

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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U.S. COURT OF APPEALS  
10TH CIRCUIT

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Sheila Lee, an individual  
Plaintiff/Petitioner - Appellant,

v.

U.S. Commodity Futures Trading Commission;  
Oklahoma Department of Securities ex rel.  
Irving L. Faught  
Defendant/Respondent - Appellee.

Case No. 10-6276  
(D.C No. 5:09-CV-01284-R)  
(W.D. Okla)

Appellant/Petitioner's Sheila Lee's  
Opening Brief

NOTICE AND INSTRUCTIONS

If you proceed on appeal pro se, the court will accept a properly completed Form A-12 in lieu of a formal brief. This form is intended to guide you in presenting your appellate issues and arguments to the court. If you need more space, additional pages may be attached. A short statement of each issue presented for review should precede your argument. Citations to legal authority may also be included. This brief should fully set forth all of the arguments that you wish the court to consider in connection with this case.

New issues raised for the first time on appeal generally will not be considered. An appeal is not a retrial but rather a review of the proceedings in the district court. A copy of the completed form must be served on all opposing counsel and on all unrepresented parties and a proper certificate of service furnished to this court. A form certificate is attached.

## APPELLANT/PETITIONER'S OPENING BRIEF

**1. Statement of the Case.** (This should be a brief summary of the proceedings in the district court.)

The District Court froze all assets before serving complaint forcing the Lee family to never be able to attend any preliminary hearing, or trial, and misleading the District Court as to Jurisdiction. The District Court refused to change the venue to South Carolina because the Plaintiffs didn't want the Lee family to have legal representation, or a voice in Court. That was the basis of the Plaintiffs' answer when the District Court asked during a hearing in June that we could not afford to attend. The District Court changed the trial from a non-jury trial, to a jury trial, and then the final pretrial report stated that it was changed back to a non jury trial without notifying any of the appellants. Meanwhile, the District Court refused to grant two different continuances knowing that the Plaintiffs had refused to disclose documents during the discovery process, the receiver refused to turn over any accounting that was ever complete, and allowing a government agency to destroy a United States Citizen's rights of due process.

**2. Statement of Facts Relevant to the Issues Presented for Review.**

On November 20, 2009, the Plaintiffs filed the Complaint in District Court. On December 10, 2009 the Receiver demanded the possession of Sheila Lee's home and bank account from 2003-2009 regardless that Sheila Lee was not named in this suit anywhere. Receiver demanded additional records from prior to 2002 as well and when he received them and they proved to be beneficial to the Defendant and Relief Defendants he never made this information available to the Court

On March 3, 2010, the Plaintiffs froze all assets of Sheila Lee before serving the amended Complaint on March 6, 2010 naming Sheila Lee as a Relief Defendant in the suit. April 21<sup>st</sup>, 2010, Judge Russell questioned the Plaintiffs during a hearing that Sheila Lee could not afford to attend that those actions were "a stretch of due process." Fifty days after the District Court granted the motion that ignored my 5<sup>th</sup> amendment rights.

The Receiver was notified a month before that the Lee Family had funds in an account that was adequate in size to purchase Sheila Lee and Kenneth Lee's home on Jorington Street in Mount Pleasant, South Carolina. (Sheila Lee's Legal Residence not in Oklahoma). The Receiver manipulated those numbers and never mentioned them in any analysis that he submitted to the District Court. His reply to Defendant and Relief

Defendants was always "I have not finished my final analysis." A week before trial the Receiver, ODS and CFTC admitted that there is more than \$1,300,00 that they cannot account for as to where it came from and could not or would not answer the question that these monies were from the Lee Family. Kenneth Lee, had submitted several account statements that showed the Lee family with, approximately that amount of money in accounts over the span of 2002-2004. The District Court was also notified of those accounts by USPS mail directly to Judge Russell and the Receiver, including these statements in several motions and answers that were submitted to the District Court. The District Court ignored these documents as well.

The Receiver failed in his duties to file the proper documents in South Carolina about the properties in question. The Receiver failed to do that in the 10 day time frame and failed in regards to filing the proper document. 28 USC § 754. The failure to file such copies in any district shall divest the receiver of jurisdiction and control over all such property in that district. The Receiver was anything but indifferent from the start. Nevertheless, the Receiver should be indifferent to both parties. *Liberte Capital Group, LLC v Capwill*, 462 F. 3d 543, 551 n. 6(6th CIR 2006). Sheila Lee challenged the Receivers competence and improper conduct with factual basis to raise those challenges and proved that they existed. By the Receiver not filing the required documents in Charleston County, SC, and the illegal act of seizing Social Security money from my personal bank account the Receiver again showed and proved his incompetence. Receiver admitted in Court Hearing in April that this was his fifth time to act as Receiver for the CFTC. (CFTC chooses the Receiver) Receivers actions during these proceedings reflected that he was there to support the CFTC and ODS rather than be indifferent during the entire process.

The Receiver lied to the District Court in his statement that he did not know that if it was Social Security money that was in her bank account. The Receiver had access to all of that information in his statements that he demanded from Wachovia Bank. The Receiver then had the gall to state that the \$400 was so insignificant anyway that he was going to keep it to pay against the judgment against her. The District Court then agreed with the Receiver. A Receiver may attempt to collect what he is owed by petitioning a judge to allow a bank account to be frozen and funds extracted from it. If the judge grants this motion, the Receiver can then approach the debtor's bank and ask that the account be frozen. Although the District Court granted this motion, the Receiver is still prohibited from freezing the account or removing money from it if the money being frozen derives from Social Security benefits. The District Court ruled in favor of the Receiver keeping my

mothers Social Security benefit that is rightfully hers. It is sad to see that there are people out there that are taking an elders government protected benefit that is rightfully ONLY hers. How many rights can be violated in Federal Court and nobody do anything about it?

### 3. Statement of Issues.

- a. **First Issue:** Rights of Due Process were denied throughout the process.

#### **Argument and Authorities:**

The 5<sup>th</sup> amendments Procedural Due Process clause (Bolling vs. Sharpe 347 US 497) (1954) added the equal protection element that the 14<sup>th</sup> amendment offers. (Barron v Baltimore). In 1934, the United States Supreme Court held that due process is violated, "if a practice or rule offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamentals." It includes an individual's right to be heard at the preceding, and that the person, or panel, making the final decision over the preceding be impartial in regards to the matter before them.

By freezing all assets before our voice was even heard in Court is just a blatant misinterpretation of what protected rights are. Commodity Futures Trading Commission (CFTC) Administrative Law Judge George H. Painter made serious allegations regarding fellow CFTC judge Bruce Levine in announcing his retirement. Judge Levine, "in the cynical guise of enforcing the rules, forces pro se complainants to run a hostile procedural gauntlet until they lose hope, and either withdraw their complaint or settle for a pittance, regardless of the merits of the case," Judge Painter wrote. The CFTC seems to have adopted Judge Levine's standard of practice by manipulating the Courts into forcing citizens from their homes, taking all monies before proving anything in Court, and violating several protected rights of an American family, in the United States of America. It is impossible to have a fair trial when the Plaintiffs use so many lawyers that ignore facts just because they don't weigh in their favor.

- b. **Second Issue:** Failure of the Discovery Process

**Argument and Authorities:**

The discovery process was due to expire on September 31, 2010. On September 15<sup>th</sup>, 2010 the Plaintiffs (CFTC) objected to answering any of the admissions and objected to turning over documents in their possession. James Holl answered for the CFTC in the Plaintiffs' objections. The Receiver failed to turn over the requested completed analysis and then the Plaintiffs disclose at the end of October the extra \$1,3000,000 that they cannot or will not account for. The Plaintiffs and Receiver had the documents that Defendant Kenneth Lee and Relief Defendants turned over throughout the discovery process and, yet they refused to participate in the crucial phase of civil litigation. The District Court was notified of their refusal and did not act upon compelling the Plaintiffs to answer a Pro Se litigants Admissions, Interrogatories, and Document Requests.

Federal Rule of Civil Procedure 26(e)(1) states: A party who has made a disclosure under Rule 26(a) — or who has responded to an interrogatory, request for production, or request for admission — must supplement or correct its disclosure or response:

(A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing;  
or

(B) as ordered by the court.

Federal Rules of Civil Procedure 37© states:(1) Failure to Disclose or Supplement.

1. If a party fails to provide information or identify a witness as required by Rule 26(a) or 26(e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:

(A) may order payment of the reasonable expenses, including attorney's fees, caused by the failure;

(B) may inform the jury of the party's failure; and

© may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)-(vi).

(2) Failure to Admit.

If a party fails to admit what is requested under Rule 36 and if the requesting party later proves a document to be genuine or the matter true, the requesting party may move that the party who failed to admit pay the reasonable expenses, including attorney's fees, incurred in making that proof. The court must so order unless:

- (A) the request was held objectionable under Rule 36(a);
- (B) the admission sought was of no substantial importance;
- © the party failing to admit had a reasonable ground to believe that it might prevail on the matter; or
- (D) there was other good reason for the failure to admit.

**c. Third Issue: Personal Jurisdiction**

**Argument and Authorities:**

The District Court should have known that Sheila Lee was not in a proper jurisdiction due to the fact of Sheila Lee's personal jurisdiction. That is based on the fact that Sheila Lee has zero contacts in Oklahoma. The District Court and Receiver denied Sheila Lee's voice to be heard in court. Fair play was denied by the District Court from the very beginning of the case. Rights of due process were unjustly denied by the Receiver on 12/14/2009. The results have proven catastrophic with an innocent Relief Defendant being homeless.

**4. Do you think the district court applied the wrong law? If so, what law do you want applied?**

Yes. The District Court placed a permanent injunction on Sheila Lee from ever having a trading account or having the opportunity to have the right to choose employment in any field that is related . The Courts decision to do that has a punitive effect on a person that is admitted by the Plaintiffs to not have violated any rule, law, or regulation regarding this case. Sheila Lee did not break any laws and was told by Plaintiff Driscoll that Sheila Lee was not guilty of any wrong doing. One should not be punished for being innocent of any wrong doing.

**5. Did the district court incorrectly decide the facts? If so, what facts?**

1. The Prestige Enterprise received at least \$10,656,921 from investors between March 5, 2003 and November 30, 2009 ("The Relevant Time Period").

The District Court incorrectly gave all of the Lee family money to the investors. That amount of \$10,656,921 is highly exaggerated and was never a figure until the Lee family could not afford to attend the trial. The Receiver's analysis conflicts with this apparent fact to show that nobody is on the same page with this trial and Defendant and Relief Defendants were railroaded by the country that Kenneth Lee served so bravely and honorably in Viet Nam.

2. The Prestige Enterprise received only \$11,000 from Sheila Lee and disbursed over \$700,000 to or for the benefit of Sheila Lee during the Relevant Time Period.

Sheila Lee has submitted or caused to be submitted to the Receiver, ODS, CFTC and the District Court several documents that showed the amounts that were deposited and the accrument over the years before purchasing the home on Jorrington Street in Mt Pleasant, South Carolina.

3. Sheila Lee's residence, ("Sheila Lee Residence"), was purchased with the funds received by the Prestige Enterprise from investors and is an asset of Prestige Enterprise.

Sheila Lee has submitted to the Receiver and the District Court several documents that showed the amounts that were deposited and the accrument over the years before purchasing my home on Jorrington Street.

**6. Did the district court fail to consider important grounds for relief? If so, what grounds?**

Sheila Lee's proper personal jurisdiction does not lie in Oklahoma and therefore the District Court should have changed the venue to Charleston, SC where Sheila Lee resides in Charleston County, South Carolina.. The Court failed to consider any of the exhibits and evidence that was submitted throughout the process that showed the monies were enough to purchase the homes in question.

The Plaintiffs and Receiver did not provide the District Court with any of the evidence provided and used false numbers in calculating the amount the Lee Family invested and ignoring the fact that there was an amount of over \$1,300,000 that they could not account for, and admitted this fact.

**7. Do you feel that there are any other reasons why the district court's judgment was wrong? If so, what?**

The District Court denied every motion submitted by the Defendant and Relief Defendants through the entire case before the Court. Every motion or request submitted by the Plaintiffs was approved without acknowledging the Defendant and Relief Defendants evidence or facts provided.

All motions for a stay on execution of having to vacate our homes was denied and no consideration for any evidence from Defendant and Relief Defendants. Kenneth Lee personally sent evidence to Judge Russell as the evidence was not being presented to the Court by any of the Plaintiffs. Judge Russell did nothing with this evidence.

The District Court heard testimony from Receiver and Plaintiffs that they only give statements like "we feel," "we thought," "we think" "we believe" and "it could be" that there may be funds hidden from the Court but could never produced any hard evidence that supported their "feelings", "thoughts" and "beliefs."

This was done as they had no evidence that was presentable that would prove their allegations or back their testimony. The Court accepted this type testimony, but would not accept evidence and documents from Defendant and Relief Defendants.

To accept Plaintiffs feelings, thoughts and beliefs and not accept evidence from Defendant and Relief Defendants is not in keeping with fairness and justice.

**8. What action do you want this court to take in your case?**

Dismiss the case, grant compensation damages from the Receiver, ODS, and CFTC for the loss of home, bank account, being humiliated before friends, neighbors, relatives and physical and emotional stress and to have all the Plaintiffs and Receiver barred from practicing law again, and to ensure that this never happens to any other family ever again by a government agency and a District Court railroading a family out of their residences.

**9. Do you think the court should hear oral argument in this case? If so, why?**

I feel there should be oral arguments in this case, but I cannot afford to travel to Denver, CO as all my financial assets have been confiscated by the Receiver and we are left destitute.

Many issues were ignored by the Court and Plaintiffs as it did not seem to support their charges and could damage their case against innocent people.

\_\_March16th, 2011\_\_\_\_\_  
Date

**Digitally Signed**  
/s/ Sheila Lee\_\_\_\_\_  
Signature

**CERTIFICATE OF SERVICE**

I hereby certify that on March 16<sup>th</sup>, 2011 I served a  
(date)  
copy of the Appellant/Petitioner's Sheila Lee's Opening Brief to:

|                           |                                    |
|---------------------------|------------------------------------|
| Katherine Driscoll~CFTC   | <u>kdriscoll@cftc.gov</u>          |
| Terra Bonnell~ODS         | <u>tbonnell@securities.ok.gov</u>  |
| Stephen Moriarty~Receiver | <u>smoriarty@fellerssnider.com</u> |

\_\_\_\_\_  
(Opposing Party or Attorney) (Email Address)

, the last known address/email address, by Email.  
(state method of service)

|                                    |                         |
|------------------------------------|-------------------------|
| <u>March 16<sup>th</sup>, 2011</u> | <b>Digitally Signed</b> |
| Date                               | <u>/s/ Sheila Lee</u>   |
|                                    | Signature               |

**CERTIFICATE OF COMPLIANCE**

I certify that the total number of pages I am submitting as my Appellant/Petitioner's Opening Brief is 30 pages or less or alternatively, if the total number of pages exceeds 30, I certify that I have counted the number of words and the total is 3,077, which is less than 14,000. I understand that if my Appellant/Petitioner's Opening Brief exceeds 14,000 words, my brief may be stricken and the appeal dismissed.

|                                    |                         |
|------------------------------------|-------------------------|
| <u>March 16<sup>th</sup>, 2011</u> | <b>Digitally Signed</b> |
| _____                              | <u>/s/ Sheila Lee</u>   |
| Date                               | Signature               |