

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF SECURITIES ]  
Ex rel. IRVING L. FAUGHT, Administrator, ]  
and DOUGLAS L. JACKSON, in his capacity as ]  
the court appointed receiver for the investors and ]  
creditors of Schubert & Assoc. and for the assets ]  
of Marsha Schubert, individually, and doing ]  
business as Schubert & Associates, and for ]  
Schubert & Associates, ]

Plaintiffs/Appellees, ]

vs. ]

ROBERT W. MATHEWS, et al ]

Defendants, ]

KENNETH YOUNG, LESLIE YOUNG, ]  
K.R. LARUE, DANA LARUE, SCOTT WILCOX, ]  
SHERYL MERCER, RODNEY MARTIN, ]  
WANDA MARTIN, RAYMOND LAUBACH, ]  
DAN JACKSON, CRYSTAL JACKSON, ]

Defendants/Appellants. ]

Case No. CJ-2005-3796  
Consolidated with  
Case No. CJ-2005-3299

Supreme Court No. 104161

**RESPONSE TO PETITION IN ERROR OF APPELLEE/RECEIVER**

Is Appellee willing to participate in an attempted settlement of the appeal by predecisional conference under Rule 1.250?

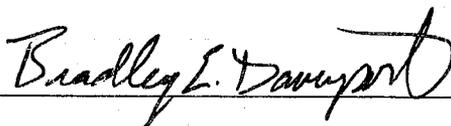
\_\_\_\_\_ YES                        X   NO

Attach as exhibit "A" appellee's statement of the case *not to exceed one "8 x 11" double spaced page* if not clearly set out by appellant in petition in error.

In accelerated appeals from orders granting motion for summary judgment or motion to dismiss **only** Appellee shall also file concurrently with response any supplement to record on accelerated appeal. See Rule 1.36.

DATE:   January 16,   2007

Verified by:



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Douglas L. Jackson, Receiver

CERTIFICATE OF MAILING TO ALL PARTIES AND COURT CLERK

I hereby certify that a true and correct copy of the *Response to Petition in Error* was mailed this 16<sup>th</sup> day of January, 2007, by depositing it in the U.S. Mails, postage pre-paid to:

Amanda Cornmesser  
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Attorneys for Appellants/Defendants  
Wade Toepfer, Kurt Blair, Wendy Blair,  
Neil Sheehan, Robert Rains

I further certify that on the 16<sup>th</sup> day of January 2007, a copy of the *Response to Petition in Error* was mailed to, or filed with:

Oklahoma County Court Clerk  
409 County Office Bldg.  
320 Robert S. Kerr Ave.  
Oklahoma City, OK 73102

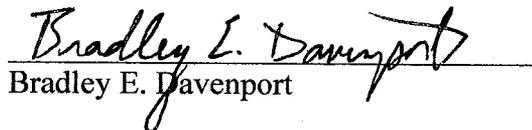
  
Bradley E. Davenport

Exhibit "A" – Appellee/Receiver's Statement of the Case

Marsha Schubert, an investment representative in Crescent, OK, operated a Ponzi scheme from January 2000 through October 2004. Schubert perpetrated this scheme by paying out money she received from later investors to earlier investors in the form of fictitious profits. As a result of Marsha Schubert's operation of a Ponzi scheme, 87 victims identified by the United States District Court for the Western District of Oklahoma in Ms. Schubert's federal criminal case lost a total of \$9.1 million. When it was learned that Marsha Schubert was violating securities laws, the Oklahoma Department of Securities ("Department") sought the appointment of a receiver over Marsha Schubert and Schubert and Associates, an unincorporated association through which Marsha Schubert did business.

The District Court of Logan County appointed the Appellee/Receiver as receiver for the assets of Marsha Schubert and Schubert and Associates. Subsequently, the District Court of Logan County amended its Order Appointing Receiver expressly appointing Appellee/Receiver as the receiver for the benefit of claimants and creditors of Marsha Schubert and Schubert and Associates. In this capacity, Appellee/Receiver filed the lawsuit below, in conjunction with the Department, to recover the fictitious profits that Marsha Schubert paid out to Appellants as part of her Ponzi scheme. Appellees asserted two causes of action against Appellants – (1) unjust enrichment, and (2) to set aside fraudulent transfers under the Oklahoma Uniform Fraudulent Transfer Act. Prior to the hearing on Plaintiffs/Appellees' Motions for Summary Judgment, Plaintiffs/Appellees withdrew their claim under the UFTA relative to Appellants.

Appellee/Receiver's claim for unjust enrichment against Appellants is equitable in nature and is based on them receiving a benefit at the expense of others. His claim against Appellants has nothing to do with violation(s) of the Oklahoma Securities Act, nor does the cause of action include "wrongdoing" as a required element. The evidentiary materials attached to Plaintiffs/Appellees' Motions for Summary Judgment against Appellants demonstrate that each of the Appellants received fictitious profits from Marsha Schubert between January 2000 and October 2004. The evidentiary materials also show that Appellants LaRue, Wilcox, and Laubach paid no money into Marsha Schubert, but each of them nonetheless received funds from Marsha Schubert. The money in Schubert's accounts was simply other investors' money. In short, these Appellants received fictitious profits from Marsha Schubert at the expense of the 87 Ponzi scheme victims.

While Appellants may have paid money to third-party brokerage firms, those payments went into their accounts with those brokerage firms. Any such payments were not made payable to Marsha Schubert and were not deposited into her bank accounts. Yet, the thousands of dollars that each of the Appellants unjustly received came directly from Marsha Schubert's own bank accounts, and not from third-party brokerage firms or Appellants' own brokerage accounts. Defendants/Appellants' repeated efforts to confuse the issue on this subject are futile. Paying money into "A" does not justify receiving money from "B". The evidentiary materials attached to Plaintiffs/Appellee's Motions for Summary Judgment and Briefs in Support demonstrate that Appellants were unjustly enriched at the expense of others and that no genuine issue of material fact exists relative to that cause of action. The trial court properly entered summary judgment in favor of Plaintiffs/Appellees and against Defendants/Appellants, and that decision should stand.

