

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 LARUE,]
Defendant/Appellant.]

Case No. CJ-2005-3796
Consolidated with
Case No. CJ-2005-3299
Supreme Court No. 104262

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: February 9, 2007

Verified by:

Bradley E. Davenport
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Te.

CERTIFICATE OF MAILING TO ALL PARTIES AND COURT CLERK

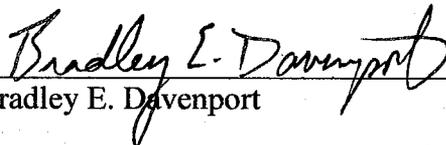
I hereby certify that a true and correct copy of the *Response to Petition in Error* was mailed this 9th day of February, 2007, by depositing it in the U.S. Mails, postage pre-paid to:

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I further certify that on the 9th day of February 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, 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 Schubert's Ponzi scheme, 87 victims lost \$9.1 million. The Oklahoma Department of Securities ("Department") sought the appointment of a receiver in the District Court of Logan County.

The District Court of Logan County appointed the Appellee as receiver for the assets of Marsha Schubert and Schubert and Associates. The Court later amended its Order expressly appointing Appellee as receiver for the benefit of claimants and creditors of Schubert. Appellee filed this lawsuit in the District Court of Oklahoma County to recover fictitious profits Schubert paid out to Appellant and his co-Defendants as part of her Ponzi scheme.

Appellee's claim for unjust enrichment is equitable in nature and is based on Appellant receiving a benefit at the expense of others. Neither wrongdoing nor a defendant's state of mind is relevant to an unjust enrichment cause of action. Appellant received \$26,710 from Schubert in 2002 and 2003 having paid no money to Schubert. In May 2004, Appellant paid \$9,000 to Schubert, which incredibly resulted in over \$72,000 of fictitious profits being paid to him in less than four months. The money in Schubert's accounts was simply other investors' money. Appellant received fictitious profits from Schubert at the expense of the Ponzi scheme victims.

While Appellant may have also paid money to third-party brokerage firms, those payments went into his brokerage account. The funds that Appellant unjustly received came from Schubert's own bank accounts. Paying money into "A" does not justify receiving money from "B". The trial court properly granted summary judgment in favor of Plaintiffs/Appellees and against Defendant/Appellant, and that decision should stand.