

IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA

DEPARTMENT OF SECURITIES
STATE OF OKLAHOMA

JAN 11 2001

SALLY HOME STATE OF OKLAHOMA
STATE OF OKLAHOMA

Oklahoma Department of Securities)
ex rel. Irving L. Faught,)
Administrator,)

Plaintiff,)

v.)

Case No. CJ 2001 60188

Parakletos Professional Services,)
L.L.C., an Oklahoma limited liability)
company, Parakletos Investment)
Club, Parakletos Investment Club II,)
Charles R. Chung, an individual, and)
J. Elaine Chung, an individual,)

Defendants.)

**PLAINTIFF'S APPLICATION FOR TEMPORARY RESTRAINING ORDER,
ASSET FREEZE, APPOINTMENT OF A RECEIVER AND TEMPORARY INJUNCTION
AND BRIEF IN SUPPORT**

I. INTRODUCTION

The Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator ("Department"), respectfully submits this application for a temporary restraining order, asset freeze, appointment of a receiver and temporary injunction against Parakletos Professional Services, L.L.C., Parakletos Investment Club, Parakletos Investment Club II, Charles R. Chung and J. Elaine Chung (collectively, "Defendants") pursuant to the authority granted by Section 406.1(a)(1) of the Oklahoma Securities Act (the "Act"), Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (1991 and Supp. 2000), and Sections 1382, 1383, 1384.1(B)(1) and 1551 of the Oklahoma Code of Civil Procedure (the "Civil Code"), Okla. Stat. tit. 12, §§ 1-3237 (1998). Specifically, the Department alleges that

the Defendants failed to register as a broker-dealer and/or agent, failed to register securities for offer and/or sale in and/or from the State of Oklahoma, and perpetrated fraud in connection with the offer, sale or purchase of securities. These violations are alleged to have occurred in connection with the offer and sale of interests (the "Interests") in one or more investment clubs organized, promoted and controlled by the Defendants (the "Investment Club").

The Department petitions this Court to halt further violations of the Act, to protect the rights of the Department in its obligation to safeguard the public interest, to prevent any dissipation or loss of investor funds and property and to remedy actions that Defendants have already committed.

The Department moves this Court for a temporary restraining order, order freezing assets and an order appointing a receiver to issue *instanter* until the Court may afford the parties a hearing, and additionally moves for the entry of a temporary injunction at such hearing against Defendants. The entry of such orders are necessary for the reasons set forth below, to preserve the *status quo* and to protect the Department's rights in enforcing the Act.

II. THE DEFENDANTS

Parakletos Professional Services, L.L.C. (Parakletos) is a limited liability company organized under the laws of the State of Oklahoma that provides tax preparation services. At all times material hereto, Parakletos operated under the dominion and control of Charles R. Chung.

At all times material hereto, Parakletos Investment Club of Parakletos Professional Services, LLC is represented by the Defendants to be a limited partnership

formed under the laws of the State of Oklahoma to invest the assets of the partnership in stocks, bonds, and any other investment vehicles for the benefit of the partners.

At all times material hereto, Parakletos Investment Club II is represented by the Defendants to have been formed for the purpose of making investments on behalf of its participants (the "Investors"). (Hereinafter, Parakletos Professional Services, LLC and Parakletos Investment Club II shall be referred to as the "Investment Club.")

Charles R. Chung (Charles Chung) is an individual who, at all times material hereto, was a resident of the State of Oklahoma doing the acts complained of in his own name and in the name of Parakletos and the Investment Club.

J. Elaine Chung (Elaine Chung) is an individual who, at all times material hereto, was a resident of the State of Oklahoma doing the acts complained of in her own name and in the name of the Investment Club.

III. NATURE OF THE CASE

Parakletos Membership Services (Membership Services) operates as part of Parakletos providing its members with audit representation services and the right to join the Investment Club. The annual cost of membership is \$299.00 for an individual and \$399.00 for a business entity.

On or about May 13, 1999, Defendants began offering and selling the Interests in the Investment Club in and/or from the State of Oklahoma. This practice continued until as recently as November 30, 2000. Purchases of the Interests in the Investment Club were evidenced by (a) the execution of a limited partnership agreement between the Investment Club and the Investor (the "Investment Club Agreement") or (b) the issuance of a promissory note by the Investment Club to the Investor (the "Promissory Note").

By the provisions of the Investment Club Agreement, the Investor is designated as a limited partner without the obligation or the right to participate in the management of the Investment Club. In addition, Investors are guaranteed a minimum rate of return of twenty-four percent (24%) annually. Under the provisions of the Investment Club Agreement, Charles Chung, as President of Parakletos, assumed the management duties over the funds invested.

The amount of interest payable to Investors on the Promissory Notes ranged from sixty percent (60%) per annum to seventy-nine percent (79%) per annum. Certain of the Promissory Notes were secured by an assignment of the personal and business assets of Charles Chung and Elaine Chung. Elaine Chung unconditionally guaranteed the obligations of the Investment Club under certain of the Promissory Notes.

The promotional materials distributed in connection with the Investment Club (the "Promotional Materials") describe the investments as "fully secured or insured" with a minimum guaranteed return of twenty-four percent (24%) annually. The Promotional Materials also state the following: "your satisfaction guaranteed or your money back."

Defendants Parakletos and Charles Chung managed the funds invested by the Investors. The Investors received monthly statements from the Defendants reflecting the value of their investments.

On or about December 26, 2000, Defendants notified Investors that the value of the Investment Club's account was significantly reduced due to a declining market in the fourth quarter of 2000. In the same communication the Investors were advised that the Defendants collected \$3,275,343 to invest on behalf of the Investors and that the balance of the Investment Club account was \$132,404 as of December 22, 2000.

Requests by certain Investors to withdraw their money and terminate their participation in the Investment Club were rejected by Defendants. On or about January 3, 2001, Defendants notified Investors that the Investment Club had failed.

IV. VIOLATIONS OF THE OKLAHOMA SECURITIES ACT

A. Failure to Register Securities

The Interests in the Investment Club evidenced by the execution of the Investment Club Agreements and the Promissory Notes are securities as defined by Section 2 of the Act.

The securities offered and sold by Defendants are not and have not been registered under the Act as required by Section 301 of the Act nor offered or sold pursuant to an exemption from registration pursuant to Section 401 of the Act. [See Affidavit attached hereto as Exhibit A.] By reason of the foregoing, Defendants have violated, and unless enjoined, will continue to violate, Section 301 of the Act.

B. Failure to Register as Agents and Employing Unregistered Agents

Defendant Parakletos is engaged in the business of effecting transactions in securities for the account of others and/or for its own account and as such is a broker-dealer as defined in Section 2 of the Act. Defendants Charles Chung and Elaine Chung, by virtue of their efforts and activities in effecting and attempting to effect sales of securities, on behalf of Parakletos and/or the Investment Club, are agents, as defined in Section 2 of the Act. Defendant Parakletos is not, and has not been, registered under the Act as a broker-dealer as required by Section 201 of the Act. [See Affidavit attached hereto as Exhibit B.] Defendants Charles Chung and Elaine Chung are not, and have not been, registered under the Act as agents as required by Section 201 of

the Act. [See Affidavit attached hereto as Exhibit B.] By reason of the foregoing, Defendants Parakletos, Charles Chung and Elaine Chung have violated, and unless enjoined, will continue to violate, Section 201 of the Act.

C. Untrue Statements of Material Fact and Omissions of Material Fact in Connection with Offer, Sale or Purchase of Securities

The Defendants, in connection with the offer, sale or purchase of securities, directly and indirectly, made untrue statements of material fact, including, but not limited to, the following:

- a. that the investments are fully secured or insured;
- b. that the stated return on the investments is guaranteed;
- c. that the obligations of the Investment Club in connection with certain of the Promissory Notes are unconditionally guaranteed; and
- d. that the Investment Club is organized as a limited partnership under the laws of the State of Oklahoma.

The Defendants, in connection with the offer, sale or purchase of securities, directly and indirectly, omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, the following:

- a. that Defendants Parakletos, Charles Chung and Elaine Chung are not qualified to transact business in this state as a broker-dealer or agent;
- b. that Defendants Parakletos, Charles Chung and Elaine Chung are not registered under the Act as a broker-dealer or agent;
- c. that the Interests in the Investment Club are not registered under the Act;

d. that the value of the Investment Club account had declined significantly; and

e. that the value of the Investment Club account was not sufficient to cover the principal amounts of the Investors' investments or the promised rate of return at the time the Defendants accepted funds from certain of the Investors.

By reason of the foregoing, Defendants, directly and indirectly, violated, and unless enjoined, will continue to violate Section 101(2) of the Act.

D. Engaging in any Act, Practice, or Course of Business which Operates or would Operate as a Fraud or Deceit upon any Person

Defendants, in connection with the offer, sale or purchase of securities, and through the use of the untrue statements of material facts and the omissions of material facts as described above, engaged in an act, practice, or course of business which operated as a fraud or deceit upon the Investors.

By reason of the foregoing, Defendants, directly and indirectly, violated, and unless enjoined, will continue to violate Section 101(3) of the Act.

V. NEED FOR TEMPORARY RESTRAINING ORDER, ASSET FREEZE, APPOINTMENT OF A RECEIVER AND TEMPORARY INJUNCTION

A. Temporary Restraining Order

Section 406.1 of the Act provides in part:

(a) Upon a showing by the Administrator that a person has violated or is about to violate the Oklahoma Securities Act, except under the provisions of Section 202.1 or 305.2 of this title, or a rule or order of the Administrator under the Oklahoma Securities Act or that a person has engaged or is about to engage in dishonest or unethical practices in the securities business, the Administrator, prior to, concurrently with, or subsequent to an administrative proceeding, may bring an action in the district court of Oklahoma County or the district court of any other county where service can be obtained on one or more of the defendants and the district

court may grant or impose one or more of the following appropriate legal or equitable remedies:

(1) Upon a showing of a violation of the Oklahoma Securities Act or a rule or order of the Administrator under the Oklahoma Securities Act or conduct involving dishonest or unethical practices in the securities business:

(i) a temporary restraining order, permanent or temporary prohibitory or mandatory injunction, or a writ of prohibition or mandamus;

(ii) a civil penalty up to a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or of Fifty Thousand Dollars (\$50,000.00) for multiple violations in a single proceeding or a series of related proceedings;

(iii) a declaratory judgment;

(iv) restitution to investors;

(v) the appointment of a receiver or conservator for the defendant or the defendant's assets; and

(vi) other relief the court deems just (emphasis added).

Section 1384.1 of the Civil Code provides in part:

B. A temporary restraining order may be granted without written or oral notice to the adverse party only if:

1. it clearly appears from specific facts shown by affidavit or by the verified petition that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or the attorney for the adverse party can be heard in opposition.

A temporary restraining order has the object of preserving the *status quo*, in order to prevent irreparable injury until such time as the Court may determine Plaintiff's application for temporary injunction. Morse v. Earnest, Inc., 547 P.2d 955 (Okla. 1976). The protection of the public interest is paramount in this matter. The Department's

rights are also paramount in this matter as it has the statutory obligation to safeguard the public interest. Investors are entitled to the protections afforded by the Act.

As demonstrated above, Defendants have engaged in acts and practices in violation of the Act and have, as a result of these activities, received a substantial amount of money from numerous Investors. A danger exists that the money received by Defendants from the Investors or money or securities held by Defendants on behalf of these Investors will be lost, removed or transferred. These facts make it clear that immediate preservation of the status quo is necessary to prevent further injury or loss. A temporary restraining order to issue instanter against Defendants is necessary to preserve these funds, securities and the records relating thereto and to prevent further violations of the Act.

Further, no injury will befall Defendants by granting such relief since Defendants have no right to act in the state of Oklahoma in violation of the Act, or to engage in fraudulent conduct in connection with securities activities. The interference with Defendants' rights by granting the temporary restraining order will be minimal, if any, while protecting the public from immediate and irreparable injury and loss.

B. Asset Freeze

Section 406.1 of the Act specifically grants this Court the power to fashion appropriate equitable relief to provide effective enforcement of the Act. Once the equity powers of the court are invoked, the court possesses the power to fashion appropriate interim remedies. SEC v. Manor Nursing Centers, 458 F.2d 1082, 1103 (2nd Cir. 1972). Within this power is the authority to grant effective equitable relief by temporarily freezing specific assets. SEC v. General Refractories Co., 400 F.Supp. 1248,1259

(D.D.C. 1975); SEC v. International Swiss Investments Corp., 895 F.2d 1272,1276 (9th Cir. 1990); SEC v. Manor Nursing Centers, 458 F.2d at 1105-06 (upholding district court's order freezing assets in part because ". . . at the time the court's order was entered, a great deal of uncertainty existed with respect to the total amount of proceeds received and their location").

As a result of Defendants' activities, Defendants have raised a substantial, amount of money from the Investors. Substantial uncertainty exists at this time as to the location of the proceeds. Furthermore, and in furtherance of these activities, Defendants made use of untrue statements of material fact and omitted to state material facts as alleged in Plaintiff's verified petition, in violation of Section 101 of the Act. These circumstances make it necessary that the court freeze specific assets to preserve the *status quo* by preventing the dissipation of assets so as to protect Investors and to provide effective relief.

C. Appointment Of A Receiver

The violations of the Act, as described above, give the Department the right to seek one or more of the remedies available by statute and in equity. Oklahoma Securities Commission v. CFR International, Inc., 622 P.2d 293, 295 (Okla. Ct. App. 1980). One such remedy is that of the appointment of a receiver. The need for protection of the public interest was sufficient to justify the appointment of a receiver in Huff v. Sioux Options, Ltd., CCH Blue Sky Rep ¶171,198 (April 7, 1975), an Iowa case involving sales of unregistered securities and illegal acts practiced on purchasers of the securities. The applicable Iowa statute allowed the Commissioner of Insurance to petition to a court of equity for a writ of injunction or appointment of a receiver or both,

when it appeared that any person had engaged in or was about to engage in any practice prohibited by Iowa securities law. Similarly, Oklahoma law, as set forth in Section 406.1 of the Act, specifies these same alternatives for relief. Further, in this matter as in the *Huff* matter, it appears to the Administrator of the Department that Defendants have engaged and continue to engage in practices prohibited by Oklahoma law.

Various courts have identified numerous factors that can be helpful in making a determination as to whether it is appropriate to appoint a receiver. In Huff v. Sioux Options, *supra*, the court held that a receiver can be appointed when a defendant cannot “preserve their assets, promote the interest of the state and its citizens and protect the substantial rights of the parties” without the appointment of a receiver. *Id.* at 67,721. As demonstrated, Defendants meet all of the *Huff* criteria for the appointment of a receiver in this matter to protect the public interest.

The court in SEC v. R.J. Allen & Associates, Inc., 386 F.Supp. 866 (D.C. Fla. 1974), stated that while a receiver should be appointed in the court’s discretion, in “circumstances of egregious fraud where the interests of public are in substantial jeopardy, it has been recognized that the appointment of a receiver is necessary to prevent diversion or waste of assets to the detriment of those for whose benefit, in some measure, the injunction is brought.” *Id.* at 878 quoting SEC v. Capital Counselors, Inc., 332 F.Supp. 291, 304 (S.D.N.Y. 1971).

In SEC v. American Bd. Of Trade, Inc., 830 F.2d 431 (2nd Cir. 1987), the court, quoting SEC v. Manor Nursing Centers, Inc., 458 F.2d 1082, 1105 (2d Cir. 1972), stated that the primary purpose of the appointment of a receiver is to help “preserve the status

quo while the various transactions were unraveled” so that an accurate picture of what happened could be formulated. *Id.* at 436.

As in *Huff, supra*, the Defendants in this matter cannot preserve their assets, promote the interest of the state and its citizens or protect the substantial rights of the Investors. Further, the Defendants have engaged in a fraudulent course of business to induce the public to purchase unregistered securities. It is critical that a receiver be appointed to take custody, possession and control of the assets and records. It is also critical that the receiver is empowered to make a speedy assessment of each Investor’s interest and to take any action that the Court orders. Under the Act, the public interest is of paramount concern and can only be addressed through independent means. The Department has the statutory obligation to protect the public interest and petitions this Court to assist it in fulfilling such obligation. This Court has the judicial authority and, under the facts set forth in the Plaintiff’s Petition, the necessary justification to prevent dissipation of Investor assets and continued violation of the law. The appointment of a receiver is well within this Court’s discretion.

D. Temporary Injunction

Once the Plaintiff has shown the Defendants’ past conduct is in violation of the Act, the proper test for the issuance of a statutory injunction is whether there is a reasonable expectation of future violations by Defendants. S.E.C. v. Manor Nursing Centers, Inc., 458 F.2d 1082 (2nd Cir. 1975); S.E.C. v. Culpepper, 270 F.2d 241, 249 (2d Cir. 1959). In considering this issue, past illegal conduct is strong support for the likelihood of future violations. Oklahoma Securities Commission v. CFR International, Inc., 622 P.2d 293, 295 (Okla. Ct. App. 1980). As described above, the Defendants

have violated the Act, creating a presumption of a likelihood of future violations. Because the Plaintiff has conclusively demonstrated the existence of past violations, injunctive relief is appropriate and the burden of showing that there is no reasonable expectation of future violations will shift to the Defendants and their burden "is a heavy one." S.E.C. v. Culpepper, 270 F.2d 241, 249 (2d Cir. 1959); Oklahoma Securities Commission v. CFR International, Inc., 622 P.2d at 296.

Further, unlike private actions for injunctions, the Department's action is a creature of statute subject to a standard of review different from the traditional equitable injunction. Because of the statutory basis for such action, no showing of irreparable injury or the inadequacy of other remedies, as in a private injunctive action, is required. Oklahoma Securities Commission v. CFR International, Inc., 622 P.2d 293 (Okla. Ct. App. 1980) (citing Bradford v. S.E.C., 278 F.2d 566 (9th Cir. 1960)). Although not required, the Department has also shown that the public will suffer irreparable injury if Defendants are not enjoined from further violations of the Act.

E. An Ex Parte Order Should Be Issued

While Courts have been cautious with the use of *ex parte* orders, they are approved in appropriate cases. Covington, Knox, Inc. v. Texas, 571 S.W.2d 323 (Tex. App. Houston [14th Dist.] 1979, no writ). The Department alleges facts that demonstrate a strong likelihood of ongoing violations of the Act by Defendants. Moreover, there is a great risk that Defendants will take measures to dissipate assets if provided notice of this action before a temporary restraining order is issued, assets are frozen and a receiver is appointed. Providing notice of this action to Defendants could lead to loss of Investor funds, and consequently, would cause irreparable injury to the

Department's ability to safeguard the public interest by providing as much monetary redress as possible for Investors, and to prevent irreparable loss and injury to potential Investors. The issuance of a temporary restraining order *instanter* and the appointment of a receiver *pendente lite* will help maximize the relief to Investors.

VI. CONCLUSION

The Department, pursuant to Section 405 of the Act, conducted an investigation into Defendants' activities in and/or from the state of Oklahoma. The investigation produced evidence that clearly indicates Defendants offered and sold unregistered securities, acted as unregistered broker-dealers and/or agents, and that Defendants, in connection with the offer, sale and/or purchase of securities: (1) made untrue statements of material fact; (2) omitted to state certain material facts; and (3) engaged in a course of business which has operated as a fraud or deceit upon investors. Defendants have engaged in substantial violations of the Act, including fraudulent practices. The Department submits that the evidence firmly establishes a *prima facie* case for the issuance of a temporary restraining order, asset freeze, appointment of a receiver and temporary injunction.

In light of the facts presented and the authorities cited, the Department respectfully requests that this Court issue a temporary restraining order and orders freezing the assets of Defendants and appointing a receiver until such time as the Court may afford the parties a hearing on the Plaintiff's motion for temporary injunction, all to halt Defendants' unlawful practices and to provide effective relief for the Investors, potential investors, and the Department.

Respectfully submitted,

Rebecca A. Cryer

Melanie Hall, OBA #1209

Rebecca A. Cryer, #2065

Oklahoma Department of Securities

120 North Robinson, Suite 860

Oklahoma City, Oklahoma 73102

(405) 280-7700

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 11th day of January, 2001, a true and correct copy of the above and foregoing Plaintiff's Application for Temporary Restraining Order, Asset Freeze, Appointment of a Receiver and Temporary Injunction and Brief in Support was mailed by certified mail with postage prepaid thereon addressed to:

Parakletos Professional Services, L.L.C.
2001 S. Garnet Road, Suite C
Tulsa, OK 74128

Parakletos Professional Services, L.L.C.
1201 S. Redbud Avenue
Tulsa, OK 74012

Parakletos Investment Club
2001 S. Garnet Road, Suite C
Tulsa, OK 74128

Parakletos Investment Club
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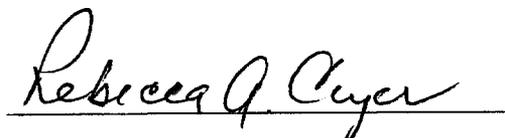
Parakletos Investment Club II
1201 S. Redbud Avenue
Tulsa, OK 74012

Charles R. Chung
2001 S. Garnet Road, Suite C
Tulsa, OK 74128

Charles R. Chung
1201 S. Redbud Avenue
Tulsa, OK 74012

J. Elaine Chung
2001 S. Garnet Road, Suite C
Tulsa, OK 74128

J. Elaine Chung
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Rebecca Q. Coyer

AFFIDAVIT

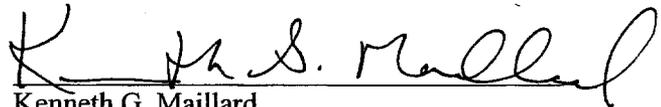
STATE OF OKLAHOMA)
) SS.
COUNTY OF OKLAHOMA)

I, Kenneth G. Maillard, Director of Registrations of the Oklahoma Department of Securities (Department), swear that I have conducted an examination of the registration and exemption files of the Department pertaining to current and past registrations for the offer or sale of securities in Oklahoma and that nowhere therein was found a record of an application for the registration of securities pursuant to Section 301 of the Oklahoma Securities Act (Act), 71 O.S. §§1-413, 501, 701-703 (Supp. 2000), for Parakletos Professional Services, L.L.C., Parakletos Investment Club or Parakletos Investment Club II.

I further swear that nowhere within the registration files for the Department was found a record of a registration of securities for Parakletos Professional Services, L.L.C., Parakletos Investment Club or Parakletos Investment Club II, pursuant to Section 301 of the Act.

I further swear that nowhere within the exemption files for the Department was found a record of a notice of intent to claim exemption from Sections 301 and 402 of the Act for Parakletos Professional Services L.L.C., Parakletos Investment Club or Parakletos Investment Club II, pursuant to any subsection of Section 401 of the Act.

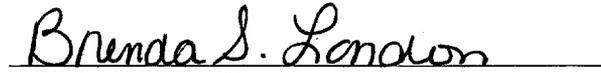
(SEAL)



Kenneth G. Maillard
DIRECTOR OF REGISTRATIONS
OKLAHOMA DEPARTMENT OF SECURITIES
First National Center, Suite 860
120 North Robinson
Oklahoma City, Oklahoma 73102
(405) 280-7700

Subscribed and sworn to before me this 11th day of January, 2001.

(NOTARIAL SEAL)



NOTARY PUBLIC

My Commission Expires:

August 26, 2001