

IN THE DISTRICT COURT OF POTTAWATOMIE COUNTY
STATE OF OKLAHOMA

FILED
IN DISTRICT COURT
FEB - 3 2004
POTTAWATOMIE COUNTY, OK
CECIL DUNLAP, COURT CLERK
BY _____ DEPUTY

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

Plaintiff,)

v.)

Case No. C-03-1239

The Hickman Agency, Inc., an Oklahoma)
corporation; Merl William Hickman, Sr.,)
an individual; Sarah L. Hickman,)
an individual; and Merl William)
Hickman, Jr., an individual,)

Defendants,)

and)

Stephanie Hickman Matthews, an individual;))
Angela Friguletto, an individual; Peter)
Friguletto, an individual; Sandra Friguletto,)
an individual; and Christy Hickman,)
an individual,)

Defendants Solely For)
Purposes of Equitable Relief.)

APPLICATION FOR EQUITABLE RELIEF

The Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator (“Department”), respectfully submits this application for equitable relief against Stephanie Hickman Matthews, Angela Friguletto, Peter Friguletto, Sandra Friguletto, and Christy Hickman (collectively, “Relief Defendants”), pursuant to Section 406.1 of the Oklahoma Securities Act (“Act”), Okla. Stat. Ann. tit. 71, §§ 1-413, 501, 701-703 (West 2004).

The Department moves this Court to issue *instanter*, an order freezing assets, an order that empowers Receiver, Stephen J. Moriarty, to marshal assets, and an order for an accounting by Relief Defendants. The entry of such orders is necessary for the reasons set forth below, to preserve the *status quo* and to protect the Department's rights in enforcing the Act.

The Department requests that this Court halt further violations of the Act, protect the rights of the Department in its obligation to safeguard the public interest, prevent any dissipation or loss of investor funds and property, and remedy actions that have already been committed. The Department reasserts and incorporates by reference the arguments and authorities cited in its Application For Temporary Restraining Order, Order Freezing Assets, Order Appointing Receiver, and Order For Accounting, against The Hickman Agency, Inc., Merl William Hickman, Sr., Sarah L. Hickman, and Merl William Hickman, Jr. (collectively, "Defendants"), and further alleges and states as follows:

RELIEF DEFENDANTS

Stephanie Hickman Matthews, an individual and Oklahoma resident, is the daughter of Merl William Hickman, Sr. ("Bill Hickman, Sr.") and Sarah L. Hickman ("Sarah Hickman"). Stephanie Hickman Matthews received large amounts of money and property from Defendants.

Angela Friguletto, an individual and Illinois resident, is the daughter of Bill Hickman, Sr. and Sarah Hickman. Angela Friguletto received large amounts of money and property from Defendants.

Peter Friguletto, an individual and Illinois resident, is the son-in-law of Bill Hickman, Sr. and Sarah Hickman. Peter Friguletto received large amounts of money and property from Defendants.

Sandra Friguletto, an individual and Illinois resident, is the mother of Peter Friguletto and the mother-in-law of Angela Friguletto. Sandra Friguletto received large amounts of money from Defendants.

Christy Hickman, an individual and Oklahoma resident, is the wife of Merl William Hickman, Jr. Christy Hickman received large amounts of money and property from Defendants.

NATURE OF THE CASE

Beginning in or about April, 1999, and continuing to the present, Relief Defendants received and/or held cash and other property and/or control property that are the proceeds, or are traceable to the proceeds, of the unlawful activities of Defendants, as alleged in the First Amendment and in Paragraphs 1 through 29 of the Petition (collectively, "Investor Assets"). Investor Assets were given to Relief Defendants by Defendants in the nature of purported salaries, jewelry, vehicles, loans, and cash for living and/or other expenses.

RELIEF DEFENDANTS ARE CUSTODIANS OF INVESTOR ASSETS

Relief Defendants have received Investor Assets from one or more of the Defendants. Relief Defendants have received or hold the Investor Assets as part of and in furtherance of the securities violations alleged in the First Amendment and in Paragraphs 1 through 29 of the Petition. Under the circumstances, it is not just, equitable or conscionable for Relief Defendants to retain the Investor Assets. As a result, Relief Defendants have been unjustly enriched.

NEED FOR EQUITABLE RELIEF AGAINST RELIEF DEFENDANTS

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 (\$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 406.1 of the Act specifically grants this Court the power to fashion appropriate equitable relief to provide effective enforcement of the Act. The Department, in its Petition and First Amendment have demonstrated the violations of the Act perpetrated by Defendants. Thus, this Court may grant equitable relief pursuant to the Act.

Asset Freeze and Accounting of Relief Defendants

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.") In addition, within the equity power of the court is the authority to order an accounting by the Relief Defendants. *SEC v. R.J. Allen & Associates*, 386 F. Supp. 866, 880 (S.D.N.Y. 1974); *SEC v. Manor Nursing Centers*, *supra* at 1103-1104.

Defendants engaged in violations of the Act as alleged in the Petition. Investor Assets obtained through these violations of the Act can be traced to Relief Defendants. Relief Defendants were not entitled to the Investor Assets. These circumstances make it necessary that the Court freeze Investor Assets received and/or held by Relief Defendants to preserve the *status quo* by preventing the dissipation of such assets, to protect investors, and to provide effective relief.

Powers of Receiver Over Relief Defendants

The violations of the Act described in the First Amendment and in the Petition, 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 remedy that this Court granted based on the allegations in the Petition. In *SEC v. American Bd. Of Trade, Inc.*, 830 F.2d 431 (2d 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. The appointment of a receiver will not fully benefit the investors in this case if the Receiver does not have custody of the Investor Assets. The power of the Receiver over the Investor Assets must extend to those Relief Defendants to whom such Investor Assets were given by Defendants.

An Ex Parte Order Should be Issued

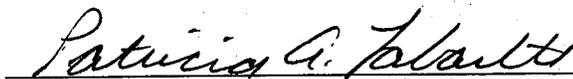
While courts have been cautious with the use of ex parte orders, they are approved in appropriate cases. *Covington, Knox Inc. v. Texas*, 577 S.W. 2d 323 (Tex. App. Houston [14th Dist.] 1979, no writ). The Department alleged facts in the First Amendment and in the Petition that demonstrate a strong likelihood of ongoing violations of the Act by Defendants.

In addition, there is a great risk that Relief Defendants will take measures to dissipate Investor Assets if provided notice of this action before an order is issued. Indeed, after this Court's Temporary Restraining Order, Order Freezing Assets, Order Appointing Receiver, and Order For Accounting was served by the Pottawatomie County Sheriff on Defendants, Defendants withdrew additional cash and/or cashed checks from investors. Providing notice of this action to Relief Defendants could lead to loss of Investor Assets, and consequently cause irreparable injury to the Department's ability to safeguard the public interest by providing monetary redress to investors. The issuance *instanter* of an order granting an asset freeze against Relief Defendants, empowering the Receiver to take custody of Investor Assets received and held by Relief Defendants, and for an accounting by the Relief Defendants of Investor Assets received and/or held by Relief Defendants, is necessary to preserve Investor Assets, and the records relating thereto; to prevent further violations of the Act; to maximize the relief to investors; and to protect the public interest.

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 issued, offered and/or sold unregistered securities, acted as unregistered agents and/or employed unregistered agents. The investigation also revealed 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 an order freezing Investor Assets received and/or held by Relief Defendants, empowering the Receiver to take custody of Investor Assets received and/or held by Relief Defendants, and for an accounting by the Relief Defendants of Investor Assets received and/or held by Relief Defendants. In light of the facts presented and the authorities cited, the Department respectfully requests that this Court issue an order freezing Investor Assets received and/or held by Relief Defendants, empowering the Receiver to take custody of Investor Assets received and/or held by Relief Defendants, and for an accounting by the Relief Defendants of Investor Assets received and/or held by Relief Defendants.

Respectfully submitted,



Patricia A. Labarthe OBA #10391
Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, Oklahoma 73102
Telephone (405) 280-7700
Fax (405) 280-7742

CERTIFICATE OF MAILING

The undersigned certifies that on the 3rd day of February, 2004, a true and correct copy of the foregoing was mailed via First Class Mail, postage prepaid, to the following:

Terry West
Bradley C. West
The West Law Firm
124 West Highland
Shawnee, OK 74801
Attorneys for Defendants The Hickman Agency, Inc.,
Merl William Hickman, Sr., Sarah L. Hickman, and
Merl William Hickman, Jr.

Stephanie Hickman Matthews
RR 3 Box 88
Meeker, OK 74855

Angela Friguletto
550 South Addison Avenue
Lombard, IL 60148

Peter Friguletto
550 South Addison Avenue
Lombard, IL 60148

Sandra Friguletto
618 South LaLonde Avenue
Lombard, IL 60148

Christy Hickman
Route 3, Box 490
Meeker, OK 74855

Stephen J. Moriarty
Andrews Davis Legg Bixler Milsten & Price
500 West Main, suite 500
Oklahoma City, OK 73102
Receiver

