

IN THE DISTRICT COURT OF OKLAHOMA COUNTY

STATE OF OKLAHOMA

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

Plaintiff,)

v.)

Case No. CJ-2003-3174

B & B Worm Farm, an unincorporated)
entity, B & B Worm Farms, Inc., a)
Nevada corporation, Lynn Bradley,)
an individual, and the Estate of Gregory)
Miles Bradley, a deceased individual,)

Defendants.)

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

APR 17 2003

PATRICIA PRESLEY, COURT CLERK
By _____
Deputy

**PLAINTIFF'S APPLICATION FOR TEMPORARY RESTRAINING ORDER AND
ASSET FREEZE AND BRIEF IN SUPPORT**

INTRODUCTION

On April 14, 2003, the Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator ("Department") filed a verified petition for permanent injunction against B & B Worm Farm, an unincorporated entity, B & B Worm Farms, Inc., a Nevada corporation, Lynn Bradley an individual, and the Estate of Gregory Miles Bradley, a deceased individual (collectively, "Defendants"), pursuant to the authority granted by Section 814 of the Oklahoma Business Opportunity Sales Act (the "Act"), Okla. Stat. tit. 71, §§ 801-829 (1991 & Supp. 1999). Specifically, the Department alleged that Defendants a) failed to register a business opportunity for offer and/or sale in and/or from the State of Oklahoma, and b) perpetrated fraud and deceit in connection

with the offer and/or sale of a business opportunity in and/or from this state. Plaintiff respectfully submits this application for an order freezing the Defendants' assets and restraining Defendants from transferring or otherwise dissipating their assets.

These violations are alleged in connection with a contract for the sale of breeder worms coupled with a buy-back provision ("Grower Contracts"). It is believed that in excess of Twenty Million Dollars (\$20,000,000) has been received by Defendants in connection with the business opportunity. During the months of February and March, 2003, over Two and One-Half Million Dollars (\$2,500,000) was deposited into the primary business account of B & B Worm Farms, Inc. During this same period, over Three Million Six Hundred Thousand Dollars (\$3,600,000) was withdrawn from the account. As of the end of March 2003, based upon bank records provided by the Defendants to the Department, the balance remaining in the account was \$295,155.44.

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 Grower funds and property and to remedy actions that Defendants have already committed.

The Department moves this Court for a temporary restraining order and an order freezing assets to issue *instanter* until the Court may afford the parties a hearing. 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.

THE DEFENDANTS

1. Gregory Miles Bradley and Lynn Bradley *dba* B & B Worm Farm began operations in Meeker, Oklahoma in 1998.

2. On November 17, 2000, B & B Worm Farms, Inc. (B & B) was incorporated under the laws of the State of Nevada. B & B was admitted to do business as a foreign corporation in the State of Oklahoma on May 20, 2002.

3. At all times material hereto, B & B operated under the dominion and control of Gregory Miles Bradley and/or Lynn Bradley.

4. Gregory Miles Bradley, who died on January 26, 2003, is listed on the Nevada corporate records as President and a Director of B & B.

5. Lynn Bradley is listed on the Nevada corporate records as Secretary/Treasurer and a Director of B & B and Lynn Bradley is the current chief executive officer of B & B.

STATEMENT OF FACTS

6. At all times material hereto, Defendants represented that B & B was formed to produce earthworms for use in organic waste management projects and to sell to new worm growers, and to produce worm biproducts or "castings" for organic soil enhancement.

7. B & B enters into contracts with persons to grow earthworms for sale to B & B ("Growers").

8. The Grower Contract provides that B & B will provide the Grower with breeder worms and supplies to establish a worm farm and will purchase, at a stated price per pound, all live worms produced by the Grower and delivered to B & B or its designees.

9. Defendants market the Grower Contracts in a variety of ways including newspaper and magazine advertisements, brochures, and the B & B web site ("Promotional Materials").

10. Defendants represent that B & B will provide each Grower with professional growing instructions, a toll free support telephone line, free return shipping, a bimonthly newsletter and operational assistance. Defendants promise each Grower a one-year money back guarantee.

11. The essential terms of the most recent Grower Contracts include a minimum purchase price ranging from \$15,000 for 100,000 breeder worms to \$60,000 for 1,500,000 breeder worms, with a provision to buy any amount of live worms per month (minimum of 100 pounds) at a guaranteed price ranging from \$7.00 to \$9.00 per pound (the "Buy Back Provision").

12. In describing the B & B Buy Back Provision in the Promotional Materials, Defendants state that without end users (users who have a purpose for the worms other than breeding), the worm business is merely a scheme that "comes to a halt when enough Growers start sending in more worms than the company's finances could [sic] handle and the business goes bust."

13. Defendants represent to potential Growers that B & B has sufficient revenues from the sales of its products to end users to honor the Buy Back Provision in the Grower Contracts.

14. Defendants have used proceeds from the sales of the Grower Contracts to pay personal expenses of Gregory and Lynn Bradley; to make wire transfers to a

relative's auto parts business in Arizona; and to make wire transfers to an adult entertainment enterprise in Las Vegas.

15. Defendants have refused to take delivery of worms produced by Growers or failed to pay for worms delivered by Growers to B & B, or its designees, in accordance with their Grower Contracts.

16. Defendants have not disclosed that B & B does not have sufficient funds to honor all Buy-Back Provisions at the time B & B entered into Grower Contracts with and accepted funds from certain Growers.

17. In the Promotional Materials, Defendants describe the relationships or affiliations between B & B and specific end users including Organic Technologies.

18. In November of 1996, the solid waste permit of Organic Technologies was revoked by the Iowa Department of Natural Resources. The agency also ordered Organic Technologies to remove all mixed compost materials from the facility on or before January 1, 1998. The revocation was upheld by the Iowa Supreme Court in a ruling issued in April of 2000.

19. Organic Technologies has not had a solid waste permit to conduct business in the Iowa facility since April of 2000.

20. No worms have been introduced into the Organic Technologies facility.

21. As recently as March 17, 2003, B & B, in touting an agreement with Organic Technologies, represented Organic Technologies to be the largest composting facility in the State of Iowa. B & B represented that worms were introduced into the facility in March of 2000 to clean up waste in the facility. B & B also represented that the worms in the facility are producing tons of worm castings and that through the

support of B & B, Organic Technologies has the capability of becoming one of the largest producers of worm castings in the United States.

22. In June of 2002, B & B made application to the Louisiana Department of Economic Development for a \$325,000 incentive grant to establish a composting operation at a deactivated ammunition plant near Minden, Louisiana. Under the proposal, horse manure from Louisiana Downs race track would be delivered to the plant to be composted and fed to worms to produce castings for Grower's Pride, B & B's line of compost, blends and pure castings fertilizers.

23. The application never received final approval by the Louisiana Department of Economic Development.

24. The Promotional Materials describe B & B's receipt of the economic development award from the State of Louisiana.

25. On August 13, 2002, Gregory Bradley and Defendants B & B and Lynn Bradley entered into an agreement with the Department wherein the parties agreed to cease and desist from the offer and/or sale of any business opportunity in and/or from the State of Oklahoma unless and until such business opportunity is registered under the Act and/or qualified for an exemption from the registration provisions of the Act (Agreement). Pursuant to the terms of the Agreement, Gregory Bradley and Defendants B & B and Lynn Bradley agreed to refund the purchase price for any Grower Contract sold prior to the effective date of registration under the Act, upon written request of any Grower.

26. To date, Defendants have not registered the Grower Contracts under the Act or demonstrated compliance with an exemption from registration under the Act.

27. Defendants have failed to honor the one-year money back guarantee and the refund provision established in the Agreement with the Department.

28. Subsequent to the date of the Agreement, Defendants sold approximately 632 Grower Contracts for approximately \$14,078,000.00, including fifteen (15) Grower Contracts to residents of Oklahoma.

29. Defendants sold Grower Contracts as recently as April 1, 2003.

30. Defendants have not delivered the written disclosure document required by the Act to each Grower.

31. Defendants have failed to disclose that Gregory Bradley was convicted of a felony involving lewd or lascivious acts with a child under 14 and a misdemeanor theft offense in the State of California.

NEED FOR TEMPORARY RESTRAINING ORDER AND ASSET FREEZE

A. Temporary Restraining Order

Section 814 of the Act provides in part:

A. Whenever it appears to the Administrator that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of the Oklahoma Business Opportunity Sales Act or any rule or order hereunder, the Administrator may:

* * *

(2) Prior to, concurrently with, or subsequent to an administrative proceeding pursuant to paragraph 1 of this subsection, 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 to enjoin the acts or practices and to enforce compliance with the Oklahoma Business Opportunity Sales Act or any rule or order hereunder. Upon a proper showing, a permanent or

temporary injunction, restraining order or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets or the court may order rescission, which shall include restitution plus the legal interest rate, for any sales of business opportunities determined to be unlawful pursuant to the Oklahoma Business Opportunity Sales Act or any rule or order hereunder. The court shall not require the Administrator to post a bond. No costs shall be assessed for or against the Administrator in a proceeding under the Oklahoma Business Opportunity Sales act brought by or against the Administrator in any court except as otherwise provided by law.

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 permanent injunction. Morse v. Earnest, Inc., 547 P.2d 955 (Okla. 1976). The protection of the public interest is paramount in this matter. Growers are entitled to the protections afforded by the Act. The Department's rights are also paramount in this matter as it has the statutory obligation to safeguard the public interest.

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 Growers. A danger exists that the money received by Defendants from the Growers or money held by Defendants on behalf of these Growers

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 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 business opportunity 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

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 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 Growers. 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 819 of the Act. These circumstances make it necessary that the court freeze Defendants' assets to preserve the *status quo* by preventing the dissipation of assets so as to protect Growers and to provide effective relief.

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 and assets are frozen. Providing notice of this action to all Defendants could lead to loss of Growers' 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. The issuance of a temporary restraining order *instanter pendente lite* will help maximize the relief to Growers.

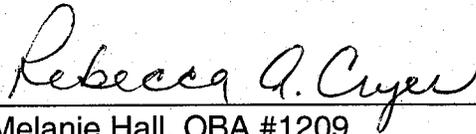
CONCLUSION

The Department, pursuant to Section 813 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 business opportunities and that Defendants, in connection with the offer, sale and/or purchase of business opportunities 1) made untrue statements of material fact and omitted to state certain material facts; and 2) engaged in a course of business which

has operated as a fraud or deceit upon Growers. 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 and asset freeze.

In light of the facts presented and the authorities cited, the Department respectfully requests that this Court issue an order temporarily restraining the Defendants from transferring or otherwise dissipating their assets and freezing the assets of Defendants until such time as the Court may afford the parties a hearing, to halt Defendants' unlawful practices, and to provide effective relief for the Growers and the Department.

Respectfully submitted,



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