

("Elkins & Associates") in two legal proceedings in the Oklahoma County District Court, styled *Oklahoma Department of Securities ex rel. Irving L. Faught, Administrator, v. Trade Partners, Inc., et al.*, Case No. CJ-2004-6295 ("Trade Partners Case"), and *Oklahoma Department of Securities ex rel. Irving L. Faught, Administrator, v. Clyde Edward Elkins, et al.*, Case No. CJ-2007-2415 ("2007 Elkins Case").

2. In the Trade Partners Case, the Department alleged that Elkins and Elkins and Associates violated the Oklahoma Securities Act ("Predecessor Act"), Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (2001 and Supp. 2003), by engaging in registration violations and fraud in connection with the offer and sale of the following securities to their tax return preparation clients:

- (a) interests in insurance related death benefits of terminally ill individuals commonly known as "viatical settlements";
- (b) promissory notes secured by interests in viatical settlements;
- (c) promissory notes secured by interests in the revenue of a telecommunications venture established to provide telephone communications services in third-world or "developing" countries, and
- (d) notes and stock issued by a company attempting to process solid and liquid effluent and wastewater for later use in agricultural irrigation.

On August 2, 2004, this Court issued a *Temporary Restraining Order, Order Freezing Assets and Order For Accounting* ("2004 Order"), prohibiting Elkins and Elkins and Associates from offering or selling any security, and from acting as a broker-dealer or agent, in and/or from the state of Oklahoma. On September 20, 2004, this Court issued a *Second Amendment to Temporary Restraining Order* ("Second Amendment") enjoining Elkins from transferring assets outside the ordinary course of business.

3. In the 2007 Elkins Case, the Department alleged that in spite of the 2004 Order,

Elkins and Elkins and Associates continued to engage in the offer and sale of securities to their tax return preparation clients, to wit:

a. interests in mineral claims issued by Earthly Mineral Solutions, Inc. ("EMS"), a Nevada corporation ("EMS Mineral Claim Interests"); and

b. "right of first refusal" contracts relating to the EMS Mineral Claim Interests ("Right of First Refusal Contracts").

4. On March 16, 2007, the Department filed an application for indirect contempt ("Contempt Application") in the Trade Partners Case, accusing Elkins with knowingly, willfully and contemptuously disobeying and violating this Court's lawfully issued 2004 Order and Second Amendment. On March 16, 2007, this Court issued a contempt citation ("Contempt Citation") pursuant to the Contempt Application.

5. The Contempt Application stated that Elkins engaged in the following violations of the 2004 Order and Second Amendment:

a. offering and selling securities in the nature of EMS Mineral Claim Interests and Right of First Refusal Contracts for Earthly Mineral Solutions, Inc.;

b. offering and selling securities in the nature of lease and advertising revenue assignments for Monarch Visual Solutions, Inc.;

c. failing to deliver bank account information and accounting; and

d. transferring assets outside the ordinary course of business including, but not limited to, cash withdrawals; the purchase of at least one vehicle; and the sale of real property located at 12401 North May Avenue, Oklahoma City, Oklahoma, on January 31, 2006, for Nine Hundred Fifty Thousand Dollars (\$950,000).

6. On March 16, 2007, the Oklahoma County District Court consolidated the Trade Partners Case and the 2007 Elkins Case to include the Contempt Citation ("Consolidated Case").

7. On August 3, 2007, in settlement of the Consolidated Case, the Department and Elkins entered into an agreement ("Settlement Agreement"), wherein Elkins consented to the

entry of a permanent injunction; to disgorge, on or before August 10, 2007, all amounts of compensation he received as a result of the sale of securities issued by Earthly Mineral Solutions, Inc. and Monarch Visual Solutions, Inc. to investors designated by the Court; to pay \$1,000 to each investor specified by the Court by December 31, 2007; to plead guilty to a single violation of the 2004 Order; and to provide the Department with the documentation described therein.

8. By the terms of the Settlement Agreement, Investor A, an Oklahoma resident, was to receive \$3,000 from Elkins by August 10, 2007, and \$1,000 from Elkins by December 31, 2007, and Investor B, an Oklahoma resident, was to receive \$1,627.88 from Elkins by August 10, 2007, and \$1,000 from Elkins by December 31, 2007.

9. On August 3, 2007, Elkins entered a plea of guilty to a single violation of the 2004 Order. As part of the plea agreement, Elkins acknowledged his understanding of the effect of his guilty plea and the terms of the Settlement Agreement, to include the disgorgement described in paragraph 7 above.

10. This Court specifically found Elkins' plea to be a part of the Settlement Agreement and found the Settlement Agreement to be fair and just. This Court accepted the plea of guilty and deferred the sentencing of Elkins to August 2, 2012 ("Sentencing Order").

Violation of Terms of Sentencing Order

11. Within five (5) business days of the entry of the Sentencing Order, Elkins issued a check to Investor A in the sum of \$3,000 and placed the check in the mail. Upon receiving the check, Investor A called Elkins to inquire about the purpose of the check. Elkins stated to Investor A that the government had ordered him to pay the money to investors even though he had not received anything from the sale of the investments. When asked by Investor A why the government was penalizing him, Elkins responded that he did not know. Elkins then instructed

Investor A to deposit the check into Investor A's own account and to send Elkins a check from Investor A's account made payable to Elkins in the amount of \$3,000. Elkins advised Investor A that if Investor A retained the money, Elkins would be required to issue a Form 1099 to Investor A resulting in the threat of intervention by the Internal Revenue Service. Investor A wrote a check to Elkins for \$3,000 that was deposited to a bank account of Elkins.

12. In January, 2007, Investor A met with Elkins at the offices of Elkins & Associates to discuss a tax preparation issue. Investor A observed a number of checks made payable to various individuals on Elkins' desk. Investor A asked Elkins if one of those checks was made payable to him. Elkins responded that one of the checks was made payable to Investor A for the same reason described by Elkins to Investor A in August, 2007. Elkins directed Investor A to endorse the check, which Investor A did. Elkins took the check back from Investor A and placed it in his desk drawer.

13. Shortly after the entry of the Sentencing Order, Elkins issued a check to Investor B in the sum of \$1,627.88, and placed the check in the mail. After receiving the check, Investor B and her husband met with Elkins at the offices of Elkins and Associates to inquire about the reason for the check. Elkins informed Investor B and her husband that he had been fined by the "State" because of their investment with him and that he was required by the State to pay the money to them despite the fact that he never received any compensation as a result of their investment. Investor B's husband asked Elkins if there were other investors in the same situation. Elkins replied that there were and that most of those investors were either endorsing the checks over to Elkins or were depositing the check from Elkins and writing a check back to Elkins for the amount of the original check. Elkins advised Investor B that she would be required to claim the payment as income if she kept the check and that by repaying the amount to

Elkins, Investor B and her husband would incur a savings of approximately \$300-\$400. Investor B wrote a check back to Elkins for \$1,627.88, that was deposited to a bank account of Elkins. Investor B then deposited the original check from Elkins to a bank account of Investor B.

14. On January 7, 2008, Elkins provided the Department with copies of checks dated December 31, 2007, as evidence of payment to Elkins' investors as ordered by this Court.

15. The acts described herein constitute violations of the Sentencing Order, and justify the acceleration of the deferred sentence of Elkins.

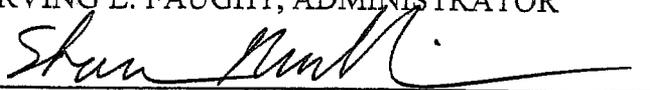
Conclusion

Defendant Elkins never intended to comply with the terms of the Sentencing Order. At the time of his guilty plea, Elkins willfully misrepresented to the Court his intention to disgorge the commission payments. His conduct demonstrates an abject disregard of the orders of this Court and his continuing schemes to abuse the trust and confidence of his clients. Wherefore, the Department requests that this Court accelerate the deferred sentence of Elkins, and/or grant such other relief as this Court deems appropriate.

Respectfully Submitted,

OKLAHOMA DEPARTMENT OF SECURITIES
IRVING L. FAUGHT, ADMINISTRATOR

By:



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 27th day of February, 2008, a true and correct copy of the foregoing was mailed by first class mail with postage prepaid thereon addressed to:

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