

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA**

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

Oklahoma Department of Securities)
ex rel. Irving L. Faught,)
Administrator,)
)
Plaintiff,)
)
v.)
)
MBS Inspection Corporation, a)
Utah corporation; and Debra Ann)
Miller, an individual,)
)
Defendants.)

JUN 25 2010

PATRICIA PRESLEY, COURT CLERK
by _____
DEPUTY

Case No.

CJ - 2010 - 5324

**APPLICATION FOR TEMPORARY RESTRAINING ORDER,
ORDER FREEZING ASSETS AND ORDER FOR ACCOUNTING**

The Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator (“Department”), respectfully submits this application for a temporary restraining order against Defendants MBS Corporation and Debra Ann Miller (collectively, "Defendants"); an order freezing the assets of Defendants; and an order for an accounting, and the records to support such accounting, to be prepared by or on behalf of the Defendants (“Accounting”), pursuant to the Oklahoma Uniform Securities Act of 2004 (the "Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2009). 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 to issue *instanter* a temporary restraining order, an order freezing assets, and the Accounting, 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 order is necessary for the reasons set forth below, to preserve the *status quo* and to protect the Department's rights in enforcing the Act.

I. THE DEFENDANTS

MBS Inspection Corporation (MBS) is a Utah corporation, with a purported business address in Duncan, Oklahoma. The identified address is a residential property that is under contract for purchase by MBS. The transaction has not yet closed. At all times material hereto, MBS issued, offered and/or sold securities in and/or from Oklahoma as described herein. Such securities have not been registered for offer and/or sale under the Act or any predecessor act.

Debra Ann Miller (Miller), an individual and Oklahoma resident, is the president and chief executive officer of MBS. At all times material hereto, Miller offered and/or sold securities in and/or from Oklahoma as described herein. Defendant Miller has not been registered under the Act in any capacity.

II. NATURE OF THE CASE

Beginning in or about April 2010, and continuing to the present, Defendants have engaged in the issuance, offer and/or sale of an investment opportunity in and/or from the state of Oklahoma to investors (Investors). Such investment opportunity involves shares of stock in MBS. Defendants promise the issuance of stock certificates and claim that the stock will be publicly traded in the future.

Investors have and continue to provide monies to Miller for shares of stock in MBS.

Defendants represent that MBS is a company that provides inspection services. These inspections include, but are not limited to, pipeline right of ways and clean-up of gulf coast oil spills.

Defendants falsely represent that MBS has contracts to participate in the inspections described in paragraph 9 above.

Defendants have failed to deliver offering materials or other similar documents to Investors. Defendants have also failed to deliver stock certificates.

Investors' funds have been deposited in accounts held at Oklahoma banks. Defendants have not invested or otherwise used the funds to generate promised investment returns.

Defendant Miller has a March 2009 felony conviction in the state of Utah for theft by deception.

III. VIOLATIONS OF THE ACT

A. Violation of Section 1-301 of the Act: Offer and/or Sale of Unregistered Securities

The MBS stock is a security as defined by Section 1-102 of the Act.

Defendants offered and sold the stock in and/or from Oklahoma.

The MBS stock is not and has not been registered under the Act for offer and/or sale in this state.

By reason of the foregoing, Defendants have violated, are violating, and unless enjoined, will continue to violate Section 1-301 of the Act.

B. Violation of Section 1-402 of the Act: Failure to Register as Agents and Employing Unregistered Agents

MBS is an issuer as defined in Section 1-102 of the Act.

Defendant Miller, by virtue of her efforts and activities in representing MBS in effecting or attempting to effect purchases or sales of its securities, is an agent as defined in Section 1-102 of the Act.

Defendant Miller is not, and has not been, registered under the Act as an agent. Defendant Miller transacted and is transacting business in this state as an agent without the benefit of registration under the Act.

MBS has employed and currently employs at least one unregistered agent.

By reason of the foregoing, Defendants have violated, are violating, and unless enjoined, will continue to violate Section 1-402 of the Act.

**C. Violation of Section 1-501 of the Act:
Untrue Statements of Material Fact and Omissions of Material Fact
in Connection with the Offer, Sale of Purchase of Securities**

Defendants, in connection with the offer and/or sale of securities, directly and indirectly, have made, and are making, untrue statements of material fact including, but not limited to, the following matters:

- a. Defendants will invest or otherwise use the Investors' funds in a manner to generate promised investment returns; and
- b. Defendants have contracts to engage in the clean up of gulf coast oil spills and to inspect pipeline right of ways.

Defendants, in connection with the offer and/or sale of securities, directly and indirectly, omitted and are omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were and are made, not misleading, including, but not limited to, the use by MBS of investor funds for the payment of personal expenses of Defendant Miller including, but not limited to, her gambling activities.

By reason of the foregoing, Defendants, directly and/or indirectly, have violated, are violating, and unless enjoined, will continue to violate Section 1-501 of the Act.

**D. Violation of Section 1-501 of the Act:
Engaging in any Act, Practice, or Course of Business that 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 misrepresentations and omissions of material fact described above, have engaged and are engaging in an act, practice, or course of business that has operated and continues to operate as a fraud or deceit upon other persons.

By reason of the foregoing, Defendants, directly and indirectly, have violated, are violating, and unless enjoined, will continue to violate Section 1-501 of the Act.

**IV. NEED FOR TEMPORARY RESTRAINING ORDER, ASSET FREEZE,
ACCOUNTING AND TEMPORARY INJUNCTION**

Section 1-603 of the Act provides:

A. If the Administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act or constituting a dishonest or unethical practice or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this act or a rule adopted or order issued under this act or a dishonest or unethical practice, the Administrator may, prior to, concurrently with, or subsequent to an administrative proceeding, maintain an action in the district court of Oklahoma County or the district court of any other county where service can be obtained to enjoin the act, practice, or course of business and to enforce compliance with this act or a rule adopted or order issued under this act.

B. In an action under this section and on a proper showing, the court may:

1. Issue a permanent or temporary injunction, restraining order, or declaratory judgment;
2. Order other appropriate or ancillary relief, which may include:
 - a. an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the Administrator, for the defendant or the defendant's assets,

b. ordering the Administrator to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property,

c. imposing a civil penalty up to a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or up to Two Hundred Fifty Thousand Dollars (\$250,000.00) for more than one violation; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act, and

d. ordering the payment of prejudgment and postjudgment interest; or

3. Order such other relief as the court considers appropriate.

A. Temporary Restraining Order

Section 1-603 of the Act specifically grants this Court the power to fashion appropriate equitable relief to provide effective enforcement of the Act. 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. *Granny Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 439, 94 S.Ct. 1113, 1124 (1974); *Morse v. Earnest, Inc.*, 547 P.2d 955 (Okla. 1976). Issuing a temporary restraining order is in the public interest when the failure to grant the relief would allow dishonest businesses and individuals to take advantage of vulnerable investors. The protection of the public interest is paramount in this matter.

In addition, 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, to include engaging 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 or loss.

B. Asset Freeze and Accounting

Section 1-603 of the Act specifically grants this Court the power to order equitable relief, in addition to a restraining order, and 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. Also within the equity power of the court is the authority to order an accounting by the Defendants. *SEC v. R. J. Allen & Associates, Inc.*, 386 F. Supp. 866, 880 (S.D. Fla. 1974); *SEC v. Manor Nursing Centers, supra* at 1103-1104.

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. The whereabouts of all of the money raised by Defendants through violations of the Act is not known at this time. A danger exists that the money received from the Investors and/or held by Defendants will be lost, removed or transferred. An order to issue *instanter* against Defendants is necessary to preserve these funds and the records relating thereto, to prevent the dissipation of assets, to account for the money raised through violations of the Act, and to prevent further violations of the Act.

C. 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. *SEC v. Manor Nursing Centers, Inc.*, *supra*; *SEC 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.*, *supra*. Here, the Defendants have violated the Act which creates a presumption of likelihood of future violations. Because the Plaintiff has conclusively demonstrated the existence of past violations, injunctive relief is appropriate and the burden of showing there is no reasonable expectation of future violations will shift to the Defendants and their burden "is a heavy one." *SEC v. Culpepper*, *supra*; *Oklahoma Securities Commission v. CFR International, Inc.*, *supra*.

Unlike private actions for injunctions, the Department's action is based on statute and no showing of irreparable injury or the inadequacy of other remedies is required. *Oklahoma Sec. Comm'n ex rel. Day v. CFR Int'l, Inc.*, 1980 OK CIV APP 60, 622 P.2d 293, 295 (citing *Bradford v. SEC*, 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.

D. 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. State*, 577 S.W.2d 323 (Tex. Civ. App. 1979). The Department alleges facts that demonstrate a strong likelihood of ongoing violations of the Act by Defendants.

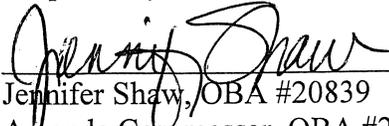
In addition, there is a great risk that Defendants will take measures to dissipate assets if provided notice of this action before a temporary restraining order is issued and assets are frozen. Providing notice of this action to Defendants could lead to loss of Investor funds, and consequently cause irreparable injury to the Department's ability to safeguard the public interest by *inter alia* providing monetary redress. The issuance of an *ex parte* temporary restraining order, asset freeze, and order for an accounting against the Defendants will help maximize the relief to Investors and protect the public interest.

V. Conclusion

The Department, pursuant to Section 1-602 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 have issued, offered and/or sold unregistered securities in and/or from this state. Such activity is continuing. The investigation also revealed the following fraudulent practices of Defendants, in connection with the offer, sale and/or purchase of securities: (1) making untrue statements of material fact; (2) omitting to state certain material facts; and (3) engaging in a course of business that has operated as a fraud or deceit upon other persons. The Department submits that the evidence firmly establishes a *prima facie* case for the issuance of a temporary restraining order, an asset freeze, an accounting, and a 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 an order freezing the assets of Defendants, until such time as the Court may afford the parties a hearing on the Plaintiff's motion for temporary injunction, and an order for an accounting, all to halt Defendants' unlawful practices and to provide effective relief to Investors and to the Department.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jennifer Shaw", is written over a horizontal line.

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