

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

OKLAHOMA DEPARTMENT OF)	
SECURITIES, ex rel, IRVING L. FAUGHT,)	
Administrator,)	
)	
Plaintiff,)	
)	
vs.)	Case No.: CJ-2012-2604
)	Judge Barbara G. Swinton
DAVID WARREN HARRIS, an individual,)	
)	
Defendant.)	

MOTION TO DISMISS FOR LACK OF JURISDICTION

COMES NOW Defendant David W. Harris (“Defendant”), by and through his attorney of record, and pursuant to Rule 4 of the Rules for District Courts of Oklahoma, Rules 10 and 37 of the Official Court Rules of the Seventh Judicial and Twenty-sixth Administrative Districts, and OKLA. STAT. tit. 12 § 2012(B)(1), (2), (6), and (10), submits this *Motion to Dismiss for Lack of Jurisdiction*. In support, Defendant would show as follows.

INTRODUCTION

The Oklahoma Department of Securities (“ODOS”) filed this action against the Defendant alleging that he sold unregistered securities, and did so as an unlicensed agent.¹ Nothing relating to the alleged investors, the company, the alleged transactions or sales, or any other material fact or aspect of this entire situation has any connection to Oklahoma. In this regard, ODOS has no authority over this matter and no basis for jurisdiction, nor does Oklahoma law have any application hereto.

On the facts of this matter the Defendant’s acts do not place him as being a part of any offer or sale of securities. However, assuming *arguendo* that they did, the proper regulatory agency(ies)

¹ Violations of OKLA. STAT. tit. 71, §§ 1-301 and 1-402, respectively.

to bring any action against the Defendant would be the department of securities in the state of the issuing company, or the states of the residences of the investors. However, it is doubtful that such agencies would do so, as the investment described in ODOS' *Petition* was successful for the investors. For these and the following reasons, this matter should, respectfully, be dismissed.

UNDISPUTED MATERIAL FACTS

1. Not one of the alleged "investors" reside in Oklahoma. *See*, Exhibit "A," *Discovery responses*, Interrogatory No. 24; and Exhibit "B," *Subscription Agreements*.
2. The company alleged to have issued and sold oil well interest securities (hereafter, "Southlake") is not located in Oklahoma. *See*, Exhibit "B."
3. Southlake is not registered to do business in Oklahoma. *See*, Exhibit "C," *Ok. Sec. of State report*.
4. Southlake does not have any operations in Oklahoma. (<http://southlakeenergy.com/projects>); (East Texas; Birdwell 1H [Jack County, Texas]; and Birdwell 2H [Jack County, Texas]).
5. None of Southlake's alleged oil well interests are located in Oklahoma. (<http://southlakeenergy.com/projects>); (East Texas; Birdwell 1H [Jack County, Texas]; and Birdwell 2H [Jack County, Texas]).
6. None of the "units" were issued from Oklahoma. *See*, Exhibit "B."
7. None of Southlake's Subscription Agreements were sent to any investor from Oklahoma. *See*, Exhibit "B," and Exhibit "D," *Deposition of David Harris*, 28:15-29:14, 29:23-30:1.
8. All Subscription Agreements were returned by investors to Southlake, in Texas, not

to Oklahoma. *See*, Exhibit “B.”

9. The Defendant had never seen any of the Subscription Agreements until receiving them in ODOS’ discovery responses in this matter. *See*, Exhibit “D,” *Deposition of David Harris*, 28:15-29:14.
10. The Defendant did not author any of the Subscription Agreements. *See*, Exhibit “D,” *Deposition of David Harris*, 67:9-68:1.
11. The Defendant did not print out or make copies of any of the Subscription Agreements. *See*, Exhibit “D,” *Deposition of David Harris*, 68:2-68:5.
12. The Defendant never mailed any of the Subscription Agreements to any investor or to anyone else. *See*, Exhibit “D,” *Deposition of David Harris*, 68:6-68:9.
13. The Defendant did not, and does not to this day, know the terms of the alleged investment or the contents of the Subscription Agreements. *See*, Exhibit “D,” *Deposition of David Harris*, 22:22-23:16, 24:7-24:11, 68:6-68:9.
14. The Defendant’s name or signature does not appear anywhere on the Subscription Agreements. *See*, Exhibit “B,” and Exhibit “D,” *Deposition of David Harris*, 68:15-68:17.
15. The Defendant never discussed the Subscription Agreements with any of the investors or anyone else. Exhibit “D,” *Deposition of David Harris*, 68:22-69:13.
16. The Defendant did not speak with the investors about the terms of Southlake’s investment, how much money to invest, the return on investment, a time frame for return, or any of the oil activities that Southlake was engaged in. Exhibit “D,” *Deposition of David Harris*, 69:14-71:4.

17. The investments made money for the investors, and no investors are unhappy with the investment. *See*, Exhibit “D,” *Deposition of David Harris*, 60:1-11; 69:14-71:4.

ARGUMENTS AND AUTHORITIES

Simply stated, there are no facts in this matter that would invoke Oklahoma securities law, invoke the regulatory authority of ODOS, or invoke the jurisdiction of an Oklahoma court. As such, this case must, respectfully, be dismissed.

A. *The Oklahoma Securities Laws Do Not Apply When an Offer or Sale has No Oklahoma Connection*

In all cases involving statutory construction, the starting point for interpreting a statute and determining its applicability must be the language employed by the legislature, because courts presume that the legislative purpose is expressed by the ordinary meaning of the words used. *Federal Trade Commission v. Kuykendall*, 466 F.3d 1149, 1154 (10th Cir. 2006). “Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive.” *Mazzio’s Corp. v. Oklahoma Tax Com’n*, 1989 OK CIV APP 86, ¶ 13, 789 P.2d 632 (quoting *Consumer Prod. Safety Comm’n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980)).

Thus, what do our statutes say when ODOS has accused a defendant of selling unregistered securities as an unlicensed agent under OKLA. STAT. tit. 71, §§ 1-301 and 1-402, respectively? OKLA. STAT. tit. 71, § 1-601 expressly, and plainly, states that these sections “do not apply to a person that sells or offers to sell a security *unless the offer to sell or the sale is made in this state* or the *offer to purchase or the purchase is made and accepted in this state.*” (Emphasis added).

With the key language being “*in this state*,” OKLA. STAT. tit. 71, § 1-601 goes on to define this phrase:

- C. For the purpose of this section, an offer to sell or to purchase a security is

made in this state, whether or not either party is then present in this state, if the offer:

1. Originates from within this state; or
 2. Is directed by the offeror to a place in this state and received at the place to which it is directed.
- D. For the purpose of this section, an offer to purchase or to sell is accepted in this state, whether or not either party is then present in this state, if the acceptance:
1. Is communicated to the offeror in this state and the offeree reasonably believes the offeror to be present in this state and the acceptance is received at the place in this state to which it is directed; and
 2. Has not previously been communicated to the offeror, orally or in a record, outside this state.

Defendant could belabor the Court about how the express language of the statute relates to the geographic location of the offeror and/or the acceptor, or the relation to where the information in the offer came from in a geographical sense.² However, such a discussion is essentially immaterial in this matter, because as shown above, the Defendant *had nothing to do with* any alleged sale, offer, acceptance, or purchase, nor any communications or information sent to any investor. *See*, Undisputed Material Facts, *supra*. In fact, the Defendant didn't, *and doesn't to this day*, even know anything of substance relating to the terms of the investment. *See*, Exhibit "D," *Deposition of David Harris*, 22:22-23:16, 24:7-24:11, 68:6-68:9.

Simply stated, no communications, information, or offer originated from Oklahoma, no offer was directed into Oklahoma, and no acceptance was made in Oklahoma. This begs the question, "why was this case filed?"

² Perhaps most instructive are the official notes and comments by the National Conference of Commissioners on Uniform State Laws which drafted the Uniform Securities Act (rev. 2002), adopted in nearly identical form by Oklahoma. *See*, Exhibit "E."

B. *ODOS filed this Case because Defendant Sold a Database of Names and Contact Information to Southlake*

Defendant earns his living by running an internet based business which rates and reviews home based businesses and exposes home based business scams. Defendant has been engaged in this business for several years. In doing so, Defendant has built up databases of individuals who provided their names and contact information to Defendant for membership to his website or to obtain information relating to Defendant's business reviews.

Out of the databases of individuals who provided him with their contact information, Defendant sold approximately fifty (50) individual's names and contact information to Southlake.³ *See*, Exhibit "D," *Deposition of David Harris*, 27:22-28:3. After selling the leads to Southlake, Defendant did not have anything further to do with whether Southlake contacted the leads or not, nor did the Defendant take place in any offers or sales discussions. *See*, Exhibit "D," *Deposition of David Harris*, 23:18-24:6, 76:19-24. The Defendant was paid by Southlake for the individuals names and contact information in an amount of approximately \$75,000. *See*, Exhibit "D," *Deposition of David Harris*, 33:3-9. Thus, the *only* connection to Oklahoma in this entire matter, is that the Defendant, who sold names and contact information to Southlake, lives in Oklahoma, and, was paid for selling this product (individual's contact information) to Southlake.

However, these mere activities simply do not invoke the regulatory authority of ODOS.

C. *In Order for Oklahoma Securities Laws to Apply to a Sale of Securities, the Offer or Acceptance Must Have Been in Oklahoma*

The express statutory language of OKLA. STAT. tit. 71, § 1-601 is clear that the Oklahoma securities laws only apply to offers and sales made *in this state*. Defendant has found no case

³ For ease of reference to the Court, throughout Defendant's deposition, the individual's names and contact information that were sold to Southlake are referred to as "leads."

authority expressly matching the facts of this matter in which *no* part of the sale was performed by a defendant, or where a defendant only sold names and contact information of individuals to an issuing company. However, Defendant anticipates that ODOS will argue that by selling names and contact information to Southlake, and getting paid for doing so, Defendant was somehow a part of the offer or sale made by Southlake. This argument however, fails for two reasons.

First, merely selling names and contact information is not enough to drag the Defendant into having a role in, or being part of, any offer or sale. Most instructive on this point is *McCullough v. Leede Oil & Gas, Inc.*, 617 F.Supp. 384, Fed. Sec. L. Rep. P 92, 475 (1985). In *McCullough*, an investor brought a lawsuit in the U.S. District Court for the Western District of Oklahoma alleging violations of federal, Alabama, Oklahoma, and Texas securities laws. In analyzing the transaction,⁴ the Court determined that the Oklahoma Securities Act was inapplicable to a transaction where, although some correspondence did originate in Oklahoma, none of the correspondence originating in Oklahoma amounted to an offer or acceptance of the sale of securities. The *McCullough* Court stated,

A securities transaction comes within the purview of the civil liabilities portion of the Oklahoma Securities Act, 71 O.S. 198 § 408(a), under the following two circumstances: (1) when an offer to sell is made in Oklahoma; and, (2) when an offer to buy is made and accepted in Oklahoma. 71 O.S. 1981 § 413(a). The Plaintiff contends that, because certain documents were sent from the Defendants' branch office in Oklahoma City, the offer to sell can be deemed to have been made in this state. The Court does not agree. After examining the documents exchanged between the parties in the course of negotiations, the Court is satisfied that the documents embodying the offer to sell and the acceptance thereof originated in either Texas or Alabama. Although some correspondence did

⁴ The Court analyzed the transaction under Okla. Stat. tit. 71, §§ 1-703, 408(a), and 413(a) (1981). Section 413 is the prior version of OKLA. STAT. tit. 71, § 1-601, under which Defendant hereto seeks to dismiss this matter.

originate in this state, none of that correspondence amounts to an offer or acceptance of a sale of securities. Thus, under § 413(a) Oklahoma Blue Sky law is inapplicable to the transaction in this case, ... *McCullough v. Leede Oil & Gas, Inc.*, 617 F.Supp. at 389.

Defendant here has an even more tenuous connection to the alleged sales than the defendant in *McCullough*. In *McCullough*, some sale documents actually originated from Oklahoma, but the Court still found that such documents did not “embody” the offer to sell. In its analysis therefore, the Court looked to the content of the materials that the Defendant provided to the investors. Here, the Defendant provided no documents to, and had no sales communications with, any investor - *there would not be any content for this Court to analyze*. Defendant simply gave Southlake names and contact information of individuals for Southlake to contact. Certainly, the provision of such information - particularly when it is to the company and not to an investor, does not “embody” an offer to sell.

Second, even if the mere provision of names and contact information would integrate the Defendant into the offer or sale, Oklahoma law would not apply. *McCullough v. Leede Oil & Gas, Inc.*, 617 F.Supp. 384, Fed. Sec. L. Rep. P 92, 475 (1985). The proper regulatory authority would be the department of securities of Texas (Southlake’s state of residency), or the securities departments of the various states of the investors. ODOS has no jurisdiction over a foreign company, or foreign investor, that is not present or acting in this state. OKLA. STAT. tit. 71, § 1-601. Furthermore, the purpose of the Oklahoma securities laws, and the charge of ODOS, is to protect Oklahoma investors, and to prevent fraudulent securities schemes from occurring in Oklahoma. *Id.*, and *Brock v. Hines*, 1924 OK 133, ¶ 3, 223 P. 654; *Hornaday v State*, 1922 OK CR 109, 208 P. 228.

Can ODOS claim, under the facts of this case, that it is engaged in its statutory purpose when

the alleged issuer resides in Texas, and all of the alleged investors reside in various other states? Can ODOS claim that it is engaged in its statutory purpose when no information, communications, activity, or other facts relating to the offer, sale, or investment had anything to do with Oklahoma? Can ODOS claim that it is protecting investors or preventing fraudulent schemes *at all* when, as here, the investment worked out for the investors?

CONCLUSION

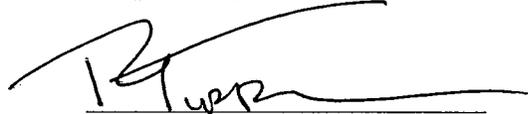
Simply stated, ODOS should not have filed this case. Not one of the alleged “investors” resides in Oklahoma. Southlake is not located in Oklahoma. Southlake is not registered to do business in Oklahoma. Southlake does not have any operations in Oklahoma. None of Southlake’s alleged oil well interests are located in Oklahoma. None of the “units” were issued from Oklahoma. None of Southlake’s Subscription Agreements were sent to any investor from Oklahoma. All Subscription Agreements were returned by investors to Southlake, in Texas, not to Oklahoma. *The Defendant had never even seen* any of the Subscription Agreements until receiving them in ODOS’ discovery responses in this matter. The Defendant never mailed any of the Subscription Agreements to any investor or to anyone else. The Defendant did not, and does not to this day, know the terms of the alleged investment or the contents of the Subscription Agreements. The Defendant never discussed the Subscription Agreements with any of the investors or anyone else. The Defendant did not speak with the investors about the terms of Southlake’s investment, how much money to invest, the return on investment, a time frame for return, or any of the oil activities that Southlake was engaged in. And perhaps most importantly, the investments made money for the investors, and no investors are unhappy with the investment.

The law is clear, in order for ODOS to have any regulatory authority or jurisdiction over an

act, it must have taken place “in this state.” OKLA. STAT. tit. 71, § 1-601. Simply stated, nothing about this matter happened in this state.

There are no facts in this matter that would invoke Oklahoma securities law, invoke the regulatory authority of ODOS, or invoke the jurisdiction of an Oklahoma Court. Therefore, the Defendant respectfully requests that this Court dismiss this matter, and grant to Defendant his costs and fees, and any other and further relief that the Court may deem just and equitable.

Respectfully submitted,



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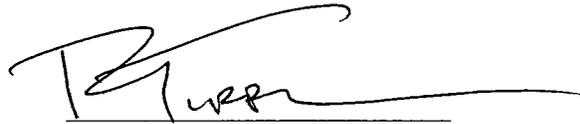
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 27, 2012, a true and correct copy of the above and foregoing *Motion to Dismiss for Lack of Jurisdiction* was served via email and US mail upon:

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