

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

NOV - 4 2014

TIM RHODES
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Oklahoma Department of Securities)
ex rel. Irving L. Faught, Administrator,)
)
Plaintiff,)
)
v.)
)
Seabrooke Investments LLC, *et al.*,)
)
Defendants.)

Case No. CJ-2014-4515

HEARING SET FOR
DECEMBER 16, 2014 @ 9:00 A.M.

**OKLAHOMA DEPARTMENT OF SECURITIES' MOTION TO RETAIN
COMMISSION FOR SALE OF PROPERTY**

The Oklahoma Department of Securities (Department), *ex rel.* Irving L. Faught, Administrator, respectfully submits this motion to retain the commission from the sale by the receivership of the property at 4708 SE 44th Street, Oklahoma City, Oklahoma 73135, known as the Cherry Hill Apartments (Cherry Hill Apartments).

BACKGROUND

On August 11, 2014, the Department filed a verified *Petition for Permanent Injunction and Other Relief* against the named Defendants pursuant to the Oklahoma Uniform Securities Act of 2004 ("Act"), Okla. Stat. tit. 71, §§1-101 through 1-701 (2011), alleging that Defendants, including Tom W. Seabrooke (Tom Seabrooke) and Judith Karyn Seabrooke (Karyn Seabrooke), perpetrated securities fraud and seeking restitution. Investor funds, totaling in excess of Four Million Dollars (\$4,000,000), were deposited to numerous bank accounts under the exclusive control of Tom and Karyn Seabrooke, and used for personal and business expenses unrelated to the investments sold. Restitution claims by investors will likely exceed the value of the Defendants' assets.

On September 9, 2014, a hearing was held on various issues in this case including compensation to be paid to Karyn Seabrooke. As a result, this Court authorized the monthly payment of \$2,500.00 to Karyn Seabrooke for the management of receivership properties and the payment to Karyn Seabrooke of one-half (1/2) of all real estate commissions earned by Defendant Seabrooke Realty, LLC for her sales of real estate properties. Since that time, a contract has been made to sell the Cherry Hill Apartments and a closing is scheduled on November 5, 2014. Seabrooke Realty LLC will receive a commission of approximately \$60,900, of which Karyn Seabrooke would be currently authorized to receive \$30,450.

AUTHORITIES

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 . . . the Administrator may . . . maintain an action in the district court of Oklahoma County . . . to enjoin the act, practice or course of business and to enforce compliance with 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,

* * *

- c. . . 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[.]

Since the filing of this case, this Court has issued a temporary restraining order and a temporary injunction, finding a justifiable basis to believe that Tom and Karyn Seabrooke engaged in violations of the Act. By thus exercising its equitable powers, particularly in ordering the appointment of a receiver and an asset freeze, the Court preserved the status quo and protected Defendants' assets. See *S.E.C. v. Current Fin. Servs.*, 62 F. Supp.2d 66, 68 (D.D.C. 1999). Preserving the status quo in a receivership is necessary to obtain an accurate picture of what transpired and, without the receivership, it would be difficult to implement an order to refund misappropriated proceeds to defrauded investors. *SEC v. Manor Nursing Centers, Inc.* 458 F.2d 1082, 1105 (2d Cir. 1972). Preserving assets of a receivership is critical to providing compensation to defrauded investors in the event that a violation of the Act is established at trial. *S.E.C. v. Duclaud Gonzalez de Castilla*, 170 F.Supp.2d 427, 429 (S.D.N.Y. 2001). It is important that this Court ensure that Defendants' assets are available to make restitution to the alleged victims. See *SEC v. Dobbins*, 2004 WL 957715 (N.D. Tex. Apr. 14, 2004); *Current Fin. Servs.* 62 F. Supp. 2d at 68.

In this case, where the liabilities of the Defendants will likely exceed the assets in the receivership, it is a particularly important public interest objective to preserve all assets, or any proceeds derived therefrom, from which the investors can recover at least a portion of their losses. The public interest objective will not be fulfilled if Karyn Seabrooke is allowed to receive the significant sum of \$30,450 in commission from the sale of the Cherry Hill Apartments.

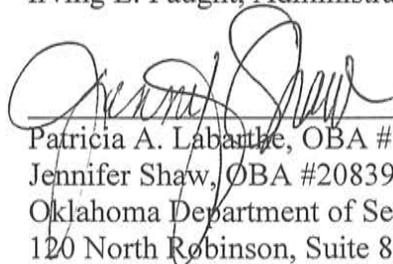
CONCLUSION

In light of the facts presented and authorities cited, the Department respectfully requests that this Court enter an order authorizing the receivership to retain the commission from the sale of the Cherry Hill Apartments for the benefit of investors.

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 4th day of November, 2014, a true and correct copy of the above and foregoing was emailed to the following:

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