

STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
THE FIRST NATIONAL CENTER
120 NORTH ROBINSON, SUITE 860
OKLAHOMA CITY, OKLAHOMA 73102



In the Matter of:

Rodney Larry Watkins, Jr. (CRD #3091936);
Southeast Investments, N.C. Inc. (CRD #43035); and
Frank H. Black (CRD #22451);

Respondents.

ODS File No. 12-058

**DEPARTMENT'S RESPONSE TO
RESPONDENTS' MOTION TO DISMISS
SUPPLEMENTAL ENFORCEMENT DIVISION RECOMMENDATION**

The Oklahoma Department of Securities (Department), for its response to the Respondents' *Motion to Dismiss Supplemental Enforcement Division Recommendation and Alternative Response to the Same of Respondents Southeast Investments, N.C. Inc. and Frank H. Black* (Motion to Dismiss), alleges and states as follows:

BACKGROUND

On March 26, 2013, the Enforcement Division of the Department filed a recommendation under the Oklahoma Uniform Securities Act of 2004 (Act), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (2011), alleging that Rodney Larry Watkins, Jr. (Watkins) violated a previous order of the Administrator by transacting business in and/or from the state of Oklahoma as an agent without the benefit of registration under the Act and that Frank Black (Black) and Southeast Investments, N.C. Inc. (Southeast) failed to supervise Watkins in violation of 660:11-5-42 of the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (Rules), Okla. Admin. Code §§ 660:1-1-1 through 660:25-7-1 (2013 Recommendation).

On April 30, 2014, the Department entered into an agreement with Watkins, leaving only Southeast and Black as parties. In discovery, Southeast and Black (collectively, Respondents) provided the Department with copies of Southeast's written supervisory procedures. The Department, in April and May of 2014, deposed several witnesses in this matter including, Black and Watkins. Discovery revealed that Respondents had violated other provisions of the Act and Rules.

On June 10, 2014, the Department filed a *Motion for Leave to Supplement Recommendation* (Motion to Supplement). On June 19, 2014, Respondents filed an objection to the Motion. On June 20, 2014, the Administrator, after review of the Motion to Supplement and objection, entered an order allowing the Department to supplement its initial recommendation. On June 20, 2014, the Department supplemented its 2013 Recommendation alleging that Southeast failed to establish, maintain and enforce written procedures that enable Southeast to supervise properly the activities of Southeast's registered agents and associated persons to assure compliance with applicable securities laws, rules, and regulations (Supplemental Recommendation).

On July 15, 2014, Respondents filed their Motion to Dismiss. Respondents did not include facts, a brief, references to statutory language, and/or case law to support their Motion to Dismiss.

ARGUMENTS AND AUTHORITIES

- 1. The filing of the Supplemental Recommendation does not violate the Respondents' right to due process.**

Respondents complain that the Supplemental Recommendation was untimely filed and that the filing, therefore, violated their constitutional due process rights and due process rights

under the Oklahoma Administrative Procedures Act. Respondents have provided no statutory authority or case law on which they base their claims.

The Act, Rules, and the Oklahoma Administrative Procedures Act do not set forth a deadline for supplementing an administrative action. In civil proceedings, Okla. Stat. tit. 12 §2015 grants courts discretion to allow pleadings to be amended at any time and provides that leave to amend “shall be freely given when justice so requires.” Courts in determining whether a time delay is undue, consider “1) the number of previous amendment requests; 2) the timing of the request (before or after discovery is closed and a trial date set); and 3) the length of time the movant was aware of the applicability of the amendment.” *Prough v. Edinger, Inc.*, 1993 OK 130, 862 P.2d 71, 76.

In this matter, the Department has made no other request to amend and/or supplement the recommendation. The Department filed its Motion to Supplement, with the Supplemental Recommendation attached, less than 30 days after the depositions of Black and other witnesses were conducted and the additional violations discovered. Further, discovery was still being conducted when the Motion to Supplement was filed, and the Administrator’s order, issued in connection with the Motion to Supplement, allowed both parties to continue discovery and have almost two months to prepare for the hearing on the merits.

As outlined in the Motion to Supplement, during the course of discovery the Department uncovered facts supporting the additional claims against the Respondents. The Supplemental Recommendation was filed to facilitate administrative efficiency and to give Respondents notice of the Department’s claims. The Department fails to see how Respondents’ due process rights have been affected by the filing itself or by the timing of the filing.

2. The Oklahoma Department of Securities has jurisdiction to proceed with its claims against the Respondents.

Southeast fails to explain how the Department lacks jurisdiction over its ability to operate as a broker-dealer under the Act. Southeast, when it applied to become a broker-dealer registered under § 1-401 of the Act, subjected itself to the jurisdiction of the Department. Southeast has also associated with two agents that are physically located in Oklahoma and registered under the Act as agents of Southeast and, thereby, Southeast has duties under the Act and Rules to properly supervise those agents.

Respondent Black, as the control person and director of Southeast, is also subject to the jurisdiction of the Department as authorized by §1-411(D) of the Act. Respondents cannot claim, in good faith, that they are not subject to the Department's jurisdiction when they voluntarily sought registration under the Act in order to do business in the state of Oklahoma.

3. The Department's Enforcement Division has complied with all of Respondents' discovery requests.

Respondents' claim that the Division of Enforcement has ignored all discovery requests is a complete distortion of the facts. Respondents, in their Motion to Dismiss, do not identify any discovery request that the Department has not responded to. Respondents issued one formal discovery request to the Department on December 2, 2013. The Department timely responded to this discovery request on December 17, 2013. In addition, the Department has continued to cooperate in discovery by providing Respondents with all relevant, non-privileged documentation subsequently received as part of the ongoing discovery process.

Respondents filed a Motion to Compel Production of Documents on April 11, 2014 (MTC). The MTC requested certain documents that the Department did not produce because they were irrelevant to the proceeding. The Department verbally addressed the MTC with

Respondents but did not file a written response because the parties were attempting to settle the case with respect to all parties. At the time, all parties agreed that a response was not necessary. Respondents have not further addressed the MTC by requesting to have it set for hearing or asking for a response from the Department.

The Department believes it has produced all relevant, non-privileged documents in a timely fashion. If Respondents do not agree, they need to advise the Department of the request to which they claim the Department has not responded.

CONCLUSION

The Department respectfully requests that the Administrator deny the Motion to Dismiss.

Respectfully submitted,



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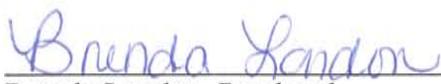
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CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 25th day of July, 2014, a true and correct copy of the above and foregoing *Department's Motion for Summary Disposition* was mailed with postage prepaid thereon, addressed to:

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