

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

IN RE: )  
)  
)  
ROBERT WILLIAM MATHEWS, ) Case No. 07-10108-TMW  
) Chapter 7  
)  
Debtor, )  
)  
OKLAHOMA DEPARTMENT OF SECURITIES, )  
Ex Rel. IRVING L. FAUGHT, )  
)  
Plaintiff, )  
)  
vs. ) Adversary No. 07-01140  
)  
ROBERT WILLIAM MATHEWS, )  
)  
Defendant. )

And

IN RE: )  
)  
)  
MARVIN LEE WILCOX and )  
PAMELA JEAN WILCOX, ) Case No. 07-10610-RLB  
) Chapter 7  
)  
Debtors. )  
)  
OKLAHOMA DEPARTMENT OF SECURITIES, )  
Ex Rel. IRVING L. FAUGHT, )  
)  
Plaintiff, )  
)  
vs. ) Adversary No. 07-01226  
)  
MARVIN LEE WILCOX, )  
)  
Defendant. )

**PLAINTIFF'S REPLY TO DEBTORS' RESPONSE**  
**TO MOTION FOR SUMMARY JUDGMENT**

The Oklahoma Department of Securities (Department) hereby replies to Debtors' response to the Department's Motion for Summary Judgment (Motion). The Department's Motion should be granted in this case. There are no material facts in controversy that would prevent judgment as a matter of law on the Department's claim that Debtors Marvin and Pamela Wilcox and Debtor Robert Mathews (Debtors) owe debts to the Department that are not dischargeable under 11 U.S.C. §523(a)(2)(A) and (19).

**THE FACTS ARE UNDISPUTED  
AND SUMMARY JUDGMENT IS WARRANTED**

A party opposing a motion for summary judgment must point to *specific* material facts showing that there is a genuine issue for trial. Rule 56, Federal Rules of Civil Procedure. Whether a particular fact is relevant or necessary, and therefore, material will be identified by substantive law. *In re: Rome Family Corporation v. Engelberth Construction, Inc.*, 2006 WL 1149179 (Bkrcty.D.Vt.). Only factual disputes that affect the outcome of the suit will properly preclude summary judgment. *Id.*

At the summary judgment stage, the non-moving party must make a showing sufficient to establish the existence of every element essential to that party's case. *Celotex v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548 (1986). When the non-moving party fails to make an adequate showing on an essential element of his case, summary judgment is appropriate as a matter of law. *Id.* at 322-23. Debtors have presented no evidence that they were doing anything other than materially aiding a "Ponzi" scheme. Debtors merely state in affidavits that they are without knowledge that Marsha Schubert operated the scheme. Debtors fail to attach any evidentiary support, other than their own deposition testimony and affidavits, to dispute the Department's claims. The mere denial

in a pleading, repeated in an affidavit that is unsupported by evidence, is not a sufficient basis to oppose a summary judgment motion. *Weeks v. Wedgewood*, 554 P.2d 780. Debtors' response is inadequate to avoid summary judgment.

Rule 56(e) states "an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." The comment to the rule continues:

(2) Without argument, a response shall ...**(B) indicate the extent to which the asserted facts recited in the motion are claimed to be false or in genuine dispute, citing the particular pages or paragraphs of any stipulations, admissions, interrogatory answers, deposition, documents, affidavits, or other materials supporting that contention;** and (C) recite in separately numbered paragraphs any additional facts that preclude summary adjudication, citing the materials evidencing such facts. To the extent a party does not timely comply with clause (B) in challenging an asserted fact, it may be deemed to have admitted such fact. See Notes of Advisory Committee on 1987 amendments to Rules, ¶2.

Debtors' responses to the Department's undisputed facts are vague and inadequate. They fail to concisely notify this Court to what extent Debtors object to a particular fact. Local Court Rule 56.1(c) for the U.S. Bankruptcy Western District of Oklahoma states:

The brief in opposition to a motion for summary judgment (or partial summary judgment) shall begin with a section which contains a concise statement of material facts to which the party asserts genuine issues of fact exist. Each fact in dispute shall be numbered, **shall refer with particularity to those portions of the record upon which the opposing party relies** and, if applicable, shall state the number of movant's facts that is disputed. All material facts set forth in the statement of the material facts of the movant shall be deemed admitted for the purpose of summary judgment unless specifically controverted by the statement of material facts of the opposing party. (Emphasis added.)

In their Response to the Department's Motion (Response), Debtors do not refer with particularity to those portions of the record upon which the Debtors rely to base their admissions or denials. Debtors leave the Department and the Court to guess what evidence supports their claims. Debtors' noncompliance with Rule 56 of the Federal Rules of Procedure warrants the Department's undisputed facts to be deemed admitted in their entirety.

Furthermore, in paragraph 6 of Debtor Mathews Objection to the Department's Complaint (Mathew Objection) and paragraph 7 of Debtors Wilcox's Objection to the Department's Complaint (Wilcox Objection), Debtors generally admitted the facts alleged by the Department but denied that they had any knowledge of the fraud. In the Department's Motion for Summary Judgment, the Department has relied on Debtors' admission of the facts in the complaints and will be prejudiced by allowing Debtors to recant. In this Motion, the Department has stated, and provided evidence supporting, additional facts numbered 8, 10 and 19-26.

**Undisputed Fact No. 1:** Debtors admitted Fact No. 1 in their Response and in paragraph 6 of the Mathews Objection and paragraph 7 of the Wilcox Objection.

**Undisputed Fact Nos. 2 and 3:** In their Response, Debtors admit to these facts in part and deny in part but fail to specify the matters denied. Debtors fail to cite to specific paragraphs in their affidavits showing proof to dispute the Department's facts and attach a segment of Debtor Marvin Wilcox's transcript wherein he denies his familiarity with daytrading. As required by Rule 56(e), no specific facts were cited by Debtors to dispute the Department's facts. Further, in Fact Nos. 2 and 3, Debtors' knowledge, or lack thereof, of what Marsha Schubert was doing does not change the underlying fact. Thus,

the Debtors' responses do not dispute a material fact(s). Additionally, Debtors admitted Fact Nos. 2 and 3 in paragraph 6 of the Mathews Objection and paragraph 7 of the Wilcox Objection.

**Undisputed Fact 4:** In their Response, Debtors fail to admit or deny Fact No. 4. Debtors admitted Fact No. 4 in paragraph 6 of the Mathews Objection and paragraph 7 of the Wilcox Objection. This fact, therefore, is deemed admitted. Further, in Fact No. 4, knowledge, or lack thereof, of what Marsha Schubert was doing does not change the underlying fact. Thus, the Debtors' responses do not dispute a material fact(s).

**Undisputed Fact Nos. 5 and 6:** In their Response, Debtors' admit to Fact Nos. 5 and 6 in part and deny them in part, but fail to specify the matters denied or to provide any contradictory evidence. Debtors admitted Fact Nos. 5 and 6 in paragraph 6 of the Mathews Objection and paragraph 7 of the Wilcox Objection. These facts, therefore, are deemed admitted.

**Undisputed Fact No. 7:** In their Response, Debtors' admit to Fact No. 7 in part and deny it in part, but fail to specify the matter(s) denied. Debtors fail to cite to specific paragraphs in their affidavits that dispute the Department's facts. As required by Rule 56(e), no other specific facts were cited by Debtors to dispute the Department's facts. Debtors cite to excerpts from Debtors Mathews' deposition transcripts which further the Department's claim that Debtors did not see evidence of the "day trading" accounts and ignored this red flag. Additionally, Debtors admitted Fact No. 7 in paragraph 6 of the Mathews Objection and paragraph 7 of the Wilcox Objection.

**Undisputed Fact No. 8:** In their Response, Debtors fail to admit or deny Fact No. 8. This fact, therefore, is deemed admitted.

**Undisputed Fact No. 9:** In their Response, Debtors' admit to Facts No. 9 in part and deny in part, but fail to specify the a material fact in dispute. Debtors' proposed evidentiary support admits they made the deposits. Additionally, Debtors admitted Fact No. 9 in paragraph 6 of the Mathews Objection and paragraph 7 of the Wilcox Objection.

**Undisputed Fact No. 10:** In their Response, Debtors fail to admit or deny Fact No. 10. This fact, therefore, is deemed admitted.

**Undisputed Facts No. 11 through 14:** In their Response, Debtors acknowledge that these facts are public record. Debtors admitted Facts No. 11 through 14 in paragraph 6 of the Mathews Objection and paragraph 7 of the Wilcox Objection. These facts, therefore, are deemed admitted.

**Undisputed Fact No. 15:** In their Response, Debtors admit to this fact in part and deny in part but fail to specify the matter denied or to provide any contradicting evidence. Debtors admitted Fact No. 15 in paragraph 6 of the Mathews Objection and paragraph 7 of the Wilcox Objection. This fact, therefore, is deemed admitted.

**Undisputed Fact No. 16:** In his Response, Debtor Mathews admits to Fact No. 16 in part and denies in part but fails to specify the matter denied or to provide any contradictory evidence. Debtor Mathews admitted Fact No. 16 in paragraph 6 of the Mathews Objection. Additionally, a copy of the referenced Judgment was attached as Exhibit A to the Department's Complaint and is a matter of public record. This fact, therefore, is deemed admitted.

**Undisputed Fact No. 17:** In their Response, Debtors admit to Fact No. 17 in part and deny in part but fail to specify the matter denied or to provide any contradictory evidence. Debtors Wilcox admitted Fact No. 17 in paragraph 7 of the Wilcox Objection.

Additionally, a copy of the referenced Judgment was attached as Exhibit A to the Department's Complaint and is a matter of public record. This fact, therefore, is deemed admitted.

**Undisputed Fact No. 18:** In their Response, Debtors admit to Fact No. 18 in part and deny in part but fail to specify the matter denied or to provide any contradictory evidence. Debtors Wilcox admitted Fact No. 18 in paragraph 7 of the Wilcox Objection. This fact, therefore, is deemed admitted.

**Undisputed Fact No. 19:** In their Response, Debtors fail to admit or deny Fact No. 19. The evidentiary support cited by Debtors is not responsive to the facts alleged. This fact, therefore, is deemed admitted.

**Undisputed Fact No. 20:** In their Response, Debtors fail to admit or deny Fact No. 20. While Debtor Marvin Wilcox did not have a pension through the banks with which he was employed, he maintained an IRA account with Schubert that he subsequently transferred to Smith Barney. Debtor Wilcox made no withdrawals from this IRA account for living expenses or other purposes during the "Ponzi" scheme time period. *See Ex. 1 Debtor Marvin Wilcox Deposition* at 5:21-25, 6:1-25; 7:1-5; 65:19-25; 66:25; 67:1-2 (October 2007).

**Undisputed Fact No. 21:** In their Response, Debtors fail to admit or deny Fact No. 21. Debtors argue the transcript of NBanC Branch President, Dennis Themer, is hearsay and inadmissible. To survive a hearsay objection, three requirements must be met to use a deposition transcript of a designated corporate officer in connection with a motion for summary judgment: 1) the deposition must be introduced by an adverse party; 2) the deposed person must be an officer of the business; and 3) the deposed person must

continue to serve in his capacity as officer at the time of the deposition. *See Cool, Cool, Water LLC v. Blackstone Capital Partners*, 2007 WL 1071943 (Bkrtcy D.N.J). The Department attached the deposition of Dennis Themer, who has been the branch bank president since 1998, to show he testified to the activity of the Debtors and their involvement in the "Ponzi" scheme. All three elements have been met making Mr. Themer's deposition transcript admissible.

Debtor Marvin Wilcox had no income from employment or received any benefits for retirement during 2003 and 2004. *See Ex. 1* at 66:17-25 and 67:1-2. Debtors Wilcox's tax return from 2003 reports a joint income of \$16,073. *See Ex. 2*, 2003 Tax Return for Marvin and Pam Wilcox. During November of 2003, Debtor Marvin Wilcox took out a loan for \$50,036.00 to purchase a 2004 Cadillac. *See Ex. 3*, Promissory Note for Marvin L. Wilcox. Between December 2, 2003 and April 30, 2004, Debtor Marvin Wilcox paid \$21,981.71 toward principal and interest. *See Ex. 3*. After Schubert's fraud was exposed in October of 2004, Debtor Wilcox had no way to continue making loan payments and sold the 2004 Cadillac. *See Ex. 1* at 66:17-25 and 67:1-2; *See Ex. 2*, ¶9 to Debtors' Response.

Debtors Wilcox's tax return from 2004 reports a joint income of \$16,315. *See Ex. 4*, 2004 Tax Return for Marvin and Pam Wilcox. During September 2004, Debtor Marvin Wilcox took out a loan for \$30,050 to purchase a 2005 Ford F350 4X4 Pickup. *See Ex. 5*, Promissory Note for Marvin L. Wilcox. After Schubert's fraud was exposed in October of 2004, Debtor Wilcox had no way to continue making loan payments and was forced to sell the 2005 Ford F350 4X4 Pickup. *See Ex. 1* at 66:17-25 and 67:1-2; *See Ex. 2*, ¶9 to Debtors' Response.

**Undisputed Fact No. 22:** In their Response, Debtors fail to admit or deny Fact No. 22. It is, therefore, deemed admitted. Debtors argue the transcript of NBanC Branch President, Dennis Themer, is hearsay and inadmissible. To survive a hearsay objection, three requirements must be met to use a deposition transcript of a designated corporate officer on a motion for summary judgment: 1) the deposition must be introduced by an adverse party; 2) the deposed person must be an officer of the business; and 3) the deposed person must continue to serve in his capacity as officer at the time of the deposition. *See Cool, Cool, Water LLC v. Blackstone Capital Partners*, 2007 WL 1071943 (Bkrcty D.N.J). The Department attached the deposition of Dennis Themer, who has been the branch president since 1998, to show he testified to the activity of the Debtors and their involvement in the “Ponzi” scheme. All three elements have been met making Mr. Themer’s deposition transcript admissible. Therefore, Fact No. 22 is deemed admitted.

**Undisputed Fact No. 23:** In their Response, Debtors fail to admit or deny Fact No. 23 as to Debtor Mathews referring Debtors Wilcox to Schubert. This fact, therefore, is deemed admitted.

**Undisputed Fact No. 24a:** In their Responses, Debtors fail to admit or deny Fact No. 24a as to Debtor Mathews referring Debtors Wilcox to Schubert. This fact, therefore, is deemed admitted in part.

**Undisputed Fact No. 24b:** In their Response, Debtors fail to admit or deny Fact No. 24b. Debtor Marvin Wilcox states he “talked with two (2) of his friends.” The Department’s *Exhibit 1* to its *Motion for Summary Judgment* shows the testimony given

by Debtor Marvin Wilcox wherein he is asked if he referred anyone to Schubert and responds with two names. See 77:14-21 and 78:1-4. It is, therefore, deemed admitted.

**Undisputed Fact No. 24c and 24d:** In their Response, Debtors fail to admit or deny Fact Nos. 24c or 24d. They are, therefore, deemed admitted.

**Undisputed Fact No. 25:** In their Response, Debtors fail to admit or deny Fact No. 25. This fact, therefore, is deemed admitted.

**Undisputed Fact No. 26:** In their Response, Debtors fail to admit or deny Fact No. 26. It is, therefore, deemed admitted.

#### **DEPARTMENT'S OPPOSITION TO DEBTORS' ALLEGED DISPUTED FACTS**

In their Response, Debtors allege five facts that they claim are material and still in dispute. As addressed in detail below, those five facts are not supported by evidence other than Debtors' own testimony or such facts are immaterial to a determination of this case.

**Debtor's Alleged Disputed Fact A:** Debtors claim they had no knowledge that Marsha Schubert was conducting a "Ponzi" scheme until the Department filed its action against Schubert. However, what Debtors believed about Marsha Schubert's operations is "irrelevant and insufficient to create any fact issue regarding the underlying scheme". *In Re Ramirez Rodriguez*, 209 B.R. 424. Debtors previously admitted all the facts alleging their aid in Schubert's investment scheme.

No one expects the Debtors to stand up and say they engaged in fraudulent activity. Of course, such admissions could expose them to other civil and criminal liability. That is precisely why courts have found that fraud can be "inferred from the totality of the circumstances" and that circumstantial evidence can be used to adduce

knowledge and intent. *In re Cohen*, 191 B.R. 599 at 605 (D.NJ 1996); *In re Vitanovich*, 259 B.R. 873, 878 (BAP 6<sup>th</sup> Cir. 2001). The sheer volume and magnitude of the transactions in Debtors' bank accounts alone should have put them on notice that they were involved in a fraud. None of the Debtors had personal income or assets to justify the transactions being made in their bank accounts. Debtors never received investment statements reflecting those transactions and they always made a profit. When Marsha Schubert was on vacation, she left envelopes with checks already written for Debtors to take to the bank. Debtor Wilcox told others that he was making a 20-30% return on his investment. When Debtors' bank told them that the activity in their accounts was suspicious, they still continued their reckless activity. Debtors tried to move the check exchange scheme to another bank, but ended up resuming their activity at NBanC. It is unreasonable for a person to believe that he could make such significant returns in such a high-risk investment program and never incur losses.

The Department, in its Complaints against Debtors, is alleging that Debtors, by participating in the check exchange scheme, materially aided the "Ponzi" scheme and committed actual fraud, not constructive fraud. The totality of the circumstances as described in the Undisputed Facts show that Debtors had the requisite knowledge and intent to deceive. Caselaw, including the case cited by Debtors, makes clear that reckless disregard of the truth satisfies the knowledge and the intent elements of a fraud claim. *In re Woolley*, 145 B.R. 830, 834-836 (E.D. Va, 1991); *Cohen* at 605; *Cantekin v. University of Pittsburg*, 192 F.3d 402, 411 (C.A.3 1999). Furthermore, Debtors' simple assertions that they had no knowledge or intent does not overcome a finding on the totality of the circumstances that Debtors recklessly disregarded the truth. *Cohen* at 605.

**Debtor's Alleged Disputed Fact B:** Debtors contend that they were not partners with Marsha Schubert in the business of Schubert and Associates. To admit that they were partners would cement their liability. It would certainly not be in their best interests to admit that now. However, during the time period that the check exchange scheme and the "Ponzi" scheme were operating, Debtors represented to the Internal Revenue Service that they were in such a partnership. If they were not members of the partnership, surely they would have so advised Marsha Schubert and requested that she provide them with accurate tax forms. At the very least, that Marsha Schubert would provide them with tax forms misrepresenting their business relationship is just one more truth that Debtors recklessly disregarded. There remains no issue of a material fact for purposes of trial.

**Debtor's Alleged Disputed Fact C:** Debtor Wilcox claims he had a retirement plan at the time he retired from NBanC. While Debtor Marvin Wilcox did not have a pension through the banks with which he was employed, he maintained an IRA account with Schubert that he subsequently transferred to Smith Barney. Debtor Wilcox made no withdrawals from this IRA account for living expenses or any other purpose during the "Ponzi" scheme time period. *See Ex. 1* at 5:21-25, 6:1-25; 7:1-5; 65:19-25; 66:25; 67:1-2 (October 2007). There remains no issue of a material fact for purposes of trial.

**Debtor's Alleged Disputed Fact D:** Debtors Wilcox claim they owned the referenced automobiles before they invested funds with Marsha Schubert. Debtors Wilcox began "daytrading" in 2002 with Schubert and Associates. *See Ex. 5 to Department's Motion for Summary Judgment.* Debtor Marvin Wilcox had no income from employment or retirement during 2003 and 2004. *See Ex. 1* at 66:17-25 and 67:1-2. Debtors Wilcox's tax return from 2003 reports a joint income of \$16,073. *See Ex. 2,*

2003 Tax Return for Marvin and Pam Wilcox. During November of 2003, Debtor Marvin Wilcox took out a loan for \$50,036.00 to purchase a 2004 Cadillac. *See Ex. 3, Promissory Note for Marvin L. Wilcox.* Between December 2, 2003 and April 30, 2004, Debtor Marvin Wilcox paid \$21,981.71 toward principal and interest. *See Ex. 3.* After Schubert's fraud was exposed in October of 2004, Debtor Wilcox had no way to continue making loan payments and sold the 2004 Cadillac. *See Ex. 1 at 66:17-25 and 67:1-2; See Ex. 2, ¶9 to Debtors' Response.*

Debtors Wilcox's tax return from 2004 reports a joint income of \$16,315. *See Ex. 4, 2004 Tax Return for Marvin and Pam Wilcox.* During September 2004, Debtor Marvin Wilcox took out a loan for \$30,050 to purchase a 2005 Ford F350 4X4 Pickup. *See Ex. 5, Promissory Note for Marvin L. Wilcox.* After Schubert's fraud was exposed in October of 2004, Debtor Wilcox had no way to continue making loan payments and was forced to sell the 2005 Ford F350 4X4 Pickup. *See Ex. 1 at 66:17-25 and 67:1-2; See Ex. 2, ¶9 to Debtors' Response.*

**Debtor's Alleged Disputed Fact E:** Debtors Wilcox claim they paid for their house from the sale proceeds of land they owned prior to their investments with Marsha Schubert. Debtors Wilcox provide no evidentiary support for this proposed disputed fact other than their own testimony.

### CONCLUSION

Debtors' participation in the check exchange scheme was itself a fraud that warrants a denial of discharge pursuant to 523(a)(2). Debtor's participation in the check exchange scheme with the result that it materially aided the "Ponzi" scheme further warrants a denial of discharge pursuant to 523(a)(2). Nor should Debtors be allowed to

discharge their debts to the Department under 523(a)(19). The Department's judgments against the Debtors result from violations of the securities laws. In addition, the Debtors materially aided Ms. Schubert's violations of the securities laws as evidenced by their participation in the check exchange scheme and that, combined with Ms. Schubert's securities violations and the Department's judgments against the Debtors, warrants a denial of discharge pursuant to 523(a)(19).

Based on its *Motion for Summary Judgment*, and this reply, summary judgment should be granted to the Department as to all Debtors.

Respectfully submitted,

/s Gerri Stuckey  
Amanda Cornmesser, OBA #20044  
Gerri Stuckey, OBA #16732  
Oklahoma Department of Securities  
120 N. Robinson, Suite 860  
Oklahoma City, OK 73120

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of July, 2008, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Jeffrey C. Trent  
P.O. Box 851530  
915 West Main  
Yukon, OK 73099  
*Attorney for Debtors*

/s Gerri Stuckey

US Bankruptcy Court  
Western District Of Oklahoma

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

IN RE: MARVIN AND PAMELA WILCOX }  
Debtor. } Case No. 07-10610

DEPOSITION OF MARVIN WILCOX  
TAKEN ON BEHALF OF  
THE OKLAHOMA STATE DEPARTMENT OF SECURITIES  
ON OCTOBER 9, 2007  
IN OKLAHOMA CITY, OKLAHOMA

WORD FOR WORD REPORTING, L.L.C.  
100 NORTH BROADWAY  
SUITE 3250  
OKLAHOMA CITY, OKLAHOMA 73102  
405) 232-9673

REPORTED BY: HOLLY HIGHTOWER, CSR

COPY

A P P E A R A N C E S

For Marvin and Pamela Wilcox:

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Also Present: Ms. Pamela Wilcox

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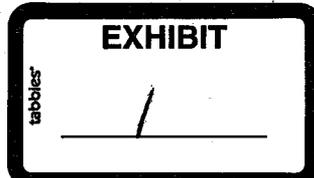
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S T I P U L A T I O N S

It is hereby stipulated and agreed by and between the parties hereto, through their respective attorneys, that the deposition of MARVIN WILCOX, may be taken on behalf of the Oklahoma State Department of Securities on October 9, 2007, in Oklahoma City, Oklahoma, by Holly Hightower, Certified Shorthand Reporter for the State of Oklahoma, pursuant to agreement.

It is further stipulated and agreed by and between the parties hereto, through their respective attorneys, that all objections, except as to the form of the question, are reserved until the time of the trial, at which time they may be made with the same force and effect as if made at the time of the taking of this deposition.

\* \* \* \* \*



1 And, thereupon, the said Trustee produced the  
2 following witness, to wit:

3 MARVIN WILCOX

4 of lawful age, being first duly sworn, deposes and  
5 says in reply to the questions propounded as follows:

6 DIRECT EXAMINATION

7 BY MS. MANCHESTER:

8 Q. Mr. Wilcox, I'm Susan Manchester. You  
9 probably recall seeing me previously at the 341  
10 Hearing. Correct?

11 A. Yes, ma'am.

12 Q. And you're the same Marvin Wilcox that filed  
13 a bankruptcy on March 2nd, 2007.

14 A. Yes, ma'am.

15 Q. Is that correct? Okay. I've kind of gone  
16 back through your schedules, and I've gotten some  
17 documents from the bank. And just a few questions on  
18 the schedules and documents is all I have today. And  
19 I know the other attorneys have a lot more to ask you  
20 about some things.

21 But looking back on your IRA, you have about  
22 \$46,000 in that IRA. Where did those funds come from  
23 and when did you put those into the IRA?

24 A. I presume you're speaking of a little  
25 retirement I had.

1 Q. Yeah. Let me find it for you.

2 A. Kingfisher Bank & Trust.

3 Q. I'm not trying to throw any trick questions.  
4 It was a Citigroup Smith-Barney. And I'm not  
5 necessarily going to make that an exhibit, but do you  
6 still have that?

7 A. Yes, ma'am.

8 Q. Okay. And I believe your attorney provided  
9 this to me when I asked for it. And this shows  
10 December 31st, 2006 that you had approximately \$46,000  
11 in this account. So, again, my question is, where did  
12 these funds come from and when did you put these  
13 funds -- or start this account?

14 A. When the Kingfisher Bank & Trust was bought  
15 out by BancFirst I went to work at NBC down the street  
16 in Kingfisher. And that was what little retirement I  
17 had from Kingfisher Bank & Trust, and I rolled it over  
18 to Smith-Barney.

19 Q. Okay. So the retirement you had at the prior  
20 bank, was it something through the bank?

21 A. Yes, ma'am.

22 Q. Now, were they your funds and the bank's  
23 funds, sort of a 401-K type situation that was just  
24 kind of put in monthly until it accumulated to this  
25 kind of sum?

1 A. Yes, ma'am. I'm pretty -- I forget how they  
2 funded it.

3 Q. But you didn't put a large sum in at any one  
4 time?

5 A. No. No.

6 Q. Now, tell me when you worked at NBC Bank.

7 A. Oh, wow. I don't remember when I quit and  
8 when I --

9 Q. To the best of your recollection.

10 A. Around 2000.

11 Q. Is when you started?

12 A. Or 1999, or something like that.

13 Q. You started then or quit?

14 A. Quit and went to work for NBC.

15 Q. Okay. So at NBC you started about 2000. And  
16 how long did you work for NBC?

17 A. Four years.

18 Q. Four years until 2004?

19 A. Yes, ma'am, approximately.

20 Q. And what did you do there?

21 A. I was a loan officer.

22 Q. And after you quit working there, did you  
23 still stay in touch with other loan officers or bank  
24 people?

25 A. At NBC.

1 Q. NBC. Uh-huh.

2 A. Yes, ma'am.

3 Q. And after you left NBC Bank, where did you  
4 go?

5 A. Nowhere.

6 Q. So since then you haven't worked?

7 A. Farming.

8 Q. Okay. But no --

9 A. No jobs.

10 Q. -- other jobs?

11 A. No, ma'am. No, ma'am.

12 Q. Okay. And you sold a 1966 Corvette to  
13 Kenneth Murray.

14 A. Yes, ma'am.

15 Q. And how did you know Kenneth Murray?

16 A. Oh, I've known him for a long time, just grew  
17 up in the county, played basketball, just knew of  
18 Kenneth.

19 Q. Now, did he work at NBC Bank?

20 A. No, he's been in the oil patch.

21 Q. Victor Emerich (ph.).

22 A. Uh-huh.

23 Q. Cresent, Oklahoma. Now, did you sell him the  
24 property in Logan County?

25 A. Yes, ma'am.

1 written out of your account for 230, 260 daily. Did  
 2 you think you had that kind of money available to buy  
 3 and sell stocks?  
 4 A. I just presumed I did.  
 5 Q. Okay. Now, you were making \$40,000 a year.  
 6 Correct?  
 7 A. Yes, sir.  
 8 Q. And you didn't know if you were you making --  
 9 you didn't know if you had \$260,000 in your account or  
 10 not?  
 11 A. No, not -- you know, I just never paid any  
 12 attention to it.  
 13 Q. And you were working there at the bank.  
 14 Weren't you concerned if you might be overdrawn?  
 15 A. I never thought about it.  
 16 Q. When did you leave the National Bank of  
 17 Commerce?  
 18 A. In '04, I think. I don't remember for sure.  
 19 Q. What was the reason that you left the bank?  
 20 A. Marsha told me I could retire.  
 21 Q. So Marsha told you that --  
 22 A. And I --  
 23 Q. Go ahead. Tell me exactly what she told  
 24 you.  
 25 A. That was it.

1 Q. What did she say?  
 2 A. I don't know exactly what she said. I'd been  
 3 banking for 36 years and getting, you know -- just had  
 4 about all the banking I could handle, you know. And,  
 5 anyway, I just asked her if there was any chance that  
 6 we were making enough money that I could retire, and  
 7 she said she didn't think it would be a problem.  
 8 Q. Now, how old are you?  
 9 A. Sixty.  
 10 Q. You're 60 now. So at the time you would have  
 11 been upper 50s?  
 12 A. Yes, sir.  
 13 Q. Well, did you review your bank, your  
 14 brokerage account, or review any documents to  
 15 determine whether you thought you could retire?  
 16 A. No.  
 17 Q. When you retired, what kind of retirement  
 18 were you drawing from your pension or from your  
 19 retirement?  
 20 A. I wasn't drawing nothing.  
 21 Q. So you were going to retire and give up your  
 22 salary at the bank. Is that correct?  
 23 A. Yes, sir.  
 24 Q. And what did you think you were going to have  
 25 on a monthly basis to live on?

1 A. I don't know. I never thought about it.  
 2 I just wanted to quit banking. I was tired.  
 3 Q. Did there come a time that the National Bank  
 4 of Commerce asked you to not use your account like you  
 5 had been using it for day trading?  
 6 A. There came a time that Mr. Jim Talkington  
 7 (ph.) -- he's the second in command at NBC -- had  
 8 talked to Dennis about stopping the deal, you know.  
 9 And Dennis talked to me about it, and I said, "Well,  
 10 that's fine with me. If that's what needs to be  
 11 done." And so that's what happened.  
 12 Q. Now, what was the deal, the deal needed to be  
 13 stopped?  
 14 A. The day trading.  
 15 Q. And why did he tell you that it needed --  
 16 A. He didn't.  
 17 Q. Dennis Themer didn't tell you why? He just  
 18 told you --  
 19 A. No, he said Jim -- Jim doesn't -- Jim wants  
 20 this to stop, and I said, "Well, that's fine. No big  
 21 deal to me."  
 22 Q. You didn't ask him questions one way or the  
 23 other?  
 24 A. No. No, he's the banker.  
 25 Q. And you said it was no big deal to you one

1 way or another?  
 2 A. No. Because I just thought she'd do  
 3 something else with all that money that we thought we  
 4 had and do something -- invest in something else or do  
 5 something different.  
 6 Q. Now, what money did you think you had?  
 7 A. I don't have a clue at that time. The money  
 8 that -- well, the little sticky things. She'd write  
 9 down a figure and say, hey, this is how much money  
 10 you've got laying over here. And we'd look at that  
 11 little sticky thing and think, wow, we're doing good.  
 12 Q. Were you paying income tax on any of that  
 13 money?  
 14 A. You'd have to ask my accountant.  
 15 Q. No, I'm asking you.  
 16 A. I don't have a clue.  
 17 Q. Were you paying taxes at the end of the  
 18 year? Did you owe monies?  
 19 A. Oh, yeah. I paid taxes, sure, like everybody  
 20 else.  
 21 Q. And you had money to pay the taxes? At the  
 22 end of the year when you were doing your taxes, were  
 23 you getting refunds, or did you owe more money, say,  
 24 at the end of '03, '04?  
 25 A. I don't remember.

1 written out of your account for 230, 260 daily. Did  
 2 you think you had that kind of money available to buy  
 3 and sell stocks?  
 4 A. I just presumed I did.  
 5 Q. Okay. Now, you were making \$40,000 a year.  
 6 Correct?  
 7 A. Yes, sir.  
 8 Q. And you didn't know if you were you making --  
 9 you didn't know if you had \$260,000 in your account or  
 10 not?  
 11 A. No, not -- you know, I just never paid any  
 12 attention to it.  
 13 Q. And you were working there at the bank.  
 14 Weren't you concerned if you might be overdrawn?  
 15 A. I never thought about it.  
 16 Q. When did you leave the National Bank of  
 17 Commerce?  
 18 A. In '04, I think. I don't remember for sure.  
 19 Q. What was the reason that you left the bank?  
 20 A. Marsha told me I could retire.  
 21 Q. So Marsha told you that --  
 22 A. And I --  
 23 Q. Go ahead. Tell me exactly what she told  
 24 you.  
 25 A. That was it.

1 Q. What did she say?  
 2 A. I don't know exactly what she said. I'd been  
 3 banking for 36 years and getting, you know -- just had  
 4 about all the banking I could handle, you know. And,  
 5 anyway, I just asked her if there was any chance that  
 6 we were making enough money that I could retire, and  
 7 she said she didn't think it would be a problem.  
 8 Q. Now, how old are you?  
 9 A. Sixty.  
 10 Q. You're 60 now. So at the time you would have  
 11 been upper 50s?  
 12 A. Yes, sir.  
 13 Q. Well, did you review your bank, your  
 14 brokerage account, or review any documents to  
 15 determine whether you thought you could retire?  
 16 A. No.  
 17 Q. When you retired, what kind of retirement  
 18 were you drawing from your pension or from your  
 19 retirement?  
 20 A. I wasn't drawing nothing.  
 21 Q. So you were going to retire and give up your  
 22 salary at the bank. Is that correct?  
 23 A. Yes, sir.  
 24 Q. And what did you think you were going to have  
 25 on a monthly basis to live on?

1 A. I don't know. I never thought about it.  
 2 I just wanted to quit banking. I was tired.  
 3 Q. Did there come a time that the National Bank  
 4 of Commerce asked you to not use your account like you  
 5 had been using it for day trading?  
 6 A. There came a time that Mr. Jim Talkington  
 7 (ph.) -- he's the second in command at NBC -- had  
 8 talked to Dennis about stopping the deal, you know.  
 9 And Dennis talked to me about it, and I said, "Well,  
 10 that's fine with me. If that's what needs to be  
 11 done." And so that's what happened.  
 12 Q. Now, what was the deal, the deal needed to be  
 13 stopped?  
 14 A. The day trading.  
 15 Q. And why did he tell you that it needed --  
 16 A. He didn't.  
 17 Q. Dennis Themer didn't tell you why? He just  
 18 told you --  
 19 A. No, he said Jim -- Jim doesn't -- Jim wants  
 20 this to stop, and I said, "Well, that's fine. No big  
 21 deal to me."  
 22 Q. You didn't ask him questions one way or the  
 23 other?  
 24 A. No. No, he's the banker.  
 25 Q. And you said it was no big deal to you one

1 way or another?  
 2 A. No. Because I just thought she'd do  
 3 something else with all that money that we thought we  
 4 had and do something -- invest in something else or do  
 5 something different.  
 6 Q. Now, what money did you think you had?  
 7 A. I don't have a clue at that time. The money  
 8 that -- well, the little sticky things. She'd write  
 9 down a figure and say, hey, this is how much money  
 10 you've got laying over here. And we'd look at that  
 11 little sticky thing and think, wow, we're doing good.  
 12 Q. Were you paying income tax on any of that  
 13 money?  
 14 A. You'd have to ask my accountant.  
 15 Q. No, I'm asking you.  
 16 A. I don't have a clue.  
 17 Q. Were you paying taxes at the end of the  
 18 year? Did you owe monies?  
 19 A. Oh, yeah. I paid taxes, sure, like everybody  
 20 else.  
 21 Q. And you had money to pay the taxes? At the  
 22 end of the year when you were doing your taxes, were  
 23 you getting refunds, or did you owe more money, say,  
 24 at the end of '03, '04?  
 25 A. I don't remember.

**Label**  
(See instructions.)  
  
**Use the IRS label.**  
Otherwise, please print or type.

For the year Jan 1 - Dec 31, 2003, or other tax year beginning , 2003, ending , 20		OMB No. 1545-0074
Your first name <b>MARVIN</b>	MI Last name <b>L WILCOX</b>	Your social security number [REDACTED]
If a joint return, spouse's first name <b>PAMELA</b>	MI Last name <b>J WILCOX</b>	Spouse's social security number [REDACTED]
Home address (number and street). If you have a P.O. box, see instructions. <b>P O BOX 106</b>		▲ <b>Important!</b> ▲ You <b>must</b> enter your social security number(s) above.
City, town or post office. If you have a foreign address, see instructions. <b>KINGFISHER</b>		
Apartment no. <b>OK 73750</b>		

**Presidential Election Campaign**  
(See instructions.)

**Note:** Checking 'Yes' will not change your tax or reduce your refund.  
Do you, or your spouse if filing a joint return, want \$3 to go to this fund?   
 You:  Yes  No  
 Spouse:  Yes  No

**Filing Status**

- 1  Single
- 2  Married filing jointly (even if only one had income)
- 3  Married filing separately. Enter spouse's SSN above & full name here
- 4  Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here
- 5  Qualifying widow(er) with dependent child. (See instructions.)

**Exemptions**

6a  **Yourself.** If your parent (or someone else) can claim you as a dependent on his or her tax return, **do not** check box 6a

b  **Spouse**

(1) First name	Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) <input checked="" type="checkbox"/> if qualifying child for child tax credit (see instrs)
				<input type="checkbox"/>

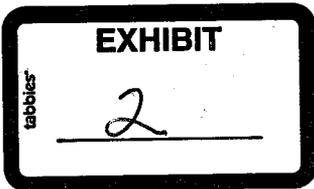
d Total number of exemptions claimed **2**

**Income**

7 Wages, salaries, tips, etc. Attach Form(s) W-2	7	16,073.
8a Taxable interest. Attach Schedule B if required	8a	
b Tax-exempt interest. Do not include on line 8a	8b	
9a Ordinary dividends. Attach Schedule B if required	9a	152.
b Qualified divs (see instrs)	9b	152.
10 Taxable refunds, credits, or offsets of state and local income taxes (see instructions)	10	7,424.
11 Alimony received	11	
12 Business income or (loss). Attach Schedule C or C-EZ	12	907.
13a Capital gain or (loss). Att Sch D if reqd. If not reqd, ck here	13a	76,232.
b If box on 13a is checked, enter post-May 5 capital gain distributions	13b	
14 Other gains or (losses). Attach Form 4797	14	
15a IRA distributions	15a	
b Taxable amount (see instrs)	15b	
16a Pensions and annuities	16a	9,997.
b Taxable amount (see instrs)	16b	0.
17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E	17	7,458.
18 Farm income or (loss). Attach Schedule F	18	-52,464.
19 Unemployment compensation	19	
20a Social security benefits	20a	
b Taxable amount (see instrs)	20b	
21 Other income	21	
22 Add the amounts in the far right column for lines 7 through 21. This is your <b>total income</b>	22	55,782.

**Adjusted Gross Income**

23 Educator expenses (see instructions)	23	
24 IRA deduction (see instructions)	24	
25 Student loan interest deduction (see instructions)	25	
26 Tuition and fees deduction (see instructions)	26	
27 Moving expenses. Attach Form 3903	27	
28 One-half of self-employment tax. Attach Schedule SE	28	
29 Self-employed health insurance deduction (see instrs)	29	
30 Self-employed SEP, SIMPLE, and qualified plans	30	
31 Penalty on early withdrawal of savings	31	
32a Alimony paid b Recipient's SSN	32a	
33 Add lines 23 through 32a	33	
34 Subtract line 33 from line 22. This is your <b>adjusted gross income</b>	34	55,782.



DATE OF NOTE  
11/03/2003

PROMISSORY NOTE - Fixed or Variable Rate - Commercial

DEBTOR'S NAME(S) WILCOX, MARVIN L.		LENDER'S NAME AND ADDRESS NBanC P.O. Box 149 Kingfisher, OK 73750			
DEBTOR'S ADDRESS P O BOX 106 KINGFISHER, OK 73750					

**COPY**

NOTE NUMBER 1768	MATURITY DATE On Demand or 05/01/2004	PRINCIPAL AMOUNT \$50,036.00	CUSTOMER NUMBER 70001622	OFFICER JJK	SOCIAL SECURITY/TIN NUMBER [REDACTED]	<input checked="" type="checkbox"/> 360 DAY <input type="checkbox"/> 365 DAY
<input checked="" type="checkbox"/> FIXED INTEREST RATE PER ANNUM 6.500 %	<input type="checkbox"/> VARIABLE RATE PRESENT INDEX RATE _____ % MARGIN OVER/UNDER INDEX _____ % INITIAL PER ANNUM RATE _____ %	VARIABLE RATE INDEX		PURPOSE OF LOAN PURCHASE VEHICLE		
<input checked="" type="checkbox"/> NEW LOAN <input type="checkbox"/> RENEWAL OF LOAN NUMBER(S)		COLLATERAL CATEGORIES 2004 CADILLAC ESCALADE 4DR 4X4 VIN: 1GYEK63N44R168083				

PAYMENT TERMS  
Demand or in absence of demand; Principal and interest are due and payable on May 01, 2004.

LIEN ENTRY 10.00 VSI 26.00

**PROMISE TO PAY.** For value received, the undersigned Debtor, whether one or more, and jointly and severally if more than one, agrees to the terms of this Note and promises to pay to the order of the Lender named above at its place of business as indicated in this Note or at such other places as may be designated in writing by Lender, the Principal Amount of this Note together with interest on the unpaid Principal Amount until Maturity at the per annum interest rate or rates stated above and according to the Payment Terms stated in this Note. Interest on this Note is calculated on the actual number of days elapsed on a basis of a 360 or 365 day year, as indicated above. For purposes of computing interest and determining the date principal and interest payments are received, all payments will be deemed made only when received in collected funds. Payments are applied first to accrued and unpaid interest and other charges, and then to unpaid Principal Amount. In this Note, "Debtor" includes any party liable under this Note, including endorsers, co-makers, guarantors and otherwise, and "Lender" includes all subsequent holders.

**VARIABLE RATE.** If this is a Variable Rate transaction as indicated above, the interest rate shall vary from time to time with changes (whether increases or decreases) in the Index Rate shown above. The interest rate on this Note will be the Index Rate plus a Margin, if any, as indicated above. Each change will become effective on the same date the Index Rate changes unless a different effective date is indicated above. If the Index Rate is Lender's base or prime rate, it is determined by Lender in its sole discretion, primarily on a basis of its cost of funds, is not necessarily the lowest rate Lender is charging its customers, and is not necessarily a published rate.

**PAYMENTS NOT MADE WHEN DUE.** Any principal and/or interest amount not paid within 10 days of when due shall be assessed a late charge of 5% of the payment amount due not to exceed \$50.00. In no event shall the interest rate and related charges either before or after maturity be greater than permitted by law.

**ALL PARTIES PRINCIPAL.** All Debtors shall each be regarded as a principal and each Debtor agrees that any Debtor, with Lender's approval and without notice to any other Debtor, may from time to time renew this Note or consent to one or more extensions or deferrals of the Maturity Date for any term(s) or to any other modification(s), and all Debtors shall be liable in same manner as on the original Note.

**ADVANCES AND PAYMENTS.** It is agreed that the sum of all advances under this Note may exceed the Principal Amount as shown above, but the unpaid balance shall never exceed said Principal Amount. Advances and payments on this Note shall be recorded on records of Lender and such records shall be prima facie evidence of such advances, payments and unpaid principal balance. Subsequent advances and the procedures described in this Note shall not be construed or interpreted as granting a continuing line of credit for Principal Amount. Lender reserves the right to apply any payment by Debtor, or for account of Debtor, toward this Note or any other obligation of Debtor to Lender.

**PREPAYMENT.** Except as otherwise provided in this Note, Debtor shall have the right to prepay all or any part of principal due under this Note at any time without penalty, subject to the following conditions: (a) all interest must be paid through the date of any prepayment; and (b) if this Note provides for monthly or other periodic payments, there will be no changes in the due dates or amounts following any partial prepayment unless Lender agrees to such changes in writing.

**COLLATERAL.** This Note and all other obligations of Debtor to Lender, including renewals and extensions, are secured by all collateral securing this Note and by all other security interests and mortgages previously or later granted to Lender and by all money, deposits and other property owned by any Debtor and in Lender's possession or control.

**ACCELERATION.** At option of Lender, the unpaid balance of this Note and all other obligations of Debtor to Lender, whether direct or indirect, absolute or contingent, now existing or later arising, shall become immediately due and payable without notice or demand, upon or after the occurrence or existence of any of the following events or conditions: (a) Any payment required by this Note or by any other note or obligation of Debtor to Lender or to others is not made when due, or any event or condition occurs or exists which results in acceleration of the maturity of any Debtor's obligation to Lender or to others under any promissory note, agreement or undertaking; (b) Debtor defaults in performing any covenant, obligation, warranty or provision contained in any loan agreement or in any instrument or document securing or relating to this Note or any other note or obligation of Debtor to Lender or to others; (c) any warranty, representation, financial information or statement made or furnished to Lender by or on behalf of Debtor proves to have been false in any material respect when made or furnished; (d) any levy, seizure, garnishment or attachment is made against any asset of any Debtor; (e) Lender determines, at any time and in Lender's sole discretion, that the prospect of payment of this Note is impaired; (f) whenever, in Lender's sole judgment, the collateral for the debt evidenced by this Note becomes unsatisfactory or insufficient either in character or value and, upon request, Debtor fails to provide additional collateral as required by Lender; (g) all or any part of the collateral for the debt evidenced by this Note is lost, stolen, substantially damaged or destroyed; (h) death, incompetency, dissolution, change in ownership or senior management, or termination of existence of any Debtor; or (i) a receiver is appointed over all or part of any Debtor's property, or any Debtor makes an assignment for the benefit of creditors, files for relief under any bankruptcy or insolvency laws, or becomes subject to an involuntary proceeding under such laws.

**RIGHT OF OFFSET.** Except as otherwise restricted by law, any indebtedness due from Lender to Debtor, including, without limitation, any deposits or credit balances due from Lender, is pledged to secure payment of this Note and any other obligation to Lender of Debtor, and may at any time while the whole or any part of such obligation(s) remain(s) unpaid, either before or after Maturity of this Note, be set off, appropriated, held or applied toward the payment of this Note or any other obligation to Lender by any Debtor.

**ADDITIONAL PROVISIONS.** (1) Debtor agrees, if requested, to furnish to Lender copies of income tax returns as well as balance sheets and income statements for each fiscal year following Date of Note and at more frequent intervals as Lender may require. (2) No waiver by Lender of any payment or other right under this Note or any related agreement or documentation shall operate as a waiver of any other payment or right. All Debtors waive presentment, notice of acceleration, notice of dishonor and protest and consent to substitutions, releases and failure to perfect as to collateral and to additions or releases of any Debtor. (3) This Note and the obligations evidenced by it are to be construed and governed by the laws of the state indicated in Lender's address shown in this Note. (4) All Debtors agree to pay costs of collection, including, as allowed by law, an attorney's fee equal to a minimum of 15% of all sums due upon default or such other maximum fee as allowed by law. (5) All parties signing below acknowledge receiving a completed copy of this Note and related documents, which contain the complete and entire agreement between Lender and any party liable for payment under this Note. No variation, condition, modification, change, amendment, extension or renewal (collectively referred to as a "Revision") of this Note or related documents shall be binding unless in writing and signed by Lender and Debtor. If there is more than one Debtor, any Debtor may agree to a Revision of this Note and/or related documents, and all Debtors agree to be bound by such Revision. No legal relationship is created by the execution of this Note and related documents except that of debtor and creditor or as stated in writing.

DEBTOR'S SIGNATURE(S)

*[Signature]*  
MARVIN L. WILCOX

**EXHIBIT**  
tabbles  
3  
24

## Host Screen

February 11, 2005 10:42 AM

CLNIH 4600 NBanC 02/11/2005  
 ACCT: 0070001622 INQUIRE NOTE HISTORY 10:43 AM  
 NOTE: 0000001768 MARVIN L WILCOX

EFF DATE	POST DTE	TRAN	TRAN DESCRIPTN	TRANSACTION VALUE	BALANCE	AMT/VALUE
12/02/03	12/02/03	0352	PRIN PMT	500.00-		49,536.00
11/18/03	11/18/03	3108	RENEWAL AMOUNT	.00		50,036.00
11/18/03	11/18/03	3152	RENEWAL NUMBER	000	001	
11/18/03	11/18/03	3010	CURRENT MATURIT	06/01/2004	05/01/2004	
11/18/03	11/18/03	3013	CURRENT NOTE DA	11/03/2003	11/18/2003	
11/03/03	11/04/03	0342	ADVANCE	50,036.00		50,036.00
11/03/03	11/04/03	0302	INT ADJ INC	9.03		

COMMAND: ACCT: PLUS:  
 01022 - NO MORE RECORDS F 01  
 23/011

## Host Screen

February 11, 2005 10:42 AM

CLNIH 4600 NBanC 02/11/2005  
 ACCT: 0070001622 INQUIRE NOTE HISTORY 10:43 AM  
 NOTE: 0000001768 MARVIN L WILCOX

EFF DATE	POST DTE	TRAN	TRAN DESCRIPTN	TRANSACTION VALUE	BALANCE	AMT/VALUE
11/24/04	11/24/04	3130	NOTE STATUS	A ACTIVE	P	PRIN PD, INT
11/24/04	11/24/04	3130	NOTE STATUS	P PRIN PD, INT	C	CLOSED
11/23/04	11/24/04	0354	INT PMT	157.27-		
11/23/04	11/24/04	0312	INT ADJ DEC	5.42-		
11/23/04	11/24/04	0352	PRIN PMT	30,036.00-		0.00
10/25/04	10/25/04	3152	RENEWAL NUMBER	002	003	
10/25/04	10/25/04	3010	CURRENT MATURIT	10/30/2004	04/25/2005	
10/25/04	10/25/04	3013	CURRENT NOTE DA	04/30/2004	10/25/2004	
10/25/04	10/25/04	0354	INT PMT	965.32-		
04/30/04	04/30/04	3108	RENEWAL AMOUNT	50,036.00		30,036.00
04/30/04	04/30/04	3152	RENEWAL NUMBER	001	002	
04/30/04	04/30/04	3010	CURRENT MATURIT	05/01/2004	10/30/2004	
04/30/04	04/30/04	3013	CURRENT NOTE DA	11/18/2003	04/30/2004	
04/30/04	04/30/04	0354	INT PMT	1,481.71-		
04/30/04	04/30/04	0352	PRIN PMT	15,000.00-		30,036.00
12/02/03	12/02/03	0352	PRIN PMT	4,500.00-		45,036.00
12/02/03	12/02/03	0352	PRIN PMT	500.00-		49,536.00

COMMAND: ACCT: PLUS:  
 3:EXIT 5:REFRESH 7:BWD 8:FWD 11:PREV MENU 12:MAIN MENU F 01  
 23/011

Label (See instructions.)

Use the IRS label. Otherwise, please print or type.

Presidential Election Campaign (See instructions.)

For the year Jan 1 - Dec 31, 2004, or other tax year beginning , 2004, ending , 20

Your first name MI Last name  
**MARVIN L WILCOX**

If a joint return, spouse's first name MI Last name  
**PAMELA J WILCOX**

Home address (number and street). If you have a P.O. box, see instructions. Apartment no.  
**P O BOX 106**

City, town or post office. If you have a foreign address, see instructions. State ZIP code  
**KINGFISHER OK 73750**

OMB No. 1545-0074

Your social security number  
 [REDACTED]

Spouse's social security number  
 [REDACTED]

**Important!**  
 You must enter your social security number(s) above.

Note: Checking 'Yes' will not change your tax or reduce your refund. Do you, or your spouse if filing a joint return, want \$3 to go to this fund? ...

You:  Yes  No  
 Spouse:  Yes  No

Filing Status

1  Single  
 2  Married filing jointly (even if only one had income)  
 3  Married filing separately. Enter spouse's SSN above & full name here ...  
 4  Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here ...  
 5  Qualifying widow(er) with dependent child (see instructions)

Exemptions

6a  Yourself. If someone can claim you as a dependent, do not check box 6a  
 b  Spouse

c Dependents:

(1) First name	Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) <input checked="" type="checkbox"/> if qualifying child for child tax credit (see instrs)

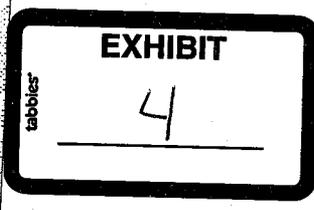
d Total number of exemptions claimed ... 2

Income

7 Wages, salaries, tips, etc. Attach Form(s) W-2 ... 16,315.  
 8a Taxable interest. Attach Schedule B if required ... 4.  
 b Tax-exempt interest. Do not include on line 8a ...  
 9a Ordinary dividends. Attach Schedule B if required ... 197.  
 b Qualifd divs (see instrs) ...  
 10 Taxable refunds, credits, or offsets of state and local income taxes (see instructions) ... 6,808.  
 11 Alimony received ...  
 12 Business income or (loss). Attach Schedule C or C-EZ ... -709.  
 13 Capital gain or (loss). Att Sch D if reqd. If not reqd, ck here ... -2,761.  
 14 Other gains or (losses). Attach Form 4797 ... 0.  
 15a IRA distributions ... 15a  
 b Taxable amount (see instrs) ... 15b  
 16a Pensions and annuities ... 16a  
 b Taxable amount (see instrs) ... 16b  
 17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E ... -201.  
 18 Farm income or (loss). Attach Schedule F ... -12,620.  
 19 Unemployment compensation ...  
 20a Social security benefits ... 20a  
 b Taxable amount (see instrs) ... 20b  
 21 Other income ...  
 22 Add the amounts in the far right column for lines 7 through 21. This is your total income ... 7,033.

Adjusted Gross Income

23 Educator expenses (see instructions) ... 23  
 24 Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ ... 24  
 25 IRA deduction (see instructions) ... 25  
 26 Student loan interest deduction (see instructions) ... 26  
 27 Tuition and fees deduction (see instructions) ... 27  
 28 Health savings account deduction. Attach Form 8889 ... 28  
 29 Moving expenses. Attach Form 3903 ... 29  
 30 One-half of self-employment tax. Attach Schedule SE ... 30  
 31 Self-employed health insurance deduction (see instrs) ... 31  
 32 Self-employed SEP, SIMPLE, and qualified plans ... 32  
 33 Penalty on early withdrawal of savings ... 33  
 34a Alimony paid b Recipient's SSN ... 34a  
 35 Add lines 23 through 34a ... 35  
 36 Subtract line 35 from line 22. This is your adjusted gross income ... 7,033.



Form 02 0763  
**PROMISSORY NOTE - Fixed or Variable Rate - Commercial**

DATE OF NOTE  
 09/28/2004

<b>DEBTOR'S NAME(S)</b> WILCOX, MARVIN L.	<b>LENDER'S NAME AND ADDRESS</b> NBanC P.O. Box 149 Kingfisher, OK 73750
<b>DEBTOR'S ADDRESS</b> P O BOX 106 KINGFISHER, OK 73750	

NOTE NUMBER 2008	MATURITY DATE On Demand or 03/31/2005	PRINCIPAL AMOUNT \$30,050.00	CUSTOMER NUMBER 70001622	OFFICER DWT	SOCIAL SECURITY/TIN NUMBER: <input checked="" type="checkbox"/> 360 DAY <input type="checkbox"/> 365 DAY
<input checked="" type="checkbox"/> FIXED INTEREST RATE PER ANNUM 5.500 %		<input type="checkbox"/> VARIABLE INTEREST RATE INDEX PRESENT INDEX RATE _____ % MARGIN OVER/UNDER INDEX _____ % INITIAL PER ANNUM RATE _____ %		VARIABLE RATE INDEX _____ % MAXIMUM PER ANNUM INTEREST RATE CHANGE _____ % MINIMUM INTEREST RATE _____ % MAXIMUM INTEREST RATE _____ %	

<input checked="" type="checkbox"/> NEW LOAN <input type="checkbox"/> RENEWAL OF LOAN NUMBER(S) <input checked="" type="checkbox"/> FULLY ADVANCED <input type="checkbox"/> MULTIPLE ADVANCES <input type="checkbox"/> REVOLVING CREDIT	PURPOSE OF LOAN PURCHASE PICKUP
COLLATERAL DESCRIPTION 2005 FORD F350 4X4 PICKUP	

**PAYMENT TERMS**  
 Demand or in absence of demand; Principal and interest are due and payable on March 31, 2005.

VSI 40.00 & LIEN 10.00

**PROMISE TO PAY.** For value received, the undersigned Debtor, whether one or more, and jointly and severally if more than one, agrees to the terms of this Note and promises to pay to the order of the Lender named above at its place of business as indicated in this Note or at such other places as may be designated in writing by Lender, the Principal Amount of this Note together with interest on the unpaid Principal Amount until maturity at the per annum interest rate or rates stated above and according to the Payment Terms stated in this Note. Interest on this Note is calculated on the actual number of days elapsed on a basis of a 360 or 365 day year, as indicated above. For purposes of computing interest and determining the date principal and interest payments are received, all payments will be deemed made only when received in collected funds. Payments are applied first to accrued and unpaid interest and other charges, and then to unpaid Principal Amount. In this Note, "Debtor" includes any party liable under this Note, including endorsers, co-makers, guarantors and otherwise, and "Lender" includes all subsequent holders.

**VARIABLE RATE.** If this is a Variable Rate transaction as indicated above, the interest rate shall vary from time to time with changes (whether increases or decreases) in the Rate shown above. The interest rate on this Note will be the Index Rate plus a Margin, if any, as indicated above. Each change will become effective on the same date the Index Rate changes unless a different effective date is indicated above. If the Index Rate is Lender's base or prime rate, it is determined by Lender in its sole discretion, primarily on a basis of its cost of funds, is not necessarily the lowest rate Lender is charging its customers, and is not necessarily a published rate.

**LATE PAYMENTS.** When permitted by law, any principal and/or interest amount not paid within 10 calendar days after the due date will be assessed the greater of \$50.00 or 5.000 % of the amount past due, as a late charge fee, with a minimum fee of \$5.00. In addition, any principal and/or interest not paid by the maturity date of this Note shall thereafter bear interest at the applicable rate stated in this Note plus 5.000% per annum. In no event shall the interest rate and related charges either before or after maturity be greater than permitted by law.

**ALL PARTIES PRINCIPAL.** All Debtors shall each be regarded as a principal and each Debtor agrees that any Debtor, with Lender's approval and without notice to any other Debtor, may from time to time renew this Note or consent to one or more extensions or deferrals of the Maturity Date for any term(s) or to any other modification(s), and all Debtors shall be liable in same manner as on the original Note.

**ADVANCES AND PAYMENTS.** If the Fully Advanced box is checked, then the Debtor acknowledges that the entire Principal Amount has been advanced to the Debtor or for Debtor's account or benefit. If the Multiple Advances box is checked, then the Debtor understands that the Lender will disburse the proceeds of this Note in increments, up to the Principal Amount, but that even if the Debtor prepays, the Debtor has no right to reborrow any amounts disbursed. The balance that the Debtor owes under this Note is the aggregate of all such disbursements, less any payments of principal made on this Note. Interest will accrue only on the actual amount of principal disbursed and outstanding from time to time. If the Revolving Credit box is checked, then the Debtor understands that the Lender will disburse the proceeds of this Note in increments up to the Principal Amount and that the remaining terms of this paragraph shall apply to this Note. The balance that the Debtor owes under this Note is the aggregate of all such disbursements, less any payments of principal made on this Note. The Debtor understands that the maximum amount of all such advances outstanding at any one time cannot exceed the Principal Amount, but that the Debtor may repay and reborrow up to the Principal Amount during the term of this Note. If the aggregate outstanding amount advanced under this Note ever exceeds the Principal Amount, then the Debtor will repay the excess upon demand, plus interest on the excess. There may be times when no principal is outstanding on this Note, but this Note and any collateral securing this Note remain valid and effective as to future advances under this Note. Any loans or advances the Lender makes to the Debtor or for the Debtor's account or benefit are presumed to be made under the terms of this Note. The Lender may make advances under this Note at the oral or written request of any person designated or authorized by the Debtor until the Debtor revokes such designation or authorization in writing received by the Lender, provided that the Lender has the right, but is not obligated, to require written authorization from the Debtor prior to honoring any oral request. Interest will accrue only on the actual amount of principal disbursed and outstanding from time to time.

**PREPAYMENT.** Debtor shall have the right to prepay all or any part of the principal due under this Note at any time, subject to the following conditions: (a) all interest must be paid through the date of any prepayment; (b) if this Note provides for monthly or other periodic payments, there will be no changes in the due dates or amounts following any partial prepayments unless Lender agrees to such changes in writing; and (c) upon prepayment, in whole or in part, Lender may charge and Debtor agrees to pay a fee or premium calculated as follows (this fee/premium provision will not apply if prohibited by applicable law):

**COLLATERAL.** This Note and all other obligations of Debtor to Lender, including renewals and extensions, are secured by all collateral securing this Note and by all other security interests and mortgages previously or later granted to Lender and by all money, deposits and other property owned by any Debtor and in Lender's possession or control.

**ACCELERATION.** At option of Lender, the unpaid balance of this Note and all other obligations of Debtor to Lender, whether direct or indirect, absolute or contingent, now existing or later arising, shall become immediately due and payable without notice of demand, upon or after the occurrence or existence of any of the following events or conditions: (a) Any payment required by this Note or by any other note or obligation of Debtor to Lender or to others is not made when due, or any event or condition occurs or exists which results in acceleration of the maturity of any Debtor's obligation to Lender or to others under any promissory note, agreement or underwriting; (b) Debtor defaults in performing any covenant, obligation, warranty or provision contained in any loan agreement or in any instrument or document securing or relating to this Note or any other note or obligation of Debtor to Lender or to others; (c) any warranty, representation, financial information or statement made or furnished to Lender by or on behalf of Debtor proves to have been false in any material respect when made or furnished; (d) any levy, seizure, garnishment or attachment is made against any asset of any Debtor; (e) Lender determines, at any time and in Lender's sole discretion, that the prospect of payment of this Note is impaired; (f) whenever, in Lender's sole judgment, the collateral for the debt evidenced by this Note becomes unsatisfactory or insufficient either in character or value and, upon request, Debtor fails to provide additional collateral as required by Lender; (g) all or any part of the collateral for the debt evidenced by this Note is lost, stolen, substantially damaged or destroyed; (h) death, incompetency, insolvency, dissolution, change in ownership or senior management, or termination of existence of any Debtor; or (i) a receiver is appointed over all or part of any Debtor's property, or any Debtor makes an assignment for the benefit of creditors, files for relief under any bankruptcy or insolvency laws, or becomes subject to an involuntary proceeding under such laws.

**RIGHT OF OFFSET.** Except as otherwise restricted by law, any indebtedness due from Lender to Debtor, including, without limitation, any deposits or credit balances due from Lender, is pledged to secure payment of this Note and any other obligation to Lender of Debtor, and may at any time while the whole or any part of such obligation(s) remain(s) unpaid, either before or after maturity of this Note, be set off, appropriated, held or applied toward the payment of this Note or any other obligation to Lender by any Debtor.

**ADDITIONAL PROVISIONS.** (1) Debtor agrees, if requested, to furnish to Lender copies of income tax returns as well as balance sheets and income statements for each fiscal year following Date of Note and at more frequent intervals as Lender may require. (2) No waiver by Lender of any payment or other right under this Note or any related agreement or documentation shall operate as a waiver of any other payment or right. All Debtors waive presentment, notice of acceleration, notice of dishonor and protest and consent to substitutions, releases and failure to perfect as to collateral and to additions or releases of any Debtor. (3) This Note and the obligations evidenced by it are to be construed and governed by the laws of the state indicated in Lender's address shown in this Note. (4) All Debtors agree to pay costs of collection, including, as allowed by law, an attorney's fee equal to a minimum of 15% of all sums due upon default or such other maximum fee as allowed by law. (5) All parties signing below acknowledge receiving a completed copy of this Note and related documents, which contain the complete and entire agreement between Lender and any party liable for payment under this Note. No variation, condition, modification, change, amendment, extension or renewal (collectively referred to as a "Revision") of this Note or related documents shall be binding unless in writing and signed by Lender and Debtor. If there is more than one Debtor, any Debtor may agree to a Revision of this Note and/or related documents, and all Debtors agree to be bound by such Revision. No legal relationship is created by the execution of this Note and related documents except that of debtor and creditor or as stated in writing.

**DEBTOR'S SIGNATURE(S)**

*Marvin L. Wilcox*  
 MARVIN L. WILCOX

**EXHIBIT**  
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CLNIH 4600 NBanC 02/10/2005  
ACCT: 0070001622 INQUIRE NOTE HISTORY 11:48 AM  
NOTE: 0000002008 MARVIN L WILCOX

EFF DATE	POST DTE	TRAN	TRAN	DESCRIPTN	TRANSACTION VALUE	BALANCE	AMT/VALUE
11/24/04	11/24/04	3130	NOTE	STATUS	A ACTIVE	P	PRIN PD, INT
11/24/04	11/24/04	3130	NOTE	STATUS	P PRIN PD, INT	C	CLOSED
11/23/04	11/24/04	0354	INT	PMT			257.09-
11/23/04	11/24/04	0312	INT	ADJ DEC			4.59-
11/23/04	11/24/04	0352	PRIN	PMT	30,050.00-		0.00
09/28/04	09/28/04	0342	ADVANCE		30,050.00		30,050.00

COMMAND: ACCT: PLUS: F 01  
01022 - NO MORE RECORDS 23/011