

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

Oklahoma Department of Securities)
ex rel. Irving L. Faught,)
Administrator,)

Plaintiff,)

v.)

Global West Funding, Ltd., Co.,)
an Oklahoma limited liability company;)
Global West Financial LLC,)
an Oklahoma limited liability company;)
Sure Lock Financial, LLC,)
an Oklahoma limited liability company;)
Sure Lock Loans LLC, an Oklahoma)
limited liability company;)
The Wave-Goldmade, Ltd.,)
an unincorporated association;)
Brian McKye, an individual;)
Joe Don Johnson, an individual; and)
James Farnham, an individual,)

Defendants,)

and)

Heritage Estate Service LLC,)
an Oklahoma limited liability company,)

Relief Defendant)

APR 10 2009
PATRICIA PRESLEY, COURT CLERK
by _____
DEPUTY

Case No. CJ-2009-2773

HEARING SET FOR APRIL 20,
2009 @10:00 A.M.

APPLICATION FOR TEMPORARY RESTRAINING ORDER,
ORDER FREEZING ASSETS AND ORDER FOR ACCOUNTING AS TO
ADDITIONAL DEFENDANTS

The Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator ("Department"), respectfully submits this application for a temporary restraining order against Defendants Heritage Estate Service LLC (Heritage), Storybook Properties, LLC, Storybook Investments WA LLC, and Matthew Story ("Additional Defendants"); an order to continue the

asset freeze against Defendant Heritage; an order appointing a special master for Defendant Heritage; and an order for an accounting by the Additional Defendants, pursuant to the Oklahoma Uniform Securities Act of 2004 (the "Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003). The Department petitions this Court to halt further violations of the Act, to protect the rights of the Department in its obligation to safeguard the public interest, to prevent any dissipation or loss of investor funds and property, and to remedy actions that the Additional Defendants have already committed.

The Department moves this Court to issue *instanter* a temporary restraining order, an order to continue the asset freeze against Defendant Heritage, an order appointing a special master for Defendant Heritage, and an order for an accounting by the Additional Defendants, until the Court may afford the parties a hearing, and additionally moves for the entry of a temporary injunction at such hearing against the Additional Defendants. The entry of such orders are necessary for the reasons set forth below, to preserve the *status quo* and to protect the Department's rights in enforcing the Act.

I. THE ADDITIONAL DEFENDANTS

Heritage Estate Service LLC ("Heritage") is an Oklahoma limited liability company with its principal place of business in Oklahoma City, Oklahoma. At all times material hereto, Heritage offered and/or sold securities in and/or from Oklahoma as described herein. Heritage was previously named as a Relief Defendant in the initial petition filed by the Department but further investigation revealed actual offers and sales of securities by Heritage. Defendant Joe Don Johnson controls all acts of Heritage.

Storybook Properties, LLC ("Storybook Properties") is a California limited liability company with its principal place of business in California. At all times material hereto,

Storybook Properties issued, offered and/or sold securities in and/or from Oklahoma as described herein.

Storybook Investments WA LLC (“Storybook WA”) is a Washington limited liability company and purportedly a division of Storybook Properties. At all times material hereto, Storybook WA issued, offered and/or sold securities in and/or from Oklahoma as described herein.

Matthew G. Story (“Story”), an individual and California resident, is the registered agent and principal of Storybook Properties and is the Managing Member of Storybook WA. At all times material hereto, Story offered and/or sold securities in and/or from the state of Oklahoma as described herein.

EXPANDED NATURE OF THE CASE

Heritage Estate Service LLC

From an indeterminate time to the present, Heritage and Johnson have engaged in the issuance, offer and/or sale of securities in and/or from the state of Oklahoma to Investors in the nature of the Investment Notes issued by Defendants Global West Funding, Ltd., Co., Global West Financial, LLC, Sure Lock Financial, LLC, Sure Lock Loans LLC.

Like the other Defendants, Heritage represents to Investors that interest will be paid monthly in sums of between eight percent (8%) and nineteen percent (19%), for a period of sixty (60) months; that Investors have “100% total control” of their money; that the investments are secured by real estate notes and are risk free; and that no commissions will be paid on the transactions. Heritage utilizes the same sales materials as the other Defendants.

From an indeterminate time to the present, Heritage received commissions on the sale of the Investment Notes.

Storybook Properties, LLC

From an indeterminate time to the present, Storybook Properties, Storybook WA, Story, Johnson and Farnham (“Storybook Defendants”) have engaged in the issuance, offer and/or sale of securities in and/or from the state of Oklahoma to investors (“Storybook Investors”) in the nature of promissory notes issued by Storybook Properties and Storybook WA (“Storybook Investment Notes”). To purchase a Storybook Investment Note, Storybook Properties and Storybook Investors sign an “Agreement and Promissory Note Earned Interest Compounding” (“Agreement”) provided by the Storybook Defendants.

Storybook Properties represents that it will provide a guaranteed minimum investment return of between 8% and 15% over a five year period. The return is to be paid in monthly payments or compounded annually. Storybook Defendants represent that the Storybook Investments Notes are secured by “over-collateralized” investments in real property. Storybook Defendants represent that they do not pay or receive commissions on the transactions. The sales materials of Storybook Properties state that a Storybook Investor must give a sixty (60) day notice to withdraw their funds early, however, Storybook Properties “can usually replace your money with another investor’s in a matter of just a few days or weeks.”

Storybook Defendants offered to at least one Oklahoma resident free guaranteed elder care in a Storybook Properties “independent or assisted living campus.” This offer is purportedly valid “as long as [the Oklahoma resident is] a Storybook Investor.”

III. VIOLATIONS OF THE ACT

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

The Storybook Investment Notes are securities as defined by Section 1-102 of the Act.

The securities offered and sold by Defendant Heritage and the Storybook Defendants are not and have not been registered under the Act nor have the securities been offered or sold pursuant to an exemption from registration under Sections 1-201 through 1-203 of the Act.

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

**B. Violation of Section 1-401 of the Act:
Failure to Register as Broker-Dealer**

Defendant Heritage is not registered in any capacity under the Act.

Defendant Heritage, by virtue of its efforts and activities in transacting business in and/or from this state, is a broker-dealer, as defined in Section 1-102 of the Act. Defendant Heritage transacted and is transacting business in and/or from this state as a broker-dealer without benefit of registration under the Act.

By reason of the foregoing, Defendant Heritage has violated, is violating, and unless enjoined, will continue to violate Section 1-401 of the Act.

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

Defendant Story is not registered in any capacity under the Act.

Defendant Story, by virtue of his efforts and activities in transacting business in and/or from this state, is an agent, as defined in Section 1-102 of the Act. Defendant Story transacted and is transacting business in and/or from this state as an agent without benefit of registration under the Act.

Defendants Storybook Properties and Storybook WA are issuers as defined in Section 1-102 of the Act. Defendants Storybook Properties and Storybook WA employed agents who were

not registered under the Act to effect or attempt to effect purchases or sales of such issuers' securities in and/or from this state.

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

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

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

- a. that Investors would receive guaranteed profits or returns on the Investment Notes in the nature of interest of between 8% and 19% when, in fact, Defendants have not invested the Investors' funds in any manner to generate such profits or returns;
- b. that the Investment Notes were secured by real estate when no real estate secures the Notes;
- c. that no commissions were paid for the Investment Notes when Defendants withdrew significant Investor funds for personal payments to Defendants;
- d. that Investors have "100% total control" of their money when Investors have no input after the Investment Note is purchased and Investors must rely completely on the judgment and discretion of the Defendants for the promised profit; and
- e. that Defendants have specialized knowledge and expertise to make the investments profitable when no action is taken by Defendants from which profit can be earned.

Defendants Heritage and Johnson, in connection with the offer and/or sale of securities, directly and indirectly, omitted and is omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were and are made, not misleading including, but not limited to, the following matters:

- a. any general or specific risk factors associated with the Investment Notes;
- b. that the Investment Notes are securities under the Act;
- c. that the Investment Notes have not been and are not registered under the Act;
- d. that the individuals who offer and sell the Investment Notes were not and are not registered as agents under the Act; and
- e. that Defendants would use Investor funds for the payment of personal expenses of the Defendants and for interest payments to earlier Investors.

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

- a. that Storybook Investors will receive guaranteed profits or returns on the Storybook Investment Notes in the nature of interest of between 8% and 15% when, in fact, the Storybook Defendants have not invested the Storybook Investors' funds in any manner to generate such profits or returns;
- b. that the Storybook Investment Notes were secured by real estate when no real estate secures the Storybook Investment Notes; and
- c. that no commissions are paid for the Storybook Investment Notes.

The Storybook Defendants, in connection with the offer and/or sale of securities, directly and indirectly, omitted and are omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were and are made, not misleading including, but not limited to, the following matters:

- a. any general or specific risk factors associated with the Storybook Investment Notes;
- b. that the Storybook Investment Notes are securities under the Act;
- c. that the Storybook Investment Notes have not been and are not registered under the Act; and

d. that the individuals who offer and sell the Storybook Investment Notes were not and are not registered as broker-dealers or agents under the Act.

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

**E. Violation of Section 1-501 of the Act:
Engaging in any Act, Practice, or Course of Business that Operates
or Would Operate as a Fraud or Deceit upon any Person**

Defendants Heritage and Johnson and the Storybook Defendants, in connection with the offer and/or sale of securities, and through the use of the untrue statements of material fact and the omissions of material fact described above, have engaged and are engaging in an act, practice, or course of business that has operated and continues to operate as a fraud or deceit upon Investors and Storybook Investors.

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

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

Section 1-603 of the Act provides:

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

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

1. Issue a permanent or temporary injunction, restraining order, or declaratory judgment;

2. Order other appropriate or ancillary relief, which may include:

a. an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the Administrator, for the defendant or the defendant's assets,

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

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

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

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

Temporary Restraining Order

Section 1-603 of the Act specifically grants this Court the power to fashion appropriate equitable relief to provide effective enforcement of the Act. A temporary restraining order has the objective of preserving the *status quo*, in order to prevent irreparable injury, until such time

as the Court may determine plaintiff's application for temporary injunction. *Granny Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 439, 94 S.Ct. 1113, 1124 (1974); *Morse v. Earnest, Inc.*, 547 P.2d 955 (Okla. 1976). Issuing a temporary restraining order is in the public interest when the failure to grant the relief would allow dishonest businesses and individuals to take advantage of vulnerable investors. The protection of the public interest is paramount in this matter.

In addition, no injury will befall the Additional Defendants by granting such relief since the Additional Defendants have no right to act in the state of Oklahoma in violation of the Act, to include engaging in fraudulent conduct in connection with securities activities. Any interference with the Additional Defendants' rights by granting the temporary restraining order will be minimal, if any, while protecting the public from immediate and irreparable injury or loss.

B. Asset Freeze and Accounting

Section 1-603 of the Act specifically grants this Court the power to order equitable relief, in addition to a restraining order, and once the equity powers of the court are invoked, the court possesses the power to fashion appropriate interim remedies. *SEC v. Manor Nursing Centers*, 458 F. 2d 1082, 1103 (2nd Cir. 1972). Within this power is the authority to grant effective equitable relief by temporarily freezing specific assets. *SEC v. General Refractories Co.*, 400 F.Supp. 1248, 1259 (D.D.C. 1975); *SEC v. International Swiss Investments Corp.*, 895 F.2d 1272, 1276 (9th Cir. 1990); *SEC v. Manor Nursing Centers*, 458 F.2d at 1105-06. Also within the equity power of the court is the authority to order an accounting by the Defendants. *SEC v. R.J. Allen & Associates*, 386 F. Supp. 866, 880 (S.D.N.Y. 1974); *SEC v. Manor Nursing Centers*, *supra* at 1103-1104.

The Additional Defendants have engaged in acts and practices in violation of the Act and have, as a result of these activities, received a substantial amount of money from numerous investors. The whereabouts of all of the money raised by the Additional Defendants through violations of the Act is not known at this time. A danger exists that the money received from the investors and/or held by the Additional Defendants will be lost, removed or transferred. An order to issue *instanter* against the Additional Defendants is necessary to preserve these funds and the records relating thereto, to prevent the dissipation of assets, to account for the money raised through violations of the Act, and to prevent further violations of the Act.

C. Special Master

The violations of the Act, as described in the Petition, give the Department the right to seek one or more of the remedies available by statute and in equity. *Oklahoma Securities Commission v. CFR International, Inc.*, 622 P.2d 293,295 (Okla. Ct. App. 1980). One such remedy is that of the appointment of a receiver. In *SEC v. American Bd. Of Trade, Inc.*, 830 F.2d 431 (2d Cir. 1987), the court, quoting *SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1105 (2d. Cir, 1972), stated that the primary purpose of the appointment of a receiver is to help “preserve the status quo while the various transactions [are] unraveled.” *Id.* at 436. A receivership is needed to take possession of all real and personal property, to collect debts, to compromise debts, to make transfers, and to perform any other act with respect to the assets in receivership as the court may authorize.

In circumstances of egregious fraud where the interests of public investors are in substantial jeopardy, it has been recognized that the appointment of a receiver is necessary to prevent “diversion or waste of assets to the detriment of those for whose benefit, in some measure, the injunction action is brought.” *Securities and Exchange Commission v. Capital*

Counselors, Inc., 332 F. Supp. 291, 304 (S.D.N.Y. 1971). The form and quantum of evidence required is a matter of judicial discretion. *U.S. v. O'Connor*, 291 F.2d 520 (2d Cir. 1961); *Haase v. Chapman*, 308 F.Supp. 399 (W.D.Mo. 1969). There is no definitive list of facts by which the Court must abide; however, the Sixth Circuit in *Tennessee Pub. Co. v. Carpenter*, 100 F.2d 728 (6th Cir. 1938), identified factors which can be considered, most of which are applicable here and justify the appointment of a receiver over Heritage Defendant's assets:

Factors typically influencing the district court's exercise of discretion include the existence of a valid claim by the moving party; the probability that fraudulent conduct has occurred or will occur to frustrate the claim; imminent danger that property will be lost, concealed, or diminished in value; inadequacy of legal remedies; lack of a less drastic equitable remedy; and the likelihood that appointment of a receiver will do more harm than good.

Id. at 732.

D. Temporary Injunction

Once the Department has shown the Additional Defendants' past conduct is in violation of the Act, the proper test for the issuance of a statutory injunction is whether there is a reasonable expectation of future violations by the Additional Defendants. *SEC v. Manor Nursing Centers, Inc.*, *supra*; *SEC v. Culpepper*, 270 F.2d 241, 249 (2d Cir. 1959). In considering this issue, past illegal conduct is strong support for the likelihood of future violations. *Oklahoma Securities Commission v. CFR International, Inc.*, *supra*. Here, the Additional Defendants have violated the Act which creates a presumption of likelihood of future violations. Because the Department has conclusively demonstrated the existence of past violations, injunctive relief is appropriate and the burden of showing there is no reasonable expectation of future violations will shift to the Additional Defendants and their burden "is a heavy one." *SEC v. Culpepper*, *supra*; *Oklahoma Securities Commission v. CFR International, Inc.*, *supra*.

Unlike private actions for injunctions, the Department's action is based on statute and no showing of irreparable injury or the inadequacy of other remedies is required. *Oklahoma Securities Commission v. CFR International, Inc.*, 622 P.2d 293, 295 (Okla. Ct. App. 1980) (citing *Bradford v. SEC*, 278 F.2d 566 (9th Cir. 1960)). Although not required, the Department has also shown that the public will suffer irreparable injury if the Additional Defendants are not enjoined from further violations of the Act.

V. Conclusion

The Department, pursuant to Section 1-602 of the Act, conducted an investigation into the Additional Defendants' activities in and/or from the state of Oklahoma. The investigation produced evidence that clearly indicates the Additional Defendants have issued, offered and/or sold unregistered securities in and/or from this state. Such activity is continuing. The investigation also revealed that the Additional Defendants, in connection with the offer, sale and/or purchase of securities: (1) misrepresented, and are misrepresenting material facts; (2) omitted, and are omitting, to state certain material facts; and (3) engaged, and are engaging, in a course of business that has operated and continues to operate as a fraud or deceit upon other persons. The Department submits that the evidence firmly establishes a *prima facie* case for the issuance of a temporary restraining order, an asset freeze, an accounting, and a temporary injunction.

In light of the facts presented and the authorities cited, the Department respectfully requests that this Court issue a temporary restraining order against the Additional Defendants, an order for accounting by the Additional Defendants, an order appointing a special master for Defendant Heritage, and an order to continue the asset freeze against Defendant Heritage, until such time as the Court may afford the parties a hearing on the Department's motion for

temporary injunction, all to halt the Additional Defendants' unlawful practices and to provide effective relief to all investors and to the Department.

Respectfully submitted,



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CERTIFICATE OF MAILING

The undersigned certifies that on the 10th day of April, 2009, a true and correct copy of the foregoing was mailed via certified mail, return receipt requested, delivery restricted to addressee, to the following:

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