

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

JUN 23 2010

OKLAHOMA DEPARTMENT OF)
SECURITIES, *ex. rel.* Irving L. Faught,)
Administrator,)
)
Plaintiff,)
)
vs.)
)
GLOBAL WEST FUNDING, LTD., CO.,)
an Oklahoma limited liability company, et al.,)
)
Defendants.)

PATRICIA PRESLEY, COURT CLERK
by _____
DEPUTY

Case No. CJ-2009-2773

HEARING SET FOR
AUGUST 5, 2010 @ 1:30 P.M.

MOTION TO ESTABLISH
RESTITUTION AMOUNT

Plaintiff, Oklahoma Department of Securities, *ex rel.* Irving L. Faught, Administrator, requests that this Court establish the amount of restitution payable to investors in this matter. Plaintiff seeks an order finding that Defendants Global West Funding, Ltd., Co., Global West Financial LLC, Sure Lock Financial, LLC, Sure Lock Loans LLC, The Wave-Goldmade Ltd., Brian McKye, Joe Don Johnson, James Farnham and Heritage Estate Service LLC (collectively, "Defendants") are jointly and severally liable for the total amount received, directly or indirectly, by Defendants from their victims as a result of their violations of the Oklahoma Uniform Securities Act of 2004 (Act), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003). Based on the undisputed facts, prior rulings by this Court in this matter, and the legal authority set forth herein, Plaintiff requests that full restitution to investors be paid by all Defendants.

1. On March 24, 2009, a *Petition for Permanent Injunction and Other Equitable Relief* (Petition) was filed against the Defendants Global West Funding, Ltd., Co., Global West Financial LLC, Sure Lock Financial, LLC, Sure Lock Loans LLC, The Wave-Goldmade Ltd.,

Brian McKye, Joe Don Johnson, and James Farnham. Heritage Estate Service LLC (Heritage) was named as a Relief Defendant.

2. On April 1, 2009, an Agreed Order Appointing Special Master was entered by this Court. Stephen J. Moriarty was appointed Special Master over Defendants Global West Funding, Ltd, Co., Global West Financial LLC, Sure Lock Financial, LLC, Sure Lock Loans, LLC, The Wave-Goldmade, Ltd., and Brian McKye.

3. On April 10, 2009, Plaintiff amended the Petition to include Heritage as a Defendant.

4. On April 23, 2009, Stephen J. Moriarty was appointed Special Master over Heritage.

5. On July 13, 2009, a default judgment was entered against Defendant James Farnham (Farnham). This judgment states in part:

IT IS FURTHER ORDERED that Farnham pay restitution to all investors who purchased securities in the nature of notes (Investment Notes) from Farnham or who transferred money to the Heritage Defendants for the purpose of purchasing the Investment Notes or otherwise making investments on their behalf, and that the amount and allocation of restitution to investors shall be determined by this Court at the conclusion of this case as to the Heritage Defendants.

6. On August 14, 2009, a default judgment was entered against Defendants Global West Funding, Ltd, Co., Global West Financial LLC, Sure Lock Financial, LLC, Sure Lock Loans, LLC, and The Wave-Goldmade, Ltd. (collectively, "Global West Defendants"). The judgment states in part:

IT IS FURTHER ORDERED that the Global West Defendants pay restitution to Investors who purchased Investment Notes, as defined in the Petition, or who transferred money to the Global West Defendants for the purpose of purchasing the Investment Notes, as defined in the Petition, or otherwise making investments on their behalf, on a pro rata basis, and that the amount and allocation of restitution to Investors, shall be determined by this Court at the conclusion of this case.

7. On November 3, 2009, this Court entered a permanent injunction against Heritage and Joe Don Johnson (Johnson) (collectively, "Heritage Defendants") that provided in part:

IT IS FURTHER ORDERED that the Heritage Defendants pay restitution to all investors who purchased securities in the nature of notes (Investment Notes) from the Heritage Defendants or who transferred money to the Heritage Defendants for the purpose of purchasing the Investment Notes or otherwise making investments on their behalf, and that the amount and allocation of restitution to such investors shall be determined by this Court at the conclusion of this case as to all Defendants.

8. On January 7, 2010, this Court entered the *Permanent Injunction and Order of Restitution against Brian McKye* that provided in part:

IT IS FURTHER ORDERED that Defendant Brian McKye pay restitution to all investors who purchased Investment Notes from any of the Defendants in this case and to all investors for whom Defendant Brian McKye otherwise made investments on their behalf and that the amount and allocation of restitution to such investors shall be determined by this Court in a future evidentiary hearing.

9. Defendants accepted approximately Six Million Dollars (\$6,000,000) from investors from May 2005 to March 2009.

10. Defendants used fraudulent methods to persuade the investors to purchase the Investment Notes and then used the monies received primarily for personal expenses.

ARGUMENT

I. Plaintiff has authority to seek joint and several liability for restitution.

Section 1-509 of the Act provides in part:

G. The following persons are liable jointly and severally with and to the same extent as persons liable under subsections B through F of this section:

* * *

3. An individual who is an employee of or associated with a person liable under subsection B through F of this section and who materially aids the conduct giving rise to the liability[.]

The Iowa Supreme Court discussed a statute similar to Section 1-509 of the Act in *State ex rel. Goettsch v. Diacide Distributors, Inc.*, 561 N.W.2d 369 (Iowa 1997). That court addressed whether the Iowa Superintendent of Securities (Iowa Regulator) could use an aiding and abetting theory to establish secondary liability for securities fraud, and whether the Iowa Regulator could seek restitution, rescission or disgorgement against aiders and abettors under Iowa's securities laws (Iowa Code).¹ The Iowa Supreme Court answered these questions in the affirmative. The Iowa Court stated: "the State is suing on behalf and for the benefit of defrauded purchasers. The State must therefore have the benefit of any theory of liability available to an individual purchaser." *Id.* at 375. Status as a purchaser is not required. *Id.* (citing, *SEC v. Wong*, 252 F.Supp. 608, 611 (D.P.R.1966)). The imposition of joint and several liability may be sought by Plaintiff even though the Oklahoma Department of Securities was not a purchaser of the Investment Notes.

II. Defendants are subject to joint and several liability for payment of restitution.

The Defendants should be held jointly and severally liable for their actions in connection with their offers and sales of the Investment Notes. All Defendants have been found to have violated the Act. This Court has previously ordered each Defendant to pay restitution to the investors. The amount of restitution to be paid by each Defendant is the only issue remaining before the Court.

Under joint and several liability, "when two or more persons' torts together cause an injury, each tortfeasor is liable to the victim for the total damages." *In re Masters Mates & Pilots Pension Plan and IRAP Litig.*, 957 F.2d 1020, 1027 (2d Cir. 1992). The policy behind

¹ Like the Oklahoma statutes, the Iowa securities laws are modeled after the state uniform securities acts. Section 1-608 of the Act sets forth general policies to be considered by the Administrator in carrying out his duties under the act, to include: maximizing effectiveness of regulation for the protection of investors, and maximizing uniformity in federal and state regulatory standards.

joint and several liability allows a plaintiff to recover from all defendants before having to incur a shortfall due to one defendant's inability to contribute thereby restricting the plaintiff's ability to recover. *In re Worldcom, Inc. Securities Litigation*, 2005 WL 613107, 6 (S.D.N.Y).

Specifically, the *Worldcom* court stated:

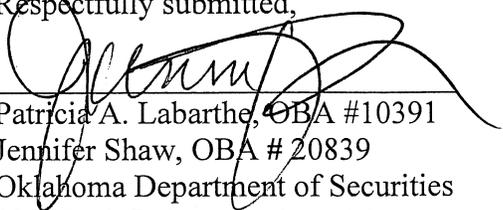
The Supreme Court has recognized that joint and several liability might "result in one defendant's paying more than its apportioned share of liability when the plaintiff's recovery from other defendants is limited by factors beyond the plaintiff's control, such as a defendant's insolvency." [citation omitted] The policy behind this allocation of liability is clear: "When the limitations on the plaintiff's recovery arise from outside forces, joint and several liability makes the other defendants, rather than an innocent plaintiff, responsible for the shortfall."

Accordingly, the offer and/or sale of the Investment Notes by the Defendants, to include Farnham and the Heritage Defendants, requires that all Defendants be jointly and severally liable for the Six Million Dollars (\$6,000,000) of lost investor funds.

CONCLUSION

In the present case, the payment of restitution is included in the relief that has already been ordered by the Court. All Defendants should be held jointly and severally liable for payment of restitution to investors in the amount of Six Million Dollars (\$6,000,000). The Department respectfully requests that the Court order such payment.

Respectfully submitted,



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Jennifer Shaw, OBA # 20839
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(405) 280-7700

CERTIFICATE OF MAILING

The undersigned certifies that on the 23 day of June, 2010, a true and correct copy of the foregoing was mailed by first class mail, with postage prepaid thereon, addressed to:

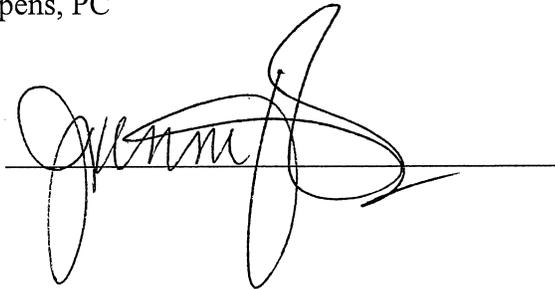
Brian McKye
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Stephen J. Moriarty
Fellers, Snider, Blankenship, Bailey and Tippens, PC
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Oklahoma City, OK 73102

A handwritten signature in black ink, appearing to read 'Stephen J. Moriarty', is written over a horizontal line. The signature is stylized and cursive.