

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

DEC 17 2009

PATRICIA PRESLEY, COURT CLERK
by _____
DEPUTY

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.)

Case No. CJ-2009-2773

**REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AGAINST DEFENDANT BRIAN MCKYE**

Plaintiff, Oklahoma Department of Securities (Plaintiff), for its reply to the *Defendant's Response to Plaintiff's Motion for Summary Judgment Against Defendant Brian McKye* (Response), shows the Court as follows:

DEFENDANT FAILED TO TIMELY RESPOND

In the case at bar, Defendant Brian McKye (Defendant) failed to file a timely response to *Plaintiff's Motion for Summary Judgment Against Defendant Brian McKye and Brief in Support* (Motion). Rule 13 of the Rules of the District Courts of Oklahoma requires Defendant to have filed with the court clerk within fifteen (15) days a response to the Motion. In this case the Plaintiff's Motion was filed November 9, 2009, and a hearing was set before this Court on December 18, 2009. Defendant failed to file a response to the Motion until December 15, 2009. Plaintiff did not receive the Response until December 17, 2009.

DEFENDANT ADMITS MATERIAL FACTS

Defendant failed in his Response to show that there is a substantial controversy that exists as to any material fact. In fact, in his Response, Defendant admits the following:

a. that at all times material hereto Defendant conducted business in the name of Global West Funding, Ltd., Co., Global West Financial LLC, Sure Lock Financial, LLC, Sure Lock Loans, LLC, and The Wave-Goldmade, Ltd.;

b. that at all times material hereto, Defendant controlled Global West Funding, Ltd., Co., Sure Lock Financial, LLC, Sure Lock Loans, LLC, and The Wave-Goldmade, Ltd.;

c. that beginning in or about May 2005, Defendant accepted money from individuals (Investors) in exchange for notes issued by Defendant in the name of GW Funding, GW Financial, Sure Lock Financial and/or Sure Lock Loans (Investment Notes);

d. that the Investment Notes promised the payment of monthly interest in rates determined by Defendant; and

e. that the Investor funds were deposited into an account controlled by Defendant.

These admissions of material fact by Defendant provide a clear basis to conclude that Defendant offered and sold securities, received Investor funds, and promised monthly payments of interest. In fact, if we use the figures submitted by Defendant in Exhibits G and H of the Response, for the sake of this Motion only, Defendant has raised over \$5,000,000 from the sale of securities.

**DEFENDANT DID NOT CLAIM OR QUALIFY FOR
EXEMPTION FROM REGISTRATION**

Defendant does not deny that the Investment Notes are securities. Pursuant to the Oklahoma Uniform Securities Act of 2004 (Act), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003), securities offered and/or sold in and/or from the state of Oklahoma must be registered under the Act or must qualify for an exemption from registration. The burden of proof of the exemption is on the one claiming the exemption. Defendant acknowledges this in his Response. Defendant states that the Investment Notes are exempt but provides no foundation for the statement. Defendant failed to designate the exemption under the Act on which he relied to

distribute the Investment Notes and failed to provide any evidence that would demonstrate a basis for the application of any exemption.

Plaintiff is unaware of an exemption that would apply in light of the admissions of Defendant in the Response that commissions and bonuses were paid to independent contractors. In Exhibit I to the Response, Defendant provides the Independent Contractor Agreement between Global West Funding, Ltd. and Joe Don Johnson, executed by Defendant, that provides for the payment by Defendant of commissions and overrides to Joe Don Johnson. In addition, Joe Don Johnson stipulated to this Court that he acted as an agent for Global West Funding, Ltd., Co., Global West Financial LLC, Sure Lock Financial, LLC, and Sure Lock Loans, LLC, and that he offered and sold Investment Notes for Global West Funding, Ltd., Co., Global West Financial LLC, Sure Lock Financial, LLC, Sure Lock Loans, LLC. See *Stipulation and Consent to Permanent Injunction by Defendants Heritage Estate Service LLC and Joe Don Johnson*, attached hereto as Exhibit A. Therefore, Defendant compensated agents, including Joe Don Johnson, to assist in selling the securities, thereby losing the possibility to claim an exemption from registration for the securities.

DEFENDANT OBSTRUCTED DISCOVERY PROCESS

As stated in Plaintiff's original brief filed with its Motion, Defendant has obstructed the discovery process by exercising his Fifth Amendment privilege in a civil proceeding. Defendant's right to now offer evidence disputing Plaintiff's evidence should not be allowed. *SEC v. Benson*, 657 F. Supp. 122, 1129 (S.D.N.Y 1987).

CONCLUSION

Plaintiff requests that the Court grant summary judgment in its favor against Defendant as no genuine issue of material fact exists regarding Plaintiff's causes of action for violations of the Act. Plaintiff therefore prays that this Court enter summary judgment against Defendant as requested in the Motion.

Respectfully submitted this 17th day of December, 2009.



Patricia A. Labarthe, OBA #10391
Jennifer Shaw, OBA #20839
Oklahoma Department of Securities
120 North Robinson Avenue, Suite 860
Oklahoma City, OK 73102
Telephone: (405) 280-7700
Facsimile: (405) 280-7742
Attorneys for Plaintiff

CERTIFICATE OF MAILING

The undersigned certifies that on the 17th day of December, 2009, a true and correct copy of the foregoing was mailed by first class mail, with postage prepaid thereon, addressed to:

Brian McKye
PO Box 957
Jay, OK 74346
Pro Se

Stephen J. Moriarty
Fellers, Snider, Blankenship, Bailey and Tippens, PC
100 N. Broadway, Ste. 1700
Oklahoma City, OK 73102



IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

NOV 03 2009

PATRICIA PRESLEY, COURT CLERK
by _____
DEPUTY

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

Case No. CJ-2009-2773

**STIPULATION AND CONSENT TO PERMANENT INJUNCTION BY DEFENDANTS
HERITAGE ESTATE SERVICE LLC AND JOE DON JOHNSON**

Defendants Heritage Estate Service LLC and Joe Don Johnson (collectively, "Heritage Defendants") stipulate to the following facts and consent to the following stipulations and undertakings:

Stipulations:

The Heritage Defendants hereby stipulate as follows:

1. The Oklahoma Department of Securities ("Plaintiff") is the proper party to bring this action seeking the relief requested in the verified *Petition for Permanent Injunction and Other Equitable Relief* and *First Amendment to Petition for Permanent Injunction and Other Equitable Relief* filed by Plaintiff ("Petition") filed in this matter.

2. The Heritage Defendants are subject to the jurisdiction of this Court by proper service of the Petition and their appearance in this matter.

3. 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. Defendant Joe Don Johnson controlled all acts of Heritage.

4. Joe Don Johnson ("Johnson"), an individual and Oklahoma resident, was an agent of Defendants Global West Funding, Ltd., Co., Global West Financial, LLC, Sure Lock Financial, LLC, Sure Lock Loans LLC, Storybook Properties LLC, Storybook Investments WA LLC ("Defendants") and Heritage. At all times material hereto, Johnson offered and/or sold securities in and/or from Oklahoma.

5. The Heritage Defendants, directly and indirectly, engaged in the offer and sale of securities in the nature of notes (Investment Notes) issued by Defendants Global West Funding, Ltd., Co., Global West Financial, LLC, Sure Lock Financial, LLC, Sure Lock Loans LLC and by Defendants Storybook Properties LLC and Storybook Investments WA LLC. The Investment Notes are securities as defined by Oklahoma Uniform Securities Act of 2004 (the "Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2004).

6. The Heritage Defendants do not contest the application of the Act to the issuance, offer and/or sale of the Investment Notes in and/or from the state of Oklahoma referenced in paragraph 5 above.

Undertakings:

The Heritage Defendants hereby undertake as follows:

1. The Heritage Defendants consent to the entry of the Permanent Injunction Against Heritage Estate Service LLC and Joe Don Johnson ("Permanent Injunction"), in the form attached as Exhibit "A" hereto and made a part of this Stipulation and Consent to Permanent Injunction of Heritage Estate Service LLC and Joe Don Johnson ("Stipulation and Consent").

2. The Heritage Defendants state that this Stipulation and Consent is entered into voluntarily and that no threat or promise of immunity of any kind has been made by Plaintiff, the Administrator of the Oklahoma Department of Securities, or any employee of the Oklahoma Department of Securities, to coerce agreement with this Stipulation and Consent.

3. The Heritage Defendants waive any right to appeal from the Permanent Injunction.

4. The Heritage Defendants agree that this Stipulation and Consent and all provisions hereof shall be incorporated by reference into the Permanent Injunction.

5. The Heritage Defendants hereby transfer and assign to the Special Master, all rights and claims they have to funds or other assets, that are held for, invested on behalf of, controlled by, or owed to any of the Defendants or any investor.

6. The Heritage Defendants agree that the allocation of restitution to investors shall be determined by this Court at the conclusion of this case.

7. The Heritage Defendants agree that the Special Master shall continue to exercise that authority granted by the *Order Modifying, in Part, Temporary Restraining Order, Order Freezing Assets and Order for Accounting and Appointing Special Master* (Order) issued on April 23, 2009.

8. The Heritage Defendants agree that this Court will retain jurisdiction of this matter for the purpose of enforcement of the Permanent Injunction and this Stipulation and Consent.

9. The Heritage Defendants understand that Plaintiff will take action as authorized by law, including, but not limited to, an enforcement action under the Act, for the failure of any Heritage Defendant to comply with the terms of the Permanent Injunction and this Stipulation and Consent in any material respect or for any future violation of the Act.

10. The Heritage Defendants agree to the presentation of this Stipulation and Consent, executed by each Heritage Defendant, and the Permanent Injunction in the form attached as Exhibit "A", to the Court to be entered without further notice.

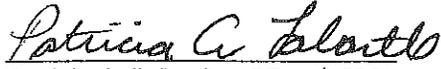
IN WITNESS WHEREOF, the Heritage Defendants have executed this Stipulation and Consent as of the date and year set forth below their signatures hereto.

HERITAGE ESTATE SERVICE LLC

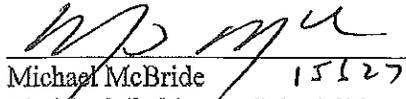
By: [Signature]
Title: Managing Member
Date: 11-2-09
Address:

[Signature]
JOE DON JOHNSON
Date: 11-2-09
Address: 2421 SW 90th Pl
OKC, OK 73159

Approved as to form and substance:



Patricia A. Labarthe, OBA #10391
Jennifer Shaw, OBA #20839
Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, OK 73102
(405) 280-7700
Attorneys for Plaintiff



Michael McBride 15127
204 North Robinson, Suite 2600
Oklahoma City, OK 73102
Attorney for Heritage Estate Service LLC and Joe Don Johnson



Stephen J. Moriarty, OBA #6410
Special Master
Fellers, Snider, Blankenship,
Bailey & Tippens, P.C.
100 North Broadway, Suite 1700
Oklahoma City, OK 73102
(405) 232-0621

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF)
SECURITIES, *ex. rel.* Irving L. Faught,)
Administrator,)

Plaintiff,)

Case No. CJ-2009-2773

vs.)

GLOBAL WEST FUNDING, LTD., CO.,)
an Oklahoma limited liability company, et al.,)

Defendants.)

PERMANENT INJUNCTION AGAINST
DEFENDANTS HERITAGE ESTATE SERVICE LLC
AND JOE DON JOHNSON

This matter came on for hearing this ___ day of November, 2009, before the undersigned Judge of the District Court in and for Oklahoma County, State of Oklahoma, upon the verified *Petition for Permanent Injunction and Other Equitable Relief* and *First Amendment to Petition for Permanent Injunction and Other Equitable Relief* filed by Plaintiff (Petition) pursuant to the Oklahoma Uniform Securities Act of 2004 (the "Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2004).

It appears to this Court from the facts alleged in the Petition that Plaintiff is entitled to the relief requested as to Defendant Heritage Estate Service LLC (Heritage Estate) and Defendant Joe Don Johnson (Johnson) (collectively, "Heritage Defendants"). It further appears that the public will suffer irreparable damage and injury unless Defendants, their affiliates, agents, servants, employees, assigns, and any other persons acting on their behalf and under their direction and control, are enjoined.

Defendants have executed the *Stipulation and Consent to Permanent Injunction by Defendants Heritage Estate Service LLC and Joe Don Johnson* (Stipulation and Consent) attached hereto at Exhibit "A" and made a part hereof. The Plaintiff has no objection to the terms of the Stipulation and Consent and agrees to the entry of this Order.

IT IS HEREBY ORDERED that a permanent injunction be and is hereby entered forever enjoining and restraining the Heritage Defendants from offering and/or selling securities in and/or from this state.

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.

IT IS FURTHER ORDERED that Defendant Heritage Estate shall remain subject to all provisions of the Court's March 24, 2009 *Temporary Restraining Order, Order Freezing Assets and Order for Accounting*, and April 23, 2009, *Order Modifying, in Part, Temporary Restraining Order, Order Freezing Assets and Order for Accounting and Appointing Special Master* (collectively, "Restraining Orders").

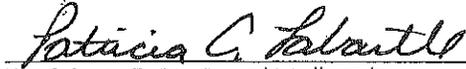
IT IS FURTHER ORDERED that the Restraining Orders shall be lifted as to Defendant Johnson.

IT IS FURTHER ORDERED that this Court will retain jurisdiction of this matter for the purpose of enforcement of this Order.

THIS ORDER IS ENTERED this ____ day of _____, 2009, at _____:____, ____m.

Noma D. Gurich, District Judge

APPROVED:



Patricia A. Labarthe, OBA #10391
Jennifer Shaw, OBA # 20839
Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, OK 73102
Attorneys for Plaintiff



Michael McBride 15627
204 North Robinson, Suite 2600
Oklahoma City, OK 73102
Attorney for Heritage Estate Service LLC and Joe Don Johnson



Stephen J. Moriarty, OBA #6410
Special Master
Fellers, Snider, Blankenship,
Bailey & Tippens, P.C.
100 North Broadway, Suite 1700
Oklahoma City, OK 73102
(405) 232-0621