

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

DEC 16 2011

PATRICIA PRESLEY, COURT CLERK
by _____
DEPUTY

Oklahoma Department of Securities)
ex rel. Irving L. Faught,)
Administrator,)
)
Plaintiff,)
)
v.)
)
Robert E. Tucker, and)
Keystone Equity Group, Inc.,)
)
Defendants.)

Case No. CJ-2010-2525

PLAINTIFF'S OBJECTION TO DEFENDANT ROBERT E. TUCKER'S MOTION TO RECONSIDER AUTHORIZATION OF BENCH WARRANT & ALLOWANCE OF PAYMENT PLAN

Plaintiff, Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator, ("Department"), submits the following objection to the *Motion to Reconsider Authorization of Bench Warrant & Allowance of Payment Plan* ("Motion to Reconsider") filed by Defendant Robert E. Tucker ("Tucker") on November 7, 2011.

The Department files this objection outside of the fifteen days allowed by Rule 4 of the Rules for District Courts of Oklahoma because the Department received a non-file-stamped copy of the Motion to Reconsider with a cover letter dated November 4, 2011, in which counsel for Defendant Tucker made statements that led counsel for the Department to believe that the attached Motion to Reconsider had not been filed and would not be filed without the Department's consent. The cover letter is attached hereto as Exhibit "A". The misleading portion of the letter states:

Additionally, I'm enclosing with this letter a **draft** of a motion that I would like to file with the Court. This is an agreed motion to request that the bench warrant be recalled based on Mr. Tucker's good faith efforts to pay the civil fine to the best of his ability . . . If you are willing to agree to the Motion, please sign and return to me in the enclosed envelope. (Emphasis added).

Because of those statements, counsel for the Department did not know that the Motion had actually been filed until approximately December 8, 2011, when the Department received the *Order Setting Hearing on Motion* filed on November 29, 2011, and served on December 6, 2011.¹

**DEFENDANT TUCKER'S MOTION TO RECONSIDER SHOULD BE DENIED
BECAUSE IT IS DEFECTIVE**

The Department objects to Defendant Tucker's Motion to Reconsider on the grounds that it does not contain a brief or list of authorities as required by Rule 4(c) of the Rules for District Courts of Oklahoma. Without a brief, a list of authorities or a single reference to statutory authority or caselaw, the Department does not know the true nature of the Motion to Reconsider or any legal basis for recalling the outstanding bench warrant for Defendant Tucker and allowing a payment plan for Defendant Tucker's civil fine. The Motion to Reconsider should be denied on the grounds that it is defective without a brief or list of authorities.

**DEFENDANT TUCKER HAS NOT INITIATED A PROCEEDING TO VACATE OR
MODIFY THE FINAL ORDER OR THE JUDGMENT OF CONTEMPT IN
COMPLIANCE WITH 12 O.S. § 1033**

Defendant Tucker's Motion to Reconsider purports to move the Court to recall the outstanding bench warrant for his arrest and to allow a payment plan for the civil

penalty imposed against him in the *Final Order, Judgment and Permanent Injunction* filed on March 30, 2011 ("Final Order"). However, if the Motion to Reconsider is allowed despite its Rule 4(c) defect, it should be treated as a request to vacate or modify the Final Order and/or the *Judgment of Contempt* filed on August 31, 2011 ("Judgment of Contempt"). The outstanding bench warrant is a direct result of the Judgment of Contempt in which Defendant Tucker was sentenced to the county jail for a period of six months or until he abided by the Final Order, a consent order, to pay a civil penalty in the amount of \$20,000. If the Court were to allow Defendant Tucker to pay the civil penalty in monthly installments of \$500 as requested in the Motion to Reconsider, the Court would effectively vacate or modify the Final Order's requirement that the civil penalty be paid in full within forty-five (45) days of the entry of the Final Order.

The requirements for requesting the Court to vacate or modify a judgment, decree, or appealable order more than thirty (30) days after the filing of the judgment, decree, or appealable order are set forth in 12 O.S. § 1033. Section 1033 states:

If more than thirty (30) days after a judgment, decree, or appealable order has been filed, proceedings to vacate or modify the judgment, decree, or appealable order, on the grounds mentioned in paragraphs 2, 4, 5, 6, 7, 8, and 9 of Section 1031 of this title, shall be by petition, verified by affidavit, setting forth the judgment, decree, or appealable order, the grounds to vacate or modify it, and the defense to the action, if the party applying was defendant. On this petition, a summons shall issue and be served as in the commencement of a civil action.

¹ Counsel for Defendant Tucker called counsel for the Department between November 7, 2011, and November 29, 2011, and asked if the Department would be consenting to the Motion to Reconsider. Counsel for the Department stated that the Department would not consent. The Department was still not aware that the Motion to Reconsider had actually been filed.

Defendant Tucker's Motion to Reconsider was filed on November 7, 2011, more than thirty days after the filing of the Final Order and the Judgment of Contempt on March 30, 2011, and August 31, 2011, respectively. If the Motion to Reconsider is interpreted by the Court as a request for the Court to vacate or modify the Final Order and/or the Judgment of Contempt, the Motion to Reconsider should be denied because it is not a petition based on one of the seven specified grounds of 12 O.S. § 1031 and was not served on the Department with a summons in accordance with 12 O.S. § 2004. None of the grounds that would authorize the Court to vacate or modify the Final Order and/or the Judgment of Contempt exist in this case or were claimed by Defendant Tucker. For these reasons, Defendant Tucker's Motion to Reconsider should be denied.

In conclusion, the Department requests that Defendant Tucker's Motion to Reconsider be denied because it is defective without the brief or list of authorities required by Rule 4(c) and/or it does not meet the requirements of 12 O.S. § 1033.

Respectfully submitted,



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CERTIFICATE OF MAILING

The undersigned certifies that on the 16th day of December, 2011, a true and correct copy of the foregoing was mailed to:

Brittany L. Woodard
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Attorney for Defendants



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November 4, 2011

Oklahoma Dept. of Securities
Attn: Ms. Terra Bonnell, Esq.
120 N. Robinson, Suite 860
Oklahoma City, OK 73102

CC: Gerald J. Lovoi, Esq.
616 S. Boston, #403
Tulsa, OK 74119

RE: *Oklahoma Dept. of Securities v. Robert E. Tucker, et. al.*, Case No. CJ-2010-2525, Oklahoma County District Court in and for the State of Oklahoma

Dear Ms. Bonnell:

Please find a cashier's check enclosed for the amount of \$5,000.00 as an additional partial payment of the civil fine that Mr. Tucker agreed to pay in settlement of the aforementioned case. I believe his remaining balance is \$7,500.00, which he will pay as soon as possible.

Additionally, I'm enclosing with this letter a draft of a motion that I would like to file with the Court. This is an agreed motion to request that the bench warrant be recalled based on Mr. Tucker's good faith efforts to pay the civil fine to the best of his ability. I know that you've previously said the Department of Securities was not willing to recall the warrant, but I thought you may be willing to reconsider in light of his substantial payment efforts in spite of his very poor health and limited ability to have gainful employment pending his upcoming surgery and recovery. If you are willing to agree to the Motion, please sign and return to me in the enclosed envelope.

Please let me know if you would like to discuss further.

Sincerely,



Brittany L. Woodard

