

STATE OF OKLAHOMA  
DEPARTMENT OF SECURITIES  
THE FIRST NATIONAL CENTER  
120 NORTH ROBINSON, SUITE 860  
OKLAHOMA CITY, OKLAHOMA 73102



In the Matter of:

Geary Securities, Inc. *fka* Capital West Securities, Inc;  
Keith D. Geary; Norman Frager; and CEMP, LLC,

Respondents.

ODS File No. 09-141

**GEARY RESPONDENTS' MOTION FOR PRECLUSION ORDER STRIKING  
WITNESSES FROM DEPARTMENT'S FINAL WITNESS LIST BASED ON THE  
DEPARTMENT'S NON-COMPLIANCE WITH THE  
AGREED AMENDED SCHEDULING ORDER**

Pursuant to the express terms of the Agreed Amended Scheduling Order and Rule 660:2-9-3(f) of the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (the "Rules"), Respondents Geary Securities, Inc. (formerly known as Capital West Securities, Inc.), Keith D. Geary, and CEMP, LLC (the "Geary Respondents") respectfully submit this Motion to request that the Hearing Officer issue an Order striking certain witnesses listed by the State of Oklahoma Department of Securities (the "Department") on its Final List of Witnesses submitted in this action on March 25, 2011.<sup>1</sup>

**I. PRELIMINARY STATEMENT.**

The Geary Respondents file this Motion to invoke and enforce the express, mandatory consequence and remedy for the Department's failure to comply with the requirements of the Agreed Amended Scheduling Order.

---

<sup>1</sup> The Department's Final List of Witnesses bears a "Filed" stamp indicating that such List was filed with the Administrator at 3 p.m. on March 15, 2011. The date of the "Filed" stamp is apparently in error, as the Department's List was served by counsel for the Department by e-mail at approximately 3:16 p.m. on March 25, 2011, and includes a Certificate of Service dated March 25, 2011.

The Department has focused this proceeding on the Geary Respondents' involvement in a re-securitization project that led to the purchase of securities (one each) by Bank of Union and Timothy Headington in September of 2009. The involvement of Bank of Union personnel has been known to the Department since before the date this action was filed and at least as early as April 2010. The Hearing Officer is well aware of the fact that certain non-parties who are material witnesses for the Department (the "BOU Non-Parties"<sup>2</sup>) have failed and refused to comply with document and deposition subpoenas issued by the Hearing Officer.

As is set forth in greater detail below, the Department has knowingly failed to comply with the terms of the Agreed Amended Scheduling Order. The Department's knowing and willful non-compliance materially prejudices and deprives the Geary Respondents of their right to discovery, due process and fundamental fairness in this action. As a result and in accordance with the express remedy provided by the Agreed Amended Scheduling Order, the Hearing Officer should promptly issue an Order striking the following individuals from the Department's Final List of Witnesses and precluding them from testifying at the time of the Hearing:

- Mike Shelley;
- John Shelley;
- Mike Braun;
- Chris Martin;
- Jeff Wills;
- Ray Evans;
- Earl Mills;
- Eldon R. Ventris;

---

<sup>2</sup> The BOU Non-Parties include the Bank of Union, John Shelley, Mike Braun, and Timothy Headington.

- Steve Ketter;
- David Tinsley;
- Betty Pettijohn;
- Bill Haycraft;
- Joseph D. McKean, Jr.; and
- Karen Hooley.

## II. BRIEF STATEMENT OF FACTS RELEVANT TO THIS MOTION.

1. The Agreed Amended Scheduling Order was prepared by the Department's counsel, then approved by all counsel and the Hearing Officer and filed in this action on February 14, 2011. The Department's deadline for filing its Final Witness List was March 25, 2011 at 5 p.m. The Agreed Amended Scheduling Order states:

"The final witness lists **shall** identify, by name, **address**, and **telephone number**, all witnesses, including but not limited to expert witnesses, intended to be called at hearing and contain a short description of the expected testimony of each witness. **Failure to comply with this paragraph will result in the exclusion of witnesses at hearing.**" See, Agreed Amended Scheduling Order, Paragraph 2 (emphasis added).

2. The Department submitted its Final List of Witnesses on March 25, 2011 (Exhibit 1 hereto). The Department's Final List of Witnesses fails to provide the addresses and telephone numbers of the following witnesses:

- Mike Shelley;
- John Shelley;
- Mike Braun;
- Chris Martin;
- Jeff Wills;

- Ray Evans;
- Earl Mills;
- Eldon R. Ventris;
- Steve Ketter;
- David Tinsley;
- Betty Pettijohn;
- Bill Haycraft;
- Joseph D. McKean, Jr.; and
- Karen Hooley.

3. The Agreed Amended Scheduling Order provided a deadline (of December 24, 2010) for the parties to file preliminary witness lists. In this regard, the Agreed Amended Scheduling Order (and the original Scheduling Order) provided that the preliminary witness lists “shall identify the witnesses by name, address and telephone number,” but did not include the preclusive language that accompanies the requirements applicable to the parties final witness lists. See, Agreed Amended Scheduling Order, Paragraph 1.

4. The Department’s Preliminary List of Witnesses (filed December 22, 2010) failed to provide addresses and telephone numbers for a number of non-party witnesses and instead provided contact information for attorneys for such witnesses. Months prior to the deadline for the Department’s final witness list, counsel for the Geary Respondents brought this aspect of non-compliance to the attention of the Department’s counsel and expressed the concern that the scheduling order requires contact information for the witness - not counsel for the witness - and service of a subpoena on an attorney for a non-party witness does not constitute effective service. In response, counsel for the Department stated that she did not have

contact information for the witnesses and could not voluntarily produce them for depositions, such that subpoenas would be required.

5. Notwithstanding this prior discussion concerning non-compliance with the scheduling order's requirements, the Department has again failed and refused to comply with the requirements applicable to its final witness list. The Department's non-compliance is particularly blatant and offensive in light of its keen awareness that counsel for non-party witnesses has obstructed – not facilitated – the Geary Respondents' attempts to exercise the discovery rights purportedly granted to them by the Department's own Rules. Fortunately, the exclusive remedy for the Department's non-compliance is mandated by the express terms of the Agreed Amended Scheduling Order itself.

### **III. ARGUMENT AND AUTHORITY.**

#### **THE DEPARTMENT'S NON-COMPLIANCE WITH THE AGREED AMENDED SCHEDULING ORDER REQUIRES ISSUANCE OF A PRECLUSION ORDER STRIKING WITNESSES FROM THE DEPARTMENT'S LIST OF FINAL WITNESSES.**

The Department cannot avoid the fact that it failed to comply with the requirements of Paragraph 2 of the Agreed Amended Scheduling Order by failing to provide the addresses and telephone numbers of certain witnesses. The Department cannot avoid the fact that it was aware of the scheduling order's requirements because the Department (a) prepared and approved the language of the Agreed Amended Scheduling Order, and (b) had previously been notified by counsel for the Geary Respondents of the Department's non-compliance at the time the Department filed its preliminary witness list.

As stated and quoted in Part II above, the requirements of the Agreed Amended

Scheduling Order are mandatory (“**shall**”) and provide an express consequence for non-compliance (“**will** result in the exclusion of witnesses at hearing”). This is a **mandatory** – not discretionary – consequence.<sup>3</sup> The Agreed Amended Scheduling Order’s preclusive language (“**will** result in the exclusion of witnesses at hearing”) is not accidental or coincidental. The Department presumably included these requirements and consequences to protect the rights of the Department. Fundamental fairness demands that these same requirements and consequences be applied and strictly enforced to protect the rights of the Geary Respondents as well.

The Department cannot avoid the fact that it failed to comply with the requirements of Paragraph 2 of the Agreed Amended Scheduling Order by failing to provide the addresses and telephone numbers of certain witnesses. The consequence is mandatory and clear – the witnesses identified herein must be excluded.

#### **IV. CONCLUSION AND REQUEST FOR HEARING.**

Based on the foregoing discussion, argument and authorities, the Geary Respondents respectfully request that the Hearing Officer promptly take the following action:

- A. Schedule and conduct a Hearing on this Motion; and
- B. Enter a preclusion order striking and precluding the following individuals from

testifying at the hearing on the merits in this action:

- Mike Shelley;
- John Shelley;

---

<sup>3</sup> In fact, the Department’s own Rules state that “failure to comply with the requirements of a scheduling order...may result in any of the following sanctions: (1) striking any pleadings; (2) a preclusion order.” See, Rule 660:2-9-3(f). Clearly, the Department’s counsel prepared, approved and stipulated to be bound by a scheduling order that includes an express consequence that is more stringent - by virtue of its mandatory nature - than the Department’s Rule.

- Mike Braun;
- Chris Martin;
- Jeff Wills;
- Ray Evans;
- Earl Mills;
- Eldon R. Ventris;
- Steve Ketter;
- David Tinsley;
- Betty Pettijohn;
- Bill Haycraft;
- Joseph D. McKean, Jr.; and
- Karen Hooley.

Respectfully submitted,



---

Joe M. Hampton, OBA No. 11851  
Amy J. Pierce, OBA No. 17980  
A. Ainslie Stanford II, OBA No. 18843

**CORBYN HAMPTON PLLC**  
One Leadership Square  
211 North Robinson, Suite 1910  
Oklahoma City, Oklahoma 73102  
Telephone: (405) 239-7055  
Facsimile: (405) 702-4348  
Email: [jhampton@corbynhampton.com](mailto:jhampton@corbynhampton.com)  
[apierce@corbynhampton.com](mailto:apierce@corbynhampton.com)  
[astanford@corbynhampton.com](mailto:astanford@corbynhampton.com)

**ATTORNEYS FOR RESPONDENTS GEARY  
SECURITIES, INC., KEITH D. GEARY, AND  
CEMP, LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that on March 28, 2011, a copy of the foregoing document was served on the following via electronic mail:

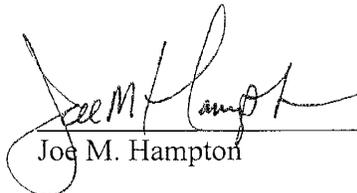
Mr. Bruce R. Kohl  
Hearing Officer  
201 Camino del Norte  
Santa Fe, NM 87501  
E-mail: [bruce.kohl09@gmail.com](mailto:bruce.kohl09@gmail.com)

Brenda London, Oklahoma Department of Securities  
120 North Robinson, Suite 860  
Oklahoma City, OK 73102; and

Melanie Hall, Director of Enforcement  
Terra Shamas Bonnell, Enforcement Attorney  
Oklahoma Department of Securities  
120 North Robinson, Suite 860  
Oklahoma City, OK 73102;

Donald A. Pape, Esq.  
Donald A. Pape, P.C.  
401 West Main Street, Suite 440  
Norman, OK 73069;

Susan Bryant  
[sbryant@bryantlawgroup.com](mailto:sbryant@bryantlawgroup.com)

  
\_\_\_\_\_  
Joe M. Hampton