

STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES



ODS File No. 11-076

Respondent's Motion to Vacate - Number One

**MEMORANDUM TO MOTION TO VACATE ORDER AND CLOSE
COMPLAINT FILE WITH PREJUDICE NUMBER ONE**

BACKGROUND

1. On May 19, 2011, Complainant Blankenship filed a Complaint with the Oklahoma Department of Securities (“ODOS”) against Respondent Possett. Complainant has from time-to-time updated the Complaint with additional documentation, more specifically the “Timeline and Summary of Gabriele Blankenship” a.k.a. “Timeline and Summary of Blankenship Investments” [“Timeline & Summary”]
2. On April 30, 2012, ODOS issued an Order to Cease and Desist (“Order”) to Respondent Possett.
3. On this date, September 26th, 2012, Respondent has filed Motions to Dismiss Number Two and Three and a Request for Exemption.
4. Now comes, Respondent petitioning the Administrator to vacate the Order and close the Complaint file with prejudice.

STATEMENT OF FACTS

In this matter and specifically as to the numbered “Findings of Fact” and “Conclusions of Law” as listed in the Order, Respondent avers as follows.

As to the Findings of Fact:

1. This finding is affirmed. Respondent did provide consulting and general business services under the trade name “The Navigator Group.”

2. This finding is affirmed. Respondent was not at any time registered under the Oklahoma Uniform Securities Act of 2004.
3. This finding is ambiguous and misleading. Respondent was at one time a Registered Representative with Spellman & Co. This language was not updated to the past tense on Respondent's personal resumes. This was a faux pas. However, Respondent did not through his normal course of business, nor in his business cards, stationary, literature, brochures, pamphlets, posters, banners, advertisements, signage, or media, nor in conversation hold himself to be a "Registered Securities Representative". As per finding number one, Respondent provided consulting and general business services. Respondent was not in the business of effecting transactions in securities.
4. This finding is misleading. The Custodial Agreement speaks to two (2) custodial accounts: a Custody Account, and a Cash Account. At no time was any money deposited into either of the custodial accounts. Respondent affirms he provided legitimate custodial services to Complainant on a personal one-time basis of one stock certificate. Respondent affirms he entered into a "Custodial Agreement" dated November 16, 2007. On or about March 26, 2008, Complainant delivered an existent stock certificate to Respondent for safekeeping [Exhibit V]. The sole service Respondent provided was custodianship of a single certificate of stock in Jenks-Cochrane Properties, a Canadian corporation. This service was provided at Complainant's request and was merely custodial in its entirety. It was a personal and private matter. Respondent

was not in the business of effecting transactions in securities.

5. This finding is severely flawed. According to the email evidence provided [Exhibit W], Complainant delivered the "Custodial Application" form to Respondent on or about June 6, 2008, nearly seven (7) months after the "Custodial Agreement" was signed, over nine (9) months after the Commercial Real Estate Purchase Contract was executed by a Jenks-Cochrane officer, and more than seven (7) months after Complainant forwarded monies in the amount of \$445,000.00 from accounts under her sole possession and absolute control to Jenks-Cochrane and the Guenthers to effectuate the purchase of the subject property. At no point did Respondent effectuate a trade, hold or transport cash, or have access to any of Complainant's accounts. All monetary transactions were effected by Complainant. No monies were ever deposited into or rolled-over into or passed-through the custodial accounts. Furthermore, not only was the "Custodial Application" completed in arrears and obsolete, it was filled out completely in Complainant's own hand and was not signed or endorsed by Respondent. Finally, the language referenced in the Order is incidental. The stock certificate was approved and authorized by Jenks-Cochrane shareholders, not Respondent. Three stock certificates were issued by Jenks-Cochrane after Respondent had resigned as an officer and member of the Board, only one certificate of which was ever held in custodianship by Respondent. Not only did Respondent not invest and not effect any transaction in securities on behalf of Complainant, it is impossible that Respondent ever could

have done any such thing, regardless of the language in the “Custodial Application.” Respondent had no account access or control over Complainant funds and all relevant transactions had been completed prior to the delivery of the application form. Finally, the plan was not the reality in this matter and actions really do speak louder than words. The **REALITY** was

- a. At all times material and relevant hereto, Complainant had sole access to, total possession of, and absolute control over her funds, retirement or otherwise.
- b. Complainant’s retirement funds of \$357,931.00 were spent, among other monies, personally by her on October 31, 2007 to effectuate the purchase of the subject property [**Exhibit M**].
- c. The preferred stock was authorized by the Jenks-Cochrane shareholders on January 31, 2008 [**Exhibit P**] and issued [**Exhibit S**] and delivered to Complainant on March 5, 2008 [**Exhibit U**].
- d. One existent stock certificate was delivered on or about March 26, 2008 by Complainant to Respondent for safekeeping [**Exhibit V**].
- e. No monies ever entered, were deposited or rolled-over into or passed-through the custodial accounts.

The **PLAN** was that

- a. Complainant would lend money to the Guenthers or a Guenther Entity [**Exhibit B**].
- b. Promissory notes would be executed and then exchanged for Jenks-Cochrane preferred stock [**Exhibit S**].
- c. The preferred stock would be duly authorized and issued as instruments of indebtedness [**Exhibit P**].

- d. The Assistant Secretary and Assistant Treasurer were specifically tasked with effectuating the loan-for-stock exchange.
- e. A custodial relationship would be established as a non-qualified and fully taxable self-directed individual retirement arrangement.
- f. A loan-for-stock exchange would take place in a non-monetary transaction by and between Complainant and Jenks-Cochrane.
- g. Complainant would deliver existent stock certificates to Respondent for deposit and safekeeping into the Custody Account.
- h. Principal and interest payments related to the existent securities would be deposited into the Cash Account.
- i. Accumulated cash income would be reinvested into additional Jenks-Cochrane preferred stock.

When the facts and circumstances were fully revealed on or about February 20, 2008, the plan was abandoned due to tax and blue sky concerns. Furthermore, on or about March 26, 2008, the plan crossed-over from business to personal. If the lending and investing activities would have been executed according to plan, The Navigator Group would have acted as an unlicensed broker-dealer in securities. They were not and did not, and thus, Respondent was in actuality a legitimate custodian of one piece of paper for the sole benefit of one person, Complainant, on one occasion.

- 6. This finding is false and misleading. Respondent did not assign Complainant an account number. Complainant provided her own account number on the "Custodial Application" and

requested Respondent use it. Furthermore, there is no reference to an "IRA" in the agreement or application, the only acknowledged documents. Complainant also requested Respondent produce quarterly statements of the custodial accounts. The statements were first issued on or about September 14, 2008 disclosing a Cash Account as "None." None (not any) is a non-integer value vis-à-vis zero. The monetary value of the certificate held in safekeeping was assigned by Jenks-Cochrane, not Respondent, and this value did not change for as long as statements were issued and custodial services provided. This is simply because no trades or securities transactions were ever effectuated or even contemplated after the tax issues and regulatory concerns were discerned. No monies ever changed hands. Respondent never had access to, possession of, or control over Complainant funds. Indeed, to repeat, A) all transactions were effected by Complainant using monies and accounts under her utter possession and in her complete control, B) the purchase of the subject property had been completed prior to the execution of the "Custodial Agreement", and C) stock was authorized and issued by Jenks-Cochrane shareholders and delivered to Complainant, who then provided to Respondent one certificate for mere safekeeping and custodianship. Complainant's instructions in the application form are extraneous and meaningless because the subject monies were completely spent by Complainant on October 31, 2007. Furthermore, no Cash Account was ever established, and therefore funded, to hold principal and income payments related to the existent security held in safekeeping due to uncertain tax issues and securities concerns. ODOS mischaracterizes the situation as an investment of retirement

funds directly into Jenks-Cochrane preferred stock as a fact. In reality, the subject monies were commingled with personal savings and disbursed by Complainant for the purpose of purchasing real estate in Canada for the benefit of Jenks-Cochrane. ODOS improperly defines the investment as JCP Series A 12.0% Preferred Stock and marks it as a fact. In actuality, Complainant invested her retirement monies, among others, in a beneficial ownership interest (“BOI”) related to the subject property purchased by Jenks-Cochrane. Subsequently, Complainant tendered and traded the BOI for instruments of indebtedness (“IOI”) with Jenks-Cochrane through the non-monetary transaction of barter at a time when she was an officer and director of said corporation. Thereafter, Complainant delivered an existent stock certificate to Respondent for safekeeping.

7. This finding is partially affirmed. Respondent terminated the custodial relationship on June 26, 2010 pursuant to paragraphs seven (7) and ten (10) of the agreement and delivered Complainant a bill for custodial services rendered. No securities transactions were ever effected.

As to the Conclusions of Law:

1. This conclusion is nonsensical. Respondent did not act as a broker-dealer. The relevant section of the Act states that a broker-dealer is “a person engaged in the business of effecting transactions in securities”. One can hardly call a personal single-solitary non-compensative transaction a business. Furthermore, the activity was an isolated (*occurring once*) act and not multiple transactions (*plural meaning more than one*) as defined. Many people affected

(with an a-) the transactions in question, including the bank tellers who handled deposits and transfers. Only a limited few effected (with an e-) those same transactions. Respondent was not one of them. Respondent did not effect any transactions in securities. Respondent was not in any position of control of accounts and funds. Respondent provided consulting and general business services, including the mere safekeeping of a previously transacted security on a one-time personal basis in his family safe.

2. This conclusion is self-evident. Respondent respectfully recognizes the authority of the Administrator for the State of Oklahoma.
3. This conclusion is hyperbole. Respondent did not effect any transactions in securities, and as such did not act as a broker-dealer under the law. However, even if such an interpretation were erroneously concluded, it is impossible that the Respondent's actions relevant to the Order in any way affected the public interest, past, present, or future. Events speak for its self. Respondent wonders how such an interest could have ever been contemplated let alone demonstrated. All matters relevant hereto constitute a private controversy innocuous to the general public, as described under Section 660:2-7-1. In the final analysis, Respondent held in safekeeping in his personal safe, for the benefit of Complainant, one stock certificate, for one person, and on one occasion. Not only was the activity legitimate, it was private and personal and did not adversely affect in anyway, past, present, or future (*"past is prologue"*), the public interest or place the general public in the State of Oklahoma in harm's way. Respondent was

not, is not, and does not intend to engage in the business of a broker-dealer and therefore, no cease and desist order is pertinent or applicable to the facts and circumstances as alleged by ODOS. The verity of the above statement is self-evident by Respondent's business and personal activities over the last four (4) to five (5) years. Respondent believes that the Complaint was filed in bad faith and is materially false and misleading. The sole purpose of the fallacious Complaint is for it to act as a "Trojan Horse" in the civil lawsuit instigated by Complainant against Respondent. Complainant seeks to use government resources for her own personal interests. The Administrator acts only in the public interest.

Respondent has at all times relevant to the Order acted in compliance with the Oklahoma Uniform Securities Act of 2004. Respondent did provide custodial services on a personal basis for a previously issued and existent security. Respondent did have a Custodial Agreement with Complainant. Complainant did complete a Custodial Application in which she did assign a custodial account number. Respondent did issue quarterly statements beginning around September 15, 2008 at the direct request of and in a form and fashion asked for by Complainant. Respondent did terminate custodial services and did produce a bill for his custodianship risks and services. Respondent did not effect any transactions in securities, and thus did not act as a broker-dealer under the law and therefore, did not need a license.

Please refer to the enclosed timeline for further clarification of events at Attachment I - Timeline of Events.

ARGUMENT

The ODOS facts and conclusions as enumerated in the Order are grounded in simple supposition. The premises do not support the hypothesis that Respondent was a broker-dealer. It is as if ODOS cobbled together a hodgepodge of disjointed documents manifesting a situation analysis that materially misrepresented actual events. The true reality is that Complainant

1. Had, at all times relevant and material hereto, sole access to, total possession of, and absolute control over all of her funds.
2. Personally spent the retirement monies, along with personal savings, on October 31, 2007 to effectuate the purchase of the subject property [**Exhibit L**].
3. Never deposited or rolled-over any monies whatsoever into the custodial accounts. The Custodial Agreement or Application form does not speak to an IRA.
4. Executed a loan-for-stock exchange with Jenk-Cochrane on March 5, 2008 [**Exhibit U**].
5. Delivered one existent stock certificate, on or about March 26, 2008, to Respondent for his personal safekeeping [**Exhibit V**].

The real facts in the matter made it impossible and impracticable for Respondent to have effected any transaction in securities as related to Complainant. Respondent was simply a personal custodian of one piece-of-paper of a private and personal nature, for one person, on one occasion. Respondent was not in the securities business. Respondent did not effectuate transactions.

CONCLUSION

For the reason stated above, Respondent's Motion to Vacate Order and Close File with Prejudice Number One should be granted.

Respectfully Submitted

Dated this 26th day of September, 2012

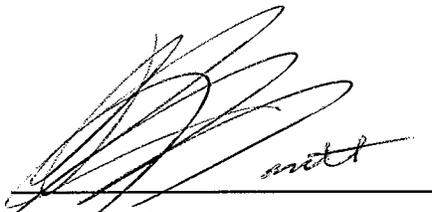


Richard W. Possett, Sr.
Pro se Respondent
1413 North Lakeside Drive
Andover, KS 67002-7415
Cell: (316)-737-2993
Fone: (316)-733-5456
Email: rpossett@att.net

CERTIFICATE OF SERVICE

I hereby certify that I served, on this 26th day of September, 2012, a true and correct copy of Respondent's, Richard W. Possett, Sr., Motion to Vacate Order and Close Complaint File with Prejudice Number One and Memorandum on the Administrator of the ODOS, by mailing it, first class mail, sufficient postage attached thereon to:

Mr. Irving L. Faught, Administrator
Oklahoma Department of Securities
120 North Robinson Ave, Suite 860
Oklahoma City, OK 73102
ATTENTION: Ms. Brenda London

A handwritten signature in black ink, appearing to read 'Richard W. Possett, Sr.', is written over a horizontal line. The signature is stylized and cursive.

Richard W. Possett, Sr.
Pro se Respondent
1413 North Lakeside Drive
Andover, KS 67002-7415
Cell: (316)-737-2993
Fone: (316)-733-5456
Email: rpossett@att.net