

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.

File No. 09-141

**ORDER DENYING GEARY RESPONDENTS' MOTION  
FOR PRECLUSION ORDER AND ORDER STRIKING DEPARTMENT  
EXHIBIT NUMBER 27 (PURPORTED HEADINGTON GURANTEE AGREEMENT)**

This matter having come before the Hearing Officer on the Respondents' Geary Securities, Inc. (formerly known as Capital West Securities, Inc.), Keith D. Geary and CEMP, LLC, Motion for Preclusion Order and Order Striking Department Exhibit Number 27 (Purported Headington Guarantee Agreement), and the parties having submitted written arguments on the same and a hearing having been held on said Motion on January 24, 2012, and the Hearing Officer having considered said arguments hereby finds that:

1. Respondents' Motion seeks the issuance of a preclusion order under the authority of Rule 660:2-9-3(f)(2) of the Rules of the Oklahoma Securities Commission and Administrator of the Department of Securities (the "Rules"), to preclude testimony on allegations made by the Department of Securities ("Department") pertaining to a securities transaction affected by the Geary Respondents with Timothy Headington ("Headington"), as alleged in the Enforcement Division Recommendation (the "Headington Claim"). The issuance of such preclusion order would in effect cause a dismissal of the Headington Claim against the Respondents;

2. A Subpoena for the deposition of Headington was issued by the Hearing Officer at the request of the Respondents without objection in accordance with Rule 660:2-9-3(b)(2) and Rule 660:2-9-4;

3. Headington is not listed as a witness for the Department in the Final and Amended Lists of Witnesses filed March 15 and 28, 2011;

4. Service of the Subpoena under the Rules could not be affected on Headington in Oklahoma, as he is apparently a resident of and present in the State of Texas, and so service of the Subpoena on Headington in Texas would have to be made in accordance with Texas law.

5. Respondents have been unable to affect legal service of the Subpoena on Headington so as to be able to obtain judicial enforcement of the Subpoena under Texas law;

6. Headington is under no legal obligation to voluntarily submit to a deposition by the Respondents in this proceeding as he is not a party to the proceeding, has not been identified as a witness by the Department, and has not been properly served with the Subpoena;

7. Evidence obtained through discovery to date, which is attached to the pleadings in this Motion, would indicate the following:

A. That Respondents had no direct contact or communication with Headington in affecting the securities transaction that is the subject of the Headington Claim or the execution of Exhibit Number 27 (purported Headington Guaranty Agreement);

B. That witness John Shelley ("Shelley") was acting as the authorized representative for Headington in the subject transaction and in the creation and execution of Exhibit Number 27, and that all communications and contact between the Geary Respondents and Headington regarding this transaction and the Headington Guaranty Agreement occurred through Shelley;

C. That Shelley prepared Exhibit Number 27 based on communications he had with Respondent Keith D. Geary, and that Headington was not involved in the preparation of Exhibit Number 27, and was not a signatory to said guaranty agreement;

D. That Shelley has been listed as a witness by the Department, and Respondents have had the opportunity to depose Shelley regarding the facts surrounding the Headington transaction and the creation and execution of Exhibit Number 27;

8. The inability of the Respondents to take Headington's deposition as set forth in their Motion has occurred through no fault of the Department, and the Department is not obligated to produce Headington to the Respondents for discovery;

9. Respondents have failed to show that Headington is an essential witness in this proceeding, and further failed to show that Headington's testimony would add substantively to the record so as to justify precluding and striking testimony pertaining to the Headington Claim and striking Exhibit Number 27, the Headington Guaranty Agreement;

10. Whether Headington's testimony is essential to this administrative proceeding can only be judged based on the testimony presented by other witnesses for the Department to establish whether the *prima facie* elements of the alleged Headington Claim have been proven, and thus it would not be justified at this time to issue an order precluding testimony concerning the Headington Claim and precluding and striking Exhibit Number 27;

11. The Hearing Officer does not believe he has the authority under Rule 660:2-9-3(e) to at this time issue an order to preclude testimony concerning the Headington Claim and to preclude and strike Exhibit Number 27 as prayed for in Respondents' Motion based on Headington's unwillingness to voluntarily submit to a deposition by Respondents, nor does he believe that such a result would be in the interests of a fair proceeding to determine the validity of the Headington Claim.

Accordingly it is ordered that the Respondents' Motion for Preclusion Order and Order Striking Department Exhibit Number 27 (Purported Headington Guaranty Agreement) is hereby DENIED.

Dated this 7<sup>th</sup> day of February, 2012.

  
Bruce R. Kohl  
Hearing Officer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 8th day of February, 2012, a true and correct copy of the above and foregoing *Order Denying Geary Respondents' Motion for Preclusion Order and Order Striking Department Exhibit Number 27 (Purported Headington Guarantee Agreement)* was emailed and mailed, with postage prepaid, to:

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

Joe M. Hampton, Esq.  
Amy J. Pierce, Esq.  
A. Ainslie Stanford II, Esq.  
Corbyn Hampton, PLLC  
211 N Robinson Ste 1910  
Oklahoma City, OK 73102  
[JHampton@Corbynhampton.com](mailto:JHampton@Corbynhampton.com)  
*Attorney for Respondents Geary Securities, Inc., Keith D. Geary,  
and CEMP, LLC*

Donald A. Pape, Esq.  
Donald A. Pape, PC  
401 W. Main, Suite 440  
Norman, OK 73069  
[don@dapape.com](mailto:don@dapape.com)

and

Susan E. Bryant  
Bryant Law  
PO Box 596  
Camden, ME 04843  
[sbryant@bryantlawgroup.com](mailto:sbryant@bryantlawgroup.com)  
*Attorneys for Respondent Norman Frager*

Emailed only to:

Melanie Hall  
[mhall@securities.ok.gov](mailto:mhall@securities.ok.gov)

and

Terra Shamas Bonnell  
[tbonnell@securities.ok.gov](mailto:tbonnell@securities.ok.gov)  
*Attorneys for Department*

  
Brenda London, Paralegal