

IN THE DISTRICT COURT OF LOGAN COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA
LOGAN COUNTY SS:
FILED FOR RECORD ON

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CLERK OF DISTRICT COURT

BY _____ DEPUTY

Oklahoma Department of Securities)
ex rel. Irving L. Faught,)
Administrator,)

Plaintiff,)

v.)

Case No. *CT-2004-256*

Marsha Schubert, an individual and)
dba Schubert and Associates;)
Richard L. Schubert, an individual and)
dba Schubert and Associates; and)
Schubert and Associates,)
an unincorporated association,)

Defendants.)

PETITION FOR PERMANENT INJUNCTION

AND OTHER EQUITABLE RELIEF

COMES NOW the Plaintiff, Oklahoma Department of Securities, *ex rel.* Irving L. Faught, ("Department"), and for its claims against the above-named Defendants, alleges and states as follows:

OVERVIEW

1. This case involves violations of the Oklahoma Uniform Securities Act of 2004 ("Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003) and the Oklahoma Securities Act ("Predecessor Act"), Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (1991 & Supp. 2003), by Marsha Schubert, Richard Schubert, and Schubert and Associates ("Defendants"). Specifically, the Department alleges Defendants offered and sold unregistered securities in violation of Section 1-301 of the Act and Section 301 of the Predecessor Act, failed to register as agents and

employed unregistered agents in violation of Section 1-401 of the Act and Section 201 of the Predecessor Act, and perpetrated fraud in connection with the offer, sale, or purchase of securities in violation of Section 1-501 of the Act and Section 101 of the Predecessor Act.

JURISDICTION

2. The Administrator of the Department brings this action pursuant to Section 1-603 of the Act and is the proper party to bring this action against the Defendants.

3. Pursuant to Sections 1-102 and 1-610 of the Act and Sections 2 and 413 of the Predecessor Act, Defendants, in connection with their activities in the offer, sale, and purchase of securities, are subject to the provisions of the Act and the Predecessor Act. By virtue of their transaction of business by contract and otherwise and commission of other acts in this state, Defendants are subject to the jurisdiction of this Court and to service of summons within or outside of this state.

4. Defendants have engaged in acts and practices in violation of the Act and the Predecessor Act and are engaging in acts and practices in violation of the Act. Unless enjoined, they will continue to engage in the acts and practices set forth herein and acts and practices of similar purport and object.

DEFENDANTS

5. Marsha Schubert is an individual and an Oklahoma resident. At all times material hereto, Marsha Schubert offered and/or sold securities in and/or from Oklahoma as described herein in her own name and/or in the name of Schubert and Associates.

6. Richard Schubert is an individual and an Oklahoma resident. At all times material hereto, Richard Schubert offered and/or sold securities in and/or from Oklahoma as described herein in his own name and/or in the name of Schubert and Associates.

7. Schubert and Associates is an unincorporated association, purporting to operate as an investment program, with its principal place of business in Crescent, Oklahoma. At all times material hereto, Schubert and Associates issued, offered, and/or sold securities in and/or from Oklahoma as described herein. At all times material hereto, Schubert and Associates acted under the control of Marsha Schubert and/or Richard Schubert.

NATURE OF THE CASE

8. Beginning in or about 2001, and continuing to the present, Defendants engaged in the issuance, offer, and/or sale of securities in and/or from Oklahoma to investors ("Investors") in the nature of interests in an investment program ("Investment Program Interests") in which Defendants represented they would pool and invest Investor funds returning large profits to Investors. Defendants have solicited and are soliciting Investors to invest money in the Investment Program. Defendants' representations were made through the use of oral communications.

9. To purchase Investment Program Interests, Investors were directed to make their checks payable to Schubert and Associates. Defendants then deposited Investor funds into a bank account in the name of Schubert and Associates. Defendants did not disclose to Investors how Defendants would invest Investors' money, but generally stated that the money would be used to make trades in option contracts. Defendants promised that the Investment Program Interests are "full proof" and promised profits of thirty percent (30%) annual interest. Investors

had no role in the success or outcome of the investments or in affecting the promised profit in the Investment Program. Investors relied completely on the judgment and discretion of the Defendants for the promised profit.

10. Defendants rarely provided statements to Investors documenting their investments in the Investment Program Interests. Some Investors received a computer produced statement in January of 2004 reflecting the amount or value of their investment at that time. Some Investors also received handwritten statements from time to time on request. However, in most cases, Investors who inquired about their profits merely received a handwritten note reflecting the percentage of profit Defendants claimed the Investors were making. When Investors asked to see the Schubert and Associate investment records, Defendants told Investors that the records were at the Schubert residence.

11. At all times material hereto, Marsha Schubert was registered as an agent of a broker-dealer registered to engage in the securities business in the state of Oklahoma. Marsha Schubert held herself out as competent to transact securities trades on behalf of customers and that because of her registered status she would deal fairly with her customers in accordance with the standards of the securities profession. The Investors placed trust and confidence in Marsha Schubert to act for their benefit. She lured the Investors into thinking that the Investment Program was part of a legitimate brokerage investment. However, the offer and sale of the Investment Program Interests involved securities transactions outside the regular course or scope of her employment with a registered broker-dealer, and were therefore, outside the scope of her agent registration.

12. In addition to investing in the Investment Program Interests, the Investors were brokerage customers of Marsha Schubert and her affiliated broker-dealers. The Investors did

receive statements from the broker-dealers reflecting the securities held in their brokerage accounts. Some Investors believed their money had been placed in their brokerage accounts and questioned Marsha Schubert about why the account value depicted on their brokerage statements did not match the amount they believed they had invested with Defendants. Marsha Schubert told Investors she had resigned from one brokerage firm and became affiliated with a different firm because of problems with the account statements and that the statements from the new brokerage firm should be accurate.

13. In May of 2004, Marsha Schubert was permitted to resign while under investigation by the broker-dealer with whom she was registered. In April of 2004, the broker-dealer had conducted an audit on Marsha Schubert regarding wire fund activity involving her customers' brokerage accounts and deposits from Schubert and Associates. When Marsha Schubert's customers, who had check writing authority on their brokerage accounts, wrote checks exceeding their cash availability for withdrawal, Marsha Schubert would be notified by the brokerage firm that her customer had insufficient funds. Marsha Schubert would then make a deposit in the form of a wire transfer from Schubert and Associates to cover the deficiency. This practice continued after Marsha Schubert became affiliated with the second brokerage firm. Phone logs retrieved from Marsha Schubert's office support that customers called to notify Ms. Schubert when they were writing checks. Ms. Schubert would deposit funds from Schubert and Associates to cover any checks drawn in that customer's brokerage account.

14. In October of 2004, the Department conducted an examination of Marsha Schubert's broker-dealer office. Marsha Schubert claimed that Schubert and Associates is a limited partnership managed by her husband Richard Schubert. She stated that Richard Schubert is the general partner and that the limited partners are just a small group of his friends who

wanted to form an investment club. Marsha Schubert asserted that she is not acting as a representative of Schubert and Associates. Marsha Schubert stated there were no records for Schubert and Associates in her office. Marsha Schubert refused to produce documents and has since closed the business without notice or explanation to Investors and advised employees that their employment was terminated.

15. The Investment Program Interests are not registered as securities with the Department.

16. Martha Schubert and Richard Schubert are not registered as issuer agents with the Department.

FIRST CAUSE OF ACTION

(Violation of Section 1-301 of the Act and Section 301 of the Predecessor Act: Offering and/or Selling Unregistered Securities)

17. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 14 above.

18. The Investment Program Interests are securities as defined by Section 1-102 of the Act and Section 2 of the Predecessor Act.

19. The securities offered and sold by Defendants are not and have not been registered, or otherwise qualify for, an exemption from registration pursuant to Section 1-201 of the Act or Section 401 of the Predecessor Act.

20. By reason of the foregoing, Defendants have violated Section 301 of the Predecessor Act and have violated, are violating, and unless enjoined, will continue to violate Section 1-301 of the Act.

SECOND CAUSE OF ACTION

(Violation of Section 1-401 of the Act and Section 201 of the Predecessor Act: Failure to Register as Agents and Employing Unregistered Agents)

21. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding cause of action.

22. Defendants are not, and have not been, registered as issuer agents pursuant to Section 1-401 of the Act or Section 201 of the Predecessor Act.

23. Schubert and Associates is an issuer as defined in Section 1-401 of the Act and Section 2 of the Predecessor Act.

24. Richard Schubert and Marsha Schubert, by virtue of their efforts and activities in this state in effecting or attempting to effect transactions in securities, are issuer agents, as defined in Section 1-102 of the Act and Section 2 of the Predecessor Act. Richard Schubert and Marsha Schubert have transacted and are transacting business in this state as issuer agents without benefit of registration under the Act or the Predecessor Act.

25. Schubert and Associates employed unregistered agents.

26. By reason of the foregoing, the Defendants have violated Section 201 of the Predecessor Act and have violated, are violating, and unless enjoined, will continue to violate Section 1-401 of the Act.

THIRD CAUSE OF ACTION

(Violation of Section 1-501 of the Act and Section 101 of the Predecessor Act: Untrue Statements of Material Facts and Omissions of Material Facts in Connection With Offer, Sale or Purchase of Securities)

27. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

28. Defendants, in connection with the offer, sale, or purchase of securities, directly and indirectly, made and are making untrue statements of material facts including, but not limited to, that the Investment Program would provide guaranteed profits or returns in the nature of annual interest of thirty percent (30%) or greater.

29. Defendants, in connection with the offer, sale, or purchase of securities, directly and indirectly, omitted and are omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were and are made, not misleading, including, but not limited to, the following matters:

- a. any general or specific risk factors associated with the Investment Program Interests;
- b. that the Investment Program Interests are securities under the Act and the Predecessor Act;
- c. that the securities have not been and are not registered under the Act or the Predecessor Act;
- d. that the Investment Program Interests were not being offered and sold through a registered broker-dealer;
- e. that the Defendants were not registered to offer and sell securities under the Act or the Predecessor Act;
- f. that Schubert and Associates was not affiliated with the customers' brokerage accounts;
- g. that the Investment Program Interests were not an authorized product of Marsha Schubert's broker-dealer; and
- h. information on the manner in which profits would be generated on the Investment Program Interests or Investors' funds would be disposed.

30. By reason of the foregoing, Defendants, directly and indirectly, have violated Section 101 of the Predecessor Act, and have violated, are violating, and unless enjoined, will continue to violate Section 1-501 of the Act.

FOURTH CAUSE OF ACTION

**(Violation of Section 1-501 of the Act and Section 101 of the Predecessor Act:
Engaging in any Act, Practice, or Course of Business Which Operates or
Would Operate as a Fraud or Deceit upon any Person)**

31. The Department realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

32. Defendants, in connection with the offer, sale, or purchase of securities, and through the use of the untrue statements of material fact and the omissions of material facts described in paragraphs 28 and 29 above, have engaged and are engaging in an act, practice, or course of business that has operated and continues to operate as a fraud or deceit upon investors.

33. By reason of the foregoing, Defendants, directly and indirectly, have violated Section 101 of the Predecessor Act, and have violated, are violating, and unless enjoined, will continue to violate Section 1-501 of the Act.

PRAYER FOR RELIEF

Defendants have engaged in acts and practices in violation of the Act and the Predecessor Act and have, as a result of these activities, received a substantial amount of money from Investors. Unless enjoined, Defendants will continue to engage in the acts and practices set forth herein and acts and practices of similar purport and object. A danger exists that the money received by Defendants from the Investors or money or securities held by Defendants on behalf of the Investors will be lost, removed, or transferred. A temporary restraining order to issue *instanter* and temporary and permanent injunctions to issue against Defendants are necessary to preserve the money received and money or securities held and the records relating thereto and to prevent further violations of the Act.

WHEREFORE, based upon the foregoing, and pursuant to the authority specifically granted by Section 1-603 of the Act, the Department prays for the court to grant the following relief:

I.

A temporary restraining order to issue *instanter* and a temporary and permanent injunction, restraining and enjoining the Defendants, their agents, servants, employees, assigns, and all those persons, directly or indirectly, acting on their behalf, under their direction and control, and/or in active concert or participation with them, who receive actual notice of the restraining order or temporary and/or permanent injunction, by personal service, facsimile or otherwise, and each of them from:

- a. offering and selling any security in this state; and
- b. transacting business in this state as a broker-dealer, agent, investment adviser, and/or investment adviser representative.

II.

An order prohibiting Defendants, their agents, servants, employees, assigns, and all those persons, directly or indirectly, acting on their behalf, under their direction and control, and/or in active concert or participation with them, who receive actual notice of the order, by personal service, facsimile or otherwise, and each of them from tampering with, mutilating, altering, erasing, concealing, removing, destroying or otherwise disposing of any and all books, records, documents, files, correspondence, computer disks, tapes or other data recordings of any type, pertaining to or referring to Defendants or any financial transactions by Defendants or to which Defendants were parties;

III.

An order *instanter* freezing the assets of Defendants and ordering that all financial or depository institutions comply with the Court's order;

IV.

An order *instanter* appointing a receiver *pendente lite* for Defendants, empowering said receiver to marshal and take possession of the books, records, funds and assets of Defendants; to undertake whatever manner of legal or equitable action is required to preserve or maintain the assets of Defendants; and to operate or liquidate the assets of Defendants for the benefit of the Investors, as equity may require;

V.

An order *instanter* requiring Defendants to file with this Court and to serve on Plaintiff, within ten (10) days of the filing of this petition, an accounting, under oath, detailing all of their assets and detailing all funds received from Investors and the disposition and/or use of those funds;

VI.

An order requiring Defendants to make restitution to any and all Investors who purchased securities from Defendants or who transferred money to Defendants for the purpose of making securities investments on their behalf;

VII.

An order requiring Defendants, their agents, servants, employees, assigns, and all persons, directly or indirectly, acting on their behalf, under their direction and control, and/or in active concert or participation with them, to disgorge all ill-gotten gains;

VIII.

An order imposing a civil penalty against Defendants in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) each; and

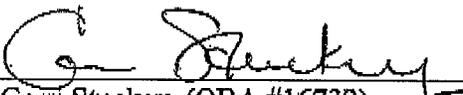
IX.

Such other equitable relief as the Court may deem necessary, just and proper in connection with the enforcement of the Act and the Predecessor Act.

Respectfully submitted,

OKLAHOMA DEPARTMENT OF SECURITIES
Irving L. Faught, Administrator

By:



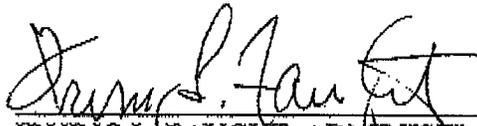
Gerri Stuckey, (OBA #16732)
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Oklahoma City, Oklahoma 73102
(405) 280-7700

STATE OF OKLAHOMA)
)
COUNTY OF OKLAHOMA)

SS.

Irving Faught, of lawful age, being first duly sworn deposes and says: that he is the Administrator of the Oklahoma Department of Securities, that he has read the foregoing Petition for Permanent Injunction and Other Equitable Relief and knows the contents thereof, and that the matters and things stated therein have been provided to him by staff members of the Department under his authority and direction, and are true and correct to the best of his knowledge, information and belief.

(SEAL)



IRVING L. FAUGHT, ADMINISTRATOR OF THE
OKLAHOMA DEPARTMENT OF SECURITIES
120 North Robinson, Suite 860
Oklahoma City, Oklahoma 73102
(405) 280-7700

Subscribed and sworn to before me this 14th day of October, 2004.



Notary Public

My Commission Expires: August 26, 2004
My Commission No.: 01013792
(NOTARIAL SEAL)