

IN THE DISTRICT COURT OF TULSA COUNTY  
STATE OF OKLAHOMA

*rev'd*  
OCT 24

DISTRICT COURT  
FILED

Oklahoma Department of Securities )  
ex rel. Irving L. Faught, )  
Administrator, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
James Van Pruitt, )  
 )  
Defendant, )

OCT 24 2001

SALLY HOWE SMITH, COURT CLERK  
STATE OF OKLA. TULSA, COUNTY

Case No. CJ-2001-2563

**MOTION FOR DEFAULT JUDGMENT  
AND BRIEF IN SUPPORT**

Plaintiff, Oklahoma Department of Securities ex rel. Irving L. Faught, Administrator, moves this Court to enter judgment by default in its favor and against James Van Pruitt ("Defendant").

I.

Summary of Action

On May 9, 2001, Plaintiff filed a Petition for Permanent Injunction and other Equitable Relief ("Petition") against Defendant. On May 15, 2001, Defendant was personally served with the Petition and a summons.

In its Petition, Plaintiff alleged that Defendant violated: (a) Section 201 of the Oklahoma Securities Act (the "Act"), Okla. Stat. tit. 71, §§ 1-17, 101-103, 201-204, 301-307, 401-413, 501, 701-703 (1991 and Supp. 2000), by transacting business in this state as a broker-dealer or agent, as defined in Section 2 of the Act, without first being registered under the Act or being exempt from registration under the Act and (b) Section 301 of the Act by offering and/or selling securities that were not registered under the Act nor exempt from such registration.

## II.

### Default Judgment is Appropriate

On August 10, 2001, Defendant entered an appearance pursuant to Okla. Stat. tit. 12, § 2012.A (1991 & Supp. 2000), thereby reserving an additional twenty days, or until August 30, 2001, to further plead or answer the Petition. To date, Defendant has failed to file an answer and his time for doing so has expired.

Okla. Stat. tit. 12, § 2008.D (1991 & Supp. 1999) pertaining to the general rules of pleadings states: "Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted when not denied in the responsive pleading."

Plaintiff's Petition alleges that Defendant violated Sections 201 and 301 of the Act. As provided by Okla. Stat. tit. 12, § 2008.D (1991 & Supp. 1999) and Defendant having not answered the allegations in Plaintiff's Petition, such averments must be deemed admitted by Defendant.

## III.

### Plaintiff's Requested Relief is Appropriate

In its Petition, Plaintiff requested that the Court permanently enjoin Defendant from further and future violations of Sections 201 and 301 of the Act. Plaintiff also requested that the Court impose a civil penalty against Defendant in the amount of Fifty Thousand Dollars (\$50,000.00) pursuant to Section 406.1 of the Act.

Section 406.1 of the Act provides in part:

**(a) Upon a showing by the Administrator that a person has violated or is about to violate the Oklahoma Securities Act, except under the provisions of Section 202.1 or 305.2 of this title, or a rule or order of the**

Administrator under the Oklahoma Securities Act or that a person has engaged or is about to engage in dishonest or unethical practices in the securities business, the Administrator, prior to, concurrently with, or subsequent to an administrative proceeding, may bring an action in the district court of Oklahoma County or the district court of any other county where service can be obtained on one or more of the defendants and **the district court may grant or impose one or more of the following appropriate legal or equitable remedies:**

(1) Upon a showing of a violation of the Oklahoma Securities Act or a rule or order of the Administrator under the Oklahoma Securities Act or conduct involving dishonest or unethical practices in the securities business:

(i) a temporary restraining order, **permanent or temporary prohibitory or mandatory injunction**, or a writ of prohibition or mandamus;

(ii) a civil penalty up to a maximum of **Five Thousand Dollars (\$5,000.00) for a single violation or of Fifty Thousand Dollars (\$50,000.00) for multiple violations in a single proceeding or a series of related proceedings;**

(iii) a declaratory judgment;

(iv) restitution to investors;

(v) the appointment of a receiver or conservator for the defendant or the defendant's assets; and

(vi) other relief the court deems just (emphasis added).

A. Permanent Injunction

Once the Plaintiff has shown the Defendant's past conduct is in violation of the Act, the proper test for the issuance of a statutory injunction is whether there is a reasonable expectation of future violations by Defendants. S.E.C. v. Manor Nursing Centers, Inc., 458 F.2d 1082 (2nd Cir. 1975); S.E.C. v. Culpepper, 270 F.2d 241, 249 (2d Cir. 1959). In considering this issue, past illegal conduct is strong support for the

likelihood of future violations. Oklahoma Securities Commission v. CFR International, Inc., 1980 OK CIV APP 60, ¶ 13, 622 P.2d 293,295 (Okla. Ct. App. 1980). As described above and in the Petition, Defendant has violated the Act, creating a presumption of a likelihood of future violations. Because Plaintiff has conclusively demonstrated the existence of past violations, injunctive relief is appropriate and the burden of showing that there is no reasonable expectation of future violations will shift to the Defendant and his burden "is a heavy one." S.E.C. v. Culpepper, 270 F.2d 241, 249 (2d Cir. 1959).

Further, unlike private actions for injunctions, Plaintiff's action is a creature of statute subject to a standard of review different from the traditional equitable injunction. Because of the statutory basis for such action, no showing of irreparable injury or the inadequacy of other remedies, as in a private injunctive action, is required. Oklahoma Securities Commission v. CFR International, Inc., 1980 OK CIV APP 60, ¶ 14, 622 P.2d 293,295 (Okla. Ct. App. 1980) (citing Bradford v. S.E.C., 278 F.2d 566 (9th Cir. 1960)); S.E.C. v. Torre, 87 F.2d 449, 450 (2d Cir. 1937). Although not required, Plaintiff has also shown that the public will suffer irreparable injury if Defendant is not enjoined from further violations of the Act.

#### B. Civil Penalty

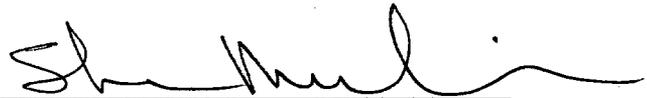
Section 406.1(a)(1) of the Act specifically grants the Court the authority to impose a civil penalty upon a showing by the Administrator of a violation of the Act. Violations of the Act have been shown by Plaintiff and admitted through Defendant's failure to answer.

The allegations in the Petition having been admitted, Plaintiff has established a sufficient basis for the issuance of a permanent injunction and the imposition of a civil penalty payable to the Oklahoma Department of Securities.

IV.  
Conclusion

Plaintiff respectfully requests that the Court enter judgment in its favor and issue a Permanent Injunction forever enjoining Defendant from further and future violations of Sections 201 and 301 of the Act. Plaintiff further requests that the Court impose a civil penalty against Defendant in the amount of Fifty Thousand Dollars (\$50,000.00) payable to the Oklahoma Department of Securities.

Respectfully submitted,



Shaun M. Mullins (OBA #16869)  
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CERTIFICATE OF SERVICE

On the 23<sup>rd</sup> day of October, 2001, a true and correct copy of the Motion for Default Judgment and Brief in Support, was mailed via U.S. Mail, postage prepaid, to:

Ronald C. Kaufman, Esq.  
Kaufman & Associates, P.C.  
610 South Main, Suite 210  
Tulsa, OK 74119  
(Attorney for Defendant)



Shaun M. Mullins