

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Oklahoma Department of Securities)
ex rel. Irving L. Faught,)
Administrator; and)
Douglas L. Jackson, in his capacity)
as the court appointed receiver)
for the investors and creditors of)
Schubert and Associates)
and for the assets of Marsha Schubert,)
individually, and doing business as)
Schubert and Associates, and)
for Schubert and Associates,)

Plaintiffs,)

v.)

Robert W. Mathews, Marvin L. Wilcox,)
Pamela J. Wilcox, Detria J. Owens,)
Kathleen Gibson, Sheryl Mercer,)
Frank Ward, Alice Sue Ward, Ben J. Allen,)
Sharon A. Allen, Michael Rogers,)
Bob E. Hudson, Wade Toepfer, Janice Fagg,)
Edward G. Stanton, Kenneth LaRue,)
Ella Carr, Martin W. Mathews,)
Beth Armer, *individually, and as trustee*)
for the Beth Armer Revocable Trust,)
Shanna Kinslow, Roy E. Landwehr,)
Vicki L. Landwehr, Scott A. Wilcox,)
Ryan E. Landwehr, Lindsay Landwehr,)
John Pumphrey, Carolyn Pumphrey,)
Justin R. Tarrant, Jeffrey L. Wilcox,)
Jacquelyn Bounds, Steven R. Espolt,)
Phillip Yenser, Glenda Yenser,)
Loyd R. Jones, Richard Brandon Schubert)
Hillary Michelle Schubert, Garrett Lee)
Schubert, Jack D. Simpson, Sue J. Simpson,)
Robert J. Owens, Chad Johnson,)
Sonny Harmon, Rodney J. Martin,)
Wanda Martin, Neil Sheehan, K. R. LaRue,)
Dana LaRue, Kenneth Young,)
Leslie A. Young, Alexandra Young,)
Dean Cue, Claudette Cue, Theresa Pittman,)
Daniel Jackson, Crystal Jackson,)
Jerald Wayne Drake, Regina Kraus,)

01-2005-3796

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

MAY 11 2005

PATRICIA PRESLEY, COURT CLERK

By

Deputy

Case No. CJ-

Lance E. Berry, Robert E. Proctor, *if living,*)
individually, and as trustee for the)
Proctor Family Revocable Trust,)
and if deceased, his unknown successors,)
Bobbie Proctor, *individually, and as trustee*)
for the Proctor Family Revocable Trust,)
Sandra K. Phillips, Elnora Viefhaus,)
Chester J. Weems, Becky Drake,)
Curtis R. Sanders, Paul Lee,)
R. Kurt Blair, Wendy B. Blair,)
Danny Gregory, Martha Gregory,)
Linda K. Jindra, Josephine Ward,)
Kerry Long, Raymond C. Laubach,)
Gary L. Scott, James W. Powell,)
Billie A. Vincent, Ted A. Payne,)
Joyce E. Payne, Sean Winn,)
Trey A. Roehrig, Robert Rains,)
Angela D. Ewers, Brenda L. Enos,)
Olin R. Rising, J. M. Miller, Willis Luber,)
Carol A. Lindley, Maudie L. Cook,)
Bill Harris, Rebecca Honeyman,)
Todd A. Ward, William Etheridge,)
Christopher LaRue, Viola M. Estes,)
Brian Reinhardt, Tonya Reinhardt,)
James Wyatt, Thelma Wyatt, Arthur Platt,)
Bette McClure, Phillip Matthews,)
Brad Pollard, Allen Griffith, Linda Elliott,)
Linda Stewart, Chelsea Venable,)
Gayle Venable, Jamie Walker Glover,)
Richard LeBoeuf, E. E. Tackett,)
Timothy W. Rains, Krista Rains,)
Michael L. Malloy, Renyssa Wines,)
Mike Bostick, Don Poindexter,)
Anita Tarralbo, Kirsten Allard,)
Mike Richey, Shawna Allen,)
Timothy Jackson, Julia Jackson,)
Betty Lamb, Bill McCutchen,)
Brandi Pollard, Craig Simmons,)
Billy D. Horn, Jack McNally, Laura Payne,)
Manuel Segura, Kenneth R. Williams,)
Bertha L. Cooper, Wes Price,)
Tricia Price, Tawnya Merchant,)
Margaret Hooley, Janet L. Lawhon,)
Mary Frates, Bob Prestridge, Jr.,)
Gerald D. Knight, Jim Copeland,)
Monte Phillips, Vincent H. Scott,)
Tracy Tarrant, Ellen Clay Benner,)

Brian Owens, Lloyd Avery, Denise Meloy,)
 Gary L. Bounds, Donald D. Hall,)
 Kevin L. Carnes, Cecil Williams,)
 Jeffrey Palmer, Mark Richards,)
 Melinda Hobbs, Jodi Sharp,)
 and Beverly Kegin,)
)
 Defendants Solely For)
 Purposes of Equitable Relief.)

PETITION

Plaintiffs, Oklahoma Department of Securities, *ex rel.* Irving L. Faught, Administrator (Department), and Douglas L. Jackson, in his capacity as court appointed receiver for the investors and creditors of Schubert and Associates and for the assets of Marsha Schubert and Schubert and Associates (Receiver), allege and state as follows:

OVERVIEW

1. On October 14, 2004, the Department filed suit against Marsha Schubert, individually and doing business as Schubert and Associates (Marsha Schubert), and Schubert and Associates in the District Court of Logan County, State of Oklahoma, for 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) (Logan County Suit). *See Exhibit 1.* Specifically, the Department alleged that Marsha Schubert and Schubert and Associates offered and sold unregistered securities, failed to register as agents and employed unregistered agents, and perpetrated fraud in connection with the offer, sale, or purchase of securities.

2. On October 14, 2004, the Logan County District Court appointed Douglas L. Jackson as Receiver for the assets of Marsha Schubert and Schubert and Associates. *See Exhibit 2.* On December 10, 2004, the Logan County District Court amended the order appointing receiver providing that Douglas L. Jackson be the Receiver for the investors and creditors of

Schubert and Associates and have the authority to institute actions to recover assets and to protect the interests of and promote equity among the investors in the Schubert and Associates investment program. *See Exhibit 3.*

3. On November 15, 2004, upon stipulation and consent of Marsha Schubert, the Logan County District Court entered a permanent injunction against Marsha Schubert and Schubert and Associates (Permanent Injunction). The Permanent Injunction enjoins Marsha Schubert and Schubert and Associates from offering and selling securities and transacting business as a broker-dealer or agent in and/or from Oklahoma and provides for the continuation of the receivership. *See Exhibit 4.*

RELIEF DEFENDANTS

4. Plaintiffs bring this action against the individuals listed in paragraph 5 below (collectively, Relief Defendants), all who received cash and other property and/or control property that are the proceeds of the unlawful activities of Marsha Schubert and/or Schubert and Associates (collectively, Investor Assets).

5. The Relief Defendants are the following individuals who reside in the county listed:

	FirstName	LastName	County of Residence
5.1	Robert W.	Mathews	Logan
5.2	Marvin L.	Wilcox	Kingfisher
5.3	Pamela J.	Wilcox	Kingfisher
5.4	Detria J.	Owens	Pottawatomie
5.5	Kathleen	Gibson	Seminole
5.6	Sheryl	Mercer	Oklahoma
5.7	Frank	Ward	Kingfisher
5.8	Alice Sue	Ward	Kingfisher
5.9	Ben J.	Allen	Oklahoma
5.10	Sharon A.	Allen	Oklahoma
5.11	Michael	Rogers	Logan
5.12	Bob E.	Hudson	Kingfisher
5.13	Wade	Toepfer	Logan
5.14	Janice	Fagg	Seminole
5.15	Edward G.	Stanton	Logan
5.16	Kenneth	LaRue	Canadian

	FirstName	LastName	County of Residence
5.17	Ella	Carr	Seminole
5.18	Martin W.	Mathews	Logan
5.19	Beth	Armer, <i>individually and as trustee for the Beth Armer Revocable Trust</i>	Logan
5.20	Shanna	Kinslow	Pottawatomie
5.21	Roy E.	Landwehr	Garfield
5.22	Vicki L.	Landwehr	Garfield
5.23	Scott A.	Wilcox	Kingfisher
5.24	Ryan E.	Landwehr	Garfield
5.25	Lindsay	Landwehr	Garfield
5.26	John	Pumphrey	Oklahoma
5.27	Carolyn	Pumphrey	Oklahoma
5.28	Justin R.	Tarrant	Logan
5.29	Jeffrey L.	Wilcox	Kingfisher
5.30	Jacquelyn	Bounds	Logan
5.31	Steven R.	Espolt	Kingfisher
5.32	Phillip	Yenzer	Logan
5.33	Glenda	Yenzer	Logan
5.34	Loyd R.	Jones	Logan
5.35	R. Brandon	Schubert	Canadian
5.36	Hillary M.	Schubert	Grant
5.37	Garrett Lee	Schubert	Payne
5.38	Jack D.	Simpson	Pottawatomie
5.39	Sue J.	Simpson	Pottawatomie
5.40	Robert J.	Owens	Pottawatomie
5.41	Chad	Johnson	Logan
5.42	Sonny	Harmon	Logan
5.43	Rodney J.	Martin	Logan
5.44	Wanda	Martin	Logan
5.45	Neil	Sheehan	Oklahoma
5.46	K. R.	LaRue	Canadian
5.47	Dana	LaRue	Canadian
5.48	Kenneth	Young	Oklahoma
5.49	Leslie A.	Young	Oklahoma
5.50	Alexandra	Young	Oklahoma
5.51	Dean	Cue	Logan
5.52	Claudette	Cue	Logan
5.53	Theresa	Pittman	Kingfisher
5.54	Daniel	Jackson	Choctaw
5.55	Crystal	Jackson	Choctaw
5.56	Jerald Wayne	Drake	Oklahoma
5.57	Regina	Kraus	Garfield
5.58	Lance E.	Berry	Oklahoma
5.59	Robert E.	Proctor, <i>if living, individually, and as trustee for the Proctor Family Revocable Trust, and if deceased, his unknown successors</i>	Garvin
5.60	Bobbie	Proctor, <i>individually, and as trustee for the Proctor Family Revocable Trust</i>	Garvin
5.61	Sandra K.	Phillips	Kingfisher
5.62	Elnora	Viefhaus	Creek
5.63	Chester J.	Weems	Kingfisher
5.64	Becky	Drake	Oklahoma
5.65	Curtis R.	Sanders	Kingfisher

	FirstName	LastName	County of Residence
5.66	Paul	Lee	Pottawatomie
5.67	R. Kurt	Blair	Kingfisher
5.68	Wendy B.	Blair	Kingfisher
5.69	Danny	Gregory	Logan
5.70	Martha	Gregory	Logan
5.71	Linda K.	Jindra	Kingfisher
5.72	Josephine	Ward	Kingfisher
5.73	Kerry	Long	Kingfisher
5.74	Raymond C.	Laubach	Garfield
5.75	Gary L.	Scott	Roger Mills
5.76	James W.	Powell	Cleveland
5.77	Billie A.	Vincent	Beckham
5.78	Ted A.	Payne	Logan
5.79	Joyce E.	Payne	Logan
5.80	Sean	Winn	Canadian
5.81	Trey A.	Roehrig	Kingfisher
5.82	Robert	Rains	Canadian
5.83	Angela D.	Ewers	Cleveland
5.84	Brenda L.	Enos	Hughes
5.85	Olin R.	Rising	Kingfisher
5.86	J. M.	Miller	Pittsburg
5.87	Willis	Luber	Kingfisher
5.88	Carol A.	Lindley	Pottawatomie
5.89	Maudie L.	Cook	Logan
5.90	Bill	Harris	Oklahoma
5.91	Rebecca	Honeyman	Grant
5.92	Todd A.	Ward	Kingfisher
5.93	William J.	Etheridge	Logan
5.94	Christopher	LaRue	Canadian
5.95	Viola M.	Estes	Kingfisher
5.96	Brian	Reinhardt	TX
5.97	Tonya	Reinhardt	TX
5.98	James	Wyatt	Oklahoma
5.99	Thelma	Wyatt	Oklahoma
5.100	Arthur	Platt	Logan
5.101	Bette	McClure	Logan
5.102	Phillip	Matthews	Oklahoma
5.103	Brad	Pollard	Logan
5.104	Allen	Griffith	Pottawatomie
5.105	Linda	Elliott	Garfield
5.106	Linda	Stewart	Logan
5.107	Gayle	Venable	Caddo
5.108	Chelsea	Venable	Caddo
5.109	Jamie	Walker Glover	Comanche
5.110	Richard	LeBoeuf	Oklahoma
5.111	E. E.	Tackett	Logan
5.112	Timothy W.	Rains	Canadian
5.113	Krista	Rains	Canadian
5.114	Michael L.	Malloy	Kingfisher
5.115	Renyssa	Wines	Custer
5.116	Mike	Bostick	Logan
5.117	Don	Poindexter	Logan
5.118	Anita	Tarralbo	Canadian
5.119	Kirsten	Allard	Pottawatomie

	FirstName	LastName	County of Residence
5.120	Mike	Richey	Canadian
5.121	Shawna	Allen	McClain
5.122	Timothy	Jackson	Oklahoma
5.123	Julia	Jackson	Oklahoma
5.124	Betty	Lamb	Beckham
5.125	Bill	McCutchen	Logan
5.126	Brandi	Pollard	Logan
5.127	Craig	Simmons	TX
5.128	Billy D.	Horn	Logan
5.129	Jack	McNally	Logan
5.130	Laura	Payne	Logan
5.131	Manuel	Segura	Logan
5.132	Kenneth R.	Williams	Logan
5.133	Bertha L.	Cooper	Kingfisher
5.134	Wes	Price	Kingfisher
5.135	Tricia	Price	Kingfisher
5.136	Tawnya	Merchant	Canadian
5.137	Margaret	Hooley	Canadian
5.138	Janet L.	Lawhon	Oklahoma
5.139	Mary	Frates	Logan
5.140	Bob	Prestridge Jr.	Oklahoma
5.141	Gerald D.	Knight	Oklahoma
5.142	Jim	Copeland	Kingfisher
5.143	Monte	Phillips	Hughes
5.144	Vincent H.	Scott	Beckham
5.145	Tracy	Tarrant	Logan
5.146	Ellen Clay	Benner	Oklahoma
5.147	Brian	Owens	Oklahoma
5.148	Lloyd	Avery	Logan
5.149	Denise	Meloy	Kingfisher
5.150	Gary L.	Bounds	Comanche
5.151	Donald D.	Hall	Oklahoma
5.152	Kevin L.	Carnes	Logan
5.153	Cecil	Williams	Logan
5.154	Jeffrey	Palmer	Kingfisher
5.155	Mark	Richards	Logan
5.156	Melinda	Hobbs	Kingfisher
5.157	Jodi	Sharp	Garfield
5.158	Beverly	Kegin	Logan

NATURE OF THE CASE

6. In the year 2000 until mid-October 2004, Marsha Schubert and/or Schubert and Associates accepted money from investors, and represented that their money would be invested in option contracts or used to "day trade". In fact, less than one percent of the money deposited into the Marsha Schubert and/or Schubert and Associates bank accounts was used to invest in option contracts. No money was used to "day trade".

7. Marsha Schubert and/or Schubert and Associates did not provide regular and authentic monthly or quarterly account statements or K-1 or 1099 tax statements to investors.

8. Marsha Schubert and/or Schubert and Associates made a large number of cash transactions and wrote a large number of checks with no payee identified.

9. Marsha Schubert and/ Schubert and Associates moved funds back and forth between the Schubert and Associates account at Farmers and Merchants Bank in Crescent Oklahoma (F&M Bank), the Kattails, LLC account at F&M Bank, the Schubert and Associates account at BancFirst in Kingfisher, Oklahoma (BancFirst), an account in the name of Richard Schubert at BancFirst, and the accounts of various individuals.

10. To perpetuate the fraud, Marsha Schubert made payments to investors, purportedly generated from investment activities, when in actuality the payments came from other investors' money - a classic Ponzi scheme.

11. Relief Defendants received Investor Assets either as purported returns on a non-existent investment or as gifts, in the nature of homes, vehicles, personal property, and cash for living and/or other expenses.

12. Relief Defendants received Investor Assets in excess of any funds they transferred to Marsha Schubert and/or Schubert and Associates.

**FIRST CAUSE OF ACTION
(Unjust Enrichment)**

13. Plaintiffs reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 12 above.

14. Relief Defendants received Investor Assets as part of and in furtherance of the securities violations alleged in the Logan County Suit and as described in paragraphs 6 through 12 above.

15. Relief Defendants received Investor Assets that do not belong to them.

16. Relief Defendants have been unjustly enriched. It would be inequitable under the circumstances described above for the Relief Defendants to retain the benefit of the money or other assets they received in excess of the funds they transferred to Schubert and Associates to the detriment of other investors.

**SECOND CAUSE OF ACTION
(Fraudulent Transfer)**

17. Plaintiffs reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 16 above.

18. The transfers of Investor Assets to the Relief Defendants, made as part of a Ponzi scheme, were by definition made with actual intent to hinder, delay or defraud creditors and/or investors of Marsha Schubert and/or Schubert and Associates.

19. Marsha Schubert and/or Schubert and Associates were insolvent or became insolvent in 2000.

20. The transfers of Investor Assets to the Relief Defendants were for inadequate consideration or no consideration. Marsha Schubert and/or Schubert and Associates did not receive reasonably equivalent value in exchange for the transfers.

21. Marsha Schubert and/or Schubert and Associates intended to incur, or believed or reasonably should have believed that they would incur, debts beyond their ability to pay as the debts became due.

**THIRD CAUSE OF ACTION
(Equitable Lien)**

22. Plaintiff Receiver realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 21 above.

23. Upon information and belief, many of the Relief Defendants used Investor Assets to purchase real and personal property. Upon information and belief, the following real property was purchased, in whole or in part, with unearned Investor Assets:

(a) Relief Defendants Ben and Sharon Allen:

All of Lot Four (4), Block Twenty-four (24), RIVER BEND ESTATES, SEC. 9, an addition to the City of Oklahoma City, Oklahoma County, Oklahoma, according to the recorded plat thereof in Book 60, Page 64 of the public records of Oklahoma County, Oklahoma.

(b) Relief Defendant Todd Ward:

Lot FORTY-EIGHT (48) of Block ONE (1), in PATCO VILLAGE IV, an Addition to the City of Oklahoma City, Canadian County, Oklahoma, according to the recorded plat thereof.

(c) Relief Defendants Frank and Alice Ward:

Lot Eleven (11), Block Seven (7), CHISHOLM EAST SECTION II, an Addition to the City of Oklahoma City, Canadian County, Oklahoma, according to the recorded plat thereof.

and

Lot THIRTEEN (13) of Block THIRTEEN (13), in WESTRIDGE VII, an addition to Oklahoma City, Canadian County, Oklahoma, according to the recorded plat thereof.

(d) Relief Defendants Robert and Detria Owens:

All of Unit 2, Cabin 25 of the Cabins at Grand Mountain Condominium Phase 9, a condominium per the recorded plat thereof in Plat Slide H at pages 1 through 3, at the Taney County Recorder's Office, Taney County, Missouri, together with the corresponding interest in the general common elements and limited common elements appurtenant thereto.

24. Plaintiff Receiver asserts an equitable lien against all real property and personal property purchased with unearned Investor Assets received by the Relief Defendants as a result of a) fraudulent transfers by Marsha Schubert and/or Schubert and Associates and/or b) unjust enrichment to the Relief Defendants.

PRAYER FOR RELIEF

Relief Defendants received a substantial amount of Investor Assets: over \$6,000,000 of the \$9,000,000 lost in this Ponzi scheme. There can be no significant recovery for the benefit of creditors and investors of Marsha Schubert and Schubert and Associates without the disgorgement and repayment of the Investor Assets transferred to the Relief Defendants.

WHEREFORE, based upon the foregoing, Plaintiffs pray for the court to grant the following relief:

I.

Plaintiffs pray for a judgment requiring Relief Defendants to disgorge any and all Investor Assets received or held by Relief Defendants, for which the Relief Defendants gave inadequate or no consideration, or to which the Relief Defendants have no legitimate claim, plus interest at the statutory rate accruing from the date of judgment until paid in full;

II.

Plaintiffs pray for a judgment against the Relief Defendants for an amount equal to all assets received by them that were generated from Investor Assets and for which the Relief Defendants gave no consideration or to which Relief Defendants have no legitimate claim, plus interest at the statutory rate accruing from the date of judgment until paid in full;

III.

Plaintiff Receiver prays for judgment on the Third Cause of Action as to all Relief Defendants, establishing Plaintiff Receiver as the owner of equitable liens on all real and personal property that Relief Defendants purchased with Investor Assets, the receipt of which constitutes unjust enrichment or a fraudulent transfer; that Plaintiff Receiver's equitable liens on said property are superior to any rights in said property of any Relief Defendant; that each Relief Defendant be required to set up his, her or its interest in said property and that same be

foreclosed; and that Plaintiff Receiver have all other proper relief including judgment for costs;
and

IV.

Plaintiffs pray for such other equitable relief as the Court may deem necessary, just and proper in connection with the enforcement of the Act, the Oklahoma Uniform Fraudulent Transfer Act, common law, and principles of equity.

Respectfully submitted,

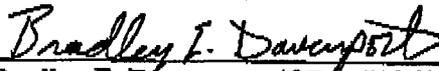
OKLAHOMA DEPARTMENT OF SECURITIES
Irving L. Faight, Administrator

By:



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Douglas L. Jackson, Receiver



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STATE OF OKLAHOMA)
)
COUNTY OF OKLAHOMA) SS.

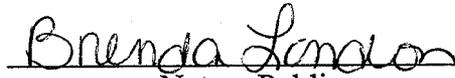
Irving Faught, of lawful age, being first duly sworn deposes and says: that he is the Administrator of the Oklahoma Department of Securities, that he has read the foregoing Petition for Permanent Injunction and Other Equitable Relief and knows the contents thereof, and that the matters and things stated 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 10 day of May, 2005.



Notary Public

My Commission Expires: Aug 26, 2005
My Commission No.: 01013792
(NOTARIAL SEAL)