

STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
THE FIRST NATIONAL CENTER
120 N. ROBINSON, SUITE 860
OKLAHOMA CITY, OKLAHOMA 73102



In the Matter of:

Rodney Larry Watkins, Jr. (CRD #3091936);
Southeast Investments, N.C. Inc. (CRD #43035); and
Frank H. Black (CRD #22451);

Respondents.

ODS File No. 12-058

**RESPONDENTS' MOTION TO QUASH SUBPOENA
DUCES TECUM DIRECTED TO RODNEY L. WATKINS, JR.**

Respondents move the Administrator, pursuant to Rule 660:2-9-4(d) to quash the subpoena *duces tecum* issued March 31, 2014 and directed to Rodney Larry Watkins, Jr. (“Watkins”). The documents demanded by the subpoena are set forth on Exhibit “A” thereto and a copy of that Exhibit is attached to this motion. In support hereof, Respondents would show the Administrator as follows:

1. The Department served broad document requests upon both Watkins and Respondent Southeast Investments, N.C., Inc. (“Southeast”) five months ago, on November 4, 2013. Respondents served timely responses and produced documents requested, with some objections. The Department challenged certain objections and Respondents, waiving time-scope and other objections, produced additional documents. Some 1,500 pages of documents have been produced to the Department.

2. Not among the categories of documents requested in early November, 2013 are the documents now demanded, on nine days' notice, by way of subpoena *duces tecum*.

3. The Department's subpoena *duces tecum* tactic amounts to an end run around Rule 660:2-9-3(b) and the time-consuming, labor-intensive task of producing documents that has already taken place. See, by way of analogy, *Joiner v. Choicepoint Servs.*, 2006 U.S. Dist. LEXIS 70239, 2006 WL 2669370 (W.D. N.C., Sept. 15, 2006)(Plaintiffs' "subpoenas *duces tecum* requesting documents possessed exclusively by Defendant is merely an attempt to circumvent the established process for requesting documentation from a party opponent under Rule 34 of the Federal Rules of Civil Procedure"), relying on *McLean v. Prudential S.S. Co.*, 36 F.R.D. 421, 425 (E.D. Va. 1965) (use of a subpoena *duces tecum* under Rule 45 to bypass the requirements of Rule 34's guidelines on document disclosure is "unthinkable"). The Administrator need look no further than the exhibits to the Department's discovery motion filed March 26, 2014 for an insight into the activity generated by the document request and production process.¹ See also 12 O.S. 2013 Supp., § 3234 (tracking Fed.R.Civ.P. 34) and 12 O.S. 2013 Supp., § 2004.1(3)(regarding subpoenas to "witnesses").

4. Much more important than the procedural objection voiced in the preceding paragraphs is this: the Department's newly-minted request is highly objectionable in its substantive content. The *duces tecum* request on its face demands production of Watkins' bank statements ("checking, savings and credit card") covering a 21-month period. The request is propounded by a Department that has refused to consider a protective order or even a counsel agreement to maintain the confidentiality of information that is personal, private, or proprietary

¹ The Department's motion does not ask the Administrator to compel production of bank statements because, of course, such documents were never requested in the first place.

and that has no bearing on this proceeding. See Motion to Resolve Discovery Issues, filed April 26, 2014, Exhibit 3 and its Attachment 2. It is not clear whether the Department contemplates that the bank statements would be redacted to eliminate irrelevant and personal information or that -- as the demand on its face would require -- the Department would become privy to Watkins' records showing, among other things, where he shops for groceries and what he pays for them. The subpoena *duces tecum* on its face seeks reams of purely private -- and irrelevant -- financial information. It is grossly overbroad and should be quashed.²

5. If the Department really believed that the newly-requested documents were relevant and admissible, it surely would have included them amongst the documents requested on November 4, 2013. Be that as it may, had such a request been made at that time, Respondents (i) would have been afforded ample time to object to the sheer breadth of the request and, in the alternative, (ii) would have had the opportunity to work with the Department and the Administrator to fashion some parameters for redaction of irrelevant, personal information from the bank statements. Given that the overwhelming bulk of the statements contain private and *utterly irrelevant* entries, Respondent objects to being saddled, at this late date, with the time-consuming task of redacting the statements.

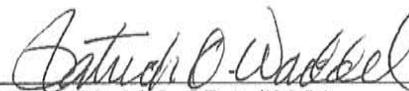
5. The Department already is in possession of the banking information that is even arguably relevant to this proceeding. It requested and received copies of documents showing

²The private nature of the documents requested is indicated, *inter alia*, by the fact that such documents would constitute "financial records" under the federal Right to Financial Privacy Act ("Privacy Act") if requested directly from BOK. That institution, confronted with such a request, would be required to jump through all of the hoops required by the Privacy Act, including allowance of challenges by Watkins. See 12 U.S.C. §§ 3401(2)(definition of "financial record") and 3410 (customer challenges to subpoena to bank).

that Watkins' commission checks from Southeast were deposited at Bank of Oklahoma.³ The Department's new request smacks of nothing quite so much as a tactic designed to cause annoyance, embarrassment, oppression and undue burden and expense. *See*, by way of analogy, Fed.R.Civ.P 26(c)(1) and 12 O.S. 2013 Supp., § 3226.1.⁴

Respectfully submitted,

Dated: April 7, 2014



Patrick O. Waddel, OBA #9254
J. David Jorgenson, OBA #4839
SNEED LANG PC
One West Third Street, Suite 1700
Tulsa, OK 74103
(918) 588-1313
(918) 588-1314 Facsimile

*Counsel for Rodney L. Watkins, Jr.,
Frank H. Black and Southeast Investments,
N.C. Inc.*

³ The BOK deposits are, *at best*, "arguably relevant." Respondents maintain that such deposits are utterly *irrelevant*. The Commission's Order of August 29, 2012 restricts Watkins from "offer[ing] or sell[ing] any security . . . in and/or from the state of Oklahoma." It does not prohibit Watkins from maintaining a bank account in Oklahoma or from directing that commissions be deposited there. If commissions had been deposited – by electronic direct deposit or otherwise – in an account in the Cayman Islands, those deposits would not have transformed Texas transactions into Cayman Islands transactions.

⁴ Rule 26 and §3226.1 of the Oklahoma Discovery Code, of course, make the four listed improprieties (annoyance, oppression, embarrassment, undue burden and expense) disjunctive. The finding of any *one* of those improper objectives is sufficient to warrant a protective order.

Brenda London

From: Patrick O. Waddel <pwaddel@sneedlang.com>
Sent: Tuesday, April 08, 2014 4:30 PM
To: Brenda London
Attachments: 20140408161458924.pdf

Ms. London, please file stamp the attaché Motion, enter it in ODS File No. 12-058 and deliver file stamped copies to the Administrator, to Ms. Shaw & Cornmesser and to me. Thank you.

Brenda London

From: Brenda London
Sent: Wednesday, April 09, 2014 7:48 AM
To: pwaddel@sneedlang.com; Jennifer Shaw; Amanda Cornmesser; Irving Faught
Subject: Rodney Watkins ODS 12-058
Attachments: RespondentsMotionToQuashSubpDirectedToRodneyWatkins_12-058.pdf

Attached is the *Respondents' Motion to Quash Subpoena Duces Tecum Directed to Rodney L. Watkins, Jr.* filed with the Administrator on April 8, 2014.

Brenda London
Paralegal
OK Department of Securities
First National Center Ste 860
120 N Robinson
Oklahoma City OK 73102
blondon@securities.ok.gov
(405) 280-7700
(405) 280-7742 Fax