

IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA

DISTRICT COURT
FILED

MAY 29 2003

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

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

Plaintiff,)

v.)

Micheal C. Stokes, d/b/a)
M.C. Stokes & Associates,)

Defendant.)

Case No. CJ-2202-05004

DAVID PETERSON

**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 Defendant, Micheal C. Stokes, as an individual and doing business as M.C. Stokes & Associates, and offers this brief in support of the motion.

I.

Summary of Action

On August 29, 2002, Plaintiff filed a Petition for Permanent Injunction and other Equitable Relief ("Petition") against Defendant. In its Petition, Plaintiff alleged that Defendant violated: (a) Section 101(2) of the Oklahoma Securities Act (the "Act"), Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (2001), by making, in connection with the offer or sale of securities in this state, untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; (b) Section 101(3) of the Act by engaging in acts, practices and a course of business that operated as a fraud or deceit upon investors; (c) Section 201 of the Act 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; and (d) Section 301 of the Act by offering and selling securities that were not, and had not been, registered under the Act.

The Court, upon motion of Plaintiff, issued a Temporary Restraining Order (the "Temporary Order") temporarily restraining Defendant from: (a) directly or indirectly, making any untrue statements of material fact or omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in connection with the offer, sale or purchase of any security from or in this state; (b) engaging in acts, practices and a course of business that operated as a fraud or deceit upon investors; (c) transacting business in this state as a broker-dealer, agent, investment adviser and/or investment adviser; and (d) offering or selling any security in or from this state.

The Court, upon motion of Plaintiff, also ordered that the assets of Defendant be frozen and that Defendant provide to the Court an accounting of all funds received pursuant to the matters described in Plaintiff's Petition. The Court further ordered that the matter be heard on September 5, 2002.

On September 3, 2002, a copy of the summons issued in this matter (the "Summons") by the clerk of the Court, along with a copy of the Petition and Temporary Order, were personally served upon Defendant.

On September 5, 2002, this matter came on for hearing before the Court to allow Defendant to seek dissolution of the Temporary Order. Defendant failed to appear. At the conclusion of the hearing, the Court converted the Temporary Order in its entirety into a temporary injunction (the "Temporary Injunction"). To date, Defendant has failed to answer.

II.

Default Judgment is Appropriate

Plaintiff submits that service of the Summons and Petition upon Defendant has been effected pursuant to Okla. Stat. tit. 12, § 2004 (2001). Plaintiff further submits that as a result of Defendant's failure to answer, the allegations in Plaintiff's Petition are

deemed admitted. Plaintiff therefore respectfully requests that judgment be entered in its favor as requested in the Petition.

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."

Having effected proper service, Defendant is required by Okla. Stat. tit. 12, § 2012(A) (2001) to serve his answer within twenty (20) days after the service of the summons and Petition upon him. As referenced above, the summons, a copy of the Petition and the Temporary Order were all served upon Defendant on September 3, 2003. From this date, Defendant had until September 24, 2002, to serve his answer but failed to do so.

Plaintiff's Petition alleges that Defendant violated Sections 101(2), 101(3), 201 and 301 of the Act. Defendant has not answered the allegations in Plaintiff's Petition. As provided by Okla. Stat. tit. 12, § 2008(D) (1991 & Supp. 1999), such averments must be deemed admitted by Defendant.

III.

Plaintiff's Requested Relief is Appropriate

In its Petition, Plaintiff requested that the Court: (a) permanently enjoin Defendant from violating Sections 101(2), 101(3), 201 and 301 of the Act; (b) order Defendant to make restitution to any and all investors who purchased securities from Defendant or who transferred money to Defendant for the purpose of making securities investments on their behalf; (c) order Defendant to disgorge all ill-gotten gains; and (d) impose a civil penalty against Defendant in the amount of Fifty Thousand Dollars (\$50,000.00). The allegations in the Petition having been admitted, Plaintiff has established a sufficient basis for the relief requested.

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).

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).

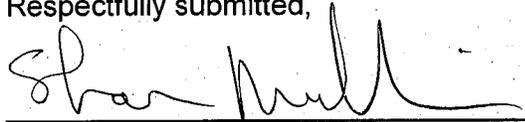
Further, unlike private actions for injunctions, Plaintiff's action is a creature of statute subject to a standard of review different from the traditional equitable injunction. Because of the statutory basis for such action, no showing of irreparable injury or the inadequacy of other remedies, as in 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 through the Petition that the public will suffer irreparable injury if Defendant is not enjoined from further violations of the Act.

IV.

Conclusion

Plaintiff has obtained proper service on Defendant. The allegations in the Petition being admitted, Plaintiff respectfully requests that the Court enter judgment in its favor by: (a) issuing a permanent injunction forever enjoining Defendant from further and future violations of Sections 101(2), 101(3), 201 and 301 of the Act; (b) ordering Defendant to make restitution to any and all investors who purchased securities from Defendant or who transferred money to Defendant for the purpose of making securities investments on their behalf; and (c) imposing a civil penalty against Defendant in the amount of Fifty Thousand Dollars (\$50,000.00).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Shaun Mullins", written over a horizontal line.

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