

IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA

DISTRICT COURT
FILED

AUG 29 2002

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

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

Plaintiff,)

v.)

Case No. CJ 2002 05004

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

Defendant.)

DAVID PETERSON

**PLAINTIFF'S APPLICATION FOR TEMPORARY RESTRAINING ORDER,
ASSET FREEZE, ORDER OF ACCOUNTING AND TEMPORARY INJUNCTION AND
BRIEF IN SUPPORT**

I. INTRODUCTION

The Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator ("Department"), respectfully moves this Court to issue a temporary restraining order against Micheal C. Stokes ("Defendant"), temporarily restraining and enjoining Defendant from violations of Sections 101, 201 and 301 of the Oklahoma Securities Act (the "Act"), Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (2001), as well as a temporary injunction against Defendant for the violations set forth in Plaintiff's verified Petition ("Petition").

Plaintiff respectfully moves this Court to specifically include as part of the temporary restraining order the following relief: 1) an order freezing the assets of Defendant; 2) an order requiring an accounting by Defendant; and 3) an order prohibiting the destruction, alteration or concealment of documents by Defendant.

This emergency matter involves securities fraud and violations of the registration provisions of the Act. The relief sought is needed to prevent dissipation or loss of public investors' money, to halt further violations of the Act and to protect the rights of the Department in its obligation to enforce the Act.

The factual assertions set forth in this application and brief in support are based upon the matters specifically pled in the Petition as well as the exhibits attached hereto.

This relief is sought pursuant to Section 406.1(a)(1) of the Act and Sections 1382, 1383, 1384.1(B)(1) and 1551 of the Oklahoma Code of Civil Procedure (the "Civil Code"), Okla. Stat. tit. 12, §§ 1-3237 (1998).

II. THE DEFENDANT

Micheal C. Stokes ("Stokes") is an individual who, at all times material hereto, was a resident of the State of Oklahoma doing the acts complained of in his own name and/or in the name of M.C. Stokes & Associates.

III. NATURE OF THE CASE

In or about June, 2002, Defendant began offering and selling what he described as "insurance escrows" (the "Escrow Contracts") to investors. Defendant offered and sold the Escrow Contracts in and/or from the State of Oklahoma.

While providing carpet cleaning services, Defendant would inform customers of the opportunity to invest in the Escrow Contracts. Defendant represented that he was familiar with the Escrow Contracts because his employment primarily involved work for insurance companies on fire related claims.

Defendant represented to investors that the Escrow Contracts were a means by which insurance companies borrowed money from investors to pay certain types of claims. Defendant explained to investors that if an insurance claim were to remain unresolved over an extended period of time the insurance company would "close the claim on its books but continue to work it." Defendant further explained that the insurance company would then use the proceeds from the Escrow Contract to pay all remaining expenses associated with a claim. When the claim was fully resolved the insurance company would then "reopen" the claim and return the principal amount of the Escrow Contract plus interest to the investor. The rate of return to the investor would be approximately 10% to 20% over a two or three week period of time.

Investors were told to make their checks payable to Stokes as the designated "agent" for each individual Escrow Contract.

Stokes stated to at least one investor that he had personally invested \$25,000.00 and had continued to "roll it over" into additional Escrow Contracts resulting in his investment balance reaching Seventy Five Thousand Dollars (\$75,000.00).

The Escrow Contracts of at least two investors specify a repayment date of July 13, 2002, and July 18, 2002. These two investors have received nothing in return for their investment. [See Exhibits A and B attached hereto].

IV. VIOLATIONS OF THE OKLAHOMA SECURITIES ACT

A. Failure to Register Securities

Section 301 of the Act provides as follows:

It is unlawful for any person to offer or sell any security in this state unless:

- (1) it is registered under this act or the security or transaction is exempted under Section 401 of this title; or

(2) it is a federal covered security.

The Escrow Contracts offered and sold by the Defendant are securities, in the form of investment contracts, notes, and evidences of indebtedness, as defined by Section 2 of the Act. The securities offered and sold by Defendant are not and have not been registered under the Act as required by Section 301 of the Act. The securities offered and sold by Defendant were not offered or sold pursuant to an exemption from registration pursuant to Section 401 of the Act nor are they federally covered securities. By reason of the foregoing, Defendant has violated, and unless enjoined, there is a substantial likelihood that he will continue to violate, Section 301 of the Act.

B. Failure to Register as Broker-Dealer or Agent

Section 201 of the Act provides in part as follows:

(a)(1) It is unlawful for any person to transact business in this state as a broker-dealer or agent unless the person is so registered under this act or unless the person is exempt from registration as provided in paragraph (2) or (3) of this subsection.

Defendant has engaged in the business of effecting transactions in the Escrow Contracts for the account of others and/or for his own account and as such is a broker-dealer or agent as defined in Section 2 of the Act. Defendant is not, and has not been, registered under the Act as a broker-dealer or agent as required by Section 201 of the Act. By reason of the foregoing, Defendant has violated, and unless enjoined, there is a substantial likelihood that he will continue to violate, Section 201 of the Act.

C. Untrue Statements of Material Fact in Connection with Offer, Sale or Purchase of Securities

Section 101 of the Act provides as follows:

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly [:]

- (1) to employ any device, scheme, or artifice to defraud,
- (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading,
- (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

In connection with the offer, sale or purchase of the Escrow Contracts, Defendant made untrue statement of a material fact when he represented to investors that the Escrow Contracts are investments offered by insurance companies. This representation is false. The insurance companies referenced by Defendant do not offer such investments. [See Exhibits C and D attached hereto.] By reason of the foregoing, Defendant, directly and indirectly, violated, and unless enjoined, there is a substantial likelihood that he will continue to violate, Section 101(1) of the Act.

D. Omissions of Material Facts in Connection with the Offer, Sale or Purchase of Securities

In addition to the untrue statements of material fact described above, Defendant, in connection with the offer, sale or purchase of securities, directly and indirectly, omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to the following matters:

- a. that on September 3, 1998, Defendant plead guilty in the United States District Court for the Northern District of Oklahoma to one count of Making a False Statement to a Federally Insured Financial Institution, in violation of 18 U.S.C. §1014;
- b. that Defendant was currently under supervised release following his release from custody of the United States Bureau of Prisons;
- c. that the individuals identified in the Escrow Contracts as the "registered service representative" of the insurance company were not associated or affiliated with the referenced insurance company;
and
- d. that the Escrow Contracts are securities that were not registered under the Act.

By reason of the foregoing, Defendant, directly and indirectly, violated, and unless enjoined, there is substantial likelihood that he will continue to violate, Section 101(2) of the Act.

E. Engaging in an Act, Practice, or Course of Business which Operated as a Fraud or Deceit upon Investors

Defendant, in connection with the offer, sale or purchase of securities, engaged in an act, practice, or course of business that operated as a fraud or deceit upon purchasers of the Escrow Contracts as described above.

By reason of the foregoing, Defendant, directly and indirectly, violated, and unless enjoined, there is a substantial likelihood that he will continue to violate, Section 101(3) of the Act.

V. **NEED FOR TEMPORARY RESTRAINING ORDER, ASSET FREEZE, ORDER OF ACCOUNTING AND TEMPORARY INJUNCTION**

A. **Temporary Restraining Order**

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).**

Section 1384.1 of the Civil Code provides in part:

B. A temporary restraining order may be granted without written or oral notice to the adverse party only if:

1. it clearly appears from specific facts shown by affidavit or by the verified petition that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or the attorney for the adverse party can be heard in opposition.

A temporary restraining order has the object of preserving the *status quo*, in order to prevent irreparable injury until such time as the Court may determine Plaintiff's application for temporary injunction. Morse v. Earnest, Inc., 547 P.2d 955 (Okla. 1976).

The protection of the public interest is paramount in this matter. In exercising its discretion in issuing a statutory injunction, the court can be guided by the primary objectives of the statute involved. Hecht v. Bowles, 321 U.S. 321, 64 S.Ct. 587, 88 L. Ed. 754 (1944). One Oklahoma court has stated: "The purpose of the Act [Oklahoma Securities Act] is to protect the public against blue-sky promotions, and promoters...." Nelson v. State, 355 P.2d 413 (Okla. Cr. 1960). The public interest, when in conflict with private interest, is paramount. S.E.C. v. Culpepper, 270 F.2d 241, 250(2nd Cir. 1959).

In analyzing the need for injunctive relief, the courts focus on whether there is a reasonable likelihood that the defendant, if not enjoined, will engage in future illegal conduct. S.E.C. v. Bonastia, 614 F.2d 908, 912 (3rd Cir. 1980). In this regard the courts have stated: "Certainly the commission of illegal conduct is highly suggestive to the likelihood of future violations." S.E.C. v. Management Dynamics, Inc. 515 F.2d 801 (2nd Cir. 1975).

Furthermore, violations of Section 301 of the Act are sufficient grounds for the issuance of a statutory injunction. Oklahoma Securities Commission v. CFR International, 622 P.2d 293 (Okla. Ct. App. 1980).

As demonstrated above, Defendant has engaged in acts and practices in violation of the Act and has, as a result of these activities, received a substantial amount of money from investors. These facts make it clear that immediate preservation of the status quo is necessary to prevent further injury or loss. A temporary restraining order to issue *instanter* against Defendant is necessary.

Further, no injury will befall Defendant by granting such relief since Defendant has no right to act in the state of Oklahoma in violation of the Act, or to engage in fraudulent conduct in connection with securities activities. The interference with Defendant's rights by granting the temporary restraining order will be minimal, if any, while protecting the public from immediate and irreparable injury and loss.

B. Asset Freeze

Section 406.1 of the Act specifically grants this Court the power to fashion appropriate equitable relief to provide effective enforcement of the Act. Once the equity powers of the court are invoked, the court possesses the power to fashion appropriate interim remedies. SEC v. Manor Nursing Centers, 458 F.2d 1082, 1103 (2nd Cir. 1972). Within this power is the authority to grant effective equitable relief by temporarily freezing specific assets. SEC v. General Refractories Co., 400 F.Supp. 1248,1259 (D.D.C. 1975); SEC v. International Swiss Investments Corp., 895 F.2d 1272,1276 (9th Cir. 1990); SEC v. Manor Nursing Centers, 458 F.2d at 1105-06 (upholding district court's order freezing assets in part because ". . . at the time the court's order was

entered, a great deal of uncertainty existed with respect to the total amount of proceeds received and their location.”).

As a result of Defendant's activities, Defendant has received a substantial, and as yet undetermined, amount of money from investors. Substantial uncertainty exists at this time as to the amount of money received by Defendant from the sales of the Escrow Contracts and the location of the proceeds. Furthermore, and in furtherance of these activities, Defendant made use of untrue statements of material fact and omitted to state material facts as alleged in Plaintiff's verified petition, in violation of Section 101 of the Act. These circumstances make it necessary that the court freeze assets to preserve the *status quo* by preventing the dissipation of assets so as to protect investors and to provide effective relief.

C. Order of Accounting

Once the equitable power of the court is invoked, an accounting “. . . is appropriate to determine: (1) the amount of profits reaped from the allegedly illicit sales; (2) the present location of such proceeds; and (3) these defendants' ability to repay.” S.E.C. v. Lybrand, 2000 WL 91384 (S.D.N.Y. July 6, 2000); S.E.C. v. Vaskevitch, 657 F.Supp. 312, 316 (S.D.N.Y. 1987).

D. Temporary 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 Defendant. 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., 622 P.2d 293,295 (Okla. Ct. App. 1980). As described above, the Defendant has violated the Act, creating a presumption of a likelihood of future violations. Because the 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); Oklahoma Securities Commission v. CFR International, Inc., 622 P.2d at 296.

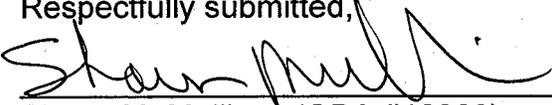
Further, unlike private actions for injunctions, the Department's action is a creature of statute subject to a standard of review different from the traditional equitable injunction. Because of the statutory basis for such action, no showing of irreparable injury or the inadequacy of other remedies,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

VI. CONCLUSION

The Department, pursuant to Section 405 of the Act, conducted an investigation into Defendant's activities in and/or from the state of Oklahoma. The investigation produced evidence that clearly indicates Defendant offered and sold unregistered securities, acted as an unregistered broker-dealer, and/or acted as an unregistered agent. The investigation further revealed that Defendant, in connection with the offer, sale and/or purchase of securities: (1) made untrue statements of a material fact; (2)

omitted to state material facts; and (3) engaged in a course of business which has operated as a fraud or deceit upon investors. Defendant has engaged in substantial violations of the Act, including fraudulent practices. The Department submits that the evidence firmly establishes a prima facie case for the issuance of a temporary restraining order, order freezing assets, order of accounting and temporary injunction.

In light of the facts presented and the authorities cited, the Department respectfully requests that this Court issue a temporary restraining order against the Defendant, an order freezing the assets of Defendant and an order of accounting until such time as the Court may afford the parties a hearing on the Plaintiff's motion for temporary injunction, all to halt Defendant's unlawful practices and to provide effective relief for investors and the Department.

Respectfully submitted,

Shaun M. Mullins, (OBA #16869)
Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, Oklahoma 73102
(405) 280-7700

The registered service representative of AllState Insurance Company, Tom Davis further referred to as representative and Mike Stokes of M.C. Stokes and Associates further referred to as agent enter into this agreement dated this 2nd day of July, 2002. The agent agrees to perform all duties associated with this individual claim verification escrow as the representative deems necessary. The agent further agrees to allow the representative to act on his behalf and in his name to provide any and all necessary contracts, claim information, payment transfers and estimate figures under the name M.C. Stokes and Associates. The total escrow contract is \$10,072.00 and will be initiated July 3, 2002. The escrow contract will close in full in 8 business working days and will pay the agent a service fee of \$1,309.36. The escrow contract will be available for closure on July 13, 2002. The total amount due and payable to the agent is \$11,381.36.



Tom Davis



Mike Stokes

Exhibit "A"

The registered service representative of State Farm Insurance Company, Tom Davis further referred to as representative and Mike Stokes of M.C. Stokes and Associates, further referred to as agent enter into this agreement dated this 12th day of December, 2001. The agent agrees to perform all duties associated with this individual claim verification escrow as the representative deems necessary. The agent further agrees to allow the representative to act on his behalf and in his name to provide any and all necessary contracts, claim information, payment transfers and estimate figures under the name M.C. Stokes and Associates. The total escrow contract is \$6,390.00 and will be initiated December 12, 2001. The escrow contract will close in full in 13 business working days and will pay the agent a service fee of 1,661.40. The escrow contract will be available for closure on January 2, 2002. The total amount due and payable to the agent is \$8,051.40



Tom Davis



Mike Stokes

Exhibit "B"



Allstate.
FINANCIAL

Michael J. Velotta
Sr. Vice President, Secretary &
General Counsel
Allstate Financial Law & Regulation

VIA FACSIMILE TRANSMISSION

Mr. Shaun M. Mullins
Enforcement Attorney
Department of Securities
State of Oklahoma
First National Center, STE 860
120 North Robinson
Oklahoma City, OK 73102

Re: "Insurance Escrow Contracts"

Dear Mr. Mullins:

This letter is in response to your phone call and letter to me dated August 23, 2002. In your letter, you sent me a copy of an "insurance escrow contract" purportedly issued by "Allstate [sic] Insurance Company" through two individuals, named Tom Davis and Mike Stokes. You requested that Allstate Insurance Company, its wholly owned subsidiary Allstate Life Insurance Company, and its other affiliated insurance companies (collectively "Allstate"): (1) verify whether Allstate issues such a purported contract; and (2) verify whether any of the following individuals are affiliated with Allstate in any capacity: Tom Davis, Sam Duncan, Michael C. Stokes, or M.C. Stokes & Associates.

On behalf of Allstate, please be advised that none of the Allstate entities now offers for sale, or has ever offered, sold or issued, an "insurance escrow contract" of the form attached hereto as Exhibit 1.

Please be further advised that Allstate has checked the records of Allstate Financial Services, LLC, a SEC registered broker-dealer, and Allstate's Human Resources Department, the latter of which is responsible for Allstate agent licensing for non-securities products. There are no matches in the broker-dealer records for any of the names above. According to Allstate Human Resource records, the only match for any of the names is one independent property-casualty insurance agency as follows:

Tom E. Davis
East Texas Insurance
P.O. Box 237
Gilmer, TX

Mr. Shaun M. Mullins
August 23, 2002
page 2

Although there were no matches for the name Sam Duncan, our Human Resources records do show the following property-casualty independent agency with the name "Duncan" in it:

Duncan Insurance Agency
3801 Triana Blvd, #8
Huntsville, AL 35805

If you need any further assistance, please let me know.

Sincerely,



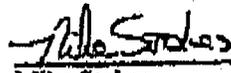
Michael J. Velotta

Exhibit 1

The registered service representative of AllState Insurance Company, Tom Davis further referred to as representative and Mike Stokes of M.C. Stokes and Associates further referred to as agent enter into this agreement dated this 2nd day of July, 2002. The agent agrees to perform all duties associated with this individual claim verification escrow as the representative deems necessary. The agent further agrees to allow the representative to act on his behalf and in his name to provide any and all necessary contracts, claim information, payment transfers and estimate figures under the name M.C. Stokes and Associates. The total escrow contract is \$10,072.00 and will be initiated July 3, 2002. The escrow contract will close in full in 8 business working days and will pay the agent a service fee of \$1,309.36. The escrow contract will be available for closure on July 13, 2002. The total amount due and payable to the agent is \$11,381.36.



Tom Davis



Mike Stokes

State Farm Insurance Companies



August 28, 2002

Oklahoma-Kansas Office
12222 State Farm Boulevard
Tulsa, Oklahoma 74146-5402

Tom Cohoon
Agency Resources Manager
918-621-3076

Shaun M. Mullins, Enforcement Attorney
State Of Oklahoma Department of Securities
First National Center, Suite 860
120 North Robinson
Oklahoma City, OK 73102

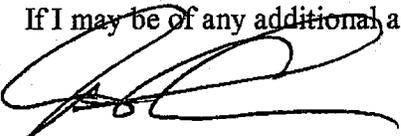
RE: Michael Stokes, Sam Duncan and Tom Davis

Dear Mr. Mullins,

On behalf of State Farm Mutual Automobile Insurance Company, its subsidiaries and affiliates, hereinafter "State Farm", I have reviewed the "insurance escrow contract" attached as exhibit A. I am employed by State Farm as an Agency Resources Manager. One of my duties is to monitor Oklahoma licensing of State Farm agents and their staff. I am familiar with the products and services offered by State Farm. In addition, I have been authorized by State Farm to respond to your inquiry.

State Farm does not and never has, offered this type of contract as one of its products or services. Furthermore, Michael Stokes, Sam Duncan and Tom Davis are not affiliated with State Farm in any capacity nor are they authorized to offer or sell any "insurance escrow contracts" for State Farm.

If I may be of any additional assistance please do not hesitate to call.



Tom Cohoon
Agency Resources Manager

tc/lp

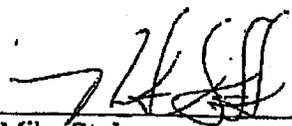
Attachment

cc: Rendi Black
John Dirks
Catherine A. Rankin

The registered service representative of State Farm Insurance Company, Tom Davis further referred to as representative and Mike Stokes of M.C. Stokes and Associates, further referred to as agent enter into this agreement dated this 12th day of December, 2001. The agent agrees to perform all duties associated with this individual claim verification escrow as the representative deems necessary. The agent further agrees to allow the representative to act on his behalf and in his name to provide any and all necessary contracts, claim information, payment transfers and estimate figures under the name M.C. Stokes and Associates. The total escrow contract is \$6,390.00 and will be initiated December 12, 2001. The escrow contract will close in full in 13 business working days and will pay the agent a service fee of 1,661.40. The escrow contract will be available for closure on January 2, 2002. The total amount due and payable to the agent is \$8,051.40



 Tom Davis



 Mike Stokes

Exhibit A