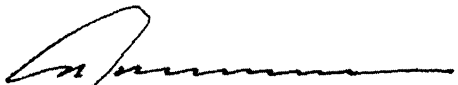
Dated: December 12, 2008 10:03:37

The following is ORDERED:



Richard L. Bohanon
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF OKLAHOMA

In re: ROBERT WILLIAM MATTHEWS, Debtor.	Case No. 07-10108-BH
OKLAHOMA DEPARTMENT OF SECURITIES, ex rel. IRVING L. FAUGHT, Plaintiff, v. ROBERT WILLIAM MATTHEWS, Defendant.	Adv. No. 07-1140-BH
In re: MARVIN LEE WILCOX and PAMELA JEAN WILCOX, Debtors.	Case No. 07-10610-BH
OKLAHOMA DEPARTMENT OF SECURITIES, ex rel. IRVING L. FAUGHT, Plaintiff, v. MARVIN LEE WILCOX, Defendant.	Adv. No. 07-1226-BH

MEMORANDUM OF DECISION AND ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

These adversary proceedings have been consolidated for trial purposes only. The Plaintiff seeks exceptions to the Defendants' discharges for fraud pursuant to 11 U.S.C. § 523(a)(2) and securities-related fraud pursuant to § 523 (a)(19). The Plaintiff now moves for summary judgment, which the Defendants oppose. For the reasons set forth below, the Court will grant the Plaintiff's motion for summary judgment.

Background

Although the parties contest many facts, the Court finds that sufficient undisputed facts exist to hold that the Plaintiff has met its burden of proof for its claim under § 523(a)(19).

Marsha Schubert ("Schubert"), an individual who is not a party to these actions, operated a securities fraud scheme in Crescent, Oklahoma. She operated a business called Schubert & Associates, which was essentially a financial investment business. According to the Plaintiff, she defrauded investors of more than $9 million. Her securities fraud scheme had two components: (1) a Ponzi scheme; and (2) a check exchange scheme.

Under the securities Ponzi scheme, Schubert would take money that was to be invested in legitimate investments and then use the money to pay other investors their purported profits. Under the check exchange scheme, Schubert would use other people's

checking accounts to "float" payments to investors as their purported profits.

The Plaintiff alleges that the Defendants knowingly participated in the check exchange scheme by allowing Schubert to funnel money through their checking accounts. Thus, the Plaintiff contends that the Defendants materially aided Schubert in her securities fraud scheme, a charge that the Defendants strenuously deny.

Regardless of the Defendants' level of involvement in Schubert's scheme, the Plaintiff sued the Defendants and other investors in state court for unjust enrichment, fraudulent transfers, and equitable liens. Ultimately, the Plaintiff elected to only pursue the unjust enrichment cause of action. The state trial court granted the Plaintiff's motion for summary judgment for unjust enrichment. The trial court judgment required the Defendants to disgorge and repay certain funds. The Defendants appealed the state court judgment to the Oklahoma Court of Civil Appeals, which affirmed the trial court.

The Plaintiff brought the state court action pursuant to the Oklahoma Uniform Securities Act of 2004, Okla. Stat. Ann., tit. 71, § 1-101 et. seq., and its predecessor statute, the Oklahoma Securities Act, Okla. Stat. Ann., tit, 71, §§ 1 et. seq. The Oklahoma Court of Civil Appeals stated the issue on appeal was, "whether . . . action may be taken against one who, although not

in violation of the Act, has directly and pecuniarily benefitted from such violation." (Pl.'s Prod. of Docs., Ex. 13., at ¶ 13.) It answered that: "We hold that, under our laws, disgorgement may be ordered in securities cases against those other than actual violators of the Act, where such relief is appropriate under the facts and circumstances of the case." (Id.)

Subsequently, the Defendants filed their individual Chapter 7 petitions, and the Plaintiff brought nearly identical dischargeability complaints against them seeking exceptions to their discharges. The adversary proceedings were consolidated for trial purposes only. The Plaintiff then filed motions for summary judgment against each Defendant, and they objected. The Plaintiff's motion is now ripe for decision.

Discussion

Section 523(a)(19) of the Bankruptcy Code provides for an exception to a debtor's discharge for a debt:

> **(19)** that--
> **(A)** is for--
>
> **(i)** the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), any of the State securities laws, or any regulation or order issued under such Federal or State securities laws; or
>
> **(ii)** common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and

> **(B)** results, before, on, or after the date on which the petition was filed, from--
>
> **(i)** any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;
>
> **(ii)** any settlement agreement entered into by the debtor; or
>
> **(iii)** any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor.

11 U.S.C. § 523(a)(19).

As applied here, § 523(a)(19) has two elements: (1) a debt that is for a violation of state securities laws; and (2) that debt results from a judgment or order in a federal or state judicial proceeding. See In re Civiello, 348 B.R. 459, 464 (Bankr. E.D. Ohio 2006). By the plain language of the statute, "[s]ection 523(a)(19) discharge exceptions are often defined by law external to the Bankruptcy Code," which here is Oklahoma securities law. In re Lichtman, 388 B.R. 396, 409 (Bankr. M.D. Fla. 2006).

Courts analyzing § 523(a)(19) routinely note that its coverage is broad, meant to cover all orders, settlements, and judgments arising from violations of state and federal securities laws. See In re Civiello, 348 B.R. at 464. See also, In re Gibbons, 289 B.R. 588, 593 (Bankr. S.D. N.Y. 2003) ("The

legislative history also demonstrates an intention to apply § 523(a)(19) as broadly as possible in pending bankruptcy cases."

A review of the opinion of the Oklahoma Court of Civil Appeals makes clear that the disgorgement judgment against the Defendants was made pursuant to Oklahoma securities law. Although the Defendants strongly argue they were innocents caught in the web of Schubert's fraudulent scheme, it is of no legal consequence since Oklahoma law does not require wrongful intent. The Oklahoma Court of Civil Appeals explained, "We agree with the assertion by the Department [the Plaintiff herein] and Receiver that Appellants' [the Defendants herein] defense of being 'innocent victims' has no merit under the facts here. Appellants are in possession of funds which, in equity and good conscience, belong to other investors." (Pl.'s Prod. of Docs., Ex. 13., at ¶ 35.) Thus, the Plaintiff has clearly established that the debt is for a violation of Oklahoma securities law.

The second element of § 523(a)(19) is also plainly satisfied, as the debt results from a state court judgment for the Plaintiff against the Defendants.

Simply put, the Plaintiff has carried its burden of proof. As a matter of law, the Plaintiff is entitled to summary judgment in its favor against both Defendants.[1]

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[1] Bankruptcy courts do not have authority to enter money judgments. See Porter Capital v. Hamilton (In re Hamilton), 282 B.R. 22 (Bankr. W.D. Okla. 2002).

Conclusion

Accordingly, the Court hereby grants the Plaintiff's motion for summary judgment, and the debts owed by the Defendants to the Plaintiff will be excepted from their discharges.

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