

IRVING L. FAUGHT
ADMINISTRATOR



MARY FALLIN
GOVERNOR

STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES

MEMORANDUM

To: Irving L. Faught, Administrator

From: Melanie Hall, Deputy Administrator *mh*

Date: July 5, 2016

Re: ENFORCEMENT REPORT

Attached is the report of the enforcement activities of the Department for the months of May and June, 2016.

Attachment

h/home/londonb/EnforcementReports/16_Enf-Reports_May-Jun_2016.doc

**OKLAHOMA DEPARTMENT OF SECURITIES
ENFORCEMENT ACTIVITIES
MAY AND JUNE 2016**

		FY-16	FY-15
		YTD	YTD
I.	Enforcement Files		
	a. Enforcement Files Opened	72	63
	1. Securities Act	70	61
	2. Business Opportunity Sales Act	2	1
	3. Other	0	1
	b. Enforcement Files Closed	125	71
	c. Active Enforcement Files	129	180
II.	Actions Taken		
	a. Administrative Subpoenas	63	0
	1. Securities Act	63	0
	2. Business Opportunity Sales Act	0	0
	b. Orders Initiating Investigation	0	0
	1. Securities Act	0	0
	2. Business Opportunity Sales Act	0	0
	c. Summary Orders	0	0
	1. Securities Act	0	0
	2. Business Opportunity Sales Act	0	0
	d. Notices of Opportunity for Hearing Served	5	4
	1. Securities Act-Notices	5	3
	i. Hearing Set	1	1
	ii. Hearings Held	0	0
	2. Business Opportunity Sales Act Notices	0	1
	i. Hearing Set	0	0
	ii. Hearings Held	0	0

		FY-16	FY-15
		YTD	YTD
	2. Business Opportunity Sales Act Notices	0	1
	i. Hearing Set	0	0
	ii. Hearings Held	0	0
	e. Other Orders	20	20
	1. Securities Act	20	19
	2. Business Opportunity Sales Act	0	1
	f. Public Undertakings/Agreements	10	5
	1. Securities Act	10	5
	2. Business Opportunity Sales Act	0	0
	g. Confidential Settlement Agreements	0	0
	1. Securities Act	0	0
	2. Business Opportunity Sales Act	0	0
	h. Letters of Caution	2	5
	1. Securities Act	2	5
	2. Business Opportunity Sales Act	0	0
	i. Appeals from Final Orders	0	1
	1. Securities Act	0	1
	2. Business Opportunity Sales Act	0	0
	j. Civil Penalties - Amounts Collected	\$111,765.31	\$221,690.11
	1. Securities Act	\$111,765.31	\$221,690.11
	2. Business Opportunity Sales Act	\$0	\$0
	k. Administrative Costs - Amounts Collected	\$0	\$0
	1. Securities Act	\$0	\$0
	2. Business Opportunity Sales Act	\$0	\$0

		FY-16	FY-15
		YTD	YTD
	I. Civil Enforcement Activities		
	1. Securities Act		
	i. Subpoenas Issued	0	9
	ii. Civil Petitions Filed	3	2
	iii. Civil Trials Held	0	0
	iv. Criminal Referrals	2	1
	v. Civil Appeals Filed	1	1
	vi. Administrative or other Court Appearances (including pleadings filed)	54	72
	2. Business Opportunity Sales Act		
	i. Subpoenas Issued	0	0
	ii. Civil Petitions Filed	0	0
	iii. Civil Trials Held	0	0
	iv. Criminal Referrals	0	0
	v. Civil Appeals Filed	0	0
	vi. Administrative or other Court Appearances (including pleadings filed)	0	0
	m. Miscellaneous Activities		
	1. Public Information/Press Releases (copy attached)	1	0
	2. Trainings/Seminars Attended	13	8
	3. Coordinated Activities	0	0
	III. Inquiries and Complaints		
	a. Inquiries	73	38
	b. Referrals from Other Oklahoma Agencies	4	2
	c. Referrals from Out of State Agencies	5	2

Administrative Actions

SUMMARY

**In the Matter of: LPL Financial, LLC
 ODS File No. 16-017**

LPL Financial, LLC (“LPL”) is a broker-dealer registered in the state of Oklahoma. State securities regulators from multiple jurisdictions conducted a coordinated investigation of LPL to determine whether its sales of non-traded REITs from January 1, 2008, through December 31, 2013, violated state law. The investigation revealed that LPL failed to (1) implement an adequate supervisory system reasonably designed to achieve compliance with applicable securities laws, rules, regulations and statements of policy regarding its sale of non-traded REITs, and (2) enforce its written procedures to supervise the activities of its registered agents. On May 3, 2016, the Administrator of the Department ordered LPL to cease and desist its violations of the Oklahoma Uniform Securities Act of 2004 (“Act”) and the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (“Rules”) and to offer to remediate losses for all non-traded REITs sold by LPL to LPL clients who were Oklahoma residents at the time they purchased the non-traded REITs. LPL also agreed to pay the sum of \$21,245.14 to the Department’s Investor Education Revolving Fund.

Civil Actions

SUMMARY

**Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator v. Seabrooke Investments, LLC; Seabrooke Realty, LLC; Oakbrooke Homes, LLC; Bricktown Capital, LLC; KAT Properties, LLC; Cherry Hill, LLC *dba* Cherry Hill Apartments; Tom W. Seabrooke; and Judith Karyn Seabrooke
Civil Case No. CJ-2014-4515**

On August 11, 2014, the Department filed a Petition for Permanent Injunction and Other Equitable Relief in the District Court of Oklahoma County against the above-named Defendants, all of Oklahoma City, Oklahoma, alleging violations of Sections 1-301, 1-402 and 1-501 of the Act. The Department also filed an Application for a Temporary Restraining Order, Order Freezing Assets, Order Appointing Receiver, Order for Accounting and Temporary Injunction. On the same date, Judge Patricia G. Parrish issued a Temporary Restraining Order, Order Appointing Receiver, Order Freezing Assets, and Order for Accounting. Judge Parrish appointed Ryan Leonard as Receiver. On August 18, Robert Edinger filed his entry of appearance as counsel for the Receiver. On August 19, the Defendants filed a motion to vacate the temporary restraining order. On August 19, a hearing was held on the Department's application for a temporary injunction and Defendants' motion to vacate the temporary restraining order. Judge Parrish ordered the entry of a temporary injunction and ordered that the asset freeze, with the exception of one bank account, and the receivership remain in effect.

On September 9, a hearing was held on the Receiver's emergency motion to release the Bricktown Hotel and Convention Center as an asset of the Receivership. The Receiver believed that the value of the hotel was less than the value of its existing mortgages. The Court ordered that the Bricktown Hotel and Convention Center be released from the asset freeze and receivership. Upon oral motion by the Seabrookes' counsel, the Court considered compensation from the receivership estate for Tom and Karyn Seabrooke. The Court authorized a one-time \$4,000 payment to Tom Seabrooke for his prior services in management of the hotel. The Court further authorized Karyn Seabrooke to receive a monthly payment of \$2,500 for property management services so long as the Receiver continues to utilize her services and one-half of all real estate commissions earned by Seabrooke Realty, LLC so long as she is licensed to sell real estate, employed by Seabrooke Realty, LLC, and utilized by the Receiver in that regard.

After the Court's September compensation ruling, the Department filed a motion to remove Tom and Karyn Seabrooke from employment by the receivership. This motion was heard on October 14. The Court denied the Department's motion and ruled that Karyn Seabrooke would continue to receive monthly compensation in the amount of \$2,500.

During the month of November, 2014, the Court approved the Receiver's fee application for the month of September and the Receiver filed an application for the approval of his October 2014 fees. An agreed order was entered for the sale of the Cherry Hill Apartments located at 4708 S.E. 44th Street, Oklahoma City, Oklahoma ("Cherry Hill Apartments"). The Department

filed a motion to retain the commission from the receivership sale of the Cherry Hill Apartments. The Defendants filed an objection to the Department's motion to retain the commission and the Department filed a reply. An agreed order was entered for the sale of property located at 2528 N.W. 12th Street in Oklahoma City, Oklahoma. An order was issued memorializing a September 2014 decision of the Court approving compensation to Tom and Karyn Seabrooke.

During the month of December, 2014, the Receiver filed a motion for contempt and for a declaratory order against First Commercial Bank ("FCB") regarding the release of funds escrowed in connection with the sale of the Cherry Hill Apartments. Judge Parrish ordered the commission from the sale of the Cherry Hill Apartments to be escrowed. The Receiver filed an application for the Court to establish a claims procedure for creditors and/or investors. First National Bank of Weatherford ("FNB-Weatherford") filed a motion for the release of the Oakbrooke Lawton Property from the Receivership estate. The Court approved the Receiver's October fee application and the Receiver filed an application for an order approving fees and expenses for the month of November.

During the month of January 2015, FNB-Weatherford filed a motion for the release of the Oakbrooke College Park Property from the Receivership estate and a supplement to its motion for the release of the Oakbrooke Lawton Property. An agreed order was entered releasing the property from the Receivership estate. Quail Creek Bank ("QCB") filed a motion to disburse escrowed funds to QCB. Bricktown Capital LLC ("Bricktown Capital") filed a motion to disburse escrowed funds to Bricktown Capital and for the payment of expenses of hotel vendors, and an objection to QCB's motion for disbursement. QCB filed an objection to Bricktown Capital's motion for disbursement of escrowed funds and for the payment of expenses of hotel vendors. The Department and the Receiver filed responses to QCB's motion. The Department also filed a response to Bricktown Capital's motion. QCB filed a response to all parties' objections to its motion. Wayne Doyle, a non-party, filed a motion for leave to intervene. An agreed protective order was issued relating to certain information requested from Wayne Doyle. The Court approved the Receiver's November fee application. An agreed order was entered establishing a claims procedure and setting a March 15, 2014 deadline for the filing of claims.

During the month of February, agreed orders were entered authorizing conditional intervention by FCB and Wayne Doyle. FCB filed its response to the Receiver's contempt motion and the application for an order to disburse escrowed attorney's fees relating to the Cherry Hill Apartments. Ilana D. Sharpe filed her entry of appearance as counsel for the Defendants. The Receiver filed a response to Bricktown Capital's motion for payment to hotel vendors. A hearing was held on February 6, wherein the Court granted, in part, QCB's motion to disburse escrowed funds. The Court ordered the payment of \$6,064.20 to QCB and the payment of the remaining escrowed funds to the Receiver. At the hearing, the Court postponed a decision on the Defendants' motion to pay hotel vendors. An order was issued memorializing the February 6 rulings. Bricktown Capital filed a motion to strike the order and to substitute a corrected order. Agreed orders were entered releasing the Oakbrooke College Park Property from the Receivership estate and continuing the hearing on the FNB-Weatherford intervention motion. Alicia Holtslander-Petrone filed an emergency application to intervene and a motion for an emergency order for the disposition of assets relating to Receivership properties on 17th Street

in Oklahoma City, Oklahoma. The Receiver filed a fee application for December 2014 and January 2015. Defendants filed an objection to this fee application. An agreed order was entered for the sale of property located at 1609 N.W. 15th Street, Oklahoma City, Oklahoma.

During the months of March and April, an agreed order was entered for the sale of properties located on 17th Street in Oklahoma City, Oklahoma. The Receiver's fee application for December 2014 and January 2015 was granted. The Receiver, Intervenor Wayne Doyle, and Defendant Bricktown Capital filed a Joint Motion for Interpleader requesting that the Court authorize the deposit with the court clerk of the balance of the proceeds from the sale of the Bricktown Hotel (\$187,585.90). The motion was granted. Doyle filed a motion asking for disbursement of the interpled funds plus an additional \$11,733.74 as payment on the secured indebtedness owed him. The Receiver filed a fee application for February 2015. Defendants filed an objection to this fee application. The Receiver's fee application was granted. The Department and the Receiver filed responses to FCB's application for an order to disburse escrowed fees. Both parties requested the release of the escrowed funds to the Receiver, while preserving the right of FCB to seek reimbursement of attorney fees in the claims process.

During the months of May and June, the Receiver filed a fee application for March 2015 to which Defendants filed an objection. The Court granted the application, as revised. Agreed orders were entered for the sale of the Briargate Plaza Apartments and properties located on Indiana Avenue and Northwest 11th, Northwest 17th and Northwest 21st Streets in Oklahoma City, Oklahoma. An application to intervene and a motion for an order to determine the right to proceeds from the sale of real estate were filed by Peggy Johnston and HPJ Family LP. A hearing is set for August 5th. The Department and Receiver filed responses to Doyle's motion asking for disbursement of the interpled funds. Doyle filed a reply to the Department's response. The Receiver filed notice of his *in camera* submission to the Court relating to his objection to Doyle's motion to disburse interpled funds and the Receiver's motion to retain the interpled funds as a receivership asset. Doyle filed a reply to the Receiver's objection and motion. An evidentiary hearing date is set for August 5th on Doyle's motion to disburse. The Receiver filed fee applications for April and May 2015.

During the months of July and August, the Receiver filed an amended fee application for April through May 2015; a fee application for June 2015; and an application for distributions on certain claims relating to Oklahoma City properties located at 1405 N.W. 17th Street, 1409 N.W. 17th Street, 1413 N.W. 17th Street, 1419 N.W. 17th Street, 1507 N.W. 17th Street, 1609 N.W. 15th Street, and 425 N.W. 11th Street. On August 24, James A. Slayton filed his entry of appearance as counsel for Peggy Johnston; HPJ Family LP; and HPJ Family Trust.

During the months of September and October, Terry D. Kordeliski II filed a motion to withdraw as counsel for Peggy Johnston, HPJ Family Trust, and HPJ Family LP. The Court granted the Receiver's fee application for June 2015. The Receiver filed fee applications for July, August and September. The Court granted the applications. An agreed order was entered for intervention by Peggy Johnston, HPJ Family Trust, and HPJ Family LP. An order was entered on the Receiver's application for distributions on certain claims relating to Oklahoma City properties located at 1419 N.W. 17th Street and 1507 N.W. 17th Street. Judge Parrish

ordered the interpled funds from the sale of the Bricktown Hotel be disbursed by the District Court Clerk to the Receiver. An agreed order was entered for the sale of eight lots in the Ravenswood Manor Addition in Oklahoma City.

During the months of November and December, Mr. Kordeliski's motion to withdraw as counsel for Peggy Johnston, HPJ Family Trust, and HPJ Family LP was granted. The Receiver filed fee applications for October and November. The Court granted the Receiver's fee applications for September and October. Defendants consented to the entries of permanent injunctions and waived any right to appeal the order. Judge Parrish issued orders against Defendants permanently enjoining them from offering and/or selling securities in and/or from Oklahoma. The Receiver filed his report on claims and requested the Court's authority to make distributions. The judge issued an order requiring notice to claimants of the Receiver's report and their opportunity to respond.

During the months of January and February 2016, entries of appearance were filed by J. Scott Henderson and Kevin Blaney as counsel for a claimant, Advance Restaurant Finance *nka* ARF Financial LLC ("ARF"). Objections and responses to the Receiver's recommendations as to claims were filed by ARF, FNB-Weatherford, and Wayne Doyle. The Department and the Receiver filed their responses to the objections. Wayne Doyle filed a supplement to his objection. The Court granted the Receiver's fee application for November 2015. The Receiver filed a fee application for December 2015 and January 2016. A hearing on the Receiver's recommendations as to the claims filed was held on February 29, 2016; however, the judge did not make a ruling at the conclusion of the hearing.

During the months of March and April, the Receiver filed fee applications for the months of February and March 2016. The Court granted the Receiver's fee applications for December 2015 through February 2016. The Receiver filed a supplement to his report on claims and filed a report regarding the status of funds available for distribution. On April 27, Judge Parrish entered an order approving all recommendations made by the Receiver and the late-filed claim of James Bradley; denying the claims of Doyle, ARF and FNB-Weatherford; and directing the Receiver to make distributions.

During the months of May and June, the Receiver filed fee applications for the months of April and May 2016. On May 25, Wayne Doyle filed a Petition in Error with the Oklahoma Supreme Court and a Designation of Record for Appeal from the District Court. On June 13, the Department filed its Counter-Designation of Record for Appeal from the District Court. On June 14, the Receiver filed his Counter-Designation of Record for Appeal from the District Court. On June 29, Micheal Kirschner filed a motion to withdraw as attorney of record for Defendants.

**Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator v.
Roland L. Cowperthwaite
Civil Case No. CJ-2016-1678**

On March 31, 2016, the Department filed a Petition for Permanent Injunction and Other Relief (“Petition”) in the District Court of Oklahoma County against Roland L. Cowperthwaite, of Edmond, Oklahoma, alleging violations of Sections 1-403 and 1-502 of the Act. The Department alleged that the Defendant transacted business in this state as an unregistered investment adviser and made material omissions in connection therewith. The Department also filed a motion for a temporary injunction.

On April 12, 2016, D. Michael O’Neil filed his entry of appearance as counsel for the Defendant. On April 19, Defendant filed his answer to the Department’s petition. On April 25, an Agreed Order of Temporary Injunction was entered by Judge Dixon.

On May 20, 2016, the Defendants consented to the entry of a Final Order of Permanent Injunction and waived any right to appeal the order. Judge Dixon issued an order permanently enjoining Defendants from transacting business as an investment adviser, as defined under the Act, in and/or from Oklahoma. Defendants were ordered to make restitution in the amount of the advisory fees paid by two individuals.

**Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator v.
Nick’s Oil & Gas Corporation, Sumper Fidelis Exploration & Production, LLC, Harbor
Resources, LLC, BTJ Consulting, Inc. and Nicholas P. Yukich, III
Civil Case No. CJ-2016-2884**

On June 8, 2016, the Department filed a Petition for Permanent Injunction and Other Relief (“Petition”) in the District Court of Oklahoma County against the above-named Defendants, alleging violations of Sections 1-301, 1-401, 1-402 and 1-501 of the Act. The Department alleged that the Defendants offered and/or sold unregistered securities in the nature of oil and gas working interests; transacted business in this state as unregistered broker-dealers or unregistered agents; and perpetrated a fraud in connection with the offer and sale of the securities.

Appellate Actions

SUMMARY

**Wayne Doyle, Intervenor/Appellant v.
Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator, Appellee, and
Ryan Leonard, Court Appointed Receiver/Appellee
Supreme Court No. 115025**

On May 25, 2016, Wayne Doyle (Appellant) filed a Petition in Error in the Supreme Court of Oklahoma in connection with the Final Order entered by Judge Parrish of the Oklahoma County District Court on April 27, 2016, in the Seabrook matter. An entry of appearance was filed by Edward O. Lee and William M. Lewis of Lee, Goodwin, Lee, Lewis & Dobson as counsel for Appellant.

Entries of appearance were filed by Patricia Labarthe and Jennifer Shaw as counsel for the Department. On June 13, the Department filed with the Supreme Court its response to the Appellant's Petition in Error and its Counter-Designation of Record for Appeal. On June 14, the Receiver filed his response to the Appellant's Petition in Error and his Counter-Designation of Record for Appeal.

Criminal Actions

SUMMARY

**State of Oklahoma vs. Robert Eugene Tucker
Case No. CF-2014-614**

Following charges brought by the Oklahoma Attorney General's Office and the Department, Robert Eugene Tucker of Tulsa, Oklahoma, pleaded guilty to four felony counts involving the unlawful sale of securities. Tucker was charged in February 2014 for taking part in selling membership interests in his company, Romar Foods, LLC, after having previously been ordered by a court not to engage in the offer and/or sale of securities in Oklahoma. In addition, Tucker made untrue statements to those who purchased the interests, stating he would have exclusive rights to a restaurant name, Knotty Pine Barbecue, and would open several locations.

Tucker pleaded guilty to two counts of willful violation of a district court order issued under the Oklahoma Uniform Securities Act and two counts of fraud under Oklahoma's securities laws.

Tucker received a 10-year suspended sentence under Department of Corrections supervision for each count, running concurrently. Tucker was ordered to pay restitution in the amount of \$37,500 and to perform 500 community service hours. Tucker was also ordered to refrain from the offer or sale of securities in Oklahoma as well as serving as an officer, director,

manager or control person of an entity offering or selling any security as an issuer in or from the state.