IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA

DEC - 6 2006

MICHAEL S. RICHIE
CLERK

OKLAHOMA DEPARTMENT OF SECURITIES *Ex rel.* IRVING L. FAUGHT, Administrator, and DOUGLAS L. JACKSON, in his capacity as the court appointed receiver for the investors and creditors of Schubert & Assoc. and for the assets of Marsha Schubert, individually, and doing business as Schubert & Associates, and for Schubert & Associates,	)	
Plaintiffs/Appellees,	)	Case No. CJ-2005-3796 Consolidated with Case No. CJ-2005-3299
v.	)	
ROBERT W. MATHEWS, *et al.*,	)	Supreme Court No. 104004
Defendants,	)	
WADE TOEPFER, R. KURT BLAIR, WENDY B. BLAIR, NEIL SHEEHAN, ROBERT RAINS,	)	
Defendants/Appellants.	)	

RESPONSE TO PETITION IN ERROR

Is appellee willing to participate in an attempted settlement of the appeal by predecisional conference under Rule 1.250?

____ YES __X__ NO

Attached as exhibit "A" is appellee, Oklahoma Department of Securities', statement of the case.

Appellee, Oklahoma Department of Securities, is filing no supplement to the record on accelerated appeal. See Rule 1.36.

DATE: December 6, 2006

Verified by:

Gerri Stuckey, OBA #16732
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CERTIFICATE OF MAILING

I certify that a true and correct copy of the Oklahoma Department of Securities' Response to the Petition in Error was mailed this 6th day of December, 2006, by depositing it in the U.S. Mails, postage prepaid, to:

G. David Bryant, OBA #01264
Lisa Mueggenborg, OBA #18595
Kline Kline Elliott & Bryant, PC
720 N.E. 63rd St.
Oklahoma City, OK 73105

Bradley E. Davenport, OBA #18687
GUNGOLL, JACKSON, COLLINS, BOX & DEVOLL, P.C.
Post Office Box 1549
Enid, Oklahoma 73702-1549

I further certify that a copy of the Response to Petition in Error was filed in the Office of the Oklahoma County District Court Clerk on this 6th day of December, 2006.

Gerri Stuckey

EXHIBIT "A" – APPELLEE'S STATEMENT OF THE CASE

Marsha Schubert *dba* Schubert and Associates (Schubert) accepted money from various individuals, and instead of investing the monies as promised, operated a classic "Ponzi" scheme in violation of state and federal laws. The Logan County District Court, on petition of the Appellee, Oklahoma Department of Securities, *inter alia*, permanently enjoined Schubert from selling securities in Oklahoma and ordered Schubert to disgorge the proceeds of her fraudulent activity. The United States of America sentenced Schubert to a 10 year prison term. The State of Oklahoma sentenced her to a 25 year prison term.

Schubert commingled money received from participants in the Ponzi scheme and other sources in multiple bank accounts (Commingled Funds). Appellees received proceeds of Schubert's underlying securities fraud for which they gave no consideration. Appellants gave no money, yet still received proceeds of the scheme at the expense of other participants who received less than they put into the Ponzi scheme. Appellees sought and the court properly granted summary judgment against Appellants on claims of unjust enrichment.

Appellants contend they had a good faith belief that they were entitled to the money they received from the Commingled Funds. However, neither the Appellants' state of mind nor actual knowledge of the fraudulent scheme is relevant. Appellants also contend that they gave consideration for their returns because they made investments in brokerage accounts for which Schubert was their registered agent. However, Appellees are seeking only money that was derived from the fruits of the underlying Ponzi scheme that Schubert operated independently of her affiliation as a registered agent of a registered broker-dealer.