

FILED IN THE DISTRICT COURT
 OKLAHOMA COUNTY, OKLA.
 IN THE DISTRICT COURT OF OKLAHOMA COUNTY
 STATE OF OKLAHOMA

DEC 19 2002

Oklahoma Department of Securities,)
 ex rel. Irving L. Faught, Administrator,)
)
 Plaintiff,)
)
 vs.)
)
 Accelerated Benefits Corporation, a Florida)
 corporation, et al.,)
)
 Defendants.)

PATRICIA PRESLEY, COURT CLERK
 BY _____
 Deputy

Case No. CJ-99-2500-66

**CONSERVATOR'S OBJECTION
 TO STANDING OF LIFE ALLIANCE, L.L.C.**

Conservator, Tom Moran ("Conservator"), hereby respectfully submits his objection to the standing of Life Alliance, L.L.C. ("Life Alliance") to appear and participate in this matter. In support thereof, the Conservator offers the following brief in support.

Brief in Support

The Conservator objects to Life Alliance's appearance in this matter on the grounds that Life Alliance lacks standing to participate in this proceeding. Life Alliance is not a party to the litigation, and therefore, does not have standing to enter its appearance or object to the actions of the Conservator. A party invoking a court's jurisdiction has the burden of establishing his or her standing, when contested, to pursue the action in court. *Heritage Village Apartments, Ltd. v. Oklahoma Housing Finance Agency*, 2001 OK CIV APP 4, 18 P.3d 1085.

Under Oklahoma law, standing is established by showing three elements: "(1) an actual or threatened injury, (2) for which relief can be granted, and (3) the interest to be protected is within a statutorily or constitutionally protected zone." *Ryals v. Keating*, 2 P.3d 378, 380 (Okla. Ct. App.

244

2002) (quoting *Brandon v. Ashworth*, 955 P.2d 233, 235 (Okla. 1998)). Additionally, the “interest must be direct, immediate and substantial” and not “conjectural or hypothetical.” *Ryals* at 381; *Toxic Waste Impact Group, Inc. v. Leavitt*, 890 P.2d 906, 910 (Okla. 1994).

Although Oklahoma does not have any case law dealing with the specific facts of this case, other courts have held that an unsuccessful bidder does not have standing to challenge a sale of property. *Pacific Standard Life Insurance Co. v. Life of America Insurance Co.*, 12 Cal.Rptr.2d 50, (Cal. Ct. App. 1992). In *Pacific Standard*, an insurance commissioner acting as conservator of a financially troubled insurance company petitioned the court for an order authorizing the sale of the company’s assets held in conservatorship. Life of America (“LOA”) offered to purchase the property by sending a letter to the conservator which set forth certain terms, including the offered purchase price. *Id.* at 1199. The letter also clearly stated that it was only a preliminary agreement. *Id.* The conservator signed the letter signifying his agreement. *Id.* However, when the conservator petitioned the court for an order authorizing the sale, the court authorized the sale to another buyer with more profitable terms. *Id.* at 1199-1200. LOA made an objection which was overruled by the trial court. *Id.* On appeal, the Court of Appeals held that LOA had no standing. Specifically, the court found that LOA was not an “aggrieved party” because it had no “interest in the subject matter recognizable by law...” *Id.* at 1201. LOA argued that the letter created a legally cognizable interest but the court found such interest was at best prospective and that “any prospective interest LOA achieved was terminated by the [trial] court’s authorization of the sale to Western Reinsurance and Central Security on their higher bid.” *Id.*

Here, as in *Pacific Standard*, Life Alliance has no legally cognizable interest, and thus no standing to participate in the hearing on the Conservator’s Motion to Approve Sale of

Conservatorship Assets or object to the inclusion of proposals from other entities. No contract exists between Life Alliance and the Conservatorship. Life Alliance's offer has been included in those presented by the Conservator to the Court for consideration and any interest Life Alliance may have in the Conservatorship assets is merely prospective.

Therefore, Life Alliance does not have any interest in this matter which is protected by either statute or the constitution, nor is there any threat of injury which is direct, immediate or substantial. Thus, Life Alliance has no standing to object or participate in the hearing on the Conservator's Motion for Order Approving Sale of Conservatorship Assets.

WHEREFORE, the Conservator, Tom Moran, respectfully requests the Court find that Life Alliance lacks standing to appear and participate in this matter.

Respectfully submitted,



Melvin R. McVay, Jr., OBA No. 6096
Thomas P. Manning, OBA No. 16117
PHILLIPS McFALL McCAFFREY
McVAY & MURRAH, P.C.
Twelfth Floor, One Leadership Square
211 North Robinson
Oklahoma City, Oklahoma 73102
Telephone: (405) 235-4100
Facsimile: (405) 235-4562
ATTORNEYS FOR CONSERVATOR,
TOM MORAN