

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF SECURITIES **FILED IN THE DISTRICT COURT**
ex rel., IRVING L. OKLAHOMA COUNTY, OKLA.
FAUGHT, ADMINISTRATOR)
MAR - 8 2003

Plaintiff PATRICIA PRESLEY, COURT CLERK
by _____ Deputy)

v.)

Case No. CJ-99-2500-66
Judge Daniel L. Owens

ACCELERATED BENEFITS)
CORPORATION, *et al.*,)

Defendants.)

**CONSERVATOR'S SUPPLEMENTAL RESPONSE TO
DEFENDANTS' MOTION TO STAY ENFORCEMENT OF SALE
ORDER AND SUPPLEMENT TO CONSERVATOR'S APPLICATION
FOR ORDER APPROVING PURCHASE AGREEMENT**

Conservator Tom Moran ("Conservator") hereby submits this Supplemental Response to the Motion of Defendants Accelerated Benefits Corporation ("ABC") and American Title Company of Orlando ("ATCO") (collectively, the "Defendants") to Stay Enforcement of Sale Order (the "Motion to Stay") and Supplement to the Conservator's Application for Approval of Purchase Agreement with Infinity Capital Services (the "Conservator's Application").

INTRODUCTION

On February 26, 2003, the Oklahoma Department of Securities filed a Motion to Add Jess and Keith LaMonda as parties defendant in this action on the basis that ABC's license to do business in Oklahoma was suspended on or about June 9, 2000, and has not been reinstated. As of the date of this Supplemental Response, ABC's license to do business in Oklahoma has still not been reinstated. ATCO has never been licensed to do business in Oklahoma. For the reasons set forth below, Defendants' motion to stay enforcement of this Court's Order dated January 16, 2003, as modified January 24, 2003 (the "Sale Order"), must be denied for the reasons stated herein.

In addition, for the same reasons set forth below, ABC and ATCO cannot object to the Conservator's Application.

ARGUMENT AND AUTHORITIES

I. Because ABC's license to do business in Oklahoma is suspended and ATCO is an Unlicensed Foreign Corporation, They cannot seek affirmative relief from this Court.

As of the date of this Supplemental Response, the Oklahoma Secretary of State's records indicate that ABC's license to do business in Oklahoma remains suspended, and that ATCO is not licensed to do business in Oklahoma. Oklahoma law provides that suspended corporations and foreign corporations who do business in this state without first obtaining authority may not maintain or defend any action, or seek affirmative relief until such right to do business in this state is properly reinstated, or in the case of a foreign corporation doing business without proper authority, until such authority is obtained.

Tit. 68 Okla.Stat. § 1212 provides in pertinent part:

Any corporation, association or organization whose right to do business shall be thus forfeited [for failure to pay taxes] shall be denied the right to sue or defend in any court of this state, except in a suit to forfeit the charter of such corporation, association or organization. In any suit against such corporation, association or organization on a cause or action arising before such forfeiture, *no affirmative relief shall be granted to such corporation, association or organization unless its right to do business in this state shall be reinstated* as provided herein . . .

(emphasis added). *See also Aviation Data Service, Inc. v. A.C.E. Copier Service, Inc.*, 832 P.2d 31 (Okla. App. 1992) (holding that trial court committed reversible error by permitting Defendant corporation suspended at the time of trial to present a defense). "The suspension and forfeiture provided for becomes effective immediately upon record being made and the 'certificate of the Secretary of State of the county clerk shall be prima facie evidence of such

suspension and forfeiture." *Sapulpa Travel Services, Inc. v. White*, 915 P.2d 396 (Okla. App. 1996)(emphasis original; citations omitted).

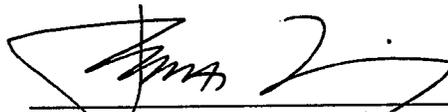
Tit. 18 Okla.Stat. §1137 provides

A. A foreign corporation which is required to comply with the provisions of Sections 130 and 131 of this act [18 O.S. §§1130 and 1131] and which has done business in this state without authority shall not maintain any action or special proceeding in this state unless and until such corporation has been authorized to do business in this state and has paid to the state all fees, penalties and franchise taxes for the years or parts thereof during which it did business in this state without authority. This prohibition shall not apply to any successor in interest of such foreign corporation.

Since neither ABC nor ATCO are properly authorized to do business in the State of Oklahoma, neither have the right to defend or seek affirmative relief in this matter. Further, since ATCO has no interest in the policies, it therefore has no standing to request a stay of the Sale Order, or to object to the entry of an Order approving the purchase agreement. Accordingly, the pending Motion for Stay must be denied.

CONCLUSION

For the reasons stated herein, the Conservator respectfully requests that this Court deny Defendants' Motion for Stay of the Sale Order and enter an Order approving the purchase agreement with Infinity Capital Services, Inc.



Melvin R. McVay, Jr., OBA No. 6096
Thomas P. Manning, OBA No. 16117
Kay Smith, OBA No. 13252
PHILLIPS MCFALL MCCAFFREY
MCVAY & MURRAH, P.C.
Twelfth Floor, One Leadership Square
211 N. Robinson
Oklahoma City, OK 73102
Telephone: (405) 235-4100
Facsimile: (405) 235-4133
ATTORNEYS FOR CONSERVATOR
TOM MORAN

CERTIFICATE OF MAILING

The undersigned hereby certifies that on this 6th day of March, 2003, a true and correct copy of the foregoing was hand-delivered to:

Patricia A. Labarthe, Esq.
Oklahoma Department of Securities
First National Center, Suite 860
120 North Robinson
Oklahoma City, OK 73102
Attorney for Plaintiff

Dino E. Viera, Esq.
Fellers, Snider, Blankenship,
Bailey & Tippens, P.C.
100 North Broadway Avenue, Suite 1700
Oklahoma City, Oklahoma 73102
Attorney for Defendants,
Accelerated Benefits Corporation and
American Title Company of Orlando

and mailed via first class U.S. Mail, postage prepaid thereon to:

Jeff Hartmann, Esq.
Angela Ables, Esq.
Kerr, Irvine, Rhodes & Ables
201 Roberts S. Kerr, Suite 600
Oklahoma City, OK 73102
Attorneys for Life Alliance, L.L.C.

Nabeel Hamameh, Esq.
800 N. Old Woodward Avenue, Suite 102
Birmingham, MI 48002
(248) 258-5658
Facsimile (248) 203-6907
Attorney for Infinity Capital Services, Inc.

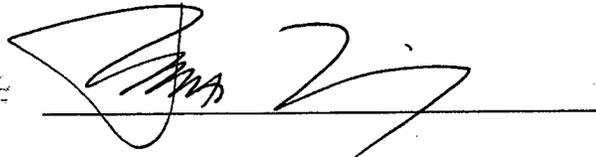
Rebecca A. Farris, Esq.
Helms & Underwood
2500 First National Center
120 North Robinson
Oklahoma City, OK 73102
Attorney for John C. Hinkle and
Wanda B. Hinkle

James Slayton, Esq.
4808 Classen Blvd
Oklahoma City, OK 73118

-and -

Jon W. McLanahan, Esq.
4205 McCauley Blvd, Suite 385
Oklahoma City, OK 73120-8347
Attorneys for Robert D. Stone and
Larry W. Hanks

Robert A. Nance, Esq.
Riggs, Abney, Neal, Turpen,
Orbison and Lewis
5801 Broadway Extension, Suite 101
Oklahoma City, OK 73118
Attorney for Lawrence Deziel



100 MAY - 2 10 11:32
OF 2003/03/06
10:32 AM