

IN THE DISTRICT COURT OF POTTAWATOMIE COUNTY
STATE OF OKLAHOMA

FILED
IN DISTRICT COURT

DEC 17 2003

POTTAWATOMIE COUNTY, OK
CECIL DUNLAP, COURT CLERK
BY _____ DEPUTY

Oklahoma Department of Securities)
ex rel. Irving L. Faught,)
Administrator,)
)
Plaintiff,)

v.)

Case No. C-03-1239

The Hickman Agency, Inc., an Oklahoma)
corporation; Merl William Hickman, Sr.,)
an individual; Sarah L. Hickman,)
an individual; and Merl William)
Hickman, Jr., an individual,)
)
Defendants.)

APPLICATION FOR TEMPORARY RESTRAINING ORDER,
ORDER FREEZING ASSETS, ORDER APPOINTING RECEIVER,
AND ORDER FOR ACCOUNTING

The Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator (“Department”), respectfully submits this application for a temporary restraining order against Defendants The Hickman Agency, Inc., Merl William Hickman, Sr., Sarah L. Hickman and Merl William Hickman, Jr. (collectively, “Defendants”), an order freezing assets of Defendants, an order appointing a receiver for Defendants and an order for an accounting by Defendants, pursuant to Section 406.1 of the Oklahoma Securities Act (“Act”), Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (West 2003).

The Department petitions this Court to halt further violations of the Act, to protect the rights of the Department in its obligation to safeguard the public interest, to prevent any dissipation or loss of investor funds and property, and to remedy actions that Defendants have already committed.

The Department moves this Court to issue *instanter* a temporary restraining order, an order freezing assets, an order appointing receiver, and an order for an accounting by Defendants until the Court may afford the parties a hearing, and additionally moves for the entry of a temporary injunction at such hearing against Defendants. The entry of such orders are necessary for the reasons set forth below, to preserve the *status quo* and to protect the Department's rights in enforcing the Act.

I. THE DEFENDANTS

The Hickman Agency, Inc. ("The Hickman Agency") is an Oklahoma corporation, purporting to operate as an insurance agency, with its principal place of business in Shawnee, Oklahoma. At all times material hereto, The Hickman Agency issued, offered and/or sold securities in and/or from Oklahoma as described herein.

Merl William Hickman, Sr. ("Bill Hickman, Sr."), an individual and Oklahoma resident, is the founder and chief executive officer of The Hickman Agency and controlled all acts of The Hickman Agency. At all times material hereto, Bill Hickman, Sr. offered and/or sold securities in and/or from Oklahoma as described herein.

Sarah L. Hickman ("Sarah Hickman"), an individual and Oklahoma resident, is the President of The Hickman Agency. At all times material hereto, Sarah Hickman offered and/or sold securities in and/or from Oklahoma as described herein.

Merl William Hickman, Jr. ("Bill Hickman, Jr."), an individual and Oklahoma resident, is the Vice-President of Marketing of The Hickman Agency. At all times material hereto, Bill Hickman, Jr. offered and/or sold securities in and/or from Oklahoma as described herein.

II. NATURE OF THE CASE

Beginning in or about April, 1999, and continuing to the present, Defendants engaged in the issuance, offer and/or sale of securities in and/or from the state of Oklahoma to investors ("Investors") in the nature of interests in an investment program ("Investment Program Interests") in which Defendants represented they would pool and invest Investor funds returning large profits to Investors. Defendants have solicited and are soliciting Investors to invest their savings and retirement money in the Investment Program Interests. Defendants' representations are made through the use of oral communications and written sales materials.

The purchase of Investment Program Interests is evidenced by the execution by certain Defendants and Investors of an agreement ("Agreement") prepared by or on behalf of the Defendants. The Agreement recites the amount of money deposited by Investors with Defendants and Investors are guaranteed payment of fifteen to twenty percent (15-20%) annual interest as long as Defendants have use of the Investors' funds. Defendants promise to protect the deposited principal with reserves of no less than the deposited amount. Defendants also represent that all fees and charges due Defendants will not be deducted from Investors' deposited principal. In some cases, Defendants have promised to pay a bonus of five percent (5%) of the deposited principal to induce Investors to transfer funds to Defendants. Defendants represent that Investors can withdraw their invested funds from Defendants at any time on an average of ten (10) to fourteen (14) days' notice.

Defendants represent to Investors that Defendants have specialized knowledge and expertise to make the investments profitable. Defendants represent to Investors that they "specialize in many different investment programs." Investors have no role in the success or outcome of the investments or in affecting the promised profit on their Investment Program

Interests. Investors rely completely on the judgment and discretion of the Defendants for the promised profit. Defendants do not disclose to Investors how Defendants will invest Investors' money.

Defendants have not invested Investor funds or earned a profit on all Investor funds. Defendants have depleted the principal deposited by Investors by using Investor funds for payment of personal expenses and salaries of the Defendants and for monthly interest payments to earlier Investors.

III. VIOLATIONS OF THE OKLAHOMA SECURITIES ACT

A. Violation of Section 301 of the Act: Failure to Register Securities

The Investment Program Interests are securities as defined by Section 2 of the Act.

The securities offered and sold by Defendants are not and have not been registered under the Act. See Affidavit attached as Exhibit A. The securities have not been offered or sold pursuant to an exemption from registration pursuant to Section 401 of the Act. See Affidavit attached as Exhibit A.

By reason of the foregoing, Defendants have violated, are violating, and unless enjoined, will continue to violate Section 301 of the Act.

B. Violation of Section 201 of the Act: Failure to Register as Agents and Employing Unregistered Agents

Defendants are not registered under the Act as issuer agents under Section 201 of the Act. See Affidavits attached as Exhibits B and C.

Defendant The Hickman Agency, Inc. is an issuer as defined in Section 2 of the Act. Defendant The Hickman Agency, Inc. employed agents who were not registered under the Act to effect or attempt to effect purchases or sales of securities.

Defendants Bill Hickman, Sr., Sarah Hickman and Bill Hickman, Jr., by virtue of their efforts and activities in this state in effecting or attempting to effect transactions in securities, are issuer agents, as defined in Section 2 of the Act. Defendants Bill Hickman, Sr., Sarah Hickman and Bill Hickman, Jr. transacted and are transacting business in this state as issuer agents without benefit of registration under the Act.

By reason of the foregoing, the Defendants have violated, are violating, and unless enjoined, will continue to violate Section 201 of the Act.

**C. Violation of Section 101 of the Act:
Untrue Statements of Material Fact and Omissions of Material Fact
in Connection with the Offer, Sale or Purchase of Securities**

Defendants, in connection with the offer, sale or purchase of securities, directly and indirectly, made and are making untrue statements of material facts including, but not limited to, that Investment Program Interests would provide guaranteed profits or returns in the nature of annual interest of fifteen to twenty percent (15-20%) when, in fact, Defendants have not invested the Investors' funds in any manner to generate such profits or returns.

Defendants, in connection with the offer, sale or purchase of securities, directly and indirectly, omitted and are omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were and are made, not misleading, including, but not limited to, the following matters:

- a. any general or specific risk factors associated with the Investment Program Interests;
- b. that the Investment Program Interests are securities under the Act;
- c. that the securities have not been and are not registered under the Act;
- d. that the Defendants who offered and sold the Investment Program Interests were and are not registered under the Act;

- e. the actual background or business experience of the Defendants;
- f. information on the manner in which profits would be generated on the Investment Program Interests or Investors' funds would be disposed; and
- g. that Defendants would use Investor funds for the payment of personal expenses and salaries of the Defendants and for monthly interest payments to earlier Investors.

By reason of the foregoing, Defendants, directly and indirectly, have violated, are violating, and unless enjoined, will continue to violate Section 101(2) of the Act.

**D. Violation of Section 101 of the Act:
Engaging in any Act, Practice, or Course of Business that Operates
or Would Operate as a Fraud or Deceit upon any Person**

Defendants, in connection with the offer, sale or purchase of securities, and through the use of the untrue statements of material facts and the omissions of material facts described above, have engaged and are engaging in an act, practice, or course of business that has operated and continues to operate as a fraud or deceit upon Investors.

By reason of the foregoing, Defendants, directly and indirectly, have violated, are violating, and unless enjoined, will continue to violate Section 101(3) of the Act.

**IV. NEED FOR TEMPORARY RESTRAINING ORDER, ASSET FREEZE,
APPOINTMENT OF A RECEIVER, ACCOUNTING
AND TEMPORARY INJUNCTION**

A. Temporary Restraining Order

Section 406.1 of the Act provides in part:

- (a) Upon a showing by the Administrator that a person has violated or is about to violate the Oklahoma Securities Act, except under the provisions of Section 202.1 or 305.2 of this title, or a rule or order of the Administrator under the Oklahoma Securities Act or that a person has engaged or is about to engage in dishonest or unethical practices in the securities business, the Administrator, prior to, concurrently with, or subsequent to an administrative

proceeding, may bring an action in the district court of Oklahoma County or the district court of any other county where service can be obtained on one or more of the defendants and **the district court may grant or impose one or more of the following appropriate legal or equitable remedies:**

- (1) Upon a showing of a violation of the Oklahoma Securities Act or a rule or order of the Administrator under the Oklahoma Securities Act or conduct involving dishonest or unethical practices in the securities business:
 - (i) a temporary restraining order, permanent or temporary prohibitory or mandatory injunction, or a writ of prohibition or mandamus;
 - (ii) a civil penalty up to a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or of Fifty Thousand (\$50,000.00) for multiple violations in a single proceeding or a series of related proceedings;
 - (iii) a declaratory judgment;
 - (iv) restitution to investors;
 - (v) the appointment of a receiver or conservator for the defendant or the defendant's assets, and
 - (vi) other relief the court deems just (*emphasis added*).

A temporary restraining order has the object of preserving the *status quo*, in order to prevent irreparable injury, until such time as the Court may determine Plaintiff's application for temporary injunction. *Granny Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 439, 94 S.Ct. 1113, 1124 (1974); *Morse v. Earnest, Inc.*, 547 P.2d 955 (Okla. 1976). Issuing a temporary restraining order is in the public interest because the failure to grant this relief allows dishonest businesses and individuals to take advantage of vulnerable investors. The protection of the public interest is paramount in this matter, as is the Department's right to safeguard the public interest.

Defendants have engaged in acts and practices in violation of the Act and have, as a result of these activities, received a substantial amount of money from numerous Investors. A danger exists that the money received from the Investors and/or held by Defendants will be lost, removed or transferred. A temporary restraining order to issue *instanter* against Defendants is necessary to preserve these funds, securities, and the records relating thereto, and to prevent further violations of the Act.

In addition, no injury will befall Defendants by granting such relief since Defendants have no right to act in the state of Oklahoma in violation of the Act, or to engage in fraudulent conduct in connection with securities activities. The interference with Defendants' rights by granting the temporary restraining order will be minimal, if any, while protecting the public from immediate and irreparable injury or loss.

B. Asset Freeze and Accounting

Section 406.1 of the Act specifically grants this Court the power to fashion appropriate equitable relief to provide effective enforcement of the Act. Once the equity powers of the court are invoked, the court possesses the power to fashion appropriate interim remedies. *SEC v. Manor Nursing Centers*, 458 F. 2d 1082, 1103 (2nd Cir. 1972). Within this power is the authority to grant effective equitable relief by temporarily freezing specific assets. *SEC v. General Refractories Co.*, 400 F.Supp. 1248, 1259 (D.D.C. 1975); *SEC v. International Swiss Investments Corp.*, 895 F.2d 1272, 1276 (9th Cir. 1990); *SEC v. Manor Nursing Centers*, 458 F.2d at 1105-06 (upholding district court's order freezing assets in part because "...at the time the court's order was entered, a great deal of uncertainty existed with respect to the total amount of proceeds received and their location.") Within the equity power of the court is the authority to

order an accounting by the Defendants. *SEC v. R.J. Allen & Associates*, 386 F. Supp. 866, 880 (S.D.N.Y. 1974); *SEC v. Manor Nursing Centers*, *supra* at 1103-1104.

Defendants made use of untrue statements of material fact and omitted to state material facts as alleged in Plaintiff's verified petition, in violation of Section 101 of the Act. The whereabouts of the money raised by Defendants through violations of the Act is not known at this time. These circumstances make it necessary that the court freeze specific assets to preserve the status quo by preventing the dissipation of assets and to account for the money raised through violations of the Act so as to protect Investors and to provide effective relief.

C. Appointment of a Receiver

The violations of the Act, as described above, give the Department the right to seek one or more of the remedies available by statute and in equity. *Oklahoma Securities Commission v. CFR International, Inc.*, 622 P.2d 293,295 (Okla. Ct. App. 1980). One such remedy is that of the appointment of a receiver. In *SEC v. American Bd. Of Trade, Inc.*, 830 F.2d 431 (2d Cir. 1987), the court, quoting *SEC v. Manor Nursing Centers, Inc.* 458 F.2d 1082, 1105 (2d. Cir, 1972), stated that the primary purpose of the appointment of a receiver is to help "preserve the status quo while the various transactions were unraveled" so that an accurate picture of what happened could be formulated. *Id.* at 436.

In circumstances of egregious fraud where the interests of public investors are in substantial jeopardy, it has been recognized that the appointment of a receiver is necessary to prevent "diversion or waste of assets to the detriment of those for whose benefit, in some measure, the injunction action is brought." *Securities and Exchange Commission v. Capital Counselors, Inc.*, 332 F. Supp. 291, 304 (S.D. N.Y. 1971). The form and quantum of evidence required is a matter of judicial discretion. *U.S. v. O'Connor*, 291 F.2d 520 (2d Cir. 1961);

Haase v. Chapman, 308 F.Supp. 399 (W.D.Mo.1969). Here, the evidence is admissible and compelling that Defendants have engaged in a fraudulent course of business to induce the public to purchase unregistered securities. It is critical that a receiver be appointed to prevent further dissipation of Investor assets and to prevent continued violations of the law. There is no definitive list of facts by which the Court must abide; however, the Sixth Circuit in *Tennessee Pub. Co. v. Carpenter*, 100 F.2d 728, 732 (6th Cir. 1938), identified factors which can be considered, each of which is applicable here and justify the appointment of a receiver for the Defendants:

“Factors typically influencing the district court’s exercise of discretion include the existence of a valid claim by the moving party; the probability that fraudulent conduct has occurred or will occur to frustrate the claim; imminent danger that property will be lost, concealed, or diminished in value; inadequacy of legal remedies; lack of a less drastic equitable remedy; and the likelihood that appointment of a receiver will do more harm than good.”

D. Temporary Injunction

Once the plaintiff has shown the Defendants’ past conduct is in violation of the Act, the proper test for the issuance of a statutory injunction is whether there is a reasonable expectation of future violations by Defendants. *SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082 (2d Cir. 1975); *SEC v. Culpepper*, 270 F.2d 241, 249 (2d Cir. 1959). In considering this issue, past illegal conduct is strong support for the likelihood of future violations. *Oklahoma Securities Commission v. CFR International, Inc.*, *supra*. Here, the Defendants have violated the Act which creates a presumption of likelihood of future violations. Because the Plaintiff has conclusively demonstrated the existence of past violations, injunctive relief is appropriate and the burden of showing there is no reasonable expectation of future violations will shift to the Defendants and their burden “is a heavy one.” *SEC v. Culpepper*, 270 F.2d 241, 249 (2d Cir.

1959); *Oklahoma Securities Commission v. CFR International, Inc.*, 622 P.2d 293, 295 (Okla. Ct. App. 1980).

Unlike private actions for injunctions, the Department's action is based on statute and no showing of irreparable injury or the inadequacy of other remedies is required. *Oklahoma Securities Commission v. CFR International, Inc.*, 622 P.2d 293, 295 (Okla. Ct. App. 1980) (citing *Bradford v. SEC*, 278 F.2d 566 (9th Cir. 1960)). Although not required, the Department has also shown that the public will suffer irreparable injury if Defendants are not enjoined from further violations of the Act.

E. An Ex Parte Order Should be Issued

While courts have been cautious with the use of ex parte orders, they are approved in appropriate cases. *Covington, Knox Inc. v. Texas*, 577 S.W. 2d 323 (Tex. App. Houston [14th Dist.] 1979, no writ). The Department alleges facts that demonstrate a strong likelihood of ongoing violations of the Act by Defendants.

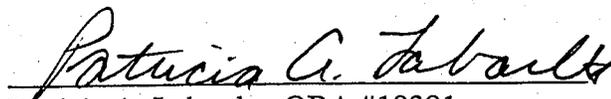
In addition, there is a great risk that Defendants will take measures to dissipate assets if provided notice of this action before a temporary restraining order is issued and a receiver is appointed. Providing notice of this action to Defendants could lead to loss of Investor funds, and consequently cause irreparable injury to the Department's ability to safeguard the public interest by providing monetary redress and by preventing irreparable loss and injury to potential Investors. The issuance of a temporary restraining order *instanter*, an asset freeze, the appointment of a receiver *pendente lite* and an order for an accounting by the Defendants will help maximize the relief to Investors and protection of the public interest.

V. Conclusion

The Department, pursuant to Section 405 of the Act, conducted an investigation into Defendants' activities in and/or from the state of Oklahoma. The investigation produced evidence that clearly indicates Defendants issued, offered and/or sold unregistered securities, acted as unregistered agents and/or employed unregistered agents. The investigation also revealed that Defendants, in connection with the offer, sale and/or purchase of securities: (1) made and are making untrue statements of material fact; (2) omitted and are omitting to state certain material facts; and (3) engaged and are engaging in a course of business which has operated as a fraud or deceit upon Investors. Defendants have engaged and are engaging in substantial violations of the Act, including fraudulent practices. The Department submits that the evidence firmly establishes a *prima facie* case for the issuance of a temporary restraining order, an asset freeze, the appointment of a receiver, an accounting, and a temporary injunction.

In light of the facts presented and the authorities cited, the Department respectfully requests that this Court issue a temporary restraining order, an order freezing the assets of Defendants, an order appointing a receiver for Defendants, and an order for an accounting, until such time as the Court may afford the parties a hearing on the Plaintiff's motion for temporary injunction, all to halt Defendants' unlawful practices and to provide effective relief to Investors and to the Department.

Respectfully submitted,



Patricia A. Labarthe OBA #10391
Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, Oklahoma 73102
Telephone (405) 280-7700
Fax (405) 280-7742

CERTIFICATE OF MAILING

The undersigned certifies that on the 17th day of December, 2003, a true and correct copy of the foregoing was mailed via First Class Mail, postage prepaid, to the following:

Bradley C. West
West Law Firm
124 West Highland
Shawnee, Oklahoma 74801

The undersigned certifies that on the 17th day of December, 2003, a true and correct copy of the foregoing was mailed via certified mail, postage prepaid, to the following:

The Hickman Agency
120 West MacArthur Street, Suite 121
Shawnee, Oklahoma 74804

Merl William Hickman, Sr.
120 West MacArthur Street, Suite 121
Shawnee, Oklahoma 74804

and

Route 3, Box 505
Meeker, Oklahoma 74855

Sarah Hickman
The Hickman Agency
120 West MacArthur Street, Suite 121
Shawnee, Oklahoma 74804

and

Route 3, Box 505
Meeker, Oklahoma 74855

Merl William Hickman, Jr.
The Hickman Agency
120 West MacArthur Street, Suite 121
Shawnee, Oklahoma 74804

and

Route 3, Box 490
Meeker, Oklahoma 74855

Patricia A. LaBonte

AFFIDAVIT

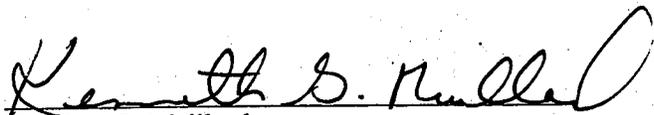
STATE OF OKLAHOMA)
) SS.
COUNTY OF OKLAHOMA)

I, Kenneth G. Maillard, Director of Registrations of the Oklahoma Department of Securities (Department), swear that I have conducted an examination of the registration and exemption files of the Department pertaining to current and past registrations and exemptions from registration for the offer or sale of securities in Oklahoma and that nowhere therein was found a record of an application for the registration of securities pursuant to Section 301 of the Oklahoma Securities Act (Act), OKLA. STAT. tit. 71, §1-413, 501, 701-703 (2001 & Supp. 2003), for The Hickman Agency, Inc.

I further swear that nowhere within the registration files for the Department was found a record of a registration of securities for The Hickman Agency, Inc. pursuant to Section 301 of the Act.

I further swear that nowhere within the exemption files for the Department was found a record of a notice of intent to claim exemption from Sections 301 and 402 of the Act for The Hickman Agency, Inc. pursuant to any subsection of Section 401 of the Act.

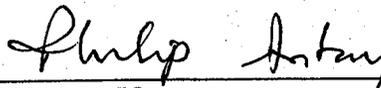
(SEAL)



Kenneth G. Maillard
DIRECTOR OF REGISTRATIONS
OKLAHOMA DEPARTMENT OF SECURITIES
First National Center, Suite 860
120 North Robinson
Oklahoma City, Oklahoma 73102
(405) 280-7700

Subscribed and sworn to before me this 15th day of December, 2003.

(NOTARIAL SEAL)



NOTARY PUBLIC

1455

My Commission Expires:

Sept 18, 2004

STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
First National Center, Suite 860
120 North Robinson
Oklahoma City, Oklahoma 73102
Telephone (405) 280-7700

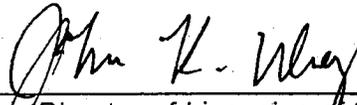
AFFIDAVIT

STATE OF OKLAHOMA)
)
COUNTY OF OKLAHOMA) SS.

I, John K. Ulrey, Director of Licensing of the Oklahoma Department of Securities, swear that I have caused to be examined the registration files of the Oklahoma Department of Securities pertaining to current and past registered broker-dealers, broker-dealer agents, investment advisers, investment adviser representatives and issuer agents and that nowhere therein was found a record of the registration pursuant to Section 201 of the Oklahoma Securities Act (Act) for the following:

Merl William Hickman, Sr.
Sarah L. Hickman
Merl William Hickman, Jr.

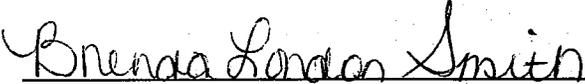
(SEAL)



John K. Ulrey, Director of Licensing of the
OKLAHOMA DEPARTMENT OF SECURITIES

Subscribed and sworn to before me this 15th day of December, 2003.

(NOTARIAL SEAL)



Notary Public

My Commission Expires: **August 26, 2005**
My Commission No.: **01013792**

STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
First National Center, Suite 860
120 North Robinson
Oklahoma City, Oklahoma 73102
Telephone (405) 280-7700

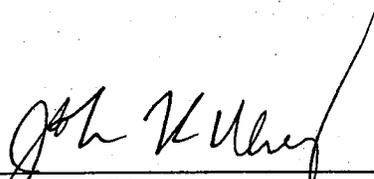
AFFIDAVIT

STATE OF OKLAHOMA)
)
COUNTY OF OKLAHOMA) SS.

I, John K. Ulrey, Director of Licensing of the Oklahoma Department of Securities, swear that I have caused to be examined the registration files of the Oklahoma Department of Securities pertaining to current and past registered broker-dealers, broker-dealer agents, investment advisers, investment adviser representatives and issuer agents and that nowhere therein was found a record of the registration pursuant to Section 201 of the Oklahoma Securities Act (Act) for the following:

The Hickman Agency, Inc.

(SEAL)



John K. Ulrey, Director of Licensing of the
OKLAHOMA DEPARTMENT OF SECURITIES

Subscribed and sworn to before me this 1 day of Dec, 2003.

(NOTARIAL SEAL)



Notary Public

My Commission Expires:

August 26, 2005
01013792