

IN THE DISTRICT COURT OF LOGAN COUNTY  
STATE OF OKLAHOMA

CLERK OF DISTRICT COURT  
LOGAN COUNTY, OK  
FILED FOR RECORD  
2008 FEB -8 PM 2:17

Oklahoma Department of Securities )  
ex rel. Irving L. Faught, )  
Administrator, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Marsha Schubert, an individual and )  
dba Schubert and Associates; )  
Richard L. Schubert, an individual and )  
dba Schubert and Associates; and )  
Schubert and Associates, )  
an unincorporated association, )  
 )  
Defendants. )

Case No. CJ 2004-256

REJEANIA ZYCK  
COURT CLERK  
BY.....DEPUTY  
Hearing set -  
March 14  
@ 1:30

MOTION TO SETTLE JOURNAL ENTRY

Plaintiff, Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator ("Department"), moves this Court to settle the journal entry concerning this Court's ruling at the hearing in this matter held on Friday, January 11, 2008. In support of this Motion, Plaintiff shows the Court the following:

1. Plaintiff filed an *Application For Citation of Indirect Contempt Against Barry Pollard* (Application) with this Court on September 11, 2007, whereby Plaintiff accused Barry Pollard of knowingly, willfully and contemptuously disobeying and violating this Court's lawfully issued *Temporary Restraining Order, Order Appointing Receiver, Order Freezing Assets and Order for Accounting* ("Temporary Restraining Order"), against Marsha Schubert, Richard L. Schubert and Schubert and Associates.

2. The Application was based on the attachment of a lien by Barry Pollard on property in the Town of Crescent, Logan County, Oklahoma, held by the Receiver over Marsha Schubert's assets. The Receiver could not collect the proceeds from a pending sale of this property due to the lien attached by Pollard.

3. The Department alleged Pollard's conduct interfered with the possession of or management by the Receiver of a Receivership asset and that such conduct violated this Court's Temporary Restraining Order and Permanent Injunction and constituted indirect contempt.

4. On January 11, 2008, Plaintiff's Application came on for hearing before this Court. Plaintiff appeared by and through its attorneys, Amanda Cornmesser and Gerri Stuckey. Barry Pollard appeared by and through his attorney, David Trojan. After hearing arguments from counsel, reviewing the pleadings on file, and being fully advised in the premises, the Court ordered the lien released and provided that Barry Pollard may, within fifteen (15) days of the appointment of a substitute receiver, file any claim he has against the receivership estate. The Court ruled that it would dismiss the contempt citation based on Pollard's action of releasing the lien. The Court appointed Jeff Hirzel to act as substitute receiver for the purpose of consideration of the claim of Barry Pollard and ordered the posting of a \$2,000 bond.

5. On January 15, 2008, Plaintiff's counsel sent its proposed order to Pollard's counsel.

6. On January 15, 2008, Pollard's counsel provided Plaintiff with a proposed order that was not at all consistent with this Court's ruling at the January 11, 2008 hearing.

7. Plaintiff's counsel contacted Pollard's counsel on January 24, 2008, to determine whether agreement could be reached concerning the order. On January 28, 2008, Plaintiff's

counsel left a message with Barry Pollard's counsel that it still had not received a response regarding the proposed order and that Plaintiff intended to file a motion to settle journal entry.

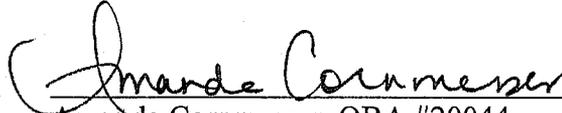
8. Barry Pollard's counsel called Plaintiff's counsel on January 29, 2008, to discuss the proposed order. Barry Pollard's counsel requested that both parties call the Court to discuss his ruling of January 11, 2008. During that phone call, the Court repeated that Barry Pollard's lien was to have been immediately released, and that the contempt proceeding against Barry Pollard would be dismissed upon release of the lien. In that same conversation, the Court stated that Barry Pollard's default judgment against Marsha Schubert is not liquidated, and that the intent of his ruling was to put everyone in the position they were in prior to Barry Pollard filing suit against Marsha Schubert and before all other claims were acted upon by the Receiver. Plaintiff's counsel informed the Court that Jeff Hirzel declined the substitute receivership position and the Court suggested that Timothy W. Green of Guthrie, Oklahoma, be appointed Substitute Receiver. The Court restated that any Receivership claim by Barry Pollard must be filed within 15 days of the appointment of the Substitute Receiver and in accordance with this Court's January 14, 2005 Order.

9. On February 1, 2008, Plaintiff's counsel sent a second proposed order reflecting Mr. Green as the Substitute Receiver and requested that a signed copy be returned from Barry Pollard's counsel by February 6, 2008. Barry Pollard's counsel has failed to return a signed copy or to otherwise respond. Attached as Exhibit A is Plaintiff's second proposed order reflecting the Court's ruling of January 11, 2008, and the Court's clarification on January 29, 2008.

WHEREFORE, Plaintiff respectfully requests that the Court set this matter on its next available motion docket pursuant to Rule 11(D) of the Rules of the Seventh Judicial District, to

settle the journal entry in this matter by approving and signing the order attached hereto as Exhibit A.

Respectfully submitted,

A handwritten signature in cursive script that reads "Amanda Cornmesser". The signature is written in black ink and is positioned above a horizontal line.

Amanda Cornmesser, OBA #20044

Gerri Stuckey, OBA #16732

Oklahoma Department of Securities

120 N. Robinson, Suite 860

Oklahoma City, OK 73102

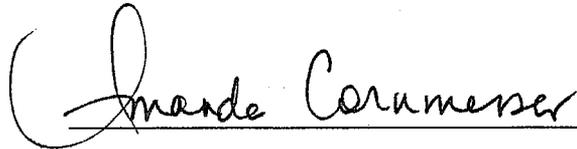
*Attorneys for Plaintiff, Oklahoma Department  
of Securities*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 8th day of February, 2008, a true and correct copy of the foregoing was mailed by first class mail with postage prepaid thereon addressed to:

Mr. David G. Trojan  
Field, Trojan, Long & Sedbrook, P.C.  
106 W. Randolph  
P.O. Box 5676  
Enid, OK 73702

Ronald D. Fulkerson  
Shawn D. Fulkerson  
Carolie E. Rozell  
Fulkerson & Fulkerson, P.C.  
10444 Greenbriar Place  
Oklahoma City, OK 73159

  
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**IN THE DISTRICT COURT OF LOGAN COUNTY  
STATE OF OKLAHOMA**

Oklahoma Department of Securities )  
*ex rel.* Irving L. Faught, )  
Administrator, )  
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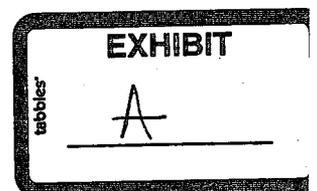
Case No. CJ 2004-256

Marsha Schubert, an individual and )  
*dba* Schubert and Associates; )  
Richard L. Schubert, an individual and )  
*dba* Schubert and Associates; and )  
Schubert and Associates, )  
an unincorporated association, )  
 )  
Defendants. )

**ORDER**

This matter came on for hearing on the 11<sup>th</sup> day of January, 2008, before the undersigned Judge of the District Court in and for Logan County, Oklahoma, on Plaintiff's *Application for Citation of Indirect Contempt against Barry Pollard*. After reviewing the pleadings and hearing oral argument, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. that Barry Pollard immediately release the lien attached to the property described as Lot Ten (10), Block Sixteen (16) in the Town of Crescent, Logan County, Oklahoma;
2. that Barry Pollard be allowed to file out of time a "Proof of Claim" in the form, and in accordance with the instructions, attached as "Exhibit B" to this Court's *Order Establishing Procedure to Notify Claimants to Make Claims* entered on January 14, 2005; and



3. that the Plaintiff's application for contempt shall be dismissed upon release of the lien referenced in paragraph 1 above.

On an oral motion made by Douglas L. Jackson, Receiver of the Schubert Receivership Estate, IT IS FURTHER ORDERED that a Substitute Receiver be appointed for the sole purpose of evaluating Barry Pollard's Proof of Claim and making a recommendation to this Court as to whether the claim should be allowed or disallowed, in whole or in part.

IT IS FURTHER ORDERED that Timothy W. Green of Guthrie, Oklahoma, will serve as the Substitute Receiver. The Substitute Receiver shall post a \$2,000 bond.

IT IS FURTHER ORDERED that Barry Pollard file his Proof of Claim with the Substitute Receiver within fifteen (15) days of this Order.

Dated this \_\_\_ day of February, 2008.

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Donald L. Worthington, District Judge

Approved as to Form:

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Amanda Cornmesser, OBA #20044  
Oklahoma Department of Securities  
120 N. Robinson, Suite 860  
Oklahoma City, OK 73102  
Attorney for Plaintiff

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David G. Trojan  
Field, Trojan, Long & Sedbrook, P.C.  
P.O. Box 5676  
Enid, OK 73702  
Attorney for Barry Pollard

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Bradley E. Davenport  
Gungoll, Jackson, Collins, Box & Devoll, P.C.  
P.O. Box 1549  
Enid, OK 73702-1549  
Attorney for Douglas L. Jackson