

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

MAR 16 2007

PATRICIA PRESLEY, COURT CLERK
by _____
DEPUTY

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

Plaintiff,)

v.)

Case No.

CJ - 2007-2415

Clyde Edward Elkins,)
Obert O. Heilaman,)
Elkins & Associates, Inc., and)
American Asset Management, Co.,)

Defendants,)

v.)

Big Boys Investment, L.L.C.,)

Relief Defendant.)

PETITION FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF

COMES NOW the Plaintiff, Oklahoma Department of Securities, *ex rel.* Irving L. Faught, Administrator, ("Department"), and for its claims against the above-named Defendants, alleges and states as follows:

OVERVIEW

1. This case involves violations of the Oklahoma Uniform Securities Act of 2004 ("Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003), and the Oklahoma Securities Act ("Predecessor Act"), Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (2001 & Supp. 2003), by Clyde Edward Elkins, Obert O. Heilaman, Elkins & Associates, Inc., and American Asset Management, Co. (collectively, the "Defendants"). Specifically, the Department alleges that

Defendants offered and sold unregistered securities in violation of Section 1-301 of the Act and Section 301 of the Predecessor Act, acted as unregistered broker-dealers in violation of Section 1-401 of the Act and Section 201 of the Predecessor Act, acted as unregistered agents in violation of Section 1-402 of the Act and Section 201 of the Predecessor Act, and perpetrated fraud in connection with the offer and sale of securities in and/or from the state Oklahoma.

JURISDICTION

2. The Administrator of the Department brings this action pursuant to Section 1-603 of the Act and Section 406.1 of the Predecessor Act and is the proper party to bring this action against the Defendants.

3. Pursuant to Section 1-610 of the Act and Section 413 of the Predecessor Act, Defendants, in connection with their activities in the offer, sale, and purchase of securities, are subject to the provisions of the Act.

4. By virtue of their transaction of business by contract and otherwise and commission of other acts in this state, Defendants are subject to the jurisdiction of this Court and to service of summons within or outside of this state.

5. Venue is proper in this county.

6. Defendants have engaged in acts and practices in violation of the Act the Predecessor Act and unless enjoined, will continue to engage in the acts and practices set forth herein and acts and practices of similar purport and object.

DEFENDANTS

7. Clyde Edward Elkins (Elkins) is an individual who, at all times material hereto, was a resident of Oklahoma doing the acts complained of in his own name and/or in the name of

Elkins & Associates, Inc. At all times material hereto, Elkins offered and sold securities in and/or from Oklahoma as described herein.

8. Obert O. Heilaman (Heilaman) is an individual who, at all times material hereto, was a resident of Oklahoma doing the acts complained of in his own name and/or in the name of American Asset Management Co. At all times material hereto, Heilaman offered and sold securities in and/or from Oklahoma as described herein.

9. Elkins & Associates, Inc. (Elkins & Associates) is an Oklahoma corporation with its principal place of business in Oklahoma City, Oklahoma. At all times material hereto, Elkins & Associates that was controlled by Elkins, offered and/or sold securities in and/or from Oklahoma as described herein.

10. American Asset Management Co. (AAMC) is an Oklahoma corporation with its principal place of business in Oklahoma City, Oklahoma. At all times material hereto, AAMC that was controlled by Heilaman, offered and/or sold securities in and/or from Oklahoma as described herein.

RELIEF DEFENDANT

11. Big Boys Investment, L.L.C. (Big Boys) is an Oklahoma limited liability company with its principal place of business in Oklahoma City, Oklahoma. At all times material hereto, Big Boys was controlled by Elkins and Heilaman.

NATURE OF THE CASE

A. Elkins

12. Elkins has been engaged in the business of providing tax compliance advice and tax return preparation services for over twenty-five years. Many of Elkins's clients have used his services for numerous years, some exceeding twenty years. Due to the types of services Elkins provides and the long term nature of the relationships developed with his clients, Elkins has had and continues to have access to detailed financial and investment information about his clients.

13. A relationship of trust and confidence developed between Elkins and many of his long term clients. This relationship was fostered by Elkins's appearance of being both personally successful and knowledgeable about financial matters. Many clients were aware of Elkins's ownership of expensive homes, automobiles and commercial office buildings.

B. Elkins is Enjoined

14. On August 2, 2004, Elkins and Elkins & Associates were named as defendants in a civil action filed by the Department. In *Oklahoma Department of Securities, ex rel. Irving L. Faught v. Trade Partners, Inc. et al.*, (Case No. CJ-2004-6295, District Court of Oklahoma County), the Department alleged that Elkins offered and sold numerous types of unregistered securities and that Elkins & Associates acted as an unregistered broker-dealer. The unregistered securities included: (a) interests in insurance related death benefits of terminally ill individuals or "viatical investment contracts"; (b) promissory notes secured by interests in viatical investment contracts; (c) promissory notes secured by interests in the revenue of a telecommunications venture established to provide telephone communications services in third-

world or "developing" countries, and (d) notes and stock issued by a company attempting to process solid and liquid effluent and wastewater for later use in agricultural irrigation.

15. In April, 2003, the issuer of the viatical investment contracts, Trade Partners, Inc., a Michigan corporation, was placed into receivership by the United States District Court for the Western District of Michigan. The court appointed receiver has reported to the court that the activities of Trade Partners, Inc. were fraudulent and he is seeking to recover money for the benefit of the Trade Partners Inc. investors. The president of Trade Partners, Inc., Thomas J. Smith, was convicted of mail, wire and securities fraud for his role in Trade Partners, Inc. and is currently serving a sentence of eight years in federal prison. The total extent of investor losses remains undetermined.

16. The issuer of the promissory notes, secured by interests in the revenue of a telecommunications venture established to provide telephone communications services in third-world or "developing" countries, has filed bankruptcy. The total extent of investor losses remains undetermined.

17. The issuer of the notes and stock relating to the processing of solid and liquid effluent and wastewater for later use in agricultural irrigation is no longer in business. The total extent of investor losses remains undetermined.

18. In connection with the civil action filed by the Department on August 2, 2004, Elkins and Elkins & Associates were enjoined from offering or selling any security and from acting as a broker-dealer or agent in and/or from the state of Oklahoma.

C. Post Injunction Activities

19. Following the issuance of the injunction, Elkins continued offering and selling securities with Heilaman's assistance and through separate entities not named in the civil action filed by the Department. Prior to his affiliation with AAMC and Elkins, Heilaman was engaged in the business of selling and installing door bell chimes.

20. In the course of providing tax compliance advice and tax return preparation services to his clients through Elkins & Associates, Elkins described certain investments and then referred the clients to Heilaman and AAMC. The offices of Heilaman and AAMC were located down the hallway from the offices of Elkins & Associates and both were located in an office building owned by Elkins.

D. Earthly Mineral Solutions

21. In or about January, 2004, Elkins and Heilaman began to offer and sell, interests in mineral claims (the "Mineral Claim Interests") issued by Earthly Mineral Solutions, Inc. (EMS), a Nevada corporation, in and/or from the state of Oklahoma. Written materials distributed in connection with the offer and sale of the Mineral Claim Interests (the "Sales Literature") state that EMS holds mineral claims to approximately 19,000 acres of land near Las Vegas, Nevada. The Sales Literature states that the land subject to the EMS mineral claims is owned by the United States and managed by the United States Bureau of Land Management (BLM). The Sales Literature states that EMS is the "Sponsor and owner of sale [sic] of certain fractional interests in mineral claims." The Sales Literature states that EMS is offering the Mineral Claim Interests at Twenty Thousand Dollars (\$20,000.00) per acre.

22. The Sales Literature represents that the Mineral Claim Interests will increase in value through appreciation of land values near Las Vegas, Nevada. The Sales Literature makes reference to the "constant growth" and "sprawl" of the city of Las Vegas and states: "The trend clearly shows more than a trebling of values in a 6 year period, which equates to an average increase of roughly 35% per year." The Sales Literature states that before the land can be sold by the BLM to accommodate expansion by the city of Las Vegas the BLM must purchase the Mineral Claim Interests.

23. The Sales Literature states under the heading "What's the Deal?" that the purchaser of a Mineral Claim Interest from EMS will receive a claim in an area pre-designated by EMS. EMS further represents that it will use its "knowledge and expertise" to maintain the claims in good standing under "all state and federal laws."

24. To provide investment returns in addition to the appreciation in value of the Mineral Claim Interests, the Sales Literature states that a purchaser may grant Natural Minerals Processing Company, a Nevada corporation and affiliate of EMS, a "right of first refusal" to extract the minerals from the purchaser's Mineral Claim Interest (the "Right of First Refusal Contracts"). In exchange for this "right of first refusal", the Mineral Claim Interest purchaser will receive a return of 7% per annum of the purchase price for a period of five years.

25. The Sales Literature states that the founders of EMS have a history of being successful businessmen. The Sales Literature further states that Roy Higgs (Higgs) founded EMS. The Sales Literature does not disclose that in 1989 Higgs filed a petition in bankruptcy and was discharged in 1997. The Sales Literature also fails to disclose that in 1991, Higgs was fined by the Arizona Corporation Commission for violations of the registration and anti-fraud provisions of the Arizona securities laws.

26. Elkins and Heilaman directed EMS to pay all sales commissions from the sale of the Mineral Claim Interests to Big Boys, an entity controlled by Elkins and Heilaman. Elkins and Heilaman then agreed to evenly divide the commission payments.

FIRST CAUSE OF ACTION

(Violation of Section 1-301 of the Act and Section 301 of the Predecessor Act: Offering and/or Selling Unregistered Securities)

27. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1-26 above.

28. The Mineral Claim Interests are securities as defined by Section 1-102 of the Act and Section 2 of the Predecessor Act.

29. The Mineral Claim Interests offered and sold by Defendants are not and have not been registered, or otherwise qualified for an exemption from registration, as required by Section 1-301 of the Act or Section 301 of the Predecessor Act.

30. By reason of the foregoing, Defendants have violated Section 1-301 of the Act and Section 301 of the Predecessor Act and unless enjoined, will continue to violate Section 1-301 of the Act.

SECOND CAUSE OF ACTION

(Violation of Section 1-301 of the Act and Section 301 of the Predecessor Act: Offering and/or Selling Unregistered Securities)

31. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding cause of action.

32. The Right of First Refusal Contracts are securities as defined by Section 1-102 of the Act and Section 2 of the Predecessor Act.

33. The Right of First Refusal Contracts offered and sold by Defendants are not and have not been registered, or otherwise qualified for an exemption from registration, as required by Section 1-301 of the Act or Section 301 of the Predecessor Act.

34. By reason of the foregoing, Defendants have violated Section 1-301 of the Act and Section 301 of the Predecessor Act and unless enjoined, will continue to violate Section 1-301 of the Act.

THIRD CAUSE OF ACTION

(Violation of Section 1-401 of the Act and Section 201 of the Predecessor Act: Failure to Register as a Broker-Dealer)

35. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

36. Defendants Elkins & Associates and AAMC, by engaging in the business of effecting transactions in securities for the account of others or for their own account, are broker-dealers as defined in Section 1-102 of the Act and Section 2 of the Predecessor Act.

37. Defendants Elkins & Associates and AAMC are not, and have not been, registered as broker-dealers pursuant to Section 1-401 of the Act or Section 201 of the Predecessor Act.

38. By reason of the foregoing, Defendants Elkins & Associates and AAMC, directly and indirectly, have violated Section 1-401 of the Act and Section 201 of the Predecessor Act, and unless enjoined, will continue to violate Section 1-401 of the Act.

FOURTH CAUSE OF ACTION

**(Violation of Section 1-402 of the Act and Section 201 of the Predecessor Act:
Failure to Register as Agents)**

39. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

40. Defendants Elkins and Heilaman, by virtue of their efforts and activities in this state in effecting or attempting to effect transactions in securities, are agents, as defined in Section 1-102 of the Act and Section 2 of the Predecessor Act.

41. Defendants Elkins and Heilaman are not, and have not been, registered as agents pursuant to Section 1-402 of the Act or Section 201 of the Predecessor Act.

42. By reason of the foregoing, Elkins and Heilaman, directly and indirectly, have violated Section 1-402 of the Act and Section 201 of the Predecessor Act, and unless enjoined, will continue to violate Section 1-402 of the Act.

FIFTH CAUSE OF ACTION

**(Violation of Section 1-401 of the Act and Section 201 of the Predecessor Act:
Employing Unregistered Agents)**

43. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

44. Defendants Elkins & Associates and AAMC are broker-dealers as defined in Section 1-102 of the Act and Section 2 of the Predecessor Act.

45. Defendants Elkins and Heilaman, by virtue of their efforts and activities in this state, in effecting or attempting to effect sales of securities, are agents of Defendants Elkins &

Associates and AAMC as defined in Section 1-102 of the Act and Section 2 of the Predecessor Act.

46. Defendants Elkins and Heilaman are not, and have not been, registered as agents of Defendants Elkins & Associates and AAMC pursuant to Section 1-402 of the Act or Section 201 of the Predecessor Act and are not exempt from registration.

47. By employing and/or associating with unregistered agents, Defendants Elkins & Associates and AAMC have violated Section 1-401 of the Act and Section 201 of the Predecessor Act, and unless enjoined, will continue to violate Section 1-401 of the Act.

SIXTH CAUSE OF ACTION

**(Violation of Section 1-501 of the Act and Section 101 of the Predecessor Act:
Untrue Statements of Material Facts and Omissions of Material Facts
in Connection With Offer, Sale or Purchase of Securities)**

48. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

49. Defendants, in connection with the offer, sale, or purchase of securities, directly and indirectly, made untrue statements of material fact, including, but not limited to, the following matters:

a. that before the United States can sell the land subject to the mineral claims, the BLM must purchase the Mineral Claim Interests; and

b. that the founders of EMS have a history of being successful businessmen, when in fact the founder and CEO of EMS has filed for and been discharged in bankruptcy.

50. Defendants, in connection with the offer, sale, or purchase of securities, directly and indirectly, omitted 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. that the BLM must authorize the mining of any minerals from the land subject to the mineral claims, and that any delay in obtaining such permits or the refusal by BLM to permit the mining of any minerals would negatively impact the ability of EMS and/or Natural Mineral Processing Company to pay the agreed interest on the Right of First Refusal Contracts;

b. that Elkins and Elkins & Associates are the subject of an injunction prohibiting them from offering or selling any security in and/or from the state of Oklahoma; and

c. that the issuers of previous securities offered by Elkins and Elkins & Associates had either been placed into receivership, filed for bankruptcy, or gone out of business resulting in substantial losses to numerous other clients of Elkins and Elkins & Associates.

51. By reason of the foregoing, Defendants have violated Section 1-501 of the Act and Section 101 of the Predecessor Act and, unless enjoined, will continue to violate Section 1-501 of the Act.

SEVENTH CAUSE OF ACTION:

(Claim Against Relief Defendant)

52. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

53. Defendants Elkins and Heilaman caused cash received from conduct described above, principally commission payments, to be transferred to Big Boys Investment.

54. The commission payments ("Commission Payments") described above are the proceeds of unlawful activities and were obtained as part of and in furtherance of the securities violations described herein and are subject to disgorgement.

PRAYER FOR RELIEF

Defendants have engaged in acts and practices in violation of the Act and the Predecessor Act. Unless enjoined, Defendants will continue to engage in the acts and practices set forth herein and acts and practices of similar purport and object. A permanent injunction to issue against Defendants Heilaman and AAMC is necessary to prevent further violations of the Act.

WHEREFORE, based upon the foregoing, and pursuant to the authority specifically granted by Section 1-603 of the Act and Section 406.1 of the Predecessor Act, the Department prays for the Court to grant the following relief:

I.

A permanent injunction, restraining and enjoining the Defendants Heilaman and AAMC, their agents, servants, employees, assigns, and all those persons, directly or indirectly, acting on their behalf, under their direction and control, and/or in active concert or participation with them,

who receive actual notice of the permanent injunction, by personal service, facsimile or otherwise, and each of them from offering and/or selling any security in this state.

II.

An order requiring Defendants, their agents, servants, employees, assigns, and all persons, directly or indirectly, acting on their behalf, under their direction and control, and/or in active concert or participation with them, to disgorge all ill-gotten gains received in connection with the offer and/or sale of the Mineral Claim Interests and the Right of First Refusal Contracts;

III.

An order requiring Defendants to make restitution to any and all investors who purchased the Mineral Claim Interests and/or Right of First Refusal Contracts from Defendants or who transferred money to Defendants for the purpose of making securities investments on their behalf;

IV.

An order imposing a civil penalty against Defendants in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) each;

V.

An order requiring the Relief Defendant, Big Boy Investments, L.L.C., its agents, servants, employees, assigns, and all persons, directly or indirectly, acting on its behalf, under its direction and control, and/or in active concert or participation with it, to disgorge all Commission Payments received in connection with the offer and/or sale of the Mineral Claim Interests and the Right of First Refusal Contracts; and

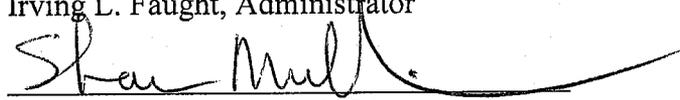
VI.

Such other equitable relief as the Court may deem necessary, just and proper in connection with the enforcement of the Act.

Respectfully submitted,

OKLAHOMA DEPARTMENT OF SECURITIES
Irving L. Faight, Administrator

By:

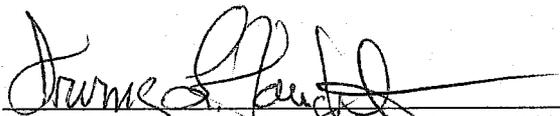


Shaun Mullins (OBA # 16869)
Patty Labarthe (OBA # 10391)
Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, Oklahoma 73102
(405) 280-7700

STATE OF OKLAHOMA)
)
COUNTY OF OKLAHOMA) SS.

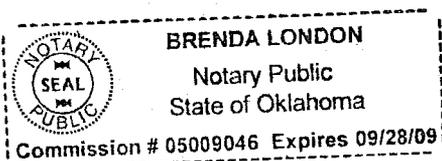
Irving Faught, of lawful age, being first duly sworn deposes and says: that he is the Administrator of the Oklahoma Department of Securities, that he has read the foregoing Petition for Permanent Injunction and Other Equitable Relief and knows the contents thereof, and that the matters and things stated therein have been provided to him by staff members of the Department under his authority and direction, and are true and correct to the best of his knowledge, information and belief.

(SEAL)

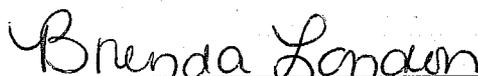


IRVING L. FAUGHT, ADMINISTRATOR OF THE
OKLAHOMA DEPARTMENT OF SECURITIES
120 North Robinson, Suite 860
Oklahoma City, Oklahoma 73102
(405) 280-7700

Subscribed and sworn to before me this 16th day of March, 2007.



(NOTARIAL SEAL)



Notary Public