

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT  
OKLAHOMA COUNTY, OKLA.

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

MAR 24 2009

PATRICIA PRESLEY, COURT CLERK  
by \_\_\_\_\_ DEPUTY

v. )

Case No.

CJ -2009-2773

Global West Funding, Ltd., Co., )  
an Oklahoma limited liability company; )  
Global West Financial LLC, )  
an Oklahoma limited liability company; )  
Sure Lock Financial, LLC, )  
an Oklahoma limited liability company; )  
Sure Lock Loans LLC, an Oklahoma )  
limited liability company; )  
The Wave-Goldmade, Ltd., )  
an unincorporated association; )  
Brian McKye, an individual; )  
Joe Don Johnson, an individual; and )  
James Farnham, an individual, )

Defendants, )

and )

Heritage Estate Service LLC, )  
an Oklahoma limited liability company, )

Relief Defendant )

**APPLICATION FOR TEMPORARY RESTRAINING ORDER,  
ORDER FREEZING ASSETS 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 Global West Funding, Ltd., Co., Global West Financial LLC, Sure Lock Financial, LLC, Sure Lock Loans LLC, The Wave-Goldmade Ltd., Brian McKye, Joe Don Johnson and James Farnham ("Defendants"); an order freezing the assets of Defendants; and an order for an

accounting by Defendants, pursuant to the Oklahoma Uniform Securities Act of 2004 (the "Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003). The Department also seeks an order freezing the assets of Heritage Estate Services, LLC ("Heritage" or "Relief Defendant"). 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, and an order for an accounting by Defendants and/or Relief Defendant, until the Court may afford the parties a hearing, and additionally moves for the entry of a temporary injunction at such hearing against Defendants and/or Relief Defendant. 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**

Global West Funding, Ltd., Co. ("GW Funding") is an Oklahoma limited liability company, with its principal place of business in Oklahoma City, Oklahoma. At all times material hereto, GW Funding issued, offered and/or sold securities in and/or from Oklahoma as described herein.

Global West Financial LLC ("GW Financial") is an Oklahoma limited liability company, with its principal place of business in Oklahoma City, Oklahoma. At all times material hereto, GW Financial issued, offered and/or sold securities in and/or from Oklahoma as described herein.

Sure Lock Financial, LLC ("Sure Lock Financial") is an Oklahoma limited liability company, with its principal place of business in Oklahoma City, Oklahoma. At all times

material hereto, Sure Lock Financial issued, offered and/or sold securities in and/or from Oklahoma as described herein.

Sure Lock Loans LLC (“Sure Lock Loans”) is an Oklahoma limited liability company, with its principal place of business in Oklahoma City, Oklahoma. At all times material hereto, Sure Lock Loans issued, offered and/or sold securities in and/or from Oklahoma as described herein.

The Wave-Goldmade, Ltd. (“TW Goldmade”) is an unincorporated association, with its principal place of business in Oklahoma City, Oklahoma. At all times material hereto, TW Goldmade issued, offered and/or sold securities in and/or from Oklahoma as described herein.

Brian McKye (“McKye”), an individual and Oklahoma resident, is the registered agent of GW Funding, GW Financial, Sure Lock Financial and Sure Lock Loans and controls all acts of GW Funding, GW Financial, Sure Lock Financial and Sure Lock Loans. McKye controls all acts of TW Goldmade. At all times material hereto, McKye offered and/or sold securities in and/or from Oklahoma as described herein.

Joe Don Johnson (“Johnson”), an individual and Oklahoma resident, was an agent of Defendants and the Relief Defendant. At all times material hereto, Johnson offered and/or sold securities in and/or from Oklahoma.

James Farnham (“Farnham”), an individual and Oklahoma resident, was an agent of Defendants and the Relief Defendant. At all times material hereto, Farnham offered and/or sold securities in and/or from Oklahoma.

## **II. RELIEF DEFENDANT**

Heritage Estate Service, LLC (“Heritage”), an Oklahoma limited liability company, is an affiliate of Defendants. At all times material hereto, Heritage received large amounts of money and property from Defendants.

### III. NATURE OF THE CASE

From an indeterminate time to the present, Defendants have 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 notes (“Investment Notes”). To purchase an Investment Note, Defendants and Investors sign a “Premium 60 Account Agreement” (Agreement) provided by the Defendants. The Investment Notes are issued by GW Funding, GW Financial, Sure Lock Financial and/or Sure Lock Loans.

Defendants represent to Investors that interest will be paid monthly in sums of between eight percent (8%) and nineteen percent (19%), for a period of sixty (60) months. Defendants state that Investors have “100% total control” of their money. Defendants represent that the investments are secured by real estate notes and are risk free. Defendants purport to pay no commissions on the transactions. The sales materials of Defendants state that Defendant Global West Funding has an “IRS approved program to perform rollovers on traditional, Roth IRAs and/or 401K accounts.” Defendants’ sales materials offer and promote the opportunity for Investors to reinvest the interest earned on their investments for even greater earnings.

Defendants have not generated revenue from the Investor funds to cover the interest payments required by the Investment Notes. At all times material hereto, Defendants used funds received from more recent Investors to make payments to earlier Investors. Defendants have also spent Investor funds for the payment of business and personal expenses of the Defendants unrelated to the generation of legitimate investment revenue.

Since September, 2007, Investor funds totaling in excess of Two Million Dollars (\$2,000,000) have been deposited into an account at Bank of America in the name of Global West Funding, Ltd.

From an indeterminate time to the present, Relief Defendant received Investor funds from Defendants in the nature of cash for purported trust financing and commissions.

### **III. VIOLATIONS OF THE ACT**

#### **A. Violation of Section 1-301 of the Act: Offer and/or Sale of Unregistered Securities**

The Investment Notes are securities as defined by Section 1-102 of the Act.

The securities offered and sold by Defendants are not and have not been registered under the Act nor have the securities been offered or sold pursuant to an exemption from registration under Sections 1-201 through 1-203 of the Act.

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

#### **B. Violation of Section 1-402 of the Act: Failure to Register as Agents and Employing Unregistered Agents**

Defendants McKye, Johnson and Farnham are not registered in any capacity under the Act.

Defendants McKye, Johnson and Farnham, by virtue of their efforts and activities in transacting business in and/or from this state, are agents, as defined in Section 1-102 of the Act. Defendants McKye, Johnson and Farnham transacted and are transacting business in and/or from this state as agents without benefit of registration under the Act.

Defendants GW Funding, GW Financial, Sure Lock Financial, LLC, and Sure Lock Loans LLC, are issuers as defined in Section 1-102 of the Act. Defendants GW Funding, GW Financial, Sure Lock Financial, LLC, and Sure Lock Loans LLC employed agents who were not registered under the Act to effect or attempt to effect purchases or sales of such issuers' securities in and/or from this state.

By reason of the foregoing, Defendants have violated, are violating, and unless enjoined, will continue to violate Section 1-402 of the Act.

**C. Violation of Section 1-501 of the Act:  
Untrue Statements of Material Fact and Omissions of Material Fact  
in Connection With Offer, Sale or Purchase of Securities**

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

- a. that Defendants would provide guaranteed profits or returns on the Investment Notes in the nature of interest of between 8% and 19% when, in fact, Defendants have not invested the Investors' funds in any manner to generate such profits or returns;
- b. that the Investment Notes were secured by real estate when no real estate secures the Investment Notes;
- c. that no commissions were paid for the Investment Notes when Defendants withdrew significant Investor funds for personal payments to Defendants and the Relief Defendant;
- d. that Investors have "100% total control" of their money when Investors have no input after the Investment Note is purchased and Investors must rely completely on the judgment and discretion of the Defendants for the promised profit; and
- e. that Defendants have specialized knowledge and expertise to make the investments profitable when no action is taken by Defendants from which profit can be earned.

Defendants, in connection with the offer and/or sale 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 Notes;
- b. that the Investment Notes are securities under the Act;

- c. that the Investment Notes have not been and are not registered under the Act;
- d. that the individuals who offer and sell the Investment Notes were not and are not registered as agents under the Act; and
- e. that Defendants would use Investor funds for the payment of personal expenses of the Defendants and for 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 1-501 of the Act.

**D. Violation of Section 1-501 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 and/or sale of securities, and through the use of untrue statements of material fact and the omissions of material fact 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 1-501 of the Act.

**E. Relief Defendant**

Relief Defendant has received Investor Assets from one or more of the Defendants. Relief Defendant has received and/or holds Investor Assets as part of and in furtherance of the securities violations alleged above. Under the circumstances, it is not just, equitable or conscionable for Relief Defendant to retain the Investor Assets. As a result, Relief Defendant has been unjustly enriched.

**IV. NEED FOR TEMPORARY RESTRAINING ORDER, ASSET FREEZE,  
ACCOUNTING AND TEMPORARY INJUNCTION**

Section 1-603 of the Act provides:

- A. If the Administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation

of this act or a rule adopted or order issued under this act or constituting a dishonest or unethical practice or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this act or a rule adopted or order issued under this act or a dishonest or unethical practice, the Administrator may, prior to, concurrently with, or subsequent to an administrative proceeding, maintain an action in the district court of Oklahoma County or the district court of any other county where service can be obtained to enjoin the act, practice, or course of business and to enforce compliance with this act or a rule adopted or order issued under this act.

B. In an action under this section and on a proper showing, the court may:

1. Issue a permanent or temporary injunction, restraining order, or declaratory judgment;

2. Order other appropriate or ancillary relief, which may include:

a. an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the Administrator, for the defendant or the defendant's assets,

b. ordering the Administrator to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property,

c. imposing a civil penalty up to a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or up to Two Hundred Fifty Thousand Dollars (\$250,000.00) for more than one violation; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act, and

d. ordering the payment of prejudgment and postjudgment interest; or

3. Order such other relief as the court considers appropriate.

#### **A. Temporary Restraining Order**

Section 1-603 of the Act specifically grants this Court the power to fashion appropriate equitable relief to provide effective enforcement of the Act. 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 when the failure to grant the relief would allow dishonest businesses and individuals to take advantage of vulnerable investors. The protection of the public interest is paramount in this matter.

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, to include engaging 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 1-603 of the Act specifically grants this Court the power to order equitable relief, in addition to a restraining order, and 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. Also 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 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. The whereabouts of all of the money raised by Defendants through violations of the Act is not known at this time. A danger exists that the money received from the Investors and/or held by Defendants and/or the Relief Defendant will be lost, removed or transferred. An order to issue *instanter* against Defendants and/or the Relief Defendant is necessary to preserve these funds and the records relating thereto, to prevent the dissipation of assets, to account for the money raised through violations of the Act, and to prevent further violations of the Act.

### **C. 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., supra; 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, supra; Oklahoma Securities Commission v. CFR International, Inc., supra*.

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.

#### **D. 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 assets are frozen. Providing notice of this action to Defendants and the Relief Defendant could lead to loss of Investor funds, and consequently cause irreparable injury to the Department's ability to safeguard the public interest by *inter alia* providing monetary redress. The issuance of an ex parte temporary restraining order, asset freeze, and order for an accounting against the Defendants and/or the Relief Defendant will help maximize the relief to Investors and protect the public interest.

#### **V. Conclusion**

The Department, pursuant to Section 1-602 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 have issued, offered and/or sold unregistered securities in and/or from this state. Such activity is continuing. The investigation also revealed the following fraudulent practices of Defendants, in connection with the offer, sale and/or purchase of securities: (1) misrepresented, and are misrepresenting material facts; (2) omitted, and are omitting, to state certain material facts; and (3) engaged, and are engaging, in a course of business that has operated and continues to operate as a fraud or deceit upon other persons. The

Department submits that the evidence firmly establishes a *prima facie* case for the issuance of a temporary restraining order, an asset freeze, 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 and an order freezing assets of Defendants and the Relief Defendant, until such time as the Court may afford the parties a hearing on the Plaintiff's motion for temporary injunction, and an order for an accounting, all to halt Defendants' unlawful practices and to provide effective relief to Investors and to the Department.

Respectfully submitted,



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## CERTIFICATE OF MAILING

The undersigned certifies that on the 24<sup>th</sup> day of March, 2009, a true and correct copy of the foregoing was mailed via certified mail, return receipt requested, delivery restricted to addressee, to the following:

Clell I. Cunningham, III  
Dunn, Swann & Cunningham, P.C.  
210 Park Avenue, Suite 2800  
Oklahoma City, OK 73102

Global West Funding, Ltd. Co.  
Brian McKye, Registered Agent  
2200 N. Classen Blvd.  
Oklahoma City, OK 73106

Global West Financial LLC  
Brian McKye, Registered Agent  
2000 NW 39th  
Oklahoma City, OK 73118

Sure Lock Financial LLC  
Brian McKye, Registered Agent  
1300 NW 20th St.  
Oklahoma City, OK 73106

Sure Lock Loans LLC  
Brian McKye, Registered Agent  
1300 NW 20th St.  
Oklahoma City, OK 73106

The Wave Goldmade Ltd.   
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Joe Don Johnson  
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Heritage Estate Service LLC  
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