

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF SECURITIES
EX REL. IRVING L. FAUGHT,
ADMINISTRATOR,

Plaintiff,

v.

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.

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

APR 29 2009

PATRICIA PRESLEY, COURT CLERK
by _____
DEPUTY

No. CJ-2009-2773

(Civil relief more than \$10,000:
INJUNCTION / RESTRAINING ORDER)

Filed: 03/24/2009

Judge: Gurich, Noma D.

**JOINT REPLY TO PLAINTIFF'S RESPONSE TO MOTION/APPLICATION FOR
ATTORNEY FEES**

COMES NOW the law firm of Dunn, Swan & Cunningham, P.C. (the "Law Firm"),
AND Richard L. Rose of Mahaffey & Gore P.C., ("Rose") counsel of record for Defendants,
Global West Funding, Ltd, Global West Financial LLC, Sure Lock Financial, LLC, Sure
Lock Loans, LLC, The Wave-Goldmade, Ltd., and Brian McKye, and for their Reply to the
Response of Plaintiff's to Motions made for distribution of Attorney Fees show the Court as

follows:

In the case at bar, Plaintiff has objected to the payment of attorney fees, essentially stating that *all* of the monies frozen by the court are “investor funds”: “the payment of attorney fees at this time would be a payment made out of investor funds.” (Plaintiff Objection, at 3.) Plaintiff however, fails to offer any evidence that moneys held by the Special Master are, in fact, “investor funds” and not proceeds of the legitimate payday loan operations of defendant, SureLock Loans, L.L.C. or any of the other Defendants.

The Law Firm openly advised this Court of the payment by Mr. McKye to it of the case sum of \$2,000.00 shortly after the entry of the Court’s freeze Order. Now, Plaintiff, without any investigation, *at all*, of the source of such payment concludes that such payment is entirely “investor funds.”

In the case of *SEC v Quinn*, 997 F.2d 287 (7th Cir. 1993), the SEC froze the defendant’s assets. Defendant thereafter sought court approval of payment of the defendant’s attorney fees. The SEC objected, arguing that all of the assets frozen belonged to the investors. The district court, in turn, “called on the SEC to make a preliminary showing that [defendant’s] assets can be traced to fraud.” (*Id.*, at 289.) In the case at bar, Plaintiff has made no such showing.

The *Quinn* court, to the contrary, “indicated willingness to release small amounts so that [defendant] could defend this suit, and on occasion the court did so.” *Id.*, at 289. Similarly, McKye should be allowed some leeway in the payment of attorney fees. To deny him access to any assets, at all, of his or the company defendants, would be an extreme hardship, and punitive in nature. “[A]ny relief ancillary to the injunction sought under the [Commodity Exchange Act] must be remedial and not punitive in nature.” *CFTC v.*

American Metals Exchange Corp., 991 F.2d 71, 78 (U.S.D.C., NJ 1993). Plaintiff's efforts to deny Defendants access to **any** moneys, and hence, legal counsel, is patently punitive in nature and inappropriate.

Other courts have similarly approved the payment of attorney's fees out of frozen assets. In the case of *S.E.C. v. Dowdell*, 175 F.Supp.2d 850, 855-856 (W.D.Va.,2001), under similar circumstances, the court held:

“This court's central concern is the fairness of the proceedings. The court does not believe that it could achieve a fair result at the preliminary injunction hearing were it to deny defendants the ability to retain counsel. This is a complex legal matter, and lawyers are essential to the presentation of issues related to it.”

Attorney's fees were also granted in *SEC v. Duclaud Gonzalez de Castilla*, 170 F.Supp.2d 427 (S.D.N.Y.2001), and *SEC v. International Loan Network, Inc.*, 770 F.Supp. 678, 680 (D.D.C.1991) (stating that it had granted a modification of the asset freeze to permit defendants to retain counsel on their behalf).

As with all cases, the Court's central concern is the fairness of the proceedings. Attorney's are necessary to achieve a fair result in complex legal matters where lawyers are essential to the presentation of issues related to it. See *S.E.C. v. Dowdell*, supra.

Plaintiff would have this Court believe that the rule which should apply here is that “[o]rdinarily the services of an attorney employed by defendant to represent him in the receivership proceedings are solely for his benefit and are not to be paid for out of funds brought into court for the benefit of plaintiff and other claimants against the defendant.” The case at bar is different than all of those cited by Plaintiff in that Plaintiff has seized ALL of Defendant's assets, regardless of, and without proof of, their origin. This is truly analogous to handcuffing someone's hands behind their back and then challenging them to a boxing

match. Plaintiff already has an advantage with considerably more resources, yet now they also want the Defendant to have nothing with which to fight back.

Respectfully submitted,



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Loans LLC; Sure Lock Financial, LLC;
Global West Funding, Ltd., Co.; and
Global West Financial LLC

CERTIFICATE OF SERVICE

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