

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FEB - 2 2010

PATRICIA PRESLEY, COURT CLERK

by _____
DEPUTY

OKLAHOMA DEPARTMENT OF)
SECURITIES, *ex rel.* Irving L. Faught,)
Administrator,)

Plaintiff,)

vs.)

GLOBAL WEST FUNDING, LTD., CO.,)
an Oklahoma limited liability company, et al.,)

Defendants.)

Case No. CJ-2009-2773

OBJECTION TO MOTION FOR RELEASE
OF FUNDS FILED BY JEFF BURKE

Plaintiff, the Oklahoma Department of Securities, requests that this Court deny the *Motion For Court Authorized Release of Funds* filed by non-party Jeff Burke.

Background

1. On March 24, 2009, a *Petition for Permanent Injunction and Other Equitable Relief* (Petition) was filed against Defendants Joe Don Johnson (Johnson) and James Farnham (Farnham) and against Heritage Estate Service LLC (Heritage) as a Relief Defendant.

2. On March 24, 2009, a *Temporary Restraining Order, Order Freezing Assets and Order for Accounting* (Order) was issued by this Court against the Defendants Johnson and Farnham.

3. On April 10, 2009, Plaintiff filed the *First Amendment to Petition for Permanent Injunction and Other Equitable Relief* and named Heritage as a Defendant

after determining that Heritage offered and/or sold securities through, *inter alia*, Johnson and Farnham.

4. On April 23, 2009, an *Order Modifying, In Part, the Temporary Restraining Order, Order Freezing Assets and Order for Accounting and Appointing Special Master* (Modification Order) was issued by the Court appointing a Special Master over the assets of Heritage. The Modification Order gave the Special Master the authority “to receive and collect any and all sums of money due or owing to Heritage whether the same are due or shall hereinafter become due and payable[.]”

5. On November 3, 2009, a *Permanent Injunction Against Defendants Heritage Estate Service LLC and Joe Don Johnson* (collectively, “Heritage Defendants”) was entered.

6. The Permanent Injunction provides in relevant part:

IT IS FURTHER ORDERED that the Heritage Defendants pay restitution to all investors who purchased securities in the nature of notes (Investment Notes) from the Heritage Defendants or who transferred money to the Heritage Defendants for the purpose of purchasing the Investment Notes or otherwise making investments on their behalf, and that the amount and allocation of restitution to such investors shall be determined by this Court at the conclusion of this case as to all Defendants.

IT IS FURTHER ORDERED that Defendant Heritage Estate shall remain subject to all provisions of the Court’s March 24, 2009 *Temporary Restraining Order, Order Freezing Assets and Order for Accounting*, and April 23, 2009, *Order Modifying, in Part, Temporary Restraining Order, Order Freezing Assets and Order for Accounting and Appointing Special Master*[.]

7. At all times relevant hereto, Jeff Burke (Burke) was the registered agent with the Oklahoma Secretary of State for Heritage. See Exhibit A. Further, Defendant

Brian McKye was a signor on the Articles of Organization of an Oklahoma Limited Liability Company for Heritage. *See* Exhibit B.

8. On January 6, 2009, Burke entered into a Contract and Agreement with the Oklahoma Department of Corrections. *See* Exhibit C.

9. On January 10, 2009, Burke presented the Department of Corrections with a signed affidavit, notarized by Johnson, stating that he was an agent of Heritage. *See* Exhibit D.

10. On January 10, 2009, Burke signed a Vendor/Payee Form that was then submitted to the State of Oklahoma Office of State Finance (OSF). The form named Heritage as the Vendor/Payee. Burke signed the form, under penalty of perjury, as President of Heritage. *See* Exhibit E.

11. A Purchase Order was issued on February 24, 2009, between the Oklahoma Department of Corrections and Heritage. *See* Exhibit F.

12. On July 28, 2009, Burke received a State of Oklahoma check dated July 24, 2009 and payable to Heritage in the amount of \$34,065.00. *See* Exhibit G. This check was endorsed by "Rod Burke." *See* Exhibit H.

13. The Special Master notified Plaintiff that the Department of Central Services Construction and Properties Division sent paperwork to the Heritage address dated November 19, 2009. The Plaintiff notified OSF of the Order and Modification Order. OSF confirmed that one additional payment was to be made to Heritage.

14. On January 13, 2010, OSF mailed the additional payment of \$7,150.00, payable to Heritage, to the Special Master.

15. On January 20, 2010, Burke filed his *Motion For Court Authorized Release of Funds* (Motion), seeking to receive the \$7,150.00 in Heritage funds.

Argument

Through the appointment of the Special Master, the Court took possession of all Heritage assets. *Farrimond v. State ex rel. Fisher*, 2000 OK 52, ¶14, 8 P.3d 872, 875.

The Special Master, as a representative of the Court, has the right to receivership property and funds – a right derived from the company being placed into receivership. *Id* at ¶15.

The payments by the State of Oklahoma of \$34,065.00 and \$7,150.00 were payable to Heritage as the vendor/payee in connection with the Department of Corrections contract. Heritage had the right and title to such funds. Based on *Farrimond*, the special Master now has the right and title to such funds.

Contrary to his arguments, Burke has no right to the funds in question. Burke represented himself to state purchasing officials as the President of Heritage and an agent of Heritage for purposes of the Department of Corrections contract. The funds in question are assets of Heritage and are therefore subject to the Court's Order and Modification Order.

Further, Burke is not a party to this action and has no standing to assert the Motion.

Conclusion

Plaintiff requests this Court deny Burke's *Motion for Court Authorized Release of Funds*. Plaintiff also requests that Burke refund the \$34,065.00 of Heritage funds that are subject to the Court-ordered receivership.

Respectfully submitted,



Patricia A. Labarthe, OBA #10391

Jennifer Shaw, OBA #20839

Oklahoma Department of Securities

120 North Robinson, Suite 860

Oklahoma City, Oklahoma 73102

(405) 280-7700

CERTIFICATE OF MAILING

The undersigned certifies that on the 2nd day of February, 2010, a true and correct copy of the foregoing was mailed by first class mail, with postage prepaid thereon, addressed to:

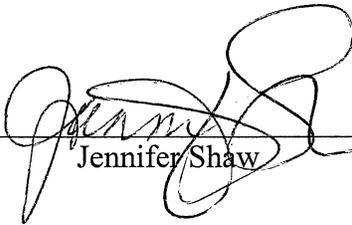
Stephen J. Moriarty
Fellers, Snider, Blankenship, Bailey and Tippens, PC
100 N. Broadway, Ste. 1700
Oklahoma City, OK 73102

Jeff Burke
2512 Covell Ln.
Edmond, OK 73034
Pro Se

Brian McKye
PO Box 957
Jay, OK 74346
Pro Se

Michael McBride
204 North Robinson, Suite 2600
Oklahoma City, OK 73102

James Farnham
6308 N. Harvard Avenue
Oklahoma City, OK 73122



Jennifer Shaw