

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, )

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 )

APR 21 2009

PATRICIA PRESLEY, COURT CLERK

by \_\_\_\_\_  
DEPUTY

Case No. CJ-2009-2773

**PLAINTIFF'S OBJECTION TO PAYMENT OF  
COMPENSATION TO ATTORNEYS FOR DEFENDANTS**

Plaintiff, the Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator (Plaintiff), respectfully objects to the "Motion of Dunn, Swan & Cunningham, P.C. for Attorney's Fees" and the "Application for Attorney Fees" filed by Richard L. Rose (collectively, the "Motions") for the following reasons:

1. On March 24, 2009, Plaintiff filed a Petition for *Permanent Injunction and Other Equitable Relief* (Petition) and an *Application for a Temporary Restraining Order, Order Freezing Assets, and Order for Accounting*, pursuant to Section 1-603 of the Oklahoma Uniform Securities Act of 2004 (Act), Okla. Stat. tit. 71, §§ 1-102 through 1-701 (Supp. 2003). This Court issued a *Temporary Restraining Order, Order Freezing Assets and Order for Accounting* against Defendants (Temporary Order) on the same day.

2. On March 26, 2009, Defendants Brian McKye, Global West Funding, Ltd., Co., Global West Financial LLC, Sure Lock Financial, LLC, Sure Lock Loans LLC, and The Wave-Goldmade, Ltd (collectively, "Relevant Defendants") paid the firm of Dunn, Swan & Cunningham, P.C. the sum of \$2,000 in violation of the Temporary Order.

3. On April 1, 2009, an *Agreed Order Appointing Special Master* was entered by this Court. This order applied to Relevant Defendants. In addition, an *Order Modifying in Part, Temporary Restraining Order, Order Freezing Assets, and Order for Accounting* was entered by the Court relating to the same defendants.

4. The Special Master appointed by the Court has found approximately \$92,000 in liquid assets for the Relevant Defendants. The Special Master used a portion of these funds for payroll and there is now a balance of approximately \$60,000 in the bank accounts. Approximately \$6,000,000 in investor funds have been deposited with the Relevant Defendants.

5. Investor funds placed into the Relevant Defendants' bank accounts were transferred among other accounts.

6. On April 6, 2009, Dunn, Swann & Cunningham, P.C. filed a motion for attorney fees seeking \$13,047.50 for representation of the Relevant Defendants.

7. On April 8, 2009, Richard L. Rose filed a motion for attorney fees seeking \$8,595.00 for his representation of the Relevant Defendants.

### **ATTORNEY FEES**

In the Motions, counsel for Relevant Defendants claim a total of \$22,002.50 in outstanding invoices for services rendered since March 24, 2009. Relevant Defendants have engaged both Richard L. Rose and the firm of Dunn, Swann & Cunningham, P.C. to represent them in this case.

The funds that the Special Master has been able to identify are dramatically less than the amount invested. The funds should not be released for the payment of attorney fees since any potential disgorgement order would vastly exceed the assets frozen by the Court. *SEC v. Current Financial Services*, 62 F. Supp.2d 66, 68 (D.D.C. 1999). Further, the payment of attorney fees at this time would be a payment made out of investor funds. “A defendant is not entitled to foot his legal bill with funds that are tainted by [his] fraud.” *SEC v. Coates*, 1994 WL 455558, \*3 (SDNY 1994). To allow the Relevant Defendants to use the remaining investor funds for attorney fees will essentially help them retain a portion of the benefit of their securities violations. “[A] swindler in securities markets cannot use the victims’ assets to hire counsel who will help him retain the gleanings of crime.” *SEC v. Quinn*, 997 F.2d 287 (7<sup>th</sup> Cir. 1993)

In *SEC v. Capital Counselors, Inc.*, 512 F. 2d 654 (2<sup>nd</sup> Cir., 1975), an application for the allowance of a claim against a securities receivership estate for legal services was filed. The Court stated “... the award of attorneys’ fees in a case such as this is entrusted to the sound discretion of the district judge.” *Id.* at 658. If this Court does allow for payment of attorney fees, the amount allowed should be reasonable. Contrary to

assertions made by the Relevant Defendants, there is no evidence that the attorney's fees incurred helped to preserve the assets of the Relevant Defendants. Plaintiff asserts that the legal representation that is subject to the Motions was for the sole benefit of the Relevant Defendants.

The liquid assets of the Relevant Defendants currently are approximately 1% of the funds invested. To allow a payment of \$22,002.50 for Relevant Defendants' legal representation would be an egregious expenditure. The Temporary Order was entered to help preserve the assets of Relevant Defendants. Payment of the attorney fees would have a negative impact of the preservation of the assets.

#### CONCLUSION

In light of the facts presented and the authorities cited, Plaintiff respectfully requests that this Court deny the Motions for the reasons stated. In addition, Plaintiff respectfully request that this Court order Relevant Defendants to return the \$2,000 that was paid to the firm of Dunn, Swan & Cunningham, P.C.

Respectfully submitted,



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**CERTIFICATE OF MAILING**

The undersigned certifies that on the 21<sup>st</sup> day of April, 2009, a true and correct copy of the foregoing was mailed by first class mail, with postage prepaid thereon, addressed to:

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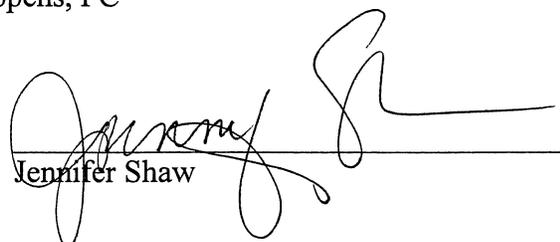
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