

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

AUG 10 2009

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

**RESPONSE TO DEFENDANT MCKYE’S OBJECTION AND MOTION
TO QUASH SUBPOENA DUCES TECUM, OR IN THE ALTERNATIVE,
MOTION TO STAY ORDER AND NOTICE OF HEARING**

Plaintiff, the Oklahoma Department of Securities, requests that this Court deny Defendant Brian McKye’s (Defendant) *Objection and Motion to Quash Subpoena Duces Tecum, or in the Alternative, Motion to Stay Order and Notice of Hearing.*

Background

1. On May 15, 2009, Defendant held a dinner meeting of his investors at the Hometown Buffet. The investors were notified of the meeting in a letter stating:

Your funds are at stake and I want you to get fully informed of ALL options available to you and your family. Please do not hesitate to bring others closely related to your familys’ [sic] concerns to be in attendance with you, if you so desire. We won’t ask for “powers of attorney” but we want you to bring whomever you desire, your informed opinion, as one of our Lenders, is our highest concern.

Defendant had been fired as an employee of Global West Funding and Sure Lock Loans prior to mailing the letter; however, he still signed the letter as “President Global West / Sure Lock Loans.” See letter attached as Exhibit A.

2. In an interview for a May 22, 2009 *Journal Record* article, Defendant “acknowledged meeting with some investors at a Hometown Buffet restaurant Friday evening to encourage them to bid on the assets themselves.” In addition, Defendant stated: “investors were also told that if they lacked funds to bid, his father, Marshall McKye, would lend it to them.” See article attached as Exhibit B.

3. Plaintiff issued a civil subpoena on May 19, 2009, requiring Defendant to produce the following:

All documents, records, and materials relating to the meeting at the Hometown Buffet on May 15, 2009, including, but not limited to, the video taped record of the meeting.

The Subpoena was issued pursuant to 12 O.S. § 2004.1 and § 3226 and the compliance date was May 28, 2009.

4. Defendant filed *Defendants [sic] Answer and Objection to Plaintiffs' [sic] Subpoena to Produce Documents and Motion for Court Approved Access to Documents* on May 28, 2009.

5. Plaintiff responded by filing a *Motion to Compel Response to Plaintiff's Subpoena* on June 5, 2009.

6. The matter came before the Court on July 13, 2009. At this hearing, Defendant made the following representations to the Court regarding the videotaped record:

- a. “I don’t know if there’s a videotape.”
- b. “I do know I was being videotaped, but I haven’t seen this videotape.”

7. In sworn testimony during the July 13th hearing before this Court, Defendant responded to questions from the Court as follows:

Defendant: . . . I actually have no problem with the videotape. You know, I didn't say anything that I would be ashamed of in the videotaping.

Court: So you're not objecting to producing the videotape, you just don't personally have a copy of it?

Defendant: I don't personally have access to the documents or those.

Court: Do you know anyone besides Mr. Cox that might have a copy of the video?

Defendant: No, I don't. But as I reiterate, I don't object to giving a copy of it.

8. After the hearing on this issue, the Court entered an *Order Granting Motion to Compel Response to Plaintiff's Subpoena* (Order to Compel) on July 14, 2009. This Order to Compel required that Defendant, no later than July 23, 2009:

- a. produce all records requested by the May 19, 2009 subpoena;
- b. assist the Plaintiff in locating all documents, records, and materials relating to the meeting at the Hometown Buffet on May 15, 2009; and
- c. assist the Plaintiff in locating Chris Cox, the individual who videotaped the May 15, 2009 meeting.

9. On July 23, 2009, Defendant provided the Department with eight pages of documents relating to a new business venture but did not provide the videotape or materials relating to the meeting or any information regarding Chris Cox.

10. On July 23, 2009, Defendant also filed the *Objection and Motion to Quash Subpoena Duces Tecum, or in the Alternative, Motion to Stay Order and Notice of Hearing* (Objection and Motion).

11. Contrary to his July 13th testimony, Defendant admits, in footnote 1 of the Objection and Motion, to being in possession of the videotape but refuses to comply with this Court's order claiming, that since the contempt proceeding is criminal in nature, the information

sought by Plaintiff is privileged material protected by Defendant's state and federal constitutional rights against self-incrimination.

Argument

Plaintiff argues that the assertion of the self-incrimination privilege should not be allowed with respect to this Court's Order to Compel. The Court issued its Order to Compel after a hearing. At no time during the hearing did Defendant attempt to assert his privilege against self-incrimination. In fact, Defendant clearly stated that he is not ashamed of anything said during the meeting and that he has no objection to turning the videotape over to Plaintiff.

Nevertheless, Defendant waived his privilege against self-incrimination by publicly discussing the following facts before the Court and in the media: (1) that he voluntarily hosted a meeting at the Hometown Buffet to which he personally invited investors; (2) that the purpose of the meeting was to encourage investors to bid on the loan portfolio offered for sale by the Special Master; (3) that his father would provide funding to any investor desiring to make such a bid; (4) that a videotape of the meeting exists; and (5) that the videotape was made by Chris Cox. Before allowing Defendant's claim of fifth amendment privilege to prevail, these previous disclosures must be considered by the Court. *Rey v. Means*, 1978 OK 4, 575 P.2d 116, 121(1978).

In *Rogers v. United States*, 340 U.S. 367 (1951), a witness before a grand jury testified she had been in possession of records relating to the Communist Party of Denver but had delivered them to another person. After voluntarily describing her membership, activities and office in the party, the witness attempted to assert her fifth amendment privilege to protect the identity of the person to whom she gave the records. The Court stated: "[d]isclosure of a fact waives the privilege as to details." *Id.* at 373. By disclosing that a meeting of investors was held,

the existence of the videotape, and the name of the individual who made the recording, Defendant waives any privilege against self-incrimination he might have had. Defendant should be required to provide a copy of the videotape and the information about Chris Cox to Plaintiff pursuant to the Order to Compel.

WHEREFORE, Plaintiff, requests this Court deny Defendant's *Objection and Motion to Quash Subpoena Duces Tecum*, or in the Alternative, *Motion to Stay Order and Notice of Hearing* and uphold its July 14, 2009 Order to Compel.

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 10th day of August, 2009, a true and correct copy of the foregoing was mailed by first class mail, with postage prepaid thereon, addressed to:

Collin Robert Walke
Assistant Public Defender
611 County Office Building
320 Robert S. Kerr
Oklahoma City, OK 73102

Brian McKye
PO Box 957
Jay, OK 74346

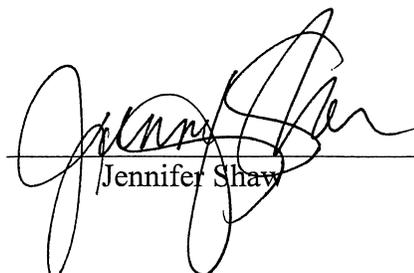
Global West Funding, Ltd.
Global West Financial, LLC
Sure Lock Financial, LLC
Sure Lock Loans, LLC
The Wave Gold-Made, Ltd.
PO Box 60725
Oklahoma City, OK 73146

R. Scott Adams
Adams & Associates, PC
204 N. Robinson, 25th Fl.
Oklahoma City, OK 73102

Robert G. McCampbell
Kristin L. Huffaker
Crowe & Dunlevy
20 N. Broadway, Suite 1800
Oklahoma City, OK 73102-8273

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

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


Jennifer Shaw

Global West Financial LLC.

May 8, 2009

Dear Valued Client,

I'm sending you this letter to invite you and/or whomever you want to attend this event on your behalf on the date of May 15th 2009 at 6:00pm hour; we would greatly appreciate your attendance.

Meeting place: HomeTown Buffet
3900 NW 63rd St. OKC

Your funds are at stake and I want you to get fully informed of ALL options available to you and your family. Please do not hesitate to bring others closely related to your familys' concerns to be in attendance with you, if you so desire. We won't ask for "powers of attorney" but we want you to bring whomever you desire, your informed opinion, as one of our Lenders, is our highest concern.

There are 82 of our Lenders such as yourself to whom we are sending out this invitation.

If you are able to attend and plan to please dial the number below to reach one of our reservation specialists to book your attendance either online or by telephone at 405-708-1636. Mon-Fri 9-6.
or online at www.globalwestfunding.com. Then go to CONTACT US. We'll usually respond within 4 to 6 hours.

Your attention is greatly appreciated since this is a matter of timely urgency.
We'll see you at the Gathering.

Thanks again



Brian McKye
President Global West / Sure Lock Loans

Member of the National **MortgageCue.com** Network

(866) 305-9090, ext #128, fax (405)524-8087 2200 N. Classen Blvd. Suite 2000 (20th Floor) Oklahoma City, Oklahoma 73106

EXHIBIT

tabbles

A

THE JOURNAL RECORD

Law

Judge OKs asset sale in McKye Ponzi case

May 22, 2009

OKLAHOMA CITY – Investors filled most of the seats in an Oklahoma County courtroom Thursday, awaiting District Judge Noma Gurich’s decision on whether the assets of companies owned by Brian McKye will be put up for sale.

Some shook hands with McKye, one woman tearfully asking what would happen to funds she had set aside for her children. Others stoically watched the proceedings aimed at what state attorneys and a special master say was a classic Ponzi scheme through which participants may lose most of the \$6 million they invested in one or more of McKye’s loan-related businesses.

Securities regulators say that McKye paid early investors out of funds contributed by later investors.

After the hearing, McKye acknowledged meeting with some investors at a Hometown Buffet restaurant Friday evening to encourage them to bid on the assets themselves.

“If the real purpose is for them to be remunerated,” he said, “they should just give the check right back.”

McKye said investors were also told that if they lacked funds to bid, his father, Marshall McKye, would lend it to them.

McKye also said he has been denied due process.

Special Master Stephen Moriarty filed motions April 30 setting in motion a proposal to establish bidding procedures for the sale of certain assets of Sure Lock Loans and Heritage Estate Service.

Gurich approved the motion at the close of the hearing. An auction is scheduled for July 10, with a sale hearing set for July 14.

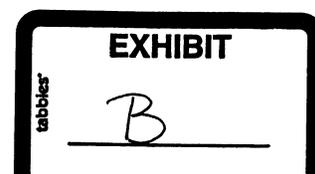
Moriarty said the major assets consist of the loan portfolios of Sure Lock Loans and accounts purchased from Heritage.

Moriarty told Gurich that to date, he has identified 82 investors and 112 separate contracts totaling about \$6 million invested with McKye.

He said McKye promised investors returns of between 8 percent and 20 percent, plus repayment of their principal within five years through a program under which their money would fund loans.

Moriarty said that under a best-case scenario the loan portfolios may be worth \$1 million, far short of the \$6 million people have invested.

“These companies are hemorrhaging money,” the special master said. “They are unable to pay bills as they become due.”



He said that in September and October of last year, about 90 percent of the companies' cash came from investors, less than 10 percent from actual operations. Moriarty said the loan portfolios decrease in value every day.

"There is an immediate need to sell these assets," he said. "The quicker we sell these assets, the more we'll realize."

Moriarty said the companies have about \$45,000 in the bank, and almost that much owing in delinquent or currently due bills.

Moriarty said the businesses collected about \$35,000 in April, about \$25,000 thus far in May, but require about \$50,000 a month to function.

He said that without sufficient funds coming in, the businesses cannot make loans.

"I live in the real world," Moriarty said. "I can't wave a magic wand over this and make it any better."

Attorney Clell Cunningham said that if the assets are sold now, the businesses cannot continue.

"This is in essence a fire sale," he said.

He urged the court to allow McKye to continue operating the companies, without check-writing authority and with a restraining order still in place regarding new investors. He also asked Gurich to put off action on Moriarty's motion for at least 30 days.

Cunningham contended that actions by regulators freezing assets were putting the companies in a worse position by preventing payments from going out and prompting some investors to stop making payments.

He also criticized Moriarty for removing McKye from the businesses. He said the special master's refusal to let Sure Lock Loans generate business also led to a drop in income.

Moriarty said he fired McKye for removing \$23,000 in cash from the businesses after the asset freeze. Cunningham offered a filing he said explained McKye's actions, which Moriarty said included \$13,000 in credit card payments that violated a court order.

A hearing is scheduled for June 12 on Moriarty's motion to sell property that includes an airplane, vehicles, Web sites, real estate and certain equipment.

Gurich also accepted motions by Cunningham and Richard Rose to withdraw as attorneys in the case.

After the hearing, McKye said he has been denied due process.

"They haven't proved that I've done anything," he said. "I didn't think they would seize and sell my assets without being charged with anything."

Copyright © 2009 The Journal Record All Rights Reserved
101 N. Robinson Ave., Ste. 101, Oklahoma City, OK, 73102 |
P.O. Box 26370, Oklahoma City, OK, 73126-0370 | (405) 235-3100
415 S. Boston Ave., Ste. 101, Tulsa, OK 74103 | (918) 295-0098