

IN THE DISTRICT COURT OF OKLAHOMA COUNTY SEP 9 2009
STATE OF OKLAHOMA

PATRICIA PRESLEY, COURT CLERK
by _____
DEPUTY

Oklahoma Department of Securities)
ex rel. Irving L. Faught,)
Administrator,)
)
Plaintiff,)
)
v.)
)
Mark S. Trimble, and)
Phidippides Capital Management LLC,)
)
Defendants.)

Case No. CJ-2009 - 8474

PETITION FOR PERMANENT INJUNCTION

Plaintiff, Oklahoma Department of Securities *ex rel.* Irving L. Faught, for its claims against the above-named Defendants, alleges and states as follows:

OVERVIEW

1. This enforcement action involves violations of the Oklahoma Uniform Securities Act of 2004 ("Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2004), by Defendants. Specifically, Defendants offered and sold unregistered securities in and/or from Oklahoma, in violation of Section 1-301 of the Act; transacted business in and/or from Oklahoma as an unregistered issuer agent and/or employed an unregistered agent, in violation of Section 1-402 of the Act; and made untrue statements of material fact, omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and perpetrated a fraud, in connection with the offer and sale of securities in and/or from Oklahoma, in violation of Section 1-501 of the Act.

JURISDICTION AND VENUE

2. Pursuant to Sections 1-102 and 1-610 of the Act, Defendants, in connection with their activities in the offer and/or sale of securities in and/or from this state, are subject to the provisions of the Act.

3. Plaintiff brings this action pursuant to Section 1-603 of the Act. Plaintiff is the proper party to bring this action against Defendants.

4. By virtue of Defendants' activities in this state, as described herein, Defendants are subject to the jurisdiction of this Court and to service of summons within or outside of this state.

5. Venue is proper in this county.

THE PARTIES

6. Plaintiff, the Oklahoma Department of Securities ("Department"), is an agency of the state of Oklahoma that is charged with responsibility for administering and enforcing the provisions of the Act. The Department brings this action by and through its Administrator, Irving L. Faught.

7. Defendant Mark S. Trimble ("Trimble") is an individual residing in Edmond, Oklahoma. At all times material hereto, Trimble was the managing member and President of Phidippides Capital Management, LLC ("PCM"). Trimble controlled PCM. Defendant Trimble is not registered in any capacity under the Act and has not been at anytime material hereto.

8. Defendant PCM was an Oklahoma limited liability company until its legal status was terminated on or about May 12, 2008. At all times material hereto, Defendant PCM maintained offices in Edmond and/or Oklahoma City, Oklahoma. Defendant PCM was also the

general partner of the Phidippides Fund LP, a Delaware limited partnership. PCM is not registered in any capacity under the Act and has not been at anytime material hereto.

FACTUAL ALLEGATIONS

9. Beginning in at least 2005 and continuing until approximately February 2009 (“Relevant Time”), Defendants operated an investment pool in which multiple investors (“Investors”) invested funds with the expectation of profits to be derived primarily from the efforts of Defendants (“Pool”). The Investors’ funds were commingled and invested by the Defendants. The Pool invested primarily in stocks until it began investing primarily in futures during or around the summer of 2008.

10. Defendants solicited and accepted funds from Investors residing in Oklahoma and other states.

11. During the Relevant Time, the Pool operated under various names including, but not limited to, PCM, Phidippides Capital LP, and Phidippides Fund LP. Beginning in or around the summer of 2008, Defendants offered and/or sold limited partnership interests in the Phidippides Fund LP (“Phidippides Fund Interests”) to Investors. Defendants’ intention appears to have been to convert the Pool interests into the Phidippides Fund Interests.

12. During the Relevant Time, the Pool effected its trading through accounts at multiple securities broker-dealers and at MF Global, a Future Commissions Merchant. The accounts were held in the name of Trimble, PCM, Phidippides Capital LP, and/or Phidippides Fund LP.

13. By providing altered MF Global account statements to a third-party that generated account statements for the Pool, Defendants caused misleading account statements, reflecting false profits, to be generated and provided to Investors, beginning in at least October 2007, and

continuing until approximately February 2009. Defendants paid themselves fees based upon the false profits.

14. Defendants did not inform the Investors that the account statements provided to them were false. In reliance on the false account statements, Investors invested additional funds in the Pool.

15. Trimble admitted his dishonesty on or about January 19, 2009, in an email addressed, "To Family, Friends, and Clients." Trimble stated, "I could not look myself in the mirror and face all of you and notify you that in the last quarter of 2008 we lost all the profits for the year and then some."

16. On February 9, 2009, the United States Commodity Futures Trading Commission initiated a civil lawsuit against Defendants Trimble and PCM in the United States District Court for the Western District of Oklahoma (Case 5:09-cv-00154-D) seeking injunctive and other equitable relief for violations of the Commodity Exchange Act, 7 U.S.C. §§ 1 *et seq.* (2006), and regulations promulgated thereunder. In the federal matter, a restraining order was entered against Defendants Trimble and PCM on February 10, 2009; a preliminary injunction was entered against Defendants Trimble and PCM on March 6, 2009; and a receiver was appointed on April 21, 2009. On July 24, 2009, the receiver was authorized to make an initial distribution in the amount of \$13,070,750.25 to Investors.

FIRST CLAIM

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

17. The allegations set forth in paragraphs 1 through 16 are re-alleged and incorporated herein by reference.

18. The Pool interests and the Phidippides Fund Interests are securities as defined by

Section 1-102 of the Act.

19. Defendants offered and sold securities in and/or from Oklahoma.

20. The securities offered and sold by Defendants are not and have not been registered under the Act and are not exempt from registration under Sections 1-201 through 1-203 of the Act.

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

SECOND CLAIM

Violation of Section 1-402 of the Act: Failure to Register as an Agent and Employing Unregistered Agents

22. The allegations set forth in the preceding claim are re-alleged and incorporated herein by reference.

23. Defendant PCM is an issuer, as defined in Section 1-102 of the Act, that engaged in offering and/or selling securities in and/or from Oklahoma.

24. By virtue of his efforts and activities in transacting business in and/or from Oklahoma, Defendant Trimble is an agent, as defined in Section 1-102 of the Act, of PCM.

25. Defendant Trimble was not registered in any capacity under the Act at any time material hereto.

26. Defendant Trimble transacted business in and/or from Oklahoma as an agent without benefit of registration under the Act.

27. Defendant PCM employed or associated with an unregistered agent who transacted business in and/or from Oklahoma on its behalf.

28. By reason of the foregoing, PCM and Trimble have violated, and unless enjoined may continue to violate, Section 1-402 of the Act.

THIRD CLAIM

**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**

29. The allegations set forth in the preceding claim are re-alleged and incorporated herein by reference.

30. In connection with the offer and sale of securities, Defendants, directly and/or indirectly, made untrue statements of material fact including, but not limited to, the existence of profits as reported to Investors on account statements.

31. In connection with the offer and sale of securities, Defendants, directly and/or indirectly, omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading including, but not limited to, that Defendants were providing false account statements to Investors and the Pool was experiencing significant trading losses.

32. By reason of the foregoing, Defendants violated, and unless enjoined may continue to violate, Section 1-501 of the Act.

FOURTH CLAIM

**Violation of Section 1-501 of the Act:
Employing a Device, Scheme, or Artifice to Defraud**

33. The allegations set forth in the preceding claim are re-alleged and incorporated herein by reference.

34. Defendants, in connection with the offer and sale of securities, directly and/or indirectly, employed a device, scheme, or artifice to defraud investors through the use of the untrue statements of material fact and the omissions of material fact described above.

35. By reason of the foregoing, Defendants violated, and unless enjoined may

continue to violate, Section 1-501 of the Act.

FIFTH CLAIM

Violation of Section 1-501 of the Act: Engaging in any Act, Practice, or Course of Business Which Operates or Would Operate as a Fraud or Deceit upon any Person

36. The allegations set forth in the preceding claim are re-alleged and incorporated herein by reference.

37. Defendants, in connection with the offer and/or sale of securities, and through the use of the untrue statements of material fact and the omissions of material fact described above, have engaged in an act, practice, or course of business that has operated as a fraud or deceit upon investors.

38. By reason of the foregoing, Defendants violated, and unless enjoined may continue to violate, Section 1-501 of the Act.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing, and pursuant to the authority specifically granted by Section 1-603 of the Act, Plaintiff prays for the following relief:

1. A permanent injunction enjoining Defendants from transacting business in and/or from the state of Oklahoma as an issuer, issuer agent, broker-dealer, broker-dealer agent, investment adviser, and/or investment adviser representative or otherwise offering and/or selling securities in and/or from the state of Oklahoma.

2. Such other relief as the Court may deem necessary, just and proper in connection with the enforcement of the Act.

Respectfully submitted,

OKLAHOMA DEPARTMENT OF SECURITIES
Irving L. Faught, Administrator

By: *Terra Shamas Bonnell*
Terra Shamas Bonnell, OBA # 20838
Patricia A. Labarthe, OBA # 10391
Oklahoma Department of Securities
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Facsimile: (405) 280-7742

STATE OF OKLAHOMA)
) SS.
COUNTY OF OKLAHOMA)

Irving L. Faught, of lawful age, being first duly sworn deposes and states: that he is the Administrator of the Oklahoma Department of Securities, that he has read the foregoing *Petition for Permanent Injunction* and knows the contents thereof, and that the matters and things stated therein have been provided to him by staff members of the Department under his authority and direction, and are true and correct to the best of his knowledge, information, and belief.

(SEAL)

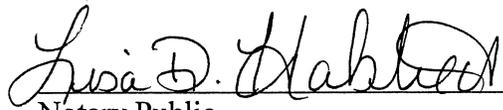


IRVING L. FAUGHT, ADMINISTRATOR OF THE
OKLAHOMA DEPARTMENT OF SECURITIES
120 North Robinson Avenue, Suite 860
Oklahoma City, Oklahoma 73102
(405) 280-7700

Subscribed and sworn to before me this 09 day of September, 2009.

(SEAL)


LISA D. HALSTIED
Notary Public
State of Oklahoma
Commission # 06002294 Expires 03/01/10



Notary Public