

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

Oklahoma Department of Securities)
ex rel. Irving L. Faught,)
Administrator,)
)
Plaintiff,)
)
v.)
)
2001 Trinity Fund, L.L.C. and)
Robert Arrowood,)
)
Defendants.)

SEP 27 2013
TIM RHODES
COURT CLERK
33

Case No. CJ-2012-6164
Judge Roger Stuart

**PLAINTIFF’S RESPONSE TO
DEFENDANT’S MOTION FOR
PROTECTIVE ORDER**

Plaintiff, Oklahoma Department of Securities *ex rel.* Irving L. Faught, (the “Department”), respectfully submits the following response to Defendant Robert Arrowood’s motion for protective order (“Motion”) and asks that the Court deny the Motion.

**Defendant’s Factual Background is
Inaccurate and Misleading**

Arrowood, in the Motion, provides the Court with inaccurate and unsubstantiated assertions that would mislead the Court. Arrowood attributes statements made by others to the Department, incorrectly states that the Department has “issued” stories concerning Arrowood, and complains that a media broadcast was aired before the petition filed in this matter was served upon Arrowood. Not a single argument contained in the Motion is supported by facts to justify the requested relief.

Arrowood complains about two media stories. The first report was published by a local television station shortly after the petition was filed in this matter. KWTW (News 9), *State Uncovers Apparent Ponzi-Scheme*, <http://www.news9.com/story/19711491/state-uncovers-apparent-ponzi-scheme-with-dozens-of-oklahoma-victims>, (October 02, 2012). The other report was published by a newspaper approximately nine months later. *See*, Exhibit 1.

Regarding the first report broadcast by the television station, all of the assertions complained of in the Motion were made by the news organization *not* the Department. For example, Arrowood complains of comparisons drawn between him and Bernard Madoff. Arrowood attempts to attribute the assertions of the television station to the Department. A review of the broadcast reflects that the complained of assertions were those of the news organization *not* the Department.

Furthermore, the assertion in the Motion, that the Department claimed Arrowood used investor money to support a “lavish lifestyle”, is false. Nowhere in the televised report does the Administrator or any other representative of the Department make that statement. Those are characterizations of the television station and those words were not used in the petition.

Arrowood next complains that the television station ran the report prior to him receiving service of process. The Department has no control over when a member of the media reports a story. Importantly, Arrowood fails to inform the Court that upon filing the petition the Department did not issue a press release. Although the Department has in the past issued press releases concerning the filing of enforcement cases no such press release was issued in this matter. The petition is a public record available and often

reviewed by members of the media who then decide whether to publish or televise a story concerning the matter based on the matters raised in the court documents.

Arrowood then complains about a newspaper article published nine months after the filing of the petition in this matter. Again, Arrowood attributes statements made by others to the Department in an attempt to convince the Court of the need for a protective order. The material quoted in the Motion from the newspaper article is actually a quote from an attorney in Tulsa, who is unaffiliated with the Department, discussing an oil and gas case from the 1970's. The second statement complained of is content prepared by the reporter *not* the Department .

Arrowood also attempts to convince the Court that the newspaper article is directed at him personally. The newspaper article cited by Arrowood concerns the risks and hazards of oil and gas related investing. The majority of the article prepared by the newspaper discussed matters other than Arrowood. The article includes information from the U.S. Securities and Exchange Commission as well as information on other pending Department cases having nothing to do with Arrowood and quotes a Tulsa attorney regarding an oil and gas case from the 1970's. *See*, Exhibit 1.

Arrowood then asserts, without evidence, that: "There can thus be no serious question that the article was effectively sponsored by Plaintiff ODS." Arrowood cites as support only assertions made by the media, not the Department. Statements made or conclusions reached by others is certainly no grounds for the issuance of a protective order against the Department.

The Department did not initiate either the television broadcast or the newspaper article. The Department has no control over media publications. As mentioned, the

Department did not even issue a press release concerning the filing of the petition in this matter.

Arrowood then proceeds to inaccurately complain about “disparaging” stories “issued” by the Department. The Motion does not cite to anything “issued” by the Department and offers no evidence that the Department is responsible for any media coverage whatsoever. The Department has “issued” nothing. Arrowood’s argument that the Department had anything to do with the news coverage is speculative.

Arrowood also asserts that the Department has not prosecuted this matter. The Motion fails to inform the Court that prior to filing the petition the Department engaged in a lengthy investigation of this matter including analysis of bank records, interviews of witnesses and review of bankruptcy filings and proceedings. Furthermore, the matter is set for pre-trial in February of 2014.

Case Law Does Not Support the Imposition of a Protective Order

Although the Oklahoma Constitution and the United States Constitution guarantee freedom of speech, the right to free speech is not absolute. *Collier v. Reese*, 2009 OK 86, ¶18, 223 P.3d 966. Speech may be restricted in judicial proceedings where the circumstances warrant. *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1072, 111 S.Ct. 2720 (1991). In determining whether the circumstances warrant a prior restraint on free speech, this Court must balance the right to free speech with the right to a fair trial or impartial jury. *Collier* at ¶18-19.

A person seeking a prior restraint on speech carries a “heavy burden of showing justification for the imposition of such a restraint.” *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419, 91 S.Ct. 1575 (1971). See also *Collier* at ¶22 (speculation of harm is insufficient). The standard for determining whether prior restraint on speech is appropriate is whether the speech to be restrained would cause a “substantial likelihood of material prejudice” to a fair trial. *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1075, 111 S.Ct. 2720 (1991). See also *Collier* at ¶22. A fair trial may be prejudiced by “comments that are likely to influence the outcome of the trial” and “comments that are likely to prejudice the jury”. *Gentile* at 1075-1076. This Court should also consider whether there are alternatives to the restraint that do not threaten free speech. *Collier* at ¶22 (potential prejudice could be countered by jury instructions, change of venue or conditions on the speech).

Arrowood does not even argue that the news reports would impact the trial of these issues, let alone that there is a substantial likelihood of material prejudice. Instead, he only expresses concern for his reputation and his ability to continue to attract investors. These concerns are not relevant to whether a fair trial may be had on the issues and therefore are inappropriate to support a prior restraint of speech. Furthermore, Arrowood has failed to show any prior prejudicial speech that would warrant placing restrictions on future speech. The existence of a conspiracy to impugn his reputation is pure speculation on his part and is unsupported by facts.

Any order restraining such speech “must have a close enough nexus to expression, or expression related conduct, to pose a real and substantial threat of the identified censorship risks.” *Collier* at ¶20. Further, any order “must be narrowly drafted

so as to suppress only that speech which presents a clear and present danger of resulting in serious, substantial evil. *Id.* at ¶22. The referenced evil is the danger of prejudicing the trial. *Gentile* at 1075-1076.

Arrowood's request for a protective order is unclear in its scope. First, Arrowood quotes from *Collier v. Reese* language that indicates the court may restrict access to judicial records if their "purpose is to gratify private spite or promote public scandal." However, Arrowood does not ask that the pleadings be sealed and he does not set forth any facts suggesting that the Department's petition was filed to gratify private spite or promote public scandal. Thus, this reference to the *Collier* case is wholly irrelevant to the matter at hand.

Second, Arrowood argues that the Department's lawyers have violated Rule 3.6 of the Oklahoma Rules of Professional Conduct. However, Defendant, in the "Factual Background" section of his Motion, makes no references to any speech or conduct by the Department's lawyers let alone any reference to speech or conduct that would violate Rule 3.6. Arrowood seems to think that the news reports, neither of which the Department solicited, involve some conspiracy against him. The Department has no control over the news media. The news media is free to read the public pleadings, conduct their own investigations, and make their own statements. If Arrowood is seeking a protective order against the media, he has failed to give them notice and an opportunity to participate in this hearing.

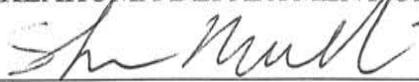
Conclusion

Arrowood has failed to meet any burden of establishing the need for the requested protective order. The complained of assertions were not made by the Department.

Furthermore, Arrowood has provided no facts showing any likelihood, much less a substantial likelihood, of any material prejudice to the judicial proceedings that would justify the prior restraint of speech. The Department respectfully requests that the Motion be denied.

Respectfully Submitted,

OKLAHOMA DEPARTMENT OF SECURITIES



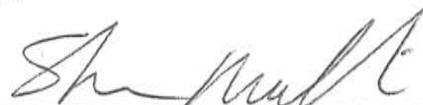
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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of September, 2013, the foregoing document was sent by email and first-class mail to the following:

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Oil, gas scams drill for unwary investors instead of crude

Energy-related scams remain popular in Oklahoma.

By Brianna Bailey (/more/Brianna Bailey) Published: July 7, 2013

By the time Norman businessman Robert Arrowood used \$10,000 of investors' money from his oil and gas lease investment company to fund a swank trip to Las Vegas that included a stay at the Bellagio resort and casino and rides in a rented limousine, the company had devolved into a Ponzi scheme, state security regulators claim.



(/gallery/articleid/3859685/1/pictures/2152582)

The Department of Securities claims Arrowood cheated investors in the 2001 Trinity Fund from Utah, Missouri, Texas and Florida out of as much as \$4 million, spending most of the funds on an ostentatious lifestyle for he and his wife, Cathy Arrowood, that included luxury vacations, tickets to Oklahoma City Thunder games and thousands of dollars spent on jewelry and clothing purchases.

Arrowood specialized in buying oil and gas leases on the cheap and then flipping them to large exploration and production companies at a premium when natural gas prices reached their peak in 2008. His funders included former University of Oklahoma football players Dusty Dvoracek and Tommie Harris, according to court documents.

Arrowood maintains he has done nothing illegal and that he never sold securities to the people who gave him money, which would be subject to certain disclosures and other regulations. Instead, he claims his financial backers gave him money in the form of loans secured by promissory notes.

"This was back when natural gas prices were extremely high," Arrowood said in a deposition, taken in the 2001 Trinity Fund's bankruptcy case. "Everybody and their brother wanted to do something in oil and natural gas. And I had people approach me on a daily basis wanting to make some kind of return on their money."

Although some Trinity funders — like Dvoracek and Harris — were repaid with interest, many were not, according to court documents. The scheme collapsed in 2009 when the 2001 Trinity Fund filed for bankruptcy.

Securities regulators say the number of oil and gas investment scams are on the rise.

With its reputation for oil and gas activity, Oklahoma is a location ripe for such scams to take root, said Irving Faught, administrator of the Oklahoma Department of Securities.

"We are concerned about mainly somebody operating from Oklahoma using the prestige of an Oklahoma address that would imply some type of expertise to people on the East and West coast," Faught said.

Investigations grow

In May, the U.S. Securities and Exchange Commission issued a bulletin to investors warning of the dangers of private oil and gas offering scams, which have become increasingly common over the past several years. In 2005, the SEC investigated only a handful of such scams each year, but that number had jumped to as many as 20 a year in recent years, according to the bulletin.

The Arrowood case is just one of several of enforcement actions or investigations into suspicious oil and gas-related investment opportunities in the state the past year.

The Oklahoma Department of Securities has opened investigations or filed enforcement actions against four oil and gas related investment businesses in the past 12 months ending in July, and three such schemes in the previous 12 months.

Many enforcement actions have to do with an oil and gas operator who has not made the proper disclosures to investors about where their money was going, Faught said.

The agency launched an investigation earlier this year into Duncan-based Gates Oil & Gas Ltd. Gates' senior drilling consultant Jimmy W.Gray once ran a company called Jasmine Inc that has been cited in at least two states for selling unlicensed securities. Although Gates claims on its website to be a third-generation oil and gas operator, the company was incorporated only in Oklahoma in 2012, according to state records.

Records show Jasmine has been banned from soliciting investors in at least two states, Pennsylvania and Wisconsin, for selling unregistered securities.

Lance Bowman, chief financial officer for Gates Oil & Gas, declined to comment on the state investigation. Faught declined to comment on any of the open investigations or enforcement actions the department is involved in.

EXHIBIT

1

While many schemes involve a promoter getting a larger-than-average cut of the profits or giving sweetheart deals to related parties to provide drilling and other oil-field services, others are outright Ponzi schemes, said attorney H. Wayne Cooper, who specializes in oil and gas and securities law with the firm Doerner, Saunders, Daniel & Anderson.

In one of Oklahoma's most infamous cases, the Tulsa-based Home-State Production Co. defrauded more than 1,500 investors out of nearly \$100 million through annual securities offerings in the 1970s in what was later discovered to be a Ponzi scheme.

In some instances, Home-State investors were shown "oil fields" where irrigation pipes had been painted to look like oil equipment, said Cooper, whose firm was involved with some of the litigation stemming from the Home-State swindle.

In many cases, a business will begin as a legitimate venture, but will become a Ponzi scheme once a promoter realizes it's easier and more lucrative to run a scam.

Case still unfolding

Arrowood maintains that he has done nothing to run afoul of state securities law. His attorney, Billy Bock, claims that people in several states gave him money not as investments but as business loans with fixed interest rates.

Bock has submitted promissory notes signed by Arrowood as proof of the loans in the lawsuit that the Department of Securities has filed against the 2001 Trinity Fund, as well as a signed affidavit of one Trinity backer backing up Arrowood's loan claim.

"Each one of these things is a business deal and they are loans," Bock said. "They didn't say 'you are investing in this oil well.' These were business loans for Mr. Arrowood to do with what he wanted and then repay."

Attempts to contact any of the people who gave money to Arrowood or the 2001 Trinity Fund were unsuccessful.