

FILED IN DISTRICT COURT  
OKLAHOMA COUNTY

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

AUG 11 2014

TIM RHODES  
COURT CLERK

30

Oklahoma Department of Securities )  
*ex rel.* Irving L. Faught, Administrator, )  
 )  
Plaintiff, )

v. )

Case No.

Seabrooke Investments LLC, an Oklahoma )  
limited liability company; )  
Seabrooke Realty LLC, an Oklahoma )  
limited liability company; )  
Oakbrooke Homes LLC, an Oklahoma )  
limited liability company; )  
Bricktown Capital LLC, an Oklahoma )  
limited liability company; )  
KAT Properties LLC, an Oklahoma )  
limited liability company; )  
Cherry Hill LLC, an Oklahoma limited liability )  
company doing business as Cherry Hill Apartments; )  
Tom W. Seabrooke, individually and as trustee of )  
Tom Seabrooke 2007 Revocable Trust and )  
J. Karyn Seabrooke 2007 Revocable Trust; and )  
Judith Karyn Seabrooke, individually and as trustee )  
of Tom Seabrooke 2007 Revocable Trust and )  
J. Karyn Seabrooke 2007 Revocable Trust, )  
 )  
Defendants. )

CJ = 2014 - 4515

**APPLICATION FOR TEMPORARY RESTRAINING ORDER,**  
**ORDER FREEZING ASSETS, ORDER APPOINTING RECEIVER,**  
**ORDER FOR ACCOUNTING AND TEMPORARY INJUNCTION**

The Oklahoma Department of Securities (“Department”), *ex rel.* Irving L. Faught, Administrator, respectfully submits this application for temporary restraining order, order freezing assets, order appointing receiver, order for accounting, and temporary injunction, pursuant to the Oklahoma Uniform Securities Act of 2004 (“Act”), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (2011). The Department incorporates herein by reference the verified *Petition for*

*Permanent Injunction and Other Relief* (“Verified Petition”) filed contemporaneously with this application. The Department petitions this Court to prevent continued violations of the Act, to protect the rights of the Department in its obligation to protect the public interest, to prevent any dissipation of Defendants’ assets, including investor funds, and to remedy actions that Defendants have already committed.

The Department moves this Court to enter, without notice, a temporary restraining order, an order freezing assets, an order appointing receiver and an order for accounting, until the Court may afford the parties a hearing, and further moves for the entry of a temporary injunction at such hearing. The entry of such orders is appropriate and necessary for the reasons set forth below.

## I. DEFENDANTS

Seabrooke Investments LLC (“Seabrooke Investments”) is an Oklahoma limited liability company, with its principal place of business in Oklahoma City, Oklahoma. At all times material hereto, Seabrooke Investments issued, offered and/or sold securities in and/or from Oklahoma as described herein.

Seabrooke Realty LLC (“Seabrooke Realty”) is an Oklahoma limited liability company, with its principal place of business in Oklahoma City, Oklahoma. At all times material hereto, Seabrooke Realty issued, offered and/or sold securities in and/or from Oklahoma as described herein.

Bricktown Capital LLC (“Bricktown Capital”) is an Oklahoma limited liability company, with its principal place of business in Oklahoma City, Oklahoma. Bricktown Capital operates as the Bricktown Hotel and Convention Center. At all times material hereto, Bricktown Capital issued, offered and/or sold securities in and/or from Oklahoma.

KAT Properties LLC (“KAT Properties”) is an Oklahoma limited liability company, with its principal place of business in Oklahoma City, Oklahoma. At all times material hereto, KAT Properties issued, offered and/or sold securities in and/or from Oklahoma.

Cherry Hill LLC is an Oklahoma limited liability company, doing business as Cherry Hill Apartments (“Cherry Hill”), with its principal place of business in Oklahoma City, Oklahoma. At all times material hereto, Cherry Hill issued, offered and/or sold securities in and/or from Oklahoma.

Tom W. Seabrooke (“Tom Seabrooke”) is an individual and Oklahoma resident. Tom Seabrooke is the trustee of the Tom Seabrooke 2007 Revocable Trust and the J. Karyn Seabrooke 2007 Revocable Trust. At all times material hereto, Tom Seabrooke was the registered agent for Seabrooke Investments, Oakbrooke Homes, KAT Properties, and Bricktown Capital. At all times material hereto, Tom Seabrooke was the managing member of Bricktown Capital, and a member of Seabrooke Investments, Seabrooke Realty, Oakbrooke Homes, KAT Properties, and Cherry Hill. Tom Seabrooke offered and/or sold securities in and/or from Oklahoma as described herein.

Judith Karyn Seabrooke (“Karyn Seabrooke”) is an individual and Oklahoma resident. Karyn Seabrooke is the trustee of the Tom Seabrooke 2007 Revocable Trust and the J. Karyn Seabrooke 2007 Revocable Trust. At all times material hereto, Karyn Seabrooke was the registered agent of Seabrooke Realty and Cherry Hill. At all times material hereto, Karyn Seabrooke was the member/manager of Seabrooke Investments, the managing member of Oakbrooke Homes, and a member of Seabrooke Realty, KAT Properties, and Cherry Hill. Karyn Seabrooke engaged in acts, practices, or a course of business that materially aided violations of the Act.

## II. NATURE OF THE CASE

### 2004 Investigation

In July 2004, the Department initiated an investigation into the activities of Seabrooke Realty and KAT Properties and sent a letter notifying Tom Seabrooke. The Department stated that it had received information that Seabrooke Realty and/or KAT Properties may have been offering and/or selling securities in the nature of investment agreements or notes in violation of Oklahoma securities laws.

Tom Seabrooke responded to the Department by letter dated July 27, 2004 (“Seabrooke Response”), stating that no investment transaction had resulted from his newspaper advertisements, undertaking that he would not “solicit funds of any kind in any manner without first applying to the State and/or other agencies to determine the legality of any type of offering,” and apologizing for his “violation of state laws and regulations regarding investments and the solicitation of real estate and/or any other kind of investment.”

On August 30, 2004, the Department sent a letter to Tom Seabrooke advising that the Seabrooke Response would be deemed an undertaking to comply in the future with state securities laws and regulations. The Department informed Tom Seabrooke that the Act prohibits the offer and/or sale of unregistered, non-exempt securities, including investment contracts and notes and provided the definition of the term “investment contract.” The Department also informed Tom Seabrooke that the Act prohibits misrepresentations or omissions of material fact in connection with the offer, sale, or purchase of any security. Finally, the Department cautioned Tom Seabrooke to review and comply with the applicable provisions of the Act in connection with the offers and sales of securities and seek the advice of private legal counsel prior to making such offers and sales.

### **Sales of Securities After 2004**

Subsequent to the Department's 2004 investigation, Defendants engaged in the issuance, offer and/or sale of securities in and/or from the state of Oklahoma to investors ("Investors"). Such securities were in the nature of various promissory notes ("Investment Notes") and agreements ("Investment Agreements") including, but not limited to, those detailed below.

Tom Seabrooke promoted different properties as lucrative opportunities for Investors to purchase ownership interests. Tom Seabrooke represented that Investors could expect profits at an annual rate between six percent (6%) and fifteen percent (15%).

Tom Seabrooke represented that the Investment Notes and Investment Agreements would be secured with specific real and personal properties. Some Investment Notes and Investment Agreements were accompanied by mortgage notes purporting to convey real property to the Investor should the Defendants default on obligations to pay.

In soliciting the Investors for the Investment Notes and Investment Agreements, Tom Seabrooke represented to Investors that (a) he had specialized knowledge and expertise to make the investments profitable; and (b) Investors would have no role in the success or outcome of the investments or in effecting the promised profits on the Investment Notes or Investment Agreements, that is, Investors would completely rely on the judgment of Tom Seabrooke for the promised profits.

On or about February 27, 2007, an Investment Agreement was issued by Bricktown Capital to an Oklahoma Investor, for which the Oklahoma Investor paid Four Hundred Thousand Dollars (\$400,000). Under the terms of the Investment Agreement, Bricktown Capital promised to sell to the Oklahoma Investor a "number of shares" representing an ownership interest in Bricktown Capital of six percent (6%). The Investment Agreement was signed by Tom

Seabrooke on behalf of Bricktown Capital.

On or about October 2, 2007, an Investment Note was issued by Tom Seabrooke with KAT Properties to an Oklahoma Investor, for which the Oklahoma Investor paid Seventy-Five Thousand Dollars (\$75,000). Under the terms of the Investment Note, Tom Seabrooke promised to pay monthly interest to the Oklahoma Investor at the rate of twelve and a half percent (12.5%) per annum beginning the first month after the investment. The Investment Note was signed by Tom Seabrooke. Tom Seabrooke identified property located at 1609 NW 15<sup>th</sup> Street in Oklahoma City, Oklahoma, as purported collateral for the Investment Note.

On or about November 21, 2008, an Investment Agreement was issued by Tom Seabrooke of Bricktown Capital to the Oklahoma Investor described in paragraph 18, for which the Oklahoma Investor paid Three Hundred Fifteen Thousand Dollars (\$315,000). Under the terms of the Investment Agreement, Tom Seabrooke promised an additional five percent (5%) ownership interest in Bricktown Capital for a total ownership interest of eleven percent (11%). Under the terms of the Investment Agreement, Tom Seabrooke promised to pay monthly interest to the Oklahoma Investor at the rate of ten percent (10%) per annum beginning January 1, 2009. The Investment Agreement was signed by Tom Seabrooke.

On or about December 15, 2008, an Investment Note was issued by Tom Seabrooke of Oakbrooke Homes to an Oklahoma Investor, for which the Oklahoma Investor paid One Hundred Thousand Dollars (\$100,000). Under the terms of the Investment Note, Tom Seabrooke promised to pay monthly interest to the Oklahoma Investor at the rate of ten percent (10%) per annum beginning January 1, 2009, for a period of one year. The Investment Note was signed by Tom Seabrooke and was purportedly secured by real estate in Mustang, Oklahoma.

On or about March 27, 2009, an Investment Note was issued by Tom Seabrooke of

Bricktown Capital to an Oklahoma Investor, for which the Oklahoma Investor paid One Hundred Fifty Thousand Dollars (\$150,000), by check payable to "Tom Seabrooke (RE:REAL ESTATE INVESTMENTS)." Under the terms of the Investment Note, Tom Seabrooke and Bricktown Capital promised to pay monthly interest to the Oklahoma Investor at the rate of ten percent (10%) per annum beginning the first month after the investment. The Investment Note was signed by Tom Seabrooke as the borrower. Tom Seabrooke granted an interest in the Bricktown Hotel, and all inventory, equipment, furnishings, appliances, and fixtures therein, as purported collateral for the Investment Note.

On or about April 20, 2009, an Investment Note was issued by Tom Seabrooke of Oakbrooke Homes to an Oklahoma Investor, for which the Oklahoma Investor paid Eighty Thousand Dollars (\$80,000). Under the terms of the Investment Note, Tom Seabrooke promised to pay the Oklahoma Investor Fifteen Hundred Dollars (\$1,500) upon the sale of each of the eleven (11) homes in Perkins, Oklahoma and Cushing, Oklahoma, identified in the Investment Note. The Investment Note was signed by Tom Seabrooke. The Investment Note was purportedly secured by an equity interest in the described homes.

On or about May 4, 2009, an Investment Note was issued by Tom Seabrooke of Oakbrooke Homes to an Oklahoma Investor, for which the Oklahoma Investor paid One Hundred Twenty Thousand Dollars (\$120,000), by check payable to "Tom Seabrooke (Real Estate Investment)." Under the terms of the Investment Note, Tom Seabrooke promised to pay monthly interest to the Oklahoma Investor at the rate of eleven percent (11%) per annum beginning the first month after the investment and also to pay Fifteen Hundred Dollars (\$1,500) per home or lot sold in the "70 Home Development Project" in Weatherford, Oklahoma. The Investment Note was signed by Tom Seabrooke as the borrower, and purported to grant a

security interest in the “70 Home Development Project” and all homes constructed therein, and all other real property of Tom Seabrooke or his heirs including Bricktown Capital, doing business as Bricktown Hotel & Convention Center.

On or about August 7, 2009, an Investment Agreement was issued by Tom Seabrooke with KAT Properties to an Oklahoma Investor, for which the Oklahoma Investor paid One Hundred Fifty Thousand Dollars (\$150,000). Under the terms of the Investment Agreement, Tom Seabrooke promised to pay to the Oklahoma Investor fifty percent (50%) of the profits from the proceeds of the sales of three new homes on “designated lots in the Timber Creek Addition to Weatherford, Oklahoma.” The Investment Agreement was signed by Tom Seabrooke.

On or about August 22, 2011, an Investment Note was issued by Tom Seabrooke of Seabrooke Realty to Washington Investors, for which the Washington Investors paid One Hundred Thousand Dollars (\$100,000). Under the terms of the Investment Note, Tom Seabrooke promised to pay monthly interest to the Washington Investors at the rate of twelve percent (12%) per annum, beginning October 1, 2011, for a period of twenty four (24) consecutive months. The Investment Note was purportedly secured by Tom Seabrooke and an equity interest in Cherry Hill.

On or about November 11, 2011, a second Investment Note was issued by Tom Seabrooke of Seabrooke Investments to the Washington Investors, for which the Washington Investors paid another One Hundred Thousand Dollars (\$100,000). Under the terms of the second Investment Note, Tom Seabrooke promised to pay monthly interest to the Washington Investors at the rate of fifteen percent (15%) per annum, beginning December 15, 2011, for a period of twelve (12) consecutive months. The Investment Note was purportedly secured by

Tom Seabrooke and an equity interest in Cherry Hill.

On or about May 11, 2012, an Investment Note was issued by Seabrooke Investments and Tom Seabrooke to a California Investor, for which the California Investor paid One Hundred Sixty-Five Thousand Dollars (\$165,000). Under the terms of the Investment Note, Seabrooke Investments and Tom Seabrooke promised to pay to the California Investor the principal sum of One Hundred Sixty-Five Thousand Dollars (\$165,000), and a profit of Seven Thousand One Hundred Fifty Dollars (\$7,150) for each of three new homes sold by November 15, 2012. The three new homes were to be constructed in Weatherford, Oklahoma in the Timber Creek II Addition Phase I (Weatherford Homes). The payment terms of the Investment Note required Seabrooke Investments and Tom Seabrooke to make equal payments to the California Investor of Sixty Two Thousand One Hundred Fifty Dollars (\$62,150) upon the sale of each of the Weatherford Homes. The Investment Note was signed by Tom Seabrooke on behalf of Seabrooke Investments. The Investment Note was purportedly secured by Tom Seabrooke, equity in a rental property described as 1505 NW 17<sup>th</sup> Street, Oklahoma City, Oklahoma, and the Weatherford Homes.

On or about October 11, 2012, an Investment Note was issued by Seabrooke Investments and Tom Seabrooke to a Texas Investor, for which the Texas Investor paid Three Hundred Fifty Thousand Dollars (\$350,000). Under the terms of the Investment Note, Seabrooke Investments and Tom Seabrooke promised to pay monthly interest to the Texas Investor at the rate of fifteen percent (15%) per annum beginning November 11, 2012. The Investment Note was signed by Tom Seabrooke, as Manager of Seabrooke Investments and was purportedly secured by land and improvements identified in the Investment Note.

### **Misuse of Investment Proceeds**

Investor funds, totaling in excess of Four Million Dollars (\$4,000,000), were deposited to numerous bank accounts under the control of Tom Seabrooke and Karyn Seabrooke.

Tom Seabrooke and Karyn Seabrooke have not used Investor funds in a manner to generate revenue to pay promised profits or returns provided by the Investment Notes or Investment Agreements.

Tom Seabrooke and Karyn Seabrooke have transferred Investor funds among multiple bank accounts that they control. Tom Seabrooke and Karyn Seabrooke have transferred business funds into personal accounts and personal funds into business accounts. Tom Seabrooke and Karyn Seabrooke used Investor funds for the payment of personal expenses, the payment of business expenses unrelated to the Investment Notes and Investment Agreements, and the payment of money to earlier Investors.

Tom Seabrooke and Karyn Seabrooke have defaulted on payments to subcontractors resulting in liens on the properties purportedly collateralizing the Investment Notes and Investment Agreements.

Investors have not received the return of their principal investments, the promised interest, or the collateral as promised.

### **Misrepresentations, Omissions and Fraud**

In connection with the offer and/or sale of securities, Tom Seabrooke made untrue statements of material fact including, but not limited to:

- a. that Investors would receive profits or returns on the Investment Notes or Investment Agreements of between 6% and 15%;
- b. that the Investment Notes or Investment Agreements were secured by

- specific real or personal property;
- c. that the real or personal property that collateralized the Investment Notes or Investment Agreements protected the Investor from investment loss; and
- d. that Tom Seabrooke had specialized knowledge and expertise to make the investments profitable.

In connection with the offer and/or sale of securities, Tom Seabrooke 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:

- a. any general or specific risk factors associated with the purchase of the Investment Notes or Investment Agreements;
- b. that the Investment Notes and Investment Agreements are securities subject to regulation under the Act;
- c. that the Investment Notes and Investment Agreements were not registered under the Act;
- d. that investments were under-collateralized, if collateralized at all;
- e. that the collateral for the investments was not owned by the issuer of the Investment Notes and Investment Agreements;
- f. that the collateral for the Investment Notes and Investment Agreements had existing mortgages;
- g. that Tom Seabrooke and Karyn Seabrooke would use Investor funds for personal expenses, business expenses unrelated to the Investment Notes and Investment Agreements, and the payment of money to earlier Investors; and

- h. that Tom Seabrooke, Seabrooke Realty and KAT Properties had been the subject of a previous investigation into violations of state securities laws.

### **III. VIOLATIONS OF THE ACT**

#### **A. Violation of Section 1-301 of the Act: Offer and Sale of Unregistered Securities**

The Investment Notes and Investment Agreements are securities as defined by Section 1-102 of the Act.

The securities offered and sold by Defendants are not and have not been registered under the Act.

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

#### **B. Violation of Section 1-402 of the Act: Transacted Business as Unregistered Agents and Employment of Unregistered Agents**

Seabrooke Investments, Seabrooke Realty, Oakbrooke Homes, Bricktown Capital, KAT Properties, and/or Cherry Hill are issuers, as defined in Section 1-102 of the Act.

Tom Seabrooke and Karen Seabrooke, by virtue of their efforts and activities in effecting or attempting to effect purchases or sales of the securities of Seabrooke Investments, Seabrooke Realty, Oakbrooke Homes, Bricktown Capital, KAT Properties, and/or Cherry Hill in and/or from this state, are agents, as defined in Section 1-102 of the Act.

Tom Seabrooke and Karen Seabrooke are not and have not been registered in any capacity under the Act.

Seabrooke Investments, Seabrooke Realty, Oakbrooke Homes, Bricktown Capital, KAT Properties, and/or Cherry Hill employed unregistered agents who transacted business in and/or from this state.

By reason of the foregoing, Defendants have violated, may be violating, and unless enjoined, will continue to violate Section 1-402 of the Act.

**C. Violation of Section 1-501 of the Act:  
Untrue Statements and Omissions of Material Fact**

Tom Seabrooke, in connection with the offer and/or sale of securities, directly and indirectly, made untrue statements of material fact.

Tom Seabrooke, in connection with the offer and/or sale of securities, directly and 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.

By reason of the foregoing, Tom Seabrooke, directly and indirectly, has violated, may be violating, and unless enjoined, will continue to violate Section 1-501 of the Act.

**D. Violation of Section 1-501 of the Act:  
Fraud or Deceit**

Tom Seabrooke, in connection with the offer and/or sale of securities, and through the use of untrue statements of material fact and the omissions of material fact described above, has engaged in an act, practice, or course of business that has operated and continues to operate as a fraud or deceit upon Investors. Karyn Seabrooke, engaged in acts, practices, or a course of business that materially aided violations of the Act.

By reason of the foregoing, Tom Seabrooke and Karyn Seabrooke, directly and indirectly, have violated, may be violating, and unless enjoined, will continue to violate Section 1-501 of the Act.

#### IV. AUTHORITY FOR TEMPORARY RESTRAINING ORDER, ASSET FREEZE, APPOINTMENT OF RECEIVER, ACCOUNTING, AND TEMPORARY INJUNCTION

Section 1-603 of the Act provides:

- A. If the Administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act . . . the Administrator may . . . maintain an action in the district court of Oklahoma County . . . to enjoin the act, practice or course of business and to enforce compliance with this act[.]
- B. In an action under this section and on a proper showing, the court may:
  1. Issue a permanent or temporary injunction, restraining order, or declaratory judgment;
  2. Order other appropriate or ancillary relief, which may include:
    - a. an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the Administrator, for the defendant or the defendant's assets[.]

Comments to the Uniform Securities Act of 2002, on which the Act is based, suggest that the “proper showing” required for relief under this section is the same as that required under similar provisions of the federal securities laws. Unif. Sec. Act §603 cmt. 3 (2002) (noting that “the term ‘upon a proper showing’ has a settled meaning in the federal securities laws”).

##### A. Temporary Injunction

Section 1-603(B)(1) of the Act specifically grants this Court the power to issue a temporary injunction. The proper showing required for such injunctive relief under federal securities laws has been defined as “a justifiable basis for believing . . . that the defendants were engaged in violations of the statutes involved.” *SEC v. Gen. Refractories Co.*, 400 F.Supp. 1248, 1254 (D.C. 1975). This standard differs from that applied in private actions for injunctive relief and no showing of irreparable harm is required. *SEC v. Mgmt. Dynamics, Inc.*, 515 F.2d 801,

808 (2<sup>nd</sup> Cir. 1975); see also *Okla. Sec. Comm'n v. CFR Inter., Inc.*, 622 P.2d 293, 295 (Okla. Civ. App. 1980).

Once this proper showing for injunctive relief has been made, the Department need only establish “a reasonable likelihood of a future violation.” *SEC v. Householder*, 2002 WL 1466812 at \*5 (N.D. Ill. 2002). In doing so, past violations are “highly suggestive [of] the likelihood of future violations.” *CFR Inter., Inc.*, 622 P.2d at 295 (quoting *Mgmt. Dynamics, Inc.*, 515 F.2d at 807).

In accord with this understanding of the requirements for injunctive relief, the Oklahoma Court of Civil Appeals found proof of the offer and sale of unregistered securities by unregistered agents to be all that was necessary for the issuance of a temporary injunction. *Id.* at 296.

As described above and in the Verified Petition, the Department has a justifiable basis for believing that Defendants have violated both registration and fraud provisions of the Act. Such past violations, in addition to the fact that Defendants continue to offer securities, are highly suggestive of a reasonable likelihood of future violations. A temporary injunction is therefore appropriate.

### **B. Temporary Restraining Order**

Section 1-603(B)(1) of the Act specifically grants this Court the power to issue a temporary restraining order. A temporary restraining order is intended to preserve the *status quo* and prevent irreparable injury until a hearing can be held on a temporary injunction. *Granny Goose Foods, Inc. v. Bhd. of Teamsters*, 415 U.S. 423, 439 (1974); see also *Morse v. Earnest, Inc.*, 547 P.2d 955, 957 (Okla. 1976). The temporary restraining order may be issued without notice where “it clearly appears . . . that immediate and irreparable injury, loss, or damage will

result” before the hearing can be held. Okla. Stat. tit. 12, § 1384.1 (2012). Such irreparable injury exists where there is a continuing violation of a state statute. *Semke v. State ex rel. Okla. Motor Vehicle Comm’n*, 465 P.2d 441, 445 (Okla. 1970).

As described above and in the Verified Petition, Defendants continue to offer securities in violation of the Act. Accordingly, a temporary restraining order should be issued without notice to preserve the *status quo* and prevent the irreparable injury caused by continued violations of the Act until a hearing can be held on a temporary injunction.

### **C. Asset Freeze and Accounting**

Section 1-603(B)(2) of the Act specifically grants this Court the power to order an asset freeze and an accounting. An asset freeze is appropriate where restitution or disgorgement may be required. *Inter. Controls Corp. v. Vesco*, 490 F.2d 1334, 1347 (2<sup>nd</sup> Cir. 1974) (finding that “an asset freeze may be appropriate to assure compensation to those who are victims of a securities fraud”); *SEC v. Unifund SAL*, 910 F.2d 1028, 1041 (2<sup>nd</sup> Cir. 1990) (noting that “the [SEC] should be able to preserve its opportunity to collect funds that may yet be ordered disgorged”).

A proper showing for an asset freeze under federal securities law requires only (1) “a concern that defendants will dissipate their assets” and (2) “a basis to infer” defendants violated the statutes involved. *SEC v. Gonzalez de Castilla*, 145 F.Supp. 2d. 402, 415 (S.D.N.Y. 2001) (citing *Unifund SAL*, 910 F.2d at 1041). An asset freeze may be granted even where a proper showing for injunctive relief cannot be made. *Unifund SAL*, 910 F.2d at 1041.

An order for an accounting, in addition to an asset freeze and injunctive relief, may be appropriate to determine the amount of proceeds received from fraudulent acts, the current

location of such proceeds, and the ability of defendants to repay investors. *SEC v. Margolin*, 1992 WL 279735 at \*6 (S.D.N.Y. 1992).

As described above and in the Verified Petition, Defendants have engaged in acts and practices in violation of the Act and, as a result of these activities, have received a substantial amount of money from investors. The whereabouts of all of the money received by Defendants is not known at this time. As also described above and in the Verified Petition, Defendants have already misused a substantial amount of investor funds, raising a concern that Defendants will further dissipate their assets to the detriment of investors. An order for an asset freeze is therefore appropriate and necessary to preserve remaining assets should the prayed for disgorgement and restitution be granted. An order for an accounting is also appropriate and necessary to determine the amount and whereabouts of money received and the ability of Defendants to repay investors.

#### **D. Receiver**

Section 1-603(B)(2) of the Act specifically grants this Court the power to appoint a receiver. The appointment of a receiver is necessary (1) to preserve the status quo while various transactions are being unraveled in order to determine an accurate picture of the fraudulent conduct, *SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1105 (2d. Cir, 1972); (2) to protect “those who have already been injured by a violator’s actions from further despoliation of their property or rights,” *Esbitt v. Dutch-American Mercantile Corp*, 335 F. 2d 141, 143 (2d Cir. 1964) (citing *SEC v. H.S. Simmons*, 190 F. Supp. 432, 433 (S.D.N.Y. 1961); (3) to prevent the dissipation of the defendant’s assets pending further action by the court, *SEC v. American Board Of Trade, Inc.*, 830 F.2d 431, 436 (2d Cir. 1987), or (4) to install a responsible officer of the court who could bring the companies into compliance with the law, *id.* at 436-437.

Here, the evidence is compelling that Defendants have engaged in a fraudulent course of business to induce the public to purchase unregistered securities. A receiver is necessary for the assets of Defendants to secure any remaining assets, to operate the business of Defendants pending an accounting of the assets and the Investor funds, to prevent further dissipation of Investor assets, to facilitate the orderly resolution of anticipated competing claims to the assets, and to prevent continued violations of the law.

## V. CONCLUSION

In light of the facts presented and authorities cited, the Department respectfully requests that this Court enter, without notice, a temporary restraining order, an order freezing assets, an order appointing a receiver, and an order for an accounting, until the Court may afford the parties a hearing, and moves for the entry of a temporary injunction against Defendants at such hearing.

Respectfully submitted,

OKLAHOMA DEPARTMENT OF SECURITIES  
Irving L. Faught, Administrator

By:

  
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 Telephone  
(405) 280-7742 Facsimile  
plabarthe@securities.ok.gov  
jshaw@securities.ok.gov

AFFIDAVIT

STATE OF OKLAHOMA    )  
                                  )  
COUNTY OF OKLAHOMA )       SS.

The undersigned affiant, of lawful age, being first duly sworn upon oath deposes and states:

1.       That she is an attorney for the Oklahoma Department of Securities (Department).
  
2.       On August 11, 2014, a verified *Petition for Permanent Injunction and Other Relief* and an *Application for Temporary Restraining Order, Order Freezing Assets, Order Appointing Receiver, Order for Accounting and Temporary Injunction* ("Application"), was filed pursuant to the Oklahoma Uniform Securities Act of 2004 ("Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (2011).
  
3.       That Defendants are not represented by counsel in this matter.

FURTHER AFFIANT SAYETH NOT.

Dated this 11<sup>th</sup> day of August, 2014.

(SEAL)

Patricia A. Labarthe  
Patricia A. Labarthe  
Attorney

Subscribed and sworn to before me this 11<sup>th</sup> day of August, 2014.

(NOTARY SEAL)

Brenda London  
Notary Public

My Commission Expires:

\_\_\_\_\_

