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IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

Oklahoma Department of Securities	)
<i>ex rel.</i> Irving L. Faught, Administrator,	)
	)
Plaintiff,	)
	)
v.	)
	)
Seabrooke Investments LLC, an Oklahoma	)
limited liability company; <i>et al.</i> ,	)
	)
Defendants.	)

Case No. CJ-2014-4515

**OKLAHOMA DEPARTMENT OF SECURITIES' EMERGENCY MOTION TO REMOVE DEFENDANTS TOM W. SEABROOKE AND J. KARYN SEABROOKE FROM EMPLOYMENT**

The Oklahoma Department of Securities (Department), *ex rel.* Irving L. Faught, Administrator, respectfully submits this motion to remove Defendants Tom W. Seabrooke (Tom Seabrooke) and J. Karyn Seabrooke (Karyn Seabrooke) (collectively, "the Seabrookes"), from employment with Defendants Seabrooke Investments LLC, Seabrooke Realty LLC, Oakbrooke Homes LLC, KAT Properties LLC and Cherry Hill LLC (collectively, "Defendant Entities"). To retain the Seabrookes in light of their serious violations of the Act cannot be justified.

**BACKGROUND**

On August 11, 2014, the Department filed a verified *Petition for Permanent Injunction and Other Relief* (Petition) against the named Defendants pursuant to the Oklahoma Uniform Securities Act of 2004 (Act), Okla. Stat. tit. 71, §§1-101 through 1-701 (2011). The Department filed this action to remedy violations of the Act by the Defendants, to prevent continued violations of the Act, to protect the rights of the Department in its

obligation to protect the public interest, and to prevent any dissipation of Defendants' assets, including investor funds.

On August 11, 2014, the Department filed the *Application for Temporary Restraining Order, Order Freezing Assets, Order Appointing Receiver, Order for Accounting and Temporary Injunction*.

On August 11, 2014, this Court entered the *Temporary Restraining Order, Order Appointing Receiver, Order Freezing Assets and Order for Accounting*.

On August 19, 2014, a hearing was held and testimony was presented on the Department's application for a temporary injunction and Defendants' motion to vacate the temporary restraining order. The Department was required to establish a justifiable basis for believing that the Defendants were engaged in violations of the Act as alleged in the Petition. At the conclusion of the evidentiary hearing, this Court entered the *Temporary Injunction and Ancillary Relief (Temporary Injunction)* finding the Department had established a justifiable basis to grant the Temporary Injunction. The Court ordered the continuation of the receivership and the asset freeze over the Defendants.

On September 9, 2014, at a hearing on issues related to Bricktown Capital LLC and the Bricktown Hotel and Convention Center, this Court considered an oral request by counsel for Tom and Karyn Seabrooke for compensation from the receivership estate for their employment by the Defendant Entities. The Court granted compensation to Tom Seabrooke for the preceding month of work in the sum of \$4,000. The Court granted compensation to Karyn Seabrooke for the preceding month of work in the sum of \$2,500. The Court also authorized Karyn Seabrooke to receive one half of all real estate commissions earned from the sale of receivership assets, so long as she is licensed to sell real estate through Seabrooke

Realty, LLC. The Court prospectively authorized compensation for Karyn Seabrooke in the sum of \$2,500 per month for property management services, with a possible increase in the future to \$3,000 per month. Compensation for any new property management business generated by Karyn Seabrooke is to be approved by the Court.

#### **FACTS JUSTIFYING THE REMOVAL OF TOM AND KARYN SEABROOKE**

This is a case involving a massive securities fraud perpetrated by Tom and Karyn Seabrooke in and from the state of Oklahoma. Investor funds, totaling in excess of Five Million Dollars (\$5,000,000), were solicited and received by Tom and Karyn Seabrooke. These funds were deposited to numerous bank accounts under the exclusive control of the Seabrookes, including large investor deposits to the personal bank account of Tom and Karyn Seabrooke. The majority of checks disbursed from all of the accounts were signed by Karyn Seabrooke.

The Seabrookes have commingled and transferred investor funds among various bank accounts without attention to investment purpose and without distinguishing between personal expenses and business expenses. Investor funds paid for personal expenses of the Seabrookes and business expenses unrelated to the investments sold.

The bank records of the Seabrookes reflect no legitimate business activity generating sufficient revenue to pay the profits or returns promised to investors. New investor funds were used to pay earlier investors. Other investors have received nothing, *i.e.* the promised interest or the return of their principal. Tom Seabrooke's promises of security interests in purported collateral that would have reduced investment risk were fabricated.

The Seabrookes' illegal conduct was not limited to an isolated occurrence. Instead, the conduct spanned a time period of at least ten years and suggests that the Seabrookes

routinely disregarded securities laws in connection with the offer and sale of investments to multiple investors. Since the filing of the Petition herein, the Department has learned that Tom Seabrooke sold investment agreements prior to the Department's 2004 investigation of Tom Seabrooke to at least two Oklahoma investors, despite Tom Seabrooke's written representation to the Department in 2004 that he had only offered, but not sold, investments at that time. Tom Seabrooke is a recidivist violator of securities laws through the use of false and misleading statements.

On Monday, September 1, 2014, an investor with the Defendants received the following text message from Tom Seabrooke:

"Courtesy update-Since receiver took over 3 weeks ago, his fees including his attorney and accounting are over 75,000. I had an offer 272,000 on one of my 4 plexs, listed at 275,000 2 days after the receivership and I told them we need to take it. He and the attorney couldn't decide and want to wait another week to talk to the judge. Over 220,000 equity to go towards paying you 50K and others off and they couldn't make the decision. They are receivers, isn't that their job? They see over 2M equity and they are going to eat all of it. Nothing can help me now, no bank accounts, no income, Karyn had a closing last week with a 4,000 commissioned-all went to the receiver. I can stand on the street corner and make 100 a day but unless you say something to the SEC and the court I doubt you will see another dime. Let me know if you want more updates or not. Tom"

From this sample communication, it is clear that Tom Seabrooke is attempting to undermine the authority of the Receiver. Tom Seabrooke continues his proclivity to deceive investors, even as the facts of this case clearly reveal the dire financial condition of the Defendants.

The Receiver has recently learned that Tom and Karyn Seabrooke have been managing the apartment units of one investor and have not collected the applicable monthly management fees for the services. Instead, the Seabrookes have been offsetting the monthly management fees against the money Defendants owe to the investor. This preference is not equitable to other investors who are also owed money. The decision to give preferential

treatment to individual investors alone is a basis to remove Tom and Karyn Seabrooke from employment.

The Receiver has identified liquid assets of less than \$100,000 since his appointment on August 11, 2014. While some other assets may have value, estimated restitution claims from investors will substantially exceed the value of these assets.

### **ARGUMENT FOR THE REMOVAL OF TOM AND KARYN SEABROOKE**

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[.]

In *State ex rel. Day v. Southwest Mineral Energy, Inc.*, 617 P.2d 1334, 1338 (Okla. 1980), the Supreme Court of Oklahoma reviewed a case brought by the Oklahoma Department of Securities wherein the defendants, both individual and corporate, were alleged to have engaged in violations of the registration and anti-fraud provisions of the Act. The Court stated that Districts Courts of Oklahoma have equitable powers in actions brought under the Act and, “[o]nce the equity jurisdiction of the District Court has properly been

invoked, the Court possesses the necessary power to fashion appropriate remedies.” *Id.* Likewise, it is well established that districts courts have “broad powers and wide discretion to determine the appropriate relief in an equity receivership.” *S.E.C. v. Elliott*, 953 F.2d 1560, 1569-70 (11<sup>th</sup> Cir. 1992.)

Under the authority of Section 1-603(B) of the Act, this Court appropriately ordered the Temporary Injunction. This Court has already found a justifiable basis to believe that Tom and Karyn Seabrooke engaged in violations of the Act. *SEC v. Gen. Refractories Co.*, 400 F.Supp. 1248, 1254 (D.C. 1975). The Department presented testimony at the August 19, 2014 hearing establishing “a reasonable likelihood of a future violation.” *SEC v. Householder*, 2002 WL 1466812 at \*5 (N.D. Ill. 2002). Also, past violations are “highly suggestive [of] the likelihood of future violations.” *Okla. Sec. Comm'n ex rel. Day v. CFR Inter., Inc.*, 622 P.2d 293, 295 (Okla. Civ. App. 1980) (quoting *SEC v. Mgmt. Dynamics, Inc.*, 515 F.2d 801, 807(2d. Cir. 1975)). Because Tom Seabrooke engaged in violations of the Act in 2004, appears to have engaged in violations of the Act prior to 2004, and has continued to violate the Act since 2004, there is great risk that he will engage in future violations.

The Temporary Injunction issued herein provides specific authority to the Receiver to remove any individual Defendant from employment as follows:

IT IS FURTHER ORDERED that Ryan Leonard (“Receiver”) shall remain the appointed Receiver for Defendants. The Receiver is given direction and authority to accomplish the following with regard to Defendants and the Assets as may be necessary and advisable for the preservation of the Assets and in discharging his duties as Receiver;

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to retain any employee of the Defendants, as may be advisable or necessary, including any individual Defendant, in control of, management of,

participation in the affairs of, or on the premises of, the Defendants; and/or to dismiss any employee of the Defendants as may be advisable or necessary, including any individual Defendant, from control of, management of, or participation in the affairs of, or from the premises of the Defendants[.]

It is consistent with the equitable authority of this Court to remove from employment those who have operated a fraudulent securities scheme as Tom and Karyn Seabrooke have done for years. The Supreme Court of Oklahoma in *State ex rel. Day v. Southwest Mineral Energy, Inc.*, *supra* stated:

“A reading of the Oklahoma Securities Act makes it clear that one of its purposes is to protect the uninformed from manipulative and deceptive practices when dealing in securities. Given this purpose, we do not believe it was the intention of the Legislature to allow those guilty of manipulative practices to profit from their illegal action.” *Id.* at 1338.

The Seabrookes 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 the Seabrookes is not fully known at this time. As described above and in the Petition, the Seabrookes have already misused a substantial amount of investor funds, raising a concern that they will further dissipate assets to the detriment of investors. Removal of the Defendants is appropriate and necessary to preserve remaining assets should the prayed for restitution be granted.

Equity requires the dismissal of those who have engaged in manipulative and deceptive practices from access to the assets, investors, and businesses of the Defendant Entities. In *S.E.C. v. Pension Fund of America*, 377 Fed.Appx. 957 (11<sup>th</sup> Cir. 2010), the court prohibited the payment of commissions and/or wages to a defendant in a securities receivership who had engaged in a “very fraudulent scheme that caused the losses at issue.” *Id.* at 963. The *Pension Fund* court found that compensating the perpetrator of a fraudulent scheme would be inconsistent with the equitable distribution of receivership assets. *Id.*

Similarly here, it is inconsistent with equitable principles to continue the employment of Tom and Karyn Seabrooke, after they illegally solicited and misused millions of dollars of investor funds, defrauded dozens of investors, and engaged in their own fraudulent scheme, in violation of the securities laws. It is imperative that they be prohibited from any further employment by the Defendant Entities.

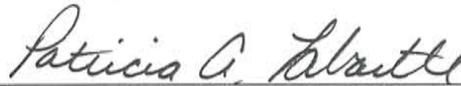
### CONCLUSION

In light of the facts presented and authorities cited, the Department respectfully requests that this Court enter an order removing Tom and Karyn Seabrooke from employment with Defendant Entities.

Respectfully submitted,

OKLAHOMA DEPARTMENT OF SECURITIES  
Irving L. Faught, Administrator

By:



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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 23<sup>rd</sup> day of September, 2014, a true and correct copy of the above and foregoing was emailed to the following:

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