

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Oklahoma Department of Securities)
ex rel. Irving L. Faught, Administrator,)
)
Plaintiff,)
)
v.)
)
Seabrooke Investments LLC, *et al.*,)
)
Defendants.)

Case No. CJ-2014-4515

FILED IN DISTRICT COURT
OKLAHOMA COUNTY
NOV 26 2014
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TIM RHODES
COURT CLERK

OKLAHOMA DEPARTMENT OF SECURITIES' REPLY TO DEFENDANTS'
OBJECTION TO DEPARTMENT'S MOTION TO RETAIN COMMISSION
FOR SALE OF PROPERTY

The Oklahoma Department of Securities (Department), *ex rel.* Irving L. Faught, Administrator, respectfully replies to the response of Defendants to the motion to retain the commission from the sale of the receivership property at 4708 SE 44th Street, Oklahoma City, Oklahoma (Motion), known as the Cherry Hill Apartments (Cherry Hill Apartments).

Pursuant to a hearing held on September 9, 2014, Karyn Seabrooke was authorized to receive one half (1/2) of the realtor's commission for the sale of receivership real estate. On November 4, 2014, the Department filed the Motion requesting that the Court authorize the Receiver to retain the \$60,900 commission, paid to Seabrooke Realty LLC, for the sale of the Cherry Hill Apartments. On November 14, 2014, the Defendants filed an objection to the Department's Motion.

Since filing this case, the Department has persisted in seeking to preserve Defendants' assets for the payment of restitution to victims of Defendants' securities law violations. This has included making equitable challenges to the employment and compensation of Defendant Karyn Seabrooke. In its Motion, the Department presents an issue regarding the payment of a sizable commission that was preliminarily but not conclusively addressed by this Court. In a hearing on

October 14, 2014, the Court expressed concern about the “hurried” September 9th ruling when considering the larger commission to be paid to Karyn Seabrooke on the pending sale of the Cherry Hill Apartments saying: “I did not realize the magnitude. I was thinking in terms of homes here and there. I did not realize the magnitude of some of the commissions.” (See transcript of October 14, 2014 hearing, page 22, lines 21-25 and page 24, lines 5-9.) Later, the Court suggested a subsequent hearing on the subject of the Cherry Hill Apartments’ commission by directing the Department as follows: “I guess if and when that closes if you have an objection to paying her her 3 percent at that point we can have another hearing on why that—that shouldn’t occur.” (See transcript of October 14, 2014 hearing, page 70, lines 21-24.) Because the Court left open a future review of the issue, the Motion is not frivolous. The sale of the property has now closed and the consideration of the disposition of this commission is timely.

Defendants correctly point out that there has been no conclusion regarding the net amount that will be claimed by the victims in this case. Receiver Ryan Leonard testified on August 19, 2014, that the investor records have been destroyed. (See transcript of August 19, 2014 hearing, page 89, lines 2-8 and lines 19-21.) On August 19, 2014, Oliver Blaha, Investigator for the Department, testified that Tom Seabrooke identified the total amount received from investors as “roughly \$4.3 million.” (See transcript of August 19, 2014 hearing, page 53, line 25 and page 54, lines 1-2.) The Receiver also testified that it does not appear there will be adequate assets to repay investors in full. (See transcript of August 19, 2014 hearing, page 90, lines 1-7 and lines 18-20.) Specifically, the Receiver testified that there is approximately \$5.2 million in property listings that will sell for something less than the listed prices. (See transcript of October 14, 2014 hearing, page 47, line 24-25 and page 48, lines 1-6.) He also testified that there are approximately \$2.3 million in mortgages. (See transcript of October 14, 2014 hearing, page 48, line 7.) The claims process will determine to what extent

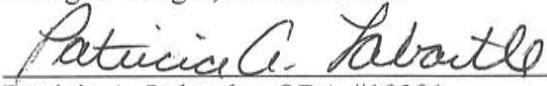
there is a loss to the Seabrooke investors and, until that time, it will be necessary to safeguard all funds for the payment of the claims.

The Department's allegations against Karyn Seabrooke in this case are stated in the Petition and have been the subject of testimony in the hearings on the temporary restraining order and temporary injunction. While Karyn Seabrooke may be assisting in the sale of real estate and the operation of the property management company, the Department contends that she should not be permitted to profit from the sale of assets funded from illegally obtained monies. In *SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1104 (2nd Cir. 1972), the Court stated that the effective enforcement of the securities laws "requires that the SEC is able to make violations unprofitable. The deterrent effect of an SEC enforcement action would be greatly undermined if securities law violators were not required to disgorge illicit profits." Id. at 1104.

The Department respectfully requests that this Court enter an order authorizing the Receiver to retain the commission from the sale of the Cherry Hill Apartments for the benefit of investors.

Respectfully submitted,

OKLAHOMA DEPARTMENT OF SECURITIES
Irving L. Faught, Administrator

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CERTIFICATE OF SERVICE

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Patricia A. Blawie

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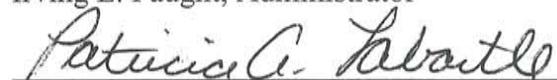
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IN THE DISTRICT COURT OF OKLAHOMA COUNTY
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Oklahoma Department of
Securities, ex. rel., Irving L.
Faught, Administrator,
Plaintiff,
vs.
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Oklahoma limited liability
company, et al.,
Defendants.

COPY

Case No. CJ-2014-4515

* * * * *

TRANSCRIPT OF PROCEEDINGS
HAD ON THE 14TH DAY OF OCTOBER, 2014
BEFORE THE HONORABLE PATRICIA G. PARRISH,
DISTRICT JUDGE

Reported by: Karen Twyford, RPR

1 THE COURT: Let me ask, Ms. Labarthe, if she was
2 removed and -- as being involved in the management or even
3 on the real estate side of this, if Ms. Seabrooke had a
4 potential purchaser on one of the receiver properties and
5 brought them to the table, would you have an objection, even
6 if she were no longer involved in the proceeding with this,
7 would you have objection to her if she were removed from any
8 involvement to even bringing offers to the receiver?

9 Because, I mean, if I release her from this, is she
10 not -- I mean, if she brings a potential offer or a buyer to
11 the table would she be reimbursed in that case?

12 MS. LABARTHE: Absolutely. I would think so. The
13 problem, though, becomes, for example, with the Cherry Hill
14 Apartments and the amount, what that -- if that property
15 closes next month, the commission on that property is going
16 to be very substantial. And I don't think that any of us
17 envisioned that that kind of a payment would be made out of
18 the receivership to a defendant in this case.

19 THE COURT: And I will tell you, that's the two
20 things, Mr. Robertson, that when this was brought to my
21 attention was two things that I did -- it was sort of a
22 hurry-up hearing that we took this up last time. I did not
23 realize the magnitude. I was thinking in terms of homes
24 here and there. I did not realize the magnitude of some of
25 the commissions.

1 we think the value is higher, but let's not argue about
2 that. It is a significant number. And 3 percent of \$6
3 million is a number that could be calculated when the order
4 was entered. It is not a surprise.

5 THE COURT: I will tell you, it was to me. When it
6 came to me, the magnitude of numbers that we were looking
7 at, I -- somebody probably could have. Maybe it was we just
8 sort of -- we dealt with this issue at the hearing without
9 any thought or input into it.

10 MR. ROBERTSON: I understand, your Honor. But what
11 it is going to come down to is under the current arrangement
12 Mrs. Seabrooke, who knows the properties better than anyone
13 else, is going to be paid less money to help the receiver
14 sell the properties that will generate more money for the
15 receivership than either of these two.

16 THE COURT: And that's part of what my question was
17 to Ms. Labarthe was if she were not doing this through the
18 receivership and just even brought, say, the Cherry Hills
19 property, a buyer to the table on that, she would be asking
20 for her 3 percent at that point, wouldn't she, because she
21 wouldn't be out of any court order?

22 I mean, I understand the dynamics of just the
23 investors saying what are they doing with these people. And
24 I'm trying to get a good grip on the amount of dollars that
25 it's really going to impact the receiver. Because what I'm

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1 something to interfere, I will remove Ms. Seabrooke as a
2 result of Mr. Seabrooke's interference if I find that that
3 is, in fact, and text messages or anything like that are
4 going out in the future.

5 So I'm going to deny the Department's request to
6 keep them involved because I think the benefit of these
7 third-party contracts is a big benefit that I don't think
8 the receiver would have access to those funds anyway.

9 Having said that, I'm a little surprised that
10 Ms. Seabrooke wants to stay involved in this because it
11 sounds like for her personally that she would be better off
12 financially to be doing this stuff on her own, but that is
13 neither here nor there.

14 MR. ROBERTSON: Well, your Honor, it has been the
15 Seabrooke's contention all along, since the investigation
16 first started, that they want lenders, investors, and
17 everyone to get as much money back as possible. This is one
18 way that she can work on getting that done.

19 THE COURT: Okay. With that said, Ms. Labarthe, do
20 you still want to set a -- do you -- I mean, my order is
21 what it is with regard to the commission and the Cherry
22 Hill. I guess if and when that closes if you have an
23 objection to paying her her 3 percent at that point we can
24 have another hearing on why that -- that shouldn't occur.

25 But right now my order is that she still gets the

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DISTRICT JUDGE

Reported by: Karen Twyford, RPR

DISTRICT COURT OF OKLAHOMA --- OFFICIAL TRANSCRIPT

1 investor funds?

2 A I asked Mr. Seabrooke on Tuesday morning when we met
3 what information he could tell us about the investors. He
4 informed me that those files had all been destroyed in a
5 storm. They were kept at the hotel, and there was a storm
6 in, I believe, May of 2013. So we were initially told that
7 the files were destroyed and he didn't have any records of
8 investor funds.

9 On Friday -- in the meantime Mr. Seabrooke, I asked
10 him, Can you do your best to recreate who invested what, and
11 he did provide us with a one-page sheet of the investor
12 monies that were received by him and what was paid back as
13 best he could recall.

14 Teresa, the bookkeeper, who we spent a lot of time
15 with, she informed us that Tom effectively took her out of
16 the account for the investors sometime ago, so she doesn't
17 have any record of the investors. She does have records of
18 some checks that were mailed out.

19 But the bottom line is the files were destroyed, is
20 what we were told. Tom made his best effort to re-create
21 those numbers. And I was given on Friday a one-page sheet
22 that shows the investor funds received and paid as best he
23 could recall.

24 Q Have you found whether there will be assets
25 sufficient to pay over \$4 million back to the investors?

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1 Q And loan -- the 43 are loan accounts for all of the
2 defendants?

3 A Yes.

4 Q What time period did you look at the records for?

5 A January 2009 to April of 2014.

6 Q And how many banks were there for defendants?

7 A Nine.

8 Q Did you look at any other documents besides bank
9 records?

10 A The documents given to me by Brenda, the paralegal,
11 of what Tom Seabrooke gave to me, gave to the Department.

12 Q Is your investigation complete at this time?

13 A No, it is not.

14 Q You mentioned the documents from Tom Seabrooke that
15 Brenda give to you. Is that how you were able to identify
16 that those records came from Tom Seabrooke?

17 A Yes.

18 Q What items did you look at in those Tom Seabrooke
19 records?

20 A The investor list, the signatures of who signed for
21 the bank accounts, and the bank accounts themselves.

22 Q And how many investors were identified in those
23 records provided by Tom Seabrooke?

24 A 15, I believe.

25 Q What did Tom Seabrooke identify as the total amount

1 received from investors?

2 A Roughly around 4.3 million.

3 Q What bank accounts have you reviewed so far in your
4 investigation?

5 A Seabrooke Realty, Bricktown Capital operating,
6 Seabrooke Investments, Oakbrooke, the Karyn and Tom
7 Seabrooke personal accounts. And we've started doing Cherry
8 Hill, Bricktown Capital. And I believe there is one more.
9 Oh, the KAT Properties, the 3020 Robinson.

10 Q How did you identify what records to review first?

11 A From the list of primary banks.

12 Q Let's talk a little bit more about your
13 investigation. How did you kind of approach the review of
14 the bank records?

15 A We would get the bank statements and the checks and
16 deposits from the bank, and we would put in the bank
17 statement amounts and we would go individually and put in
18 each transaction and make sure what we get corresponds with
19 the amount that is on the bank statement. Then we would
20 categorize the transactions as either business expense,
21 personal, investor funds.

22 Q Did you have other people help you input the records?

23 A Yes, I had a couple of colleagues of mine.

24 Q But do you review all of the records that your
25 colleagues have entered?

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1 A That's what we're -- one of the things we're trying
2 to determine, in addition to managing and running these
3 businesses as best we can. I don't have any information at
4 this point to suggest that there will be those kind of
5 assets to repay investors. There does appear to be some
6 equity in the properties outside of the hotel, but it does
7 not appear to be \$4 million. But I think in the coming days
8 we will have a clearer picture of that.

9 Q Have you received any phone calls from investors?

10 A Received a number of phone calls from investors.
11 I've responded to those calls as best I can. We're getting
12 calls from a lot of people who have either invested or who
13 were hired by the hotel. Got a call today from a lady who
14 has booked a convention at the hotel in September wanting to
15 know what to do.

16 we're doing the best that we can under the
17 circumstances to field those questions. Obviously, those
18 questions will continue to come. But at this point we just
19 don't know how much money is there. It does not look like
20 there is \$4 million there.

21 Q What have been the nature of the investor calls?

22 A I had a call last night from Richard Shonts, who I
23 believe invested about \$200,000. He told me that he lives
24 off the money that he receives from Mr. Seabrooke. I don't
25 know exactly how much that is, but he's -- obviously he

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1 Realty would have retained 3 percent.

2 THE COURT: Right.

3 MR. LEONARD: Under this arrangement, the Cherry
4 Hill, for example, there was no broker representing the
5 buyer so Seabrooke Realty would retain 6 percent. Under the
6 court's previous order Mrs. Seabrooke would have been paid 3
7 percent of that.

8 THE COURT: Okay. All right. Mr. Robertson. Did
9 you have anymore questions, Ms. Labarthe?

10 Let me just ask this of the receiver: What is your
11 position with regard to whether it's an asset to the
12 receivership or not to keep Ms. Seabrooke involved?

13 MR. LEONARD: Your Honor, that's -- I understand
14 where the State is coming from, from a policy standpoint
15 obviously. I view my role as doing whatever the court
16 instructs me to do. My understanding was that the
17 instruction from the court was to, at least at the outset,
18 retain the Seabrookes for reasons that I mentioned:
19 Tom with the hotel, Karyn does know the properties, as
20 Mr. Robertson said. If we retain Mrs. Seabrooke, obviously
21 there's -- that means more money for the receiver.

22 THE COURT: Do you believe the receivership will
23 make more money if Ms. Seabrooke stays involved?

24 MR. LEONARD: As Mr. Robertson pointed out with the
25 commission splits, just as a matter of math, the actual list

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TRANSCRIPT OF PROCEEDINGS

HAD ON THE 14TH DAY OF OCTOBER, 2014
BEFORE THE HONORABLE PATRICIA G. PARRISH,
DISTRICT JUDGE

Reported by: Karen Twyford, RPR

1 value, based upon list values provided by the seabrookes, if
2 you look at their entire portfolio it is \$5.2 million in
3 list value. So, obviously, we won't sell everything for
4 \$5.2 million, but there is some number that we will and we
5 think those are competitively priced, and there is value in
6 these properties.

7 There is roughly \$2.3 million in mortgages, so
8 there is equity in these properties, so there is money in
9 this receivership to repay investors. As Mr. Robertson
10 pointed out, if you just look at the numbers, the numbers
11 with Mrs. Seabrooke are more favorable than hiring an
12 outside broker, even though the outside broker -- both
13 brokers have -- one quote is lower than the other, but both
14 have taken a discount off the standard.

15 So I've not felt like it was my role to make a
16 determination as to whether or not the Seabrookes stay in or
17 go. I can tell you that I feel very confident that we,
18 regardless of who is there, we have a very tight fist on the
19 finances of these businesses. And, you know, no money is
20 going to go anywhere that it shouldn't go.

21 So I guess the answer to the question is I don't
22 know that it is my place to have a position. I can work
23 with Mrs. Seabrooke, or I can work with an outside broker.

24 THE COURT: Thank you. Mr. Robertson.

25 MR. ROBERTSON: Just a few questions, your Honor,