
IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF SECURITIES, *ex rel.*
IRVING L. FAUGHT, ADMINISTRATOR,

Plaintiffs/Appellees,

v.

ACCELERATED BENEFITS CORPORATION,
C. KEITH LAMONDA, AMERICAN TITLE COMPANY OF
ORLANDO, AND DAVID S. PIERCEFIELD,

Defendants/Appellants.

v.

TOM MORAN,

Court Appointed Conservator/Appellee.

FILED
SUPREME COURT
STATE OF OKLAHOMA

APR 24 2003

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BRIEF-IN-CHIEF OF DEFENDANTS/APPELLANTS

APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY
THE HONORABLE DANIEL L. OWENS, JUDGE OF THE DISTRICT COURT
CASE NO. CJ-99-2500-66
ACTION FOR VIOLATIONS OF THE OKLAHOMA SECURITIES ACT

April 24, 2003

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BRIEF-IN-CHIEF OF DEFENDANTS/APPELLANTS

Defendants/Appellants, Accelerated Benefits Corporation ("ABC"), American Title Company of Orlando ("ATCO"), C. Keith LaMonda ("LaMonda") and David Piercefield ("Piercefield") (collectively "Defendants"), hereby submit this Brief in Chief in support of their appeal of two related final orders which the district court entered on November 20, 2002 (hereafter the "November Orders").

I. INTRODUCTION

This appeal is from the district court's November Orders which construed and modified a previous final order which the district court entered nine months earlier. The court's construction of the prior final order resulted in a substantial modification of its provisions and imposed new and significantly different obligations on ABC and ATCO which were not contained in the previous final order nor contemplated by the parties (or by the court) when originally entered. As shown below, the district court's November Orders should be reversed and the previous final order should be given a construction which is consistent with its plain language and original intent.

II. SUMMARY OF THE RECORD

A. The Department's Lawsuit And The Subject Matter of This Case.

This case was originally filed on April 8, 1999, by the Oklahoma Department of Securities (the "Department") against ABC and several other defendants. The Department alleged that the defendants violated various provisions of the Oklahoma Securities Act, including

selling unregistered securities and making false statements in connection with the sale of securities.¹

ABC was a licensed viatical settlement provider. Essentially, it arranged for the purchase of life insurance policies through a viatical broker who represented terminally ill persons insured under various life insurance policies. A viatical settlement generally provides that, in return for a sum of money in advance of death, the insured or "viator" agrees to change the beneficiary of the policy in favor of a trustee who holds title to the policy for the benefit of persons who have agreed to purchase an interest in the policy (hereafter referred to as "purchasers"). Upon the death of the viator (*i.e.*, when the policy "matures"), the proceeds of the policies are distributed to the purchasers in proportion to their fractional interest of ownership in the policy. (*See* fn. 1, *supra.*)

ABC has been a viatical provider since 1996. It matched purchasers with policies and received a fee for arranging the viatical transaction. ATCO, a bonded title company based in Orlando, Florida, acted as a trustee. Its duties included documenting the transaction to carry out the purchase of the policies from the viators, including changing the beneficiary of the policies. In some cases, the purchasers became direct beneficiaries of the policies. However, in most cases, ATCO became the beneficiary of the policies for the benefit of the purchasers.

¹The foregoing facts are of record in the Supreme Court. They are provided here as background facts only. The various documents supporting these facts are contained in the briefs and appendices and in the petition for rehearing and Defendants' response thereto filed with the Court in *Accelerated Benefits Corp. v. Hon. Daniel L. Owens*, Case No. 98083.

As explained in more detail below, ATCO held nominal title to approximately 1,400 policies for the benefit of nearly 4,500 purchasers. Each of the purchasers executed a purchase request agreement, which in tandem with various other documents, effected the viatical transaction. (See fn. 1, *supra*.)

In connection with all purchase transactions, a reserve account was initially established to pay premiums, and keep the policies in force, over the estimated life expectancy of the viator. When a viator dies, the proceeds are collected from the insurance company and distributed by ATCO and ABC to the purchasers in accordance with their fraction of interest in the particular policy. (See fn. 1, *supra*.)

As noted above, in 1999, the Department filed suit against ABC, ATCO, and others, claiming that the viatical settlements effected by ABC in Oklahoma were investment contracts, or "securities" within the meaning of the Oklahoma Securities Act, Okla. Stat. tit. 71, § 101, *et seq.* (the "Act"). A threshold issue, which the district court decided against the defendants, was whether the viatical settlements constituted "securities" within the meaning of the Act. ABC relied on an opinion authored by Judge Ruth Bader Ginsburg of the United States Court of Appeals for the District of Columbia (now Justice Ginsburg). Writing for the majority of the three member panel, Judge Ginsburg found that viatical settlements, similar to those provided by ABC, were not securities within the meaning of the federal securities laws. See *SEC v. Life Partners*, 102 F.3d 587 (1996). The district court, however, disagreed with *Life Partners* and held that ABC's viatical settlements were, in fact, securities within the meaning of the Act,

even though the Act requires that it be construed consistent with the federal securities laws. *See* Okla. Stat. tit. 71, § 501. (*See* fn. 1, *supra.*)

B. The District Court's Findings And The Formation of The Conservatorship Order.

Based on the district court's finding that the Act was applicable, the district court proceeded to find that the defendants unlawfully sold unregistered securities within the State of Oklahoma in violation of the Act, and that certain defendants, allegedly acting on behalf of ABC, made various misrepresentations in connection with the sale of the viatical settlements in violation of the anti-fraud provisions of the Act. The district court ruled in favor of the Department and entered findings of fact and conclusions of law on March 13, 2001. Approximately three months later, on June 26, 2001, the Department applied for and obtained a permanent injunction against ABC enjoining it from selling unregistered securities within the State of Oklahoma. (*See* fn. 1, *supra.*)

ABC did not appeal the judgment nor the injunction. Instead, over the course of the next seven months, Keith LaMonda, president of ABC, dismissed his trial attorneys and personally negotiated the terms of an order with the Department's lawyer, Patricia LaBarthe. The order was designed to conserve the "assets" of ABC and ATCO to insure the timely payment of premiums and prevent the life insurance policies from lapsing and thereby resulting in a total loss of the purchasers' investments. The parties' negotiations resulted in the entry of an "Order Appointing Conservator and Transferring Assets," (hereafter the "Conservatorship Order") filed

These facts are relevant here only because, as will be shown below, the Conservatorship Order, as envisioned by the Department and LaMonda, did not contemplate many of the events that would come to pass, including a Conservator and a district judge who had distinctly different views over the interpretation of an order which they had absolutely nothing to do with its drafting. It was largely because of their divergent views of a document which neither had any part in drafting, and their subsequent interpretations of its provisions, that the Conservatorship Order was construed in a manner that was radically different from what the drafting parties, *i.e.*, ABC and the Department, actually intended. Moreover, because the district court signed the order based primarily on the parties' representations that they had reached an agreement as to its terms, the court was essentially requested to "construe" (and in certain instances, modify) what was, in effect, a contract concerning disputes over terms the court took had no part in drafting, let alone provisions which it had actually ordered.

The subject of the Conservatorship Order, including the powers bestowed by it on the district court and on the Conservator, have already been the subject of original proceedings before this Court. *Accelerated Benefits Corp. v. Hon. Daniel L. Owens*, Case No. 98083 (Aug. 7, 2002). In this proceeding, ABC and ATCO successfully obtained a writ of mandamus directing the district court to vacate an order sought and obtained by the Conservator which was thought to be authorized by the Conservatorship Order. (*See* Order of Supreme Court entered in Case No. 98,083, dated October 3, 2002.) Since that time, a similar order, which orders the sale of the policies for approximately a third of their face value, has been entered by the district court and is currently the subject of another appeal filed by ABC. *Oklahoma Dept.*

of Securities, ex rel., Irving L. Faught, Administrator v. Accelerated Benefits Corp., Case No. 98854 (Feb. 12, 2003). It suffers from the same defects, and to expedite matters and prevent irreparable harm, ABC will soon seek a writ as to this order as well.

D. The Conservatorship Order.

There are certain aspects of the Conservatorship Order which are not in dispute. It was drafted with the overriding intent to protect the purchasers' investments, and this is clearly evident from its terms. It provides initially:

The Court, having reviewed all of the evidence offered, and being advised that the parties agree to the entry of this Conservatorship Order, finds that the following order should be entered in lieu of a judgment for restitution and *in order to prevent potential irreparable loss, damage or injury to purchasers of interests in the right to receive proceeds from viatical and/or life settlement policies effectuated by ABC Purchase Request Agreements ("ABC Investors")*.

(Conservatorship Order at 1, Ex. A; Emphasis supplied.)

The various disputes over the construction of the Conservatorship Order began, however, when the Conservator (and his attorneys) began making demands under the order which, in many respects, were seemingly designed to insure that there would be sufficient funds on hand to pay the Conservator's exorbitant fees, expenses and attorney fees. Indeed, during the space of the first nine months of the Conservatorship, the Conservator and his attorneys paid themselves over \$396,610.54, and this figure does not even include fees and expenses incurred over the ensuing months ending February 2003, which amount to \$350,577. Moreover, during

policies that have not yet matured." (Conservatorship Order at 3, Ex. A.) As noted above, for the first nine months of the Conservatorship, ABC, not the Conservator, made all premium payments.

Defendants also asserted that the Conservator's position regarding the payment of premiums was ill-taken. (Defendants' Motion at 2-4.) The Conservator relied on a provision of the Order which required ABC to pay "office expenses, salaries, and other costs of the Conservatorship until at least 75% of all Conservatorship assets have been transferred to the Conservator." The parties disagreed over the meaning of two aspects of this provision. First, contrary to the Conservator's contention, this provision clearly dealt with the administrative expenses of the Conservatorship and did not, in anyway, include or reference the payment of premiums, which were specifically dealt with in another portion of the order. The Conservator contended that ABC's purported obligation to pay premiums was required by the "other costs" language of the provision quoted above. Second, the parties disagreed radically on when 75% of the Conservatorship assets (here mainly the insurance policies) were deemed to be "transferred" to the Conservator. Defendants argued, citing numerous authorities, that a policy is deemed transferred once the change of beneficiary documents have been properly executed and delivered to the insurance company — a mere administrative formality. Conversely, the Conservator argued that the transfer would not take place until several months later, after the insurance company had "acknowledged" receipt of the forms and a change of beneficiary. (*Id.* at 10-14.)

F. The District Court Rulings.

Two hearings were held on the matter. At the first hearing, the court announced its ruling from the bench. (See Transcript filed October 11, 2002.) The second hearing was a motion to settle the terms of the journal entries disposing of the parties' respective motions. (See Transcript filed January 29, 2003.)

Thus, on November 20, 2002, two journal entries (the November Orders) were executed and filed by the court.⁶ The first journal entry, dealing with Defendants' Motion, provided, in part: (a) that the Conservatorship Order was "clear and unambiguous"; (b) that ABC was obligated to pay all costs and expenses of the Conservatorship, including premium shortfalls, until 75% of the Conservatorship assets were transferred to the Conservator and that, as of November 1, 2002, 75% of the assets will have been deemed "transferred" to the Conservator. In other words, the court agreed with the Conservator's argument as to when the beneficiary of an insurance policy is deemed to have been changed. The court also held, at the first hearing, that the "[Conservatorship Order] was not meant to be punitive" and that ABC should be reimbursed for premium payments it previously made which had also been made by purchasers, thus leaving ABC *voluntarily* responsible for payment of premium shortfalls, which, at all times, it was willing to do to keep the policies in force, provided it would be reimbursed for its advances of premiums upon maturity of the policies. (See Ex. B.)

⁶The November Orders are attached hereto as Exhibits "B" and "C."

The second of the November Orders similarly provided that ABC was obligated to pay all costs and expenses of the Conservatorship, including premium shortfalls, until 75% of the Conservatorship assets were deemed transferred. The order also provided that "a policy will deem to have been transferred upon receipt by the Conservator of a confirmation from the insurance company acknowledging the change of beneficiary or ownership of the policy to the Conservatorship." The order directed ABC to pay the Conservator's fees and expenses that had been incurred through the date of the order, which at the time was approximately \$396,610.54. A subsequent order quantified the remainder of the fees and expenses incurred through November 1, 2002, leaving ABC responsible for the sum of \$173,445.82.

The November Orders also directed that an audit would be performed, at ABC's expense, that would determine the amount that should be reimbursed to ABC for premiums it had advanced which had already been paid by other purchasers. That determination, to date, has not been made, because the audit has not been completed. Further, the audit was ordered to also determine the amount of assets that were left with the Conservatorship at its inception so that the court could determine whether all or any such portion of the assets should be deemed to be in payment of ABC's expense obligations. Because the audit has not been completed, that determination has not been either, but in the meantime the Conservator and the Department have initiated efforts to collect ABC's monetary obligations triggered by the November Orders.

III. ARGUMENT AND AUTHORITIES

A. General Rules of Construction of Judgments.

In general, once a judgment has become final for want of an appeal or in consequence of an appellate court's decision, any controversy over the meaning and effect of that judgment must be resolved by resorting solely to the face of the judgment roll. *Stork v. Stork*, 898 P.2d 732, 739 (Okla. 1995). Only if a judgment is ambiguous on the face of the record may a court reach it for construction. The meaning of a judgment is to be defined from the terms expressed in its text, which is to be construed with the other parts of the judgment roll. *Id.*

The judgment roll consists of the petition, the process, the return, the pleadings subsequent thereto, reports, verdicts, orders, judgments, and all material acts and proceedings of the court. *Mills v. Mills*, 841 P.2d 624, 627 (Okla. Ct. App. 1992). Even if it were proper to "construe" the judgment being considered, a court may not rewrite its provisions, and a court's search for clarification would be limited to the judgment roll. *Id.* Thus, even if the Conservatorship Order is ambiguous, the Court is generally limited to the judgment roll when interpreting or construing its terms. The offending ambiguity must be shown by some inconsistency on the face of the record. *Dickason v. Dickason*, 607 P.2d 674, 678 (Okla. 1980).

Mere ambiguity will not affect a judgment's validity, unless none of its terms is susceptible to construction which will make it conformable to law. *Jackson v. Jackson*, 45 P.3d 418 (Okla. 2002). An unclear judgment should be construed so as to carry out its evident purpose and intent, rather than defeat it, and a court should consider the situation to which it was

applied and the purpose it sought to accomplish. *Id.* at 428. The purpose and function of the court in construing a decree earlier entered is to give effect to that which is already in the judgment, although expressed ambiguously, and the court has no authority to add new provisions to the decree or to change substantive provisions already in the decree, under the guise of construing said decree. *Id.* Also, merely entering a second judgment cannot, per se, vacate a prior judgment in the same action. *Id.*

The general rules of interpretation, as set forth herein, have been utilized by various Oklahoma courts for some time. In *Hicks v. Hicks*, 417 P.2d 830, 832 (Okla. 1966), the Oklahoma Supreme Court stated that when construing a judgment, effect should be given to every word and part thereof, including such effects and consequences that follow the necessary legal implications of its terms. Where the wording of the judgment is not clear, it should be construed so as to carry out the evident purport and intent of the action rather than to defeat it. *Id.* It is necessary to take into consideration the situation to which it was to be applied and the purpose sought to be accomplished. *Id.* at 833.

In *Frazier v. Bryan Memorial Hospital Authority*, 775 P.2d 281, 287-88 (Okla. 1989), the Oklahoma Supreme Court stated that, when construing the terms of an unclear, doubtful or ambiguous order, the court will examine the four corners of the record proper to interpret the trial judge's decision. "We will not construe an order as granting more relief than that which was demanded." *Id.* at 286.

Especially pertinent here is the rule that *the interpretation of the parties to a judgment which is ambiguous*, like the interpretation of an ambiguous contract, should be given weight by the court. *General Creditors of Estate of Harris v. Cornett*, 416 P.2d 398, 400 (Okla. 1966). Likewise, the circumstances surrounding the making of the judgment may be considered. *In construing the provisions of a judgment the usual canons of construction should be applied.* While the language of particular judgment provisions should be taken in its ordinary legal meaning, it must be considered in connection with its context and the judgment as a whole. *Id.*

Accordingly, in the current action, if this Court should determine that the Conservatorship Order is ambiguous, then the Court may construe or interpret the Conservatorship Order. Regardless, the Court may not allow a district court to add provisions to the current Conservatorship Order nor may the district court be permitted to make substantive changes to the existing provisions. Further, because the parties to the Conservatorship Order actually drafted it, "[t]he interpretation of the parties to a judgment which is ambiguous, like the interpretation of an ambiguous contract, should be given weight by the court," as well as the circumstances surrounding the making of the judgment, employing the usual canons of construction applied to contracts. *General Creditors of Estate of Harris v. Cornett*, 416 P.2d 398, 400 (Okla. 1966).

B. The Conservatorship Order Expressly Dictates That The Conservatorship Is Responsible For The Collection and Payment of Premiums.

The Conservatorship Order directed the Conservator to take possession and control over certain "assets" "as they are transferred to Conservator." (Conservatorship Order

at 2, Ex. A.) These assets included (a) "all life insurance policies owned directly or indirectly" by ABC and its agents, including ATCO, (b) the viator files relating to the policies, (c) all premium reserve accounts and bank accounts into which ABC investor funds or proceeds from the policies had been deposited, and (d) "the right to recoup from the proceeds of the Policies all funds advanced by ABC to finance the payment of premiums on the Policies." (Conservatorship Order at 2, Ex. A.) The Conservator in fact seized many of these assets immediately upon execution of the Conservatorship Order. (See J. LaMonda Affidavit, filed September 19, 2003, Ex. "1" attached thereto.)

Further, the Conservator was "*directed*" by the Conservatorship Order:

1. to take custody, possession and control of the Conservatorship Assets as they are transferred to the Conservator.

* * *

5. to make such payments and disbursements as may be necessary and advisable for the preservation of the Conservatorship Assets and as may be necessary and advisable in discharging his duties as Conservator including, but not limited to, **the timely payment of all premiums for Policies that have not yet matured.**

(Conservatorship Order at 3, Ex. A; emphasis supplied.) Thus, under the clear and unambiguous terms of the Conservatorship Order, the Conservator was, from the inception of the Conservatorship, responsible for control of the policies and payment and collection of premiums on the policies.

Contrary to his express duties, the Conservator refused to pay, collect or administrate premiums. The Conservator also informed ABC that it would not reimburse it for the premiums which ABC had advanced to protect the purchasers from the Conservator's failure to perform his duties. In support this specious claim, the Conservator relied on the following language in the Conservatorship Order:

IT IS FURTHER ORDERED that ABC pay and maintain all office expenses, salaries, and other costs of the Conservatorship until at least seventy-five percent (75%) of all Conservatorship Assets have been transferred to the Conservator.

(Conservatorship Order at 5, Ex. A.)

This language in no way references the funding or payment of premiums. It is clearly limited to administrative expenses of the Conservatorship. In contrast, the Conservatorship Order, as quoted above, specifically says that the Conservator, not ABC or ATCO, is expressly duty-bound to make "the timely payment of all premiums for Policies that have not yet matured." (Conservatorship Order at 3, Ex. A.) It is a well known precept of Oklahoma law that the specific provisions of a contract control over its general terms. *See, e.g., West v. Aetna Life Ins. Co.*, 536 P.2d 393, 397 (Okla. Ct. App. 1974). Accordingly, the Conservatorship's construction is without basis, and the district court should have enforced the specific clear terms of the Conservatorship Order regarding the payment of premiums, rather than an unrelated, general provision dealing with administrative expenses. The district court's construction was clearly erroneous, and essentially rewrote the Conservatorship Order by reversing the parties' respective obligations.

Even if the phrase "office expenses, salaries, and other costs of the Conservatorship," stood alone and its meaning was not expressly superceded by the express provision terms the Conservator to make premium payments, the rule of *ejusdem generis* would nevertheless require a finding that the words "other costs" refer only to the words which precede them - "office expenses" and "salaries." The rule of *ejusdem generis* is "a rule of interpretation. It gives guidance to the ordinary insight that when specific words are followed by general words those specific words restrict the meaning of the general." (Emphasis supplied.) *State ex rel. Comr's of Land Office v. Butler*, 753 P.2d 1334, 1336 (Okla. 1987), *cert. denied*, 488 U.S. 993 (1988). In *Butler*, the issue was whether the word "minerals" used in the phrase "oil, gas and other minerals" referred to all types of minerals or only to minerals associated with oil and gas. The court held that "where the phrase 'other minerals' follows the enumeration of particular classes of minerals such as oil and gas, the general words will be construed as applicable only to minerals of the same kind or class as those specifically named." *Id.*

By the same token, because the words "other costs" follow the words "office expenses" and "salaries," it must be assumed that the parties were referring to the type of costs normally associated office expenses and salaries. These specific terms restrict the meaning of the more general terms "other costs" - which could admittedly cover many types of costs, but here, they can only be referring to administrative office costs because the terms which precede "other costs" clearly refer to the office administration of running the Conservatorship, and not to the premiums which must be paid to keep the policies in force.

In short, even if the Conservatorship Order never expressly set out the duty of the Conservator to pay premiums (it obviously does), the office expense provision of the order cannot be interpreted to impose that obligation on ABC. For this reason as well, the district court's interpretation of the premium payment obligation should be reversed.

C. Even If The Court Were To Accept The Conservator's Disingenuous Construction, The Conservator Was Still Nevertheless Responsible For All Premiums, Expenses, Salaries And Other Costs Upon the Transfer of 75 Percent of the Conservatorship Assets.

Pursuant to the terms of the Conservatorship Order, Defendants transferred to the Conservator (or the Conservator seized) virtually all Conservatorship Assets to the Conservator well within the 90 day period prescribed by the Conservatorship Order. Well over seventy-five percent of the policies were transferred during the initial months of the Conservatorship. As a result, even if "office expenses, salaries and other costs of the Conservatorship" included premiums, as urged by the Conservator, he nevertheless abdicated his responsibility to pay premiums for several months after ABC fulfilled its asset transfer responsibilities.

In an effort to avoid his responsibilities, and any corresponding costs, the Conservator took the position, in response to Defendants' Motion, that while the paperwork effecting the transfer of the policies had been expeditiously executed by Defendants (indeed, why would they want to delay doing so), only fifty-one percent of the various insurance companies had formally acknowledged or "confirmed" such transfers at the time parties' motions were filed; therefore, ABC's "expense" obligations continued. This position was, as explained to the district court, without basis in the law.

In the context of life insurance and change of beneficiary forms, the law of Oklahoma, and of other states, is quite clear — if the insured has done everything in his power to effect a change of beneficiary but dies before the last act is completed, particularly when the remaining act is a ministerial act to be performed by the insurer, the change will be regarded as complete. *Shaw v. Loeffler*, 796 P.2d 633, 635 (Okla. 1990); *Ivey v. Wood*, 387 P.2d 621, 626 (Okla. 1963); *Bowser v. Bowser*, 211 P.2d 517, 520 (Okla. 1949); *see also, Connecticut Gen. Life Ins. Co. v. Gulley*, 668 F.2d 325, 327 (7th Cir. 1982); *Persons v. Prudential Ins. Co.*, 233 S.W.2d 729, 733 (Mo. 1950).

Here, ABC and ATCO had done everything to effectuate the transfer of well over seventy-five percent (75%) of the Policies in compliance with the Conservatorship Order. *Once the paperwork was complete, so were the transfers in the eyes of the law.* Indeed, “existing applicable law is part of every contract as if it were expressly referred to or incorporated within the agreement.” *Welty v. Martinaire, Inc.*, 867 P.2d 1273, 1276 (Okla. 1994); *see also, Smith v. Baptist Found. of Okla.*, 17 P.3d 466, 470-71 (Okla. Civ. App. 2000); *Gamble, Simmons & Co. v. Kerr-McGee Corp.*, 175 F.3d 762, 769 (10th Cir. 1999). The same principle should apply to the interpretation of the Conservatorship Order. The remaining ministerial acts of the insurers’ approval did not diminish nor delay the effective date of the transfers.

Nor does it make any sense to penalize ABC and ATCO with payment of premiums and other expense because of the vagaries of insurance company delays, especially when ABC and ATCO went to great lengths to expeditiously complete the transfer documents.

A

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

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

Plaintiff

Accelerated Benefits Corporation, a Florida
corporation, et al.,

Defendants.

FEB - 7 2002

PATRICIA PHEWLEY, COURT CLERK

~~By _____~~
Wobley

Case No. CJ-99-2500-66

ORDER APPOINTING CONSERVATOR AND TRANSFERRING ASSETS

This matter came on for hearing this 6th day of February, 2002, before the undersigned judge of the Oklahoma County District Court, State of Oklahoma, on the joint application of Plaintiff Oklahoma Department of Securities ("Department") and Defendant Accelerated Benefits Corporation ("ABC"), for this Order Appointing Conservator and Transferring Assets ("Conservatorship Order"). The Court, having reviewed all of the evidence offered, and being advised that the parties agree to the entry of this Conservatorship Order, finds that the following order should be entered in lieu of a judgment for restitution and in order to prevent potential irreparable loss, damage or injury to purchasers of interests in the right to receive the proceeds from the viatical and/or life settlement policies effectuated by ABC Purchase Request Agreements ("ABC Investors").

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Tom Moran of Oklahoma City, Oklahoma, ("Conservator") be and is hereby appointed Conservator of the following assets of ABC or its agents, including American Title Company of Orlando and David Piercefield ("Conservatorship Assets").

1. all life insurance policies owned or held beneficially, directly or indirectly, by or for the benefit of ABC and/or the ABC Investors, that were purchased from the date of inception of ABC through September 30, 2000 ("Policies");

2. all assets of ABC necessary to accomplish the objectives of the Conservatorship listed below including, but not limited to, computer hardware, databases, software, ABC Investor and viator files relating to the Policies, accounting and financial records pertaining to premium payments and receipt and distribution of proceeds on the Policies, any deposit of cash, bond or guarantee, filing cabinets, office supplies, the lease to office space at 105 East Robinson Street, Suite 320, Orlando, Florida 32801, and telephone systems;

3. all premium reserve accounts and bank accounts into which ABC Investor funds or proceeds from Policies have been deposited; and

4. the right to recoup from the proceeds of the Policies all funds advanced by ABC to finance the payment of premiums on the Policies.

IT IS FURTHER ORDERED that the Conservator is given directions and authority to accomplish the following:

1. to take custody, possession and control of the Conservatorship Assets as they are transferred to Conservator;

2. to manage all Conservatorship Assets pending further action by this Court including, but not limited to, the evaluation of the Policies, and to take the necessary steps to protect the ABC Investors' interests including, but not limited to, the liquidation or sale of the Policies to institutional buyers and the assessment to ABC Investors of future premium payments;

3. to receive and collect any and all sums of money due or owing on the Policies to ABC or its agents whether the same are due or shall hereinafter become due and payable;
4. to seek the return of any cash, bond or guarantee on deposit with any regulatory agency or other entity on behalf of ABC or its agents;
5. to make such payments and disbursements as may be necessary and advisable for the preservation of the Conservatorship Assets and as may be necessary and advisable in discharging his duties as Conservator including, but not limited to, the timely payment of all premiums for Policies that have not yet matured;
6. to monitor the viators of the Policies by tracking the location of the viators and periodically checking the health of the viators;
7. to receive notice of the death of viators, file death claims on the viators, and collect the proceeds paid on the Policies as such mature;
8. to disburse to each ABC Investor his proportionate share of the proceeds paid on matured Policies, which amount may be reduced by the total amount of any premium payments advanced by ABC or the Conservator on behalf of such ABC Investor;
9. to establish open communication with ABC Investors with proper disclosure of available options and consequences including, but not limited to, notice to ABC Investors of this Conservatorship Order within thirty (30) days of the entry of this Order;
10. to retain and employ attorneys, accountants, computer consultants and other persons as may be advisable or necessary to the exercise of the duties of the Conservator. Conservator may immediately retain or employ such persons, and compensate such persons, all subject to application to and approval by the Court;

11. to open and inspect any and all mail and/or deliveries if same relate to the existence, location, identity and/or collection, preservation, maintenance or operation of Conservatorship Assets, and to notify any insurance company or third party administrator and the United States Postal Service to effect the forward delivery of any mail related to the Conservatorship Assets to a mail depository under the control of the Conservator;

12. to institute, prosecute, defend, intervene in or become party to such actions or proceedings in any state court, federal court or United States bankruptcy court as may in the Conservator's opinion be necessary or proper for the protection, maintenance and preservation of the Conservatorship Assets, or the carrying out of the terms of this Conservatorship Order; and

13. to exercise those powers necessary to implement his conclusions with regard to disposition of this Conservatorship pursuant to the orders and directives of this Court.

IT IS FURTHER ORDERED that ABC and its agents, including American Title Company of Orlando and David Piercefield, shall immediately begin the process of transferring the ownership and beneficial rights to the Conservatorship Assets to the Conservator until all Conservatorship Assets have been transferred. The transfer process shall conclude within ninety (90) days of the execution of this Order. If for any reason any Conservatorship Asset has not been transferred on or before end of the ninety (90) day period, ABC and/or its agents, including American Title Company of Orlando and David Piercefield, shall provide a list to the Conservator of the Conservatorship Assets that have not been transferred and the reasons therefor.

IT IS FURTHER ORDERED that this order supercedes the order of this Court dated May 10, 2001, that prohibited the assessment or collection of future premium payments from ABC Investors.

IT IS FURTHER ORDERED that ABC pay and maintain all office expenses, salaries, and other costs of the Conservatorship until at least seventy-five percent (75%) of all Conservatorship Assets have been transferred to the Conservator.

IT IS FURTHER ORDERED that all persons and entities, including ABC, its subsidiaries, affiliates, officers, directors, agents, servants, employees, attorneys, and all persons acting on their behalf, under their direction and control, and/or in active concert or participation with them, and further including any banks or financial institutions, wherever chartered or located, life insurance companies, federal and state agencies, viators, viatical settlement providers, and viatical settlement brokers who receive actual notice of this Conservatorship Order, by personal service, facsimile transmission or otherwise, shall promptly deliver and surrender to the Conservator:

1. all Conservatorship Assets in the possession of or under the control of any one or more of them; and
2. all books and records of any kind pertaining to the Conservatorship Assets, to the ABC Investors, or to the viators whose lives are insured by the Policies.

IT IS FURTHER ORDERED that all persons and entities, including ABC, its subsidiaries, affiliates, officers, directors, agents, servants, employees, attorneys, and all persons acting on their behalf, under their direction and control, and/or in active concert or participation with them, and further including any banks or financial institutions, wherever chartered or located, life insurance companies, federal and state agencies, viators, viatical settlement providers, and viatical settlement brokers who receive actual notice of this Conservatorship Order, by personal service, facsimile transmission or otherwise, fully cooperate with and assist the Conservator and that they take no action, directly or indirectly, to hinder or obstruct the

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Conservator in the conduct of his duties or to interfere in any manner, directly or indirectly, with the custody, possession or control exercised by said Conservator.

IT IS FURTHER ORDERED that the Conservator is authorized, without breaching the peace, to enter and secure any premises under the control of ABC or its agents, wherever located or situated, in order to take possession, custody or control of, or to identify the location or existence of, any Conservatorship Assets.

IT IS FURTHER ORDERED that the Conservator may apply to the Court for compensation, from time to time, in a reasonable sum to be determined by the Court and from such sources as approved by the Court and for reimbursement for reasonable expenses incurred in connection with his duties as Conservator. The fees and expenses of the Conservator shall have priority over any other claims made against ABC. The Conservator shall not be required to give any bond. The Oklahoma Department of Securities shall have the authority to seek removal of the Conservator for cause and upon approval of this Court.

IT IS FURTHER ORDERED that except by leave of Court during the pendency of this Conservatorship, all creditors and other persons seeking money, damages or other relief from ABC or its agents, including American Title Company of Orlando and David Piercesfield; and all others acting on behalf of any such creditor or other persons, including sheriffs, marshals, and other officers and their deputies; and their respective attorneys, servants, agents, and employees, are hereby stayed and restrained from doing any act or thing whatsoever to interfere with ABC or its agents, including American Title Company of Orlando and David Piercesfield, in the orderly transfer of the Conservatorship assets or the Conservator or to the possession of or management by the Conservator of the Conservatorship Assets, or to interfere in any manner during the pendency of this proceeding with the exclusive jurisdiction of this Court over ABC. This

Conservatorship Order shall not stay or restrain any pending or future action whatsoever by any government agency or any representative on behalf of any government.

IT IS FURTHER ORDERED that any Conservatorship Assets remaining at the conclusion of the Conservatorship shall be transferred to ABC.

IT IS FURTHER ORDERED that ABC and its agents, including American Title Company of Orlando and David Piercefield, be held harmless from any and all liability, costs and damages arising in connection with each Conservatorship Asset after each such asset has been transferred to the Conservator.

IT IS FURTHER ORDERED that the Conservator be held harmless from any and all liability, costs and damages arising from acts of ABC and its agents, including American Title Company of Orlando and David Piercefield, before Conservatorship Assets have been transferred to the Conservator.

IT IS FURTHER ORDERED that the Conservator may rely on applicable exclusions or exemptions from registration under the Act in connection with the offer and/or sale of securities to institutional buyers in and/or from the state of Oklahoma.

IT IS FURTHER ORDERED that the Court shall retain jurisdiction over this matter and ABC for all purposes.

Dated this 6th day of February, 2002.

[Handwritten Signature]

District Court Judge

I PATRICIA PRESLEY, Court Clerk for Oklahoma County, Okla., hereby certify that the foregoing is true, correct and complete copy of the instrument herewith set out as appears of record in the District Court Clerk's Office of Oklahoma County, Okla., this 7 day of February, 2002.
By *[Handwritten Signature]* PATRICIA PRESLEY, Court Clerk Deput

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IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

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

Plaintiff.

v.

Accelerated Benefits Corporation, a Florida
corporation, et al.,

Defendants.

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PATRICIA PRESLEY
District Court
Case No. CI-99-2500
Judge Durrell L. Owens

JOURNAL ENTRY

This matter comes on for hearing this 27th day of September, 2002, before the undersigned Judge of the District Court in and for Oklahoma County, State of Oklahoma, on Defendants' Motion to Enforce or, Alternatively Construe the Court's Order Appointing Conservator and Transferring Assets ("Defendants' Motion"). Conservator, Tom Moran, appeared in person and through counsel, Thomas Manning of the law firm Phillips McFall McCaffrey McVay & Murrah, P.C.. Defendants Accelerated Benefits Corporation ("ABC"), C. Keith LaMonda, American Title Company of Orlando ("ATCO") and David Piercefield (collectively "Defendants"), appeared by and through counsel, Dino Viera of the law firm, Fellers, Snider, Blankenship, Bailey and Tippens, P.C.. The Oklahoma Department of Securities, ex rel. Irving L. Faught, Administrator (the "Department") appears by and through its attorney, Patricia A. Labarthe. The Court, having reviewed all of the evidence offered, hearing argument of counsel, and being fully advised in the premises finds as follows:

- (a) The Order Appointing Conservator and Transferring Asset dated February 6th, 2002 (the "Conservatorship Order") is clear and unambiguous;

(b) ABC participated in the drafting and agreed to the terms of the Conservatorship Order in lieu of restitution;

(c) Under the Conservatorship Order, ABC is obligated to pay all costs and expenses of the Conservatorship, including premium shortfalls, Conservator's fees and expenses, and attorney's fees, until seventy-five percent (75%) of the Conservatorship Assets, as defined by the Conservatorship Order, are transferred to the Conservator;

(d) To date there has been no determination that seventy-five percent (75%) of the Conservatorship Assets, as defined by the Conservatorship Order, have been transferred to the Conservator;

(e) The parties have agreed have beginning October 1, 2002, the Conservator will be responsible for the compensation of ABC employees utilized by the Conservator;

(f) The parties have agreed that Conservator will make a reasonable effort to ensure timely disbursement of all proceeds from matured policies within 30 days of receipt;

(g) The parties have agreed that prior to November 1, 2002, ABC will ensure that all premiums are paid current;

(h) The parties have agreed that Defendants will turn over all funds currently being held in any accounts which contain funds from any investor or policy subject to the Conservatorship Order;

(i) The parties have agreed that beginning November 1, 2002, the Conservator will assume the responsibility to collect, pay and administer the collection and payment of all premiums, and will maintain all records of premium collections, payments, Conservator expenses, billings, etc.;

(j) The parties have agreed that the Conservator will continue to open bank accounts for the deposit of collected premiums and will sign legal documents on behalf of and in the name of the Conservatorship;

(k) The parties have agreed that the Conservator will continue to maintain proper accounting and documentation of all aspects of the Conservatorship;

(l) The parties have agreed an independent auditor, acceptable to the parties, will be retained at ABC's expense, pursuant to the terms of an engagement letter to be agreed to by the parties; and

(m) The Court will make a future determination of any amounts to be reimbursed to ABC for amounts advanced for payment of premiums for which investor funds have been collected.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

(a) ABC shall continue to be obligated to pay all costs and expenses of the Conservatorship, including premium shortfalls, Conservator's fees and expenses, and attorney's fees, until seventy-five percent (75%) of the Conservatorship Assets, as defined by the Conservatorship Order, are transferred to the Conservator;

(b) Beginning October 1, 2002, the Conservator will assume the responsibility for the compensation of ABC employees utilized by the Conservator;

(c) The Conservator shall make a reasonable effort to ensure timely disbursement of all proceeds from matured policies within 30 days of receipt;

(d) Prior to November 1, 2002, ABC shall ensure that all premiums are paid current, and that no policies are in lapse status or within a grace period;

(e) Defendants shall turn over all funds currently being held in any accounts which contain funds from any investor or policy subject to the Conservatorship Order;

(f) On November 1, 2002, the Conservator shall assume the responsibility to collect, pay and administer the collection and payment of all premiums, and will maintain all records of premium collections, payments, Conservator expenses, billings, etc.;

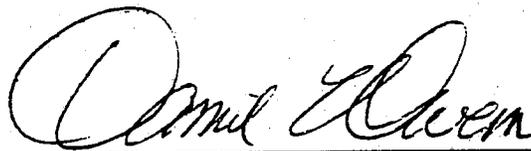
(g) The Conservator shall continue to open bank accounts for the deposit of collected premiums and will sign legal documents on behalf of and in the name of the Conservatorship;

(h) The Conservator shall continue to maintain proper accounting and documentation of all aspects of the Conservatorship;

(i) An independent auditor, acceptable to all parties, shall be selected and retained at ABC's expense, to conduct an audit pursuant to the terms of an engagement letter to be agreed to by the parties; and

(j) The Court will make a future determination of any amounts to be reimbursed to ABC for amounts advanced for payment of premiums for which investor funds have been collected.

Dated this 20th day of November, 2002.



JUDGE OF THE DISTRICT COURT

I, PATRICIA PRESLEY, Court Clerk for Oklahoma County, Okla., hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears of record in the District Court Clerks Office of Oklahoma County, Okla., this 19 day of December, 2002

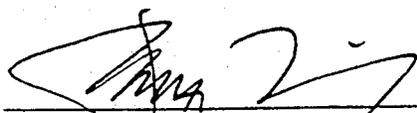
By Patricia Presley Deputy
PATRICIA PRESLEY, Court Clerk

APPROVED:

Patricia A. Labarthe

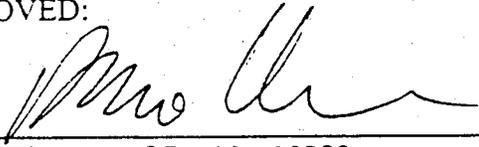
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IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

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

PATRICIA PRESLEY
Plaintiff.

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DEPT. OF COURT CLERK

v.

Accelerated Benefits Corporation, a Florida
corporation, et al..

Case No. CJ99-2500
Deputy Judge Daniel L. Owens

Defendants.

JOURNAL ENTRY

This matter comes on for hearing this 27th day of September, 2002, before the undersigned Judge of the District Court in and for Oklahoma County, State of Oklahoma, on Conservator's Motion For Order Assessing Conservator's Expenses Against Defendants And Compelling Defendants To Comply With The Conservatorship Order (the "Conservator's Motion"). Conservator, Tom Moran, appeared in person and through counsel, Thomas Manning of the law firm Phillips McFall McCaffrey McVay & Murrah, P.C.. Defendants Accelerated Benefits Corporation, C Keith LaMonda, American Title Company of Orlando and David Piercefield (~~collectively ABC~~), appeared by and through counsel, Dino Viera of the law firm, Fellers, Snider, Blankenship, Bailey and Tippens, P.C.. The Oklahoma Department of Securities, ex rel. Irving L. Faught, Administrator (the "Department") appears by and through its attorney, Patricia A. Labarthe. The Court, having reviewed all of the evidence offered, hearing argument of counsel, and being fully advised in the premises finds as follows:

- (a) The Order Appointing Conservator and Transferring Asset dated February 6th, 2002 (the "Conservatorship Order") is clear and unambiguous:

(b) ABC participated in the drafting and agreed to the terms of the Conservatorship Order in lieu of restitution;

(c) Under the Conservatorship Order, ABC is obligated to pay all costs and expenses of the Conservatorship, including premium shortfalls, Conservator's fees and expenses, and attorney's fees, until seventy-five percent (75%) of the Conservatorship Assets, as defined by the Conservatorship Order, are transferred to the Conservator:

(d) To date there has been no determination that seventy-five percent (75%) of the Conservatorship Assets, as defined by the Conservatorship Order, have been transferred to the Conservator; and

(e) A policy will be deemed to have been transferred upon receipt by the Conservator of a confirmation from the insurance company acknowledging the change of beneficiary or ownership of the policy to the Conservator.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Counservator's Motion is granted and Accelerated Benefits Corporation is ordered to pay to the Conservator all Conservator fees, expenses and attorney's fees approved by the Court to date within 30 days.

Dated this 20th day of November, 2002.



JUDGE OF THE DISTRICT COURT

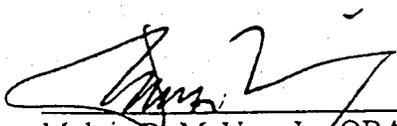
I, PATRICIA PRESLEY, Court Clerk for Oklahoma County, Okla., hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears of record in the District Court Clerks Office of Oklahoma County, Okla., this 19 day of December, 2002
By Patricia Presley Deputy
PATRICIA PRESLEY, Court Clerk

APPROVED:

Patricia A. Labarthe

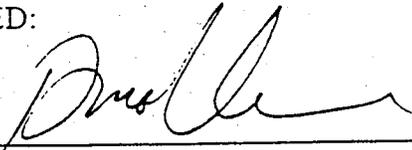
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