

IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA

DISTRICT COURT
FILED

FEB 29 2000

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

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

Plaintiff,)

v.)

Case No. **6J 2000 01035**

Bruce T. Gilliam, an individual and doing)
business as Freedom Association,)
Freedom Association, an unincorporated)
association, Freedom Association, Inc.,)
an Oklahoma corporation, Christian)
Freedom Ministries, an Oklahoma)
corporation,)

Defendants.)

DEBORAH G. SHALLCROSS

**PLAINTIFF'S APPLICATION FOR TEMPORARY RESTRAINING ORDER,
ASSET FREEZE, APPOINTMENT OF A RECEIVER AND TEMPORARY
INJUNCTION AND BRIEF IN SUPPORT**

I. INTRODUCTION

The Oklahoma Department of Securities ex rel. Irving L. Faught, Administrator ("Department"), respectfully submits this application for a temporary restraining order, asset freeze, appointment of a receiver and temporary injunction against Bruce Gilliam ("Gilliam"), Freedom Association ("Freedom Association"), Freedom Association, Inc. ("Freedom Association, Inc.") and Christian Freedom Ministries ("Christian Freedom Ministries") (collectively, "Defendants") pursuant to the authority granted by Section 406.1(a)(1) of the Oklahoma Securities Act (the "Act"), Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (1991 and Supp. 1999), and Sections 1382, 1383, 1384.1(B)(1) and 1551 of the Oklahoma Code of Civil

Procedure (the "Civil Code"), Okla. Stat. tit. 12, §§ 1-3237 (1998). The Department petitions this Court to halt further violations of the Act, to protect the rights of the Department in its obligation to safeguard the public interest, to prevent any dissipation or loss of investor funds and property and to remedy actions that Defendants have already committed.

The Department moves this Court for a temporary restraining order, order freezing assets and an order appointing a receiver to issue *instanter* against Defendants until the Court may afford the parties a hearing, and additionally moves for the entry of a temporary injunction at such hearing against Defendants. The entry of such orders is necessary for the reasons set forth below, to preserve the *status quo* and to protect the Department's rights in enforcing the Act.

II. THE DEFENDANTS

Bruce Gilliam is an individual who, at all times material hereto, was a resident of Oklahoma doing the acts complained of in his own name and/or in the name of Freedom Association or Freedom Association, Inc.

Freedom Association is an unincorporated association. At all times material hereto, Freedom Association offered and sold securities in and/or from Oklahoma as described herein. At all times material hereto, Freedom Association acted under the control of Gilliam.

Freedom Association, Inc. was incorporated in the state of Oklahoma on March 1, 1999. Freedom Association, Inc., formed for the purpose of continuing Freedom Association's business of offering and selling securities in and/or from Oklahoma, is the successor corporation to Freedom Association, (hereinafter the term "Freedom Association" refers to both Freedom Association and Freedom Association, Inc.) At all times material hereto, Freedom Association, Inc. acted under the control of Gilliam.

Christian Freedom Ministries was incorporated in the state of Oklahoma on October 17,

1978. At all times material hereto, Christian Freedom Ministries offered and sold securities in and/or from Oklahoma as described herein. At all times material hereto, Christian Freedom Ministries acted under the control of Gilliam.

III. NATURE OF THE CASE

In early 1997, Gilliam began doing business as Freedom Association. Freedom Association was formed to make a profit for the individuals who wanted to invest with Gilliam and at the same time, to fund his personal ministry, Christian Freedom Ministries. Freedom Association offered memberships to individuals and entities at a cost of \$200 per membership, which entitled the members to invest money with Gilliam, which he would invest for them in various enterprises. Initially, Freedom Association enrolled a group of people whose money Gilliam pooled together to invest in different investment scenarios such as investments in enterprises that conduct liquidation sales and oil field equipment sales. Very quickly, the primary investment opportunity offered through Freedom Association became interests in privately placed, bank-secured, high yield investments ("Prime Bank Loans").

When members invested money with Gilliam to purchase the interests in the Prime Bank Loans ("Prime Bank Investors"), they entered into a Letter of Contract/Authority ("Contract"). [See Exhibit "A" attached to Petition.] The Contract provides, among other things, that the Prime Bank Investor is ready, willing, and able to commit these funds for a period of one year for investment in a bank-secured, high yield trading program. The Contract further provides that the "facilitators" of Freedom Association, including Gilliam, would pool the Prime Bank Investors' funds and place the funds in an escrow account until the facilitators had secured a "Top Bank Guaranty" that would fully secure the principal. The Contract further stated that Prime Bank Investors could expect a return on their investment of somewhere between 10 and 30

percent per month – that equates to an annual return of 120-360 percent. The Contract also contained the following language:

I swear that I am not a government agent and am entering into this as a private person for my own personal reasons of obtaining a legal increase. I also understand that all financial arrangements will be kept confidential by Freedom Association and I further agree not to divulge to any fiduciary, government agents or private parties the particulars of any of the financial arrangements being made or the names of the financial institutions or private persons or principals participating.

Gilliam, as a facilitator for Freedom Association, represented to the Prime Bank Investors that he invested their funds with Hermit Butler, a banker in Belize. Gilliam represented that Butler was soliciting money for a program that involved the International Monetary Fund (“IMF”) and the United Nations and that Butler had received an IMF number that allowed him to trade in amounts of \$100 million or more. Gilliam represented that, as a result of the IMF number, Butler would have access to lucrative "Third World Infrastructure Contracts" that were traded in London. Additionally, Gilliam represented that Butler had exclusive rights, to use in any way that he could, a judgment out of the United States for over \$40 billion.

Gilliam represented to the Prime Bank Investors that Butler would “hypothecate” the judgment by putting it up for collateral but, in order to be recognized in the world scene as a major player, Butler had to have several hundred thousand dollars of real assets in the bank in Belize to become a proper fiduciary representative. As a result, the money raised from the Prime Bank Investors was sent to Butler’s company, Great Western Holdings, to be put into the Lord's Trust Bank (a subsidiary of Great Western Holdings) to be used as part of a transaction or trade involving Butler in an amount of \$100 million.

Freedom Association raised in excess of \$700 thousand and placed those funds on behalf of investors in the Lord's Trust Bank as part of a prime bank lending scheme operated by

Gilliam, Butler and others. The Prime Bank Investors invested their money with the expectation of receiving profits substantially based upon the efforts of others through a common enterprise that they had engaged. As of the filing of this application, none of the funds collected by Gilliam or Freedom Association have been returned to investors and no profits have been generated. Prime Bank Investors have requested on numerous occasions that they receive their funds and have been denied.

Christian Freedom Ministries, through its Senior Minister, Gilliam, participated in the offer and sale and the resale of the interests in the Prime Bank Loans. Gilliam, as a principal of both Freedom Association and Christian Freedom Ministries, used Christian Freedom Ministries, its name and its purpose, to attract investors to Freedom Association and to provide Freedom Association with an air of legitimacy.

Defendants have violated the Act and have shown their intention to continue violating the Act in the future, and will do so unless immediately enjoined. [See Exhibits "B" and "C" attached to Petition.]

IV. VIOLATIONS OF THE OKLAHOMA SECURITIES ACT

A. Failure to Register Securities

The interests in the Prime Bank Loans evidenced by the execution of the Letter of Contract/Authority with Freedom Association ("Interests") are securities as defined by Section 2 of the Act.

The securities offered and sold by Defendants are not and have not been registered under the Act as required by Section 301 of the Act nor offered or sold pursuant to an exemption from registration pursuant to Section 401 of the Act. [See Exhibit "D" attached to Petition.] By

reason of the foregoing, Defendants have violated, and unless enjoined, will continue to violate, Section 301 of the Act.

B. Failure to Register as Agents or Broker-Dealers and Employing Unregistered Agents or Broker-Dealers

Defendant Freedom Association is the issuer of the Interests. Defendant Christian Freedom Ministries, by virtue of its efforts and activities in effecting and attempting to effect sales of the Interests, is a broker-dealer as defined in Section 2 of the Act. Defendant Gilliam, by virtue of his efforts and activities in effecting and attempting to effect sales of the Interests, is an agent of the Defendant Freedom Association as defined in Section 2 of the Act. In the alternative, Defendant Gilliam, by virtue of his efforts and activities in effecting and attempting to effect sales of the Interests, is an agent of the Defendant Christian Freedom Association. Defendants Gilliam and Christian Freedom Ministries are not, and have not been, registered under the Act as agents or broker-dealers as required by Section 201 of the Act. [See Exhibit "E" attached to Petition.] By reason of the foregoing, Defendants have violated, and unless enjoined, will continue to violate, Section 201 of the Act.

C. Untrue Statements of Material Fact and Omissions of Material Fact in Connection with Offer, Sale or Purchase of Securities

Defendants, in connection with the offer, sale or purchase of securities, directly and indirectly, made untrue statements of material fact, including, but not limited to, the following:

- a. that Prime Bank Investors would earn an annual return of 120-360% on the investment;
- b. that the investment would be guaranteed by an "acceptable Top Bank Guarantee";

- c. that the Prime Bank Investors' purchases would be secured for not less than 100% of the principal amount of the investment;
- d. that even if the investment failed, Prime Bank Investors would recover their principal; and
- e. that Defendants would invest the funds for or on behalf of the Prime Bank Investors in bank-secured, high yield trading programs.

By reason of the foregoing, Defendants, directly and indirectly, violated, and unless enjoined, will continue to violate Section 101(2) of the Act.

D. Engaging in any Act, Practice, or Course of Business which Operates or would Operate as a Fraud or Deceit upon any Person

Defendants, in connection with the offer, sale or purchase of securities, and through the use of the untrue statements of material facts as described above, engaged in an act, practice, or course of business that operated as a fraud or deceit upon the Prime Bank Investors.

By reason of the foregoing, Defendants, directly and indirectly, violated, and unless enjoined, will continue to violate Section 101(3) of the Act.

V. NEED FOR TEMPORARY RESTRAINING ORDER, ASSET FREEZE, APPOINTMENT OF A RECEIVER AND TEMPORARY INJUNCTION

A. Temporary Restraining Order

Section 406.1 of the Act provides in part:

- (a) Upon a showing by the Administrator that a person has violated or is about to violate the Oklahoma Securities Act, except under the provisions of Section 202.1 or 305.2 of this title, or a rule or order of the Administrator under the Oklahoma Securities Act or that a person has engaged or is about to engage in dishonest or unethical practices in the securities business, the Administrator, prior to, concurrently with, or subsequent to an administrative proceeding, may bring an action in the district court of Oklahoma County or the district court of any other county where service can be obtained on one or more of the defendants and **the district**

court may grant or impose one or more of the following appropriate legal or equitable remedies:

(1) Upon a showing of a violation of the Oklahoma Securities Act or a rule or order of the Administrator under the Oklahoma Securities Act or conduct involving dishonest or unethical practices in the securities business:

(i) a temporary restraining order, permanent or temporary prohibitory or mandatory injunction, or a writ of prohibition or mandamus;

(ii) a civil penalty up to a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or of Fifty Thousand Dollars (\$50,000.00) for multiple violations in a single proceeding or a series of related proceedings;

(iii) a declaratory judgment;

(iv) restitution to investors;

(v) the appointment of a receiver or conservator for the defendant or the defendant's assets; and

(vi) other relief the court deems just (emphasis added).

Section 1384.1 of the Civil Code provides in part:

B. A temporary restraining order may be granted without written or oral notice to the adverse party only if:

1. it clearly appears from specific facts shown by affidavit or by the verified petition that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or the attorney for the adverse party can be heard in opposition.

A temporary restraining order has the object of preserving the *status quo*, in order to prevent irreparable injury until such time as the Court may determine Plaintiff's application for temporary injunction. Morse v. Earnest, Inc., 547 P.2d 955 (Okla. 1976). The protection of the public interest is paramount in this matter. The Department's rights are also paramount in this

matter as it has the statutory obligation to safeguard the public interest. Investors are entitled to the protections afforded by the Act.

As demonstrated above, Defendants have engaged in acts and practices in violation of the Act and have, as a result of these activities, received a substantial amount of money from numerous Prime Bank Investors. A danger exists that the money received by Defendants from the Prime Bank Investors or money or securities held by Defendants on behalf of these investors will be lost, removed or transferred. These facts make it clear that immediate preservation of the status quo is necessary to prevent further injury or loss. A temporary restraining order to issue instanter against Defendants is necessary to preserve these funds, securities and the records relating thereto and to prevent further violations of the Act.

Further, no injury will befall Defendants by granting such relief since Defendants have no right to act in the state of Oklahoma in violation of the Act, or to engage in fraudulent conduct in connection with securities activities. The interference with Defendants' rights by granting the temporary restraining order will be minimal, if any, while protecting the public from immediate and irreparable injury and loss.

B. Asset Freeze

Section 406.1 of the Act specifically grants this Court the power to fashion appropriate equitable relief to provide effective enforcement of the Act. Once the equity powers of the court are invoked, the court possesses the power to fashion appropriate interim remedies. SEC v. Manor Nursing Centers, 458 F.2d 1082, 1103 (2nd Cir. 1972). Within this power is the authority to grant effective equitable relief by temporarily freezing specific assets. SEC v. General Refractories Co., 400 F.Supp. 1248,1259 (D.D.C. 1975); SEC v. International Swiss Investments Corp., 895 F.2d 1272,1276 (9th Cir. 1990); SEC v. Manor Nursing Centers, 458 F.2d at 1105-06

(upholding district court's order freezing assets in part because "... at the time the court's order was entered, a great deal of uncertainty existed with respect to the total amount of proceeds received and their location.").

As a result of Defendants' activities, Defendants have raised a substantial, and as yet undetermined, amount of money from the Prime Bank Investors. Substantial uncertainty exists at this time as to the amount of money received by Defendants from the Prime Bank Investors and the location of the proceeds. Furthermore, and in furtherance of these activities, Defendants made use of untrue statements of material fact and omitted to state material facts as alleged in Plaintiff's verified petition, in violation of Section 101 of the Act. These circumstances make it necessary that the court freeze specific assets to preserve the *status quo* by preventing the dissipation of assets so as to protect investors and to provide effective relief.

C. Appointment Of A Receiver

The violations of the Act, as described above, give the Department the right to seek one or more of the remedies available by statute and in equity. Oklahoma Securities Commission v. CFR International, Inc., *supra*. One such remedy is that of the appointment of a receiver. The need for protection of the public interest was sufficient to justify the appointment of a receiver in Huff v. Sioux Options, Ltd., CCH Blue Sky Rep ¶71,198 (April 7, 1975), an Iowa case involving sales of unregistered securities and illegal acts practiced on purchasers of the securities. The applicable Iowa statute allowed the Commissioner of Insurance to petition to a court of equity for a writ of injunction or appointment of a receiver or both, when it appeared that any person had engaged in or was about to engage in any practice prohibited by Iowa securities law. Similarly, Oklahoma law, as set forth in Section 406.1 of the Act, specifies these same alternatives for relief. Further, in this matter, as in the Huff matter, it appears to the

Administrator of the Department that Defendants have engaged and continue to engage in practices prohibited by Oklahoma law.

Various courts have identified numerous factors that can be helpful in making a determination as to whether it is appropriate to appoint a receiver. In Huff v. Sioux Options, supra, the court held that a receiver can be appointed when a defendant cannot “preserve their assets, promote the interest of the state and its citizens and protect the substantial rights of the parties” without the appointment of a receiver. Id. at 67,721. As demonstrated, Defendants meet all of the Huff criteria for the appointment of a receiver in this matter to protect the public interest.

The court in SEC v. R.J. Allen & Associates, Inc., 386 F.Supp. 866 (D.C. Fla. 1974), stated that while a receiver should be appointed in the court’s discretion, in “circumstances of egregious fraud where the interests of the public are in substantial jeopardy, it has been recognized that the appointment of a receiver is necessary to prevent diversion or waste of assets to the detriment of those for whose benefit, in some measure, the injunction is brought.” Id. at 878 quoting SEC v. Capital Counselors, Inc., 332 F.Supp. 291, 304 (S.D.N.Y. 1971).

In SEC v. American Bd. Of Trade, Inc., 830 F.2d 431 (2nd Cir. 1987), the court, quoting SEC v. Manor Nursing Centers, Inc., 458 F.2d 1082, 1105 (2d Cir. 1972), stated that the primary purpose of the appointment of a receiver is to help “preserve the status quo while the various transactions were unraveled” so that an accurate picture of what happened could be formulated. Id. at 436.

As in Huff, supra, the Defendants in this matter cannot preserve their assets, promote the interest of the state and its citizens or protect the substantial rights of the investors. Further, the Defendants have engaged in a fraudulent course of business to induce the public to purchase

unregistered securities. It is critical that a receiver be appointed to take custody, possession and control of the assets and records. It is also critical that the receiver is empowered to make a speedy assessment of each investor's interest and to take any action that the Court orders. Under the Act, the public interest is of paramount concern and can only be addressed through independent means. The Department has the statutory obligation to protect the public interest and petitions this Court to assist it in fulfilling such obligation. This Court has the judicial authority and, under the facts set forth in the Plaintiff's Petition, the necessary justification to prevent dissipation of investor assets and continued violation of the law. The appointment of a receiver is well within this Court's discretion.

D. Temporary Injunction

Once the Plaintiff has shown the Defendants' past conduct is in violation of the Act, the proper test for the issuance of a statutory injunction is whether there is a reasonable expectation of future violations by Defendants. S.E.C. v. Manor Nursing Centers, Inc., 458 F.2d 1082 (2nd Cir. 1975); S.E.C. v. Culpepper, 270 F.2d 241, 249 (2d Cir. 1959). In considering this issue, past illegal conduct is strong support for the likelihood of future violations. Oklahoma Securities Commission v. CFR International, Inc., 622 P.2d 293,295 (Okla. Ct. App. 1980). As described above, the Defendants have violated the Act, creating a presumption of a likelihood of future violations. Because the Plaintiff has conclusively demonstrated the existence of past violations, injunctive relief is appropriate and the burden of showing that there is no reasonable expectation of future violations will shift to the Defendants and their burden "is a heavy one." S.E.C. v. Culpepper, 270 F.2d 241, 249 (2d Cir. 1959); Oklahoma Securities Commission v. CFR International, Inc., 622 P.2d at 296.

Further, unlike private actions for injunctions, the Department's action is a creature of statute subject to a standard of review different from the traditional equitable injunction. Because of the statutory basis for such action, no showing of irreparable injury or the inadequacy of other remedies, as in a private injunctive action, is required. Oklahoma Securities Commission v. CFR International, Inc., 622 P.2d 293 (Okla. Ct. App. 1980) (citing Bradford v. S.E.C., 278 F.2d 566 (9th Cir. 1960)). Although not required, the Department has also shown that the public will suffer irreparable injury if Defendants are not enjoined from further violations of the Act.

E. An Ex Parte Order Should Be Issued

While courts have been cautious with the use of ex parte orders, they are approved in appropriate cases. Covington, Knox, Inc. v. Texas, 571 S.W.2d 323 (Tex. App. Houston [14th Dist.] 1979, no writ). The Department alleges facts that demonstrate a strong likelihood of ongoing violations of the Act by Defendants. Moreover, there is a great risk that Defendants will take measures to dissipate assets if provided notice of this action before a temporary restraining order is issued and a receiver is appointed. Providing notice of this action to Defendants would lead to loss of investor funds, and consequently, would cause irreparable injury to the Department's ability to safeguard the public interest by providing as much monetary redress as possible for investors, and to prevent irreparable loss and injury to potential investors. The issuance of a temporary restraining order instanter, an asset freeze and the appointment of a receiver pendente lite will help maximize the relief to investors.

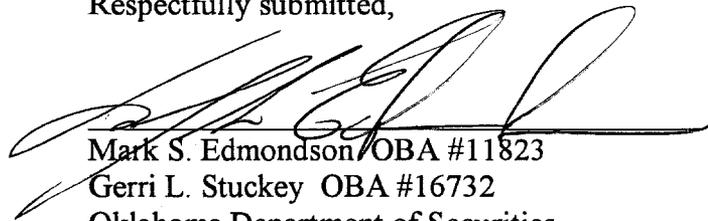
VI. CONCLUSION

The Department, pursuant to Section 405 of the Act, conducted an investigation into Defendants' activities in and/or from the state of Oklahoma. The investigation produced

evidence that clearly indicates Defendants offered and sold unregistered securities, acted as unregistered agents, and that Defendants, in connection with the offer, sale and/or purchase of securities: (1) made untrue statements of material fact and (2) engaged in a course of business which has operated as a fraud or deceit upon investors. Defendants have engaged in substantial violations of the Act, including fraudulent practices. The Department submits that the evidence firmly establishes a prima facie case for the issuance of a temporary restraining order, asset freeze and temporary injunction and the appointment of a receiver.

In light of the facts presented and the authorities cited, the Department respectfully requests that this Court issue a temporary restraining order and order the freezing of the assets of Defendants and the appointment of a receiver until such time as the Court may afford the parties a hearing on the Plaintiff's motion for temporary injunction, all to halt Defendants' unlawful practices and to provide effective relief for the Prime Bank Investors, potential investors, and the Department.

Respectfully submitted,



Mark S. Edmondson/OBA #11823
Gerri L. Stuckey OBA #16732
Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, Oklahoma 73102
(405) 280-7700