

DISTRICT COURT OF LOGAN COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA
LOGAN COUNTY SS:
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OKLAHOMA DEPARTMENT OF)
SECURITIES, *ex rel.* Irving Faught,)
Administrator)
)
Plaintiff,)
)
v.)
)
MARSHA SCHUBERT, an)
Individual, and *dba* SCHUBERT AND)
ASSOCIATES, *et al.*)
)
Defendants.)

Case No. CJ 2004-256

**INTERVENOR'S MOTION TO COMPEL PLAINTIFF DEPARTMENT OF
SECURITIES', RECEIVER'S, RECEIVER LAW FIRM'S, AND BAIRD KURTZ
& DOBSON L.L.P.'S RESPONSES TO DISCOVERY REQUEST**

Upon suspicion of fraud and lack of notice to third parties, Intervenor Richard LeBoeuf, pursuant to 12 Okla. Stat. Ann. § 3237(A), moves for an Order compelling the Department, as well as Receiver, Receiver's Appointed law firm (his own—Gungoll Jackson, P.C.), and accounting firm (Baird Kurtz LLP), to respond to the Interrogatories, Requests for Production, and Requests for Admissions attached as Exhibits.

Intervenor LeBoeuf has informally requested from the Department of Securities, the Receiver, and the Gungoll Jackson law firm that they provide the list of alleged investors who lost money from Marsha Schubert, as these persons should have been noticed in all the proceedings in Logan County and Oklahoma County.¹ The Department has made clear to undersigned counsel they would continue to refuse to provide such list of names and addresses until he files a Motion to Compel such information and succeeds.

¹ See *State ex. rel. Oklahoma Bar Ass'n v. Taylor*, 2000 OK 35, 4 P.3d 1242, ¶ 16 (“Upon receiving funds in which a client (or third party) has an interest, a lawyer is required by ORPC Rule 1.15(b) to notify promptly the interested party”).

In response to their request, and in the interest of due process,² Mr. LeBoeuf has therefore filed this Motion, and, pending transfer of this case to Oklahoma County, has included other discovery requests for purposes of saving time and judicial efficiency. In order to properly assess the costs of the receivership thus far, an investigation must occur into Gungoll Jackson, P.C.'s activities, as well as Baird Kurtz L.L.P.'s activities, as part of necessary accounting to this Court and the Oklahoma County Court.

Intervenor LeBoeuf suspects the Baird Kurtz firm may have submitted unnecessary, inflated bills for work that was performed administratively for free.

WHEREFORE, pending transfer and consolidation of this matter to Oklahoma County into case CJ-2005-3299, and subject to the Oklahoma County Court's scheduling of discovery, Intervenor LeBoeuf requests that this Court order the above-named parties to respond to the discovery requests attached to this Motion.

Respectfully submitted,



Alexander L. Bednar, Esq., OBA # 19635
P.O. Box 3021
Oklahoma City, OK 73101
Telephone: (405) 235-2800

COUNSEL FOR RICHARD LEBOEUF

² Oklahoma law, like Federal law, provides that: An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is **notice** reasonably calculated, under all of the circumstances, to apprise **interested parties** of the pendency of the action and afford them an opportunity to present their objections.' (Emphasis added.) *Hutchins v. Smith* 538 P.2d 610, 612 (Okl. App. 1975); Quoting, *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865, at page 314, 70 S.Ct. at 657;(The Oklahoma Supreme Court stated that "Oklahoma has long recognized the Mullane doctrine." *Hutchins*, 538 P.2d at 612; quoting, *Bomford v. Socony Mobil Oil Co.*, 1968 OK 43, 440 P.2d 713, 718).

CERTIFICATE OF SERVICE

On this 12^h day of August, 2005, a true and correct copy of the foregoing pleadings was properly served upon:

Douglas Jackson
323 West Broadway
Post Office Box 1549
Enid, OK 73702

Mack Martin
Suite 360
119 N. Robinson Ave.
Oklahoma City, OK 73102

Bradley Davenport
323 West Broadway
Post Office Box 1549
Enid, OK 73702

Gerri Stuckey
120 N. Robinson
Suite 860
Oklahoma City, OK 73102

Dept of Securities
C% Irving Faught
Administrator
120 N. Robinson
Suite 860
Oklahoma City, OK 73102

Charlie Meyer

Willie Baker



Alexander Bednar

EXHIBIT 1

**DISTRICT COURT OF LOGAN COUNTY
STATE OF OKLAHOMA**

OKLAHOMA DEPARTMENT OF)
SECURITIES, *ex rel.* Irving Faught,)
Administrator)

Plaintiff,)

v.)

Case No. CJ 2004-256

MARSHA SCHUBERT, an)
Individual, and *dba* SCHUBERT AND)
ASSOCIATES, *et al.*)

Defendants.)

**REQUEST FOR PRODUCTION, ADMISSIONS, AND TO INSPECT, AND
INTERROGATORIES FOR BAIRD, KURTZ, L.L.P.**

Pursuant to 12 Okla. Stat. Ann. § 3237, Richard LeBoeuf requests the following discovery as the information requested is relevant to the pending subject matter, not privileged, and calculated to lead to the discovery of other admissible evidence. In interpreting the following requests, plain language meaning of words should be utilized, unless a referenced statute dictates otherwise.

REQUESTS FOR PRODUCTION

1. Produce all documents containing any communication (written, verbal, or electronic such as email) between you and all members of the Schubert family.
2. Produce all documents containing any communication (written, verbal, or electronic such as email) between you and the Department of Securities.
3. Produce all documents containing any communication (written, verbal, or electronic such as email) between you and Gungol, Jackson P.C. (law firm in Enid, Oklahoma).

4. Produce all documents containing any communication (written, verbal, or electronic such as email) between you and Douglas Jackson.
5. Produce all documents containing any communication (written, verbal, or electronic such as email) between you and Marsha Schubert.
6. Produce all documents containing any communication (written, verbal, or electronic such as email) between you and any individuals who invested with Marsha Schubert.
7. Produce all documents containing any communication (written, verbal, or electronic such as email) between you and the Logan County District Court in 2004 and 2005.
8. Produce all documents containing any communication (written, verbal, or electronic such as email) between you and Richard LeBoeuf.
9. Produce all documents showing cash money Marsha Schubert received in 2002-2004.
10. Produce all documents with evidence of tracing the cash money received by Marsha Schubert or Schubert and Associates in 2002-2004.
11. Produce all documents regarding your investigation of Marsha Schubert.
12. Produce all your banking records for 2004 and 2005.
13. Produce all payments from you to Douglas Jackson, or Gungol, Jackson P.C. or any individual associated therewith.
14. Produce all documents pertaining to bills submitted to Douglas Jackson, Receiver from work on Marsha Schubert's case. Please include bills and supporting documentation.

ADMISSIONS

1. Admit that Marsha Schubert had at least five thousand dollars (\$5,000.00) in funds in her personal bank account that were not part of the alleged "Ponzi scheme" in the spring and summer of 2004.
2. Admit that Marsha Schubert had received legitimate commissions for her work as a stockbroker, and that she placed those proper commissions into the bank account she used to write a check to Richard LeBoeuf in 2004.
3. Admit that you incorrectly determined that Richard LeBoeuf owed \$2,000.00 to Marsha Schubert.
4. Admit that you do not have any account of the amount of cash money that Richard LeBoeuf gave Marsha Schubert.
5. Admit that you have no ability to determine the amount of money that Marsha Schubert received in the form of cash (not checks).
6. Admit that Marsha Schubert made gift donations to certain individuals.
7. Admit that Marsha Schubert spent time, in your presence, identifying payments made to persons from her bank account titled "Schubert and Associates."
8. Admit that you met with Marsha Schubert regarding her identification of payments to investors.
9. Admit that you are aware the Department of Securities has elicited an agreement from Marsha Schubert regarding her cooperation with the Receiver Douglas Jackson.
10. Admit that you have a list of persons who allegedly lost money in their investments with Marsha Schubert.

11. Admit that you have not sent legal notice (regarding any pleadings) to any of the investors referenced in "6" either in Logan County in case CJ-2004-256, or in Oklahoma County case CJ-2005-3299.
12. Admit that you are aware that Receiver Douglas Jackson has caused the sale of property outside the state of Oklahoma belonging to Marsha Schubert and her husband.
13. Admit that you have worked with the Department of Securities to determine the tracing of funds in Marsha Schubert's bank account titled "Schubert and Associates."
14. Admit that you have a prior relationship with Douglas Jackson, before appointment as Receiver's accountant.
15. Admit that you are aware Douglas Jackson, Receiver, did not set for hearing in Logan County the issue of the sale of Marsha Schubert's property located in Missouri.
16. Admit that you did not send legal notice of court hearings to any third parties or investors you were aware of (such as those persons reference in "10"), prior to the Receiver Douglas Jackson authorizing payment to you.

INSPECTION OF PROPERTY

1. Please make available your personal email server for inspection and list available dates that a forensic expert may visit for such inspection.

INTERROGATORIES

1. What is your prior relationship with Douglas Jackson or Gungoll Jackson, P.C.?
2. What method did you use to calculate the amount of money Richard LeBoeuf allegedly may owe Marsha Schubert?

3. Explain your work with the Department of Securities in this matter. Please include notes and evidence of all meetings with the Department of Securities.
4. Explain your work with Marsha Schubert in this matter. Please include all notes and evidence of all meetings with Marsha Schubert.
5. What is the explanation for your incorrect determination that Richard LeBoeuf owed \$2,000.00 to Marsha Schubert, based upon Marsha's check to Medford Schools?
6. Please list all other mistakes you have made regarding money allegedly owing to Marsha Schubert.
7. Describe the method you utilized to determine how a person may owe money to Schubert and Associates.
8. Has the Department of Securities reviewed your work in this matter prior to your submitting your final work product to Douglas Jackson, Receiver?
9. At what date did you first become aware of the name and address of an individual who may have lost money in Marsha Schubert's alleged "Ponzi scheme"?
10. Describe your working relationship with Douglas Jackson, Receiver.
11. Have you known any individuals at the Gungoll, Jackson law firm longer than 2 years?
12. Please list the individuals referenced in your response to "8" above.
13. Have you made any payments to Douglas Jackson, Gungoll Jackson P.C., or any other individuals associated therewith in 2005.
14. List all property of Marsha Schubert that you have identified in 2004 and 2005.

EXHIBIT 2

**DISTRICT COURT OF LOGAN COUNTY
STATE OF OKLAHOMA**

OKLAHOMA DEPARTMENT OF)
SECURITIES, *ex rel.* Irving Faught,)
Administrator)

Plaintiff,)

v.)

Case No. CJ 2004-256

MARSHA SCHUBERT, an)
Individual, and *dba* SCHUBERT AND)
ASSOCIATES, *et al.*)

Defendants.)

**REQUEST FOR PRODUCTION, ADMISSIONS, AND TO INSPECT, AND
INTERROGATORIES FOR OKLAHOMA DEPARTMENT OF SECURITIES**

Pursuant to 12 Okla. Stat. Ann. § 3237, Richard LeBoeuf requests the following discovery as the information requested is relevant to the pending subject matter, not privileged, and calculated to lead to the discovery of other admissible evidence. In interpreting the following requests, plain language meaning of words should be utilized, unless a referenced statute dictates otherwise.

REQUESTS FOR PRODUCTION

1. Produce all documents containing any communication (written, verbal, or electronic such as email) between the Department of Securities and all members of the Schubert family.
2. Produce all documents containing any communication (written, verbal, or electronic such as email) between the Department of Securities and Douglas Jackson, Receiver.

3. Produce all documents containing any communication (written, verbal, or electronic such as email) between the Department of Securities and Gungol, Jackson P.C. (law firm in Enid, Oklahoma).
4. Produce all documents containing any communication (written, verbal, or electronic such as email) between the Department of Securities and Baird, Kurtz L.L.P. (accounting firm paid from Receivership trust fund for Marsha Schubert estate).
5. Produce all documents containing any communication (written, verbal, or electronic such as email) between the Department of Securities and Marsha Schubert.
6. Produce all documents containing any communication (written, verbal, or electronic such as email) between the Department of Securities and investors of Marsha Schubert.
7. Produce all documents containing any communication (written, verbal, or electronic such as email) between the Department of Securities and the Logan County District Court in 2004 and 2005.
8. Produce all documents containing any communication (written, verbal, or electronic such as email) between the Department of Securities and Richard LeBoeuf.
9. Produce all documents showing cash money Marsha Schubert received in 2002-2004.
10. Produce all documents of tracing cash receipt by Marsha Schubert in 2002-2004.
11. Produce all pleadings the Department of Securities filed in Case CJ-2005-3299 (Oklahoma County) that did not include Douglas Jackson, Receiver, the title of the pleading.

REQUEST FOR ADMISSIONS

1. Admit that Marsha Schubert had at least five thousand dollars (\$5,000.00) in funds in her personal bank account that were not part of the alleged "Ponzi scheme" in the spring and summer of 2004.
2. Admit that Marsha Schubert had received legitimate commissions for her work as a stockbroker, and that she placed those proper commissions into the bank account she used to write a check to Richard LeBoeuf in 2004.
3. Admit that the Department of Securities does not have any account of the amount of cash money that Richard LeBoeuf gave Marsha Schubert.
4. Admit that Marsha Schubert, in the presence of the Department of Securities, spent time identifying the payments made to persons from her bank account titled "Schubert and Associates."
5. Admit that the Department of Securities has elicited an agreement from Marsha Schubert regarding her cooperation with the Receiver Douglas Jackson.
6. Admit that the Department of Securities has a list of persons who lost money in their investments with Marsha Schubert.
7. Admit that the Department of Securities has not sent legal notice (regarding any pleadings) to any of the investors referenced in "6" either in Logan County in case CJ-2004-256, or in Oklahoma County case CJ-2005-3299.
8. Admit that the Department of Securities is aware that Receiver Douglas Jackson has sold property outside the state of Oklahoma belonging to Marsha Schubert and her husband.

9. Admit that the Department of Securities did not request permission from any Court of competent jurisdiction before Receiver Douglas Jackson sold property of Marsha Schubert outside the state of Oklahoma.

10. Admit that the Department of Securities did not send legal notice of court hearings to any third parties or investors it is aware of (such as those persons reference in "6"), prior to the Receiver Douglas Jackson's selling of any property in 2004 or 2005.

REQUEST FOR INSPECTION OF PROPERTY

1. Please make available the Department of Securities' email server for inspection and list available dates that a forensic expert may visit for such inspection.

INTERROGATORIES

1. Why did the Department of Securities fail to send legal notice of pleadings in Logan County case CJ-2004-256 to investors or any other third parties?

2. What information does the Department of Securities have regarding the Gungol Jackson P.C. law firm's experience in securities law?

3. Which individuals at the Department of Securities are responsible for choosing Douglas Jackson as receiver?

4. At what date did the Department of Securities first become aware of the name and address of an individual who may have lost money in Marsha Schubert's alleged "Ponzi scheme"?

EXHIBIT 3

**DISTRICT COURT OF LOGAN COUNTY
STATE OF OKLAHOMA**

OKLAHOMA DEPARTMENT OF)
SECURITIES, *ex rel.* Irving Faught,)
Administrator)

Plaintiff,)

v.)

Case No. CJ 2004-256)

MARSHA SCHUBERT, an)
Individual, and *dba* SCHUBERT AND)
ASSOCIATES, *et al.*)

Defendants.)

**REQUEST FOR PRODUCTION, ADMISSIONS, AND TO INSPECT, AND
INTERROGATORIES FOR DOUGLAS JACKSON, RECEIVER**

Pursuant to 12 Okla. Stat. Ann. § 3237, Richard LeBoeuf requests the following discovery as the information requested is relevant to the pending subject matter, not privileged, and calculated to lead to the discovery of other admissible evidence. In interpreting the following requests, plain language meaning of words should be utilized, unless a referenced statute dictates otherwise.

REQUESTS FOR PRODUCTION

1. Produce all documents containing any communication (written, verbal, or electronic such as email) between you and all members of the Schubert family.
2. Produce all documents containing any communication (written, verbal, or electronic such as email) between you and the Department of Securities.
3. Produce all documents containing any communication (written, verbal, or electronic such as email) between you and Gungol, Jackson P.C. (law firm in Enid, Oklahoma).

4. Produce all documents containing any communication (written, verbal, or electronic such as email) between you and Baird, Kurtz L.L.P. (accounting firm paid from Receivership trust fund for Marsha Schubert estate).
5. Produce all documents containing any communication (written, verbal, or electronic such as email) between you and Marsha Schubert.
6. Produce all documents containing any communication (written, verbal, or electronic such as email) between you and any individuals who invested with Marsha Schubert.
7. Produce all documents containing any communication (written, verbal, or electronic such as email) between you and the Logan County District Court in 2004 and 2005.
8. Produce all documents containing any communication (written, verbal, or electronic such as email) between you and Richard LeBoeuf.
9. Produce all documents showing cash money Marsha Schubert received in 2002-2004.
10. Produce all documents with evidence of tracing the cash money received by Marsha Schubert or Schubert and Associates in 2002-2004.

ADMISSIONS

1. Admit that Marsha Schubert had at least five thousand dollars (\$5,000.00) in funds in her personal bank account that were **not** part of the alleged "Ponzi scheme" in the spring and summer of 2004.

2. Admit that Marsha Schubert had received legitimate commissions for her work as a stockbroker, and that she placed those proper commissions into the bank account she used to write a check to Richard LeBoeuf in 2004.
3. Admit that you do not have any account of the amount of cash money that Richard LeBoeuf gave Marsha Schubert.
4. Admit that Marsha Schubert, in your presence as Receiver, or in the presence of your agent, spent time identifying payments made to persons from her bank account titled "Schubert and Associates."
5. Admit that you are aware the Department of Securities has elicited an agreement from Marsha Schubert regarding her cooperation with the Receiver Douglas Jackson.
6. Admit that you have a list of persons who lost money in their investments with Marsha Schubert.
7. Admit that you have not sent legal notice (regarding any pleadings) to any of the investors referenced in "6" either in Logan County in case CJ-2004-256, or in Oklahoma County case CJ-2005-3299.
8. Admit that you, as Receiver, have caused the sale of property outside the state of Oklahoma belonging to Marsha Schubert and her husband.
9. Admit that you did not request permission from any Court of competent jurisdiction prior to the sale of property of Marsha Schubert outside the state of Oklahoma. If denied, please give a detailed explanation of your denial.
10. Admit that you did not receive specific permission from any Court of competent jurisdiction in Oklahoma to sell Marsha Schubert's property in Missouri. If denied, please provide evidence of such permission.

11. Admit that you did not set for hearing in Logan County the issue of the sale of Marsha Schubert's property located in Missouri.
12. Admit that you did not send legal notice of court hearings to any third parties or investors you were aware of (such as those persons reference in "6"), prior to the Receiver Douglas Jackson selling of any of Marsha Schubert's property in 2004 or 2005.
13. Admit that you did not send any legal notice to any investors or other third parties regarding payment you requested for Baird Kurtz L.L.P. in the amount of \$97,756.00 in your APPLICATION OF RECEIVER FOR AUTHORITY TO PAY INTERIM ACCOUNTING FEES (filed on or about March 23, 2005 in Logan County).
14. Admit that you did not send any legal notice to any investors or other third parties regarding the NOTICE OF HEARING you filed with the Logan County Court on or about the 7th day of April 2005, regarding an upcoming hearing to pay the Baird Kurtz L.L.P. accounting firm the sum of \$97,756.00.

INSPECTION OF PROPERTY

1. Please make available your personal email server for inspection and list available dates that a forensic expert may visit for such inspection.

INTERROGATORIES

1. Why did you fail to send legal notice of pleadings in Logan County case CJ-2004-256 to investors or any other third parties?
2. What experience do you have regarding securities law?

3. Which individuals at the Department of Securities are responsible for choosing you, Douglas Jackson, as receiver?
4. At what date did you first become aware of the name and address of an individual who may have lost money in Marsha Schubert's alleged "Ponzi scheme"?
5. Describe your working relationship with the Department of Securities.
6. Has the Department of Securities requested to review any of your pleadings before you filed them?
7. Describe your relationship with the Baird Kurtz accounting firm
8. Have you known any individuals at the Baird Kurtz firm longer than 2 years?
9. Please list the individuals referenced in your response to "8" above.
10. List all property of Marsha Schubert that you have procured in 2004 and 2005.