

IN THE DISTRICT COURT OF TULSA COUNTY  
STATE OF OKLAHOMA

DISTRICT COURT  
**FILED**

APR 16 2002

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

Oklahoma Department of Securities )  
ex rel. Irving L. Faught, )  
Administrator, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Robert S. Miles, COEREC, Inc., an )  
Oklahoma corporation and )  
Daystar Investments International, Inc., )  
f/k/a Daystar Investments, Inc., an )  
Oklahoma corporation, )  
 )  
Defendants. )

Case No. CJ-2002-00035

DEBORAH C. SHALLCROSS

**MOTION FOR DEFAULT JUDGMENT  
AND BRIEF IN SUPPORT**

Plaintiff, Oklahoma Department of Securities ex rel. Irving L. Faught, Administrator, moves this Court to enter judgment by default in its favor and against Defendants COEREC, Inc., an Oklahoma corporation and Daystar Investments International, Inc., f/k/a Daystar Investments, Inc., an Oklahoma corporation ("Defendants").

I.

Summary of Action

On January 3, 2002, Plaintiff filed a Petition for Permanent Injunction and other Equitable Relief ("Petition") against Defendants.

In its Petition, Plaintiff alleged that Defendants violated: (a) Subsection (1) of Section 101 of the Oklahoma Securities Act (the "Act"), Okla. Stat. tit. 71, §§ 1-17, 101-103, 201-204, 301-307, 401-413, 501, 701-703 (1991 and Supp. 2000), by employing, in connection with the offer, sale, or purchase of securities in this state, a device, scheme, or

artifice to defraud; (b) Subsection (2) of Section 101 of the Act by making, in connection with the offer, sale, or purchase of securities in this state, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; (c) Subsection (3) of Section 101 of the Act by engaging, in connection with the offer, sale, or purchase of securities in this state, in acts, practices and a course of business which operated as a fraud or deceit upon investors; and (d) Section 301 of the Act by offering and/or selling securities that were not registered under the Act nor exempt from registration.

## II.

### Default Judgment is Appropriate

On January 7, 2002, each Defendant was personally served with the Petition and a summons. To date, Defendants have failed to file answers and their time for doing so has expired.

Okla. Stat. tit. 12, § 2008.D (1991 & Supp. 1999) pertaining to the general rules of pleadings states: "Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted when not denied in the responsive pleading."

Plaintiff's Petition alleges that Defendants violated Sections 101 and 301 of the Act. As provided by Okla. Stat. tit. 12, § 2008.D (1991 & Supp. 1999) and Defendants having not answered the allegations in Plaintiff's Petition, such averments must be deemed admitted by Defendants.

## III.

### Plaintiff's Requested Relief is Appropriate

In its Petition, Plaintiff requested that the Court permanently enjoin Defendants from further and future violations of Sections 101 and 301 of the Act. Pursuant to

Section 406.1 of the Act, Plaintiff also requested that the Court order Defendants to make restitution to investors who purchased securities from Defendants, disgorge all ill-gotten gains and pay a civil penalty in the amount of Fifty Thousand Dollars (\$50,000.00) each.

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).

A. Permanent 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., 1980 OK CIV APP 60, ¶ 13, 622 P.2d 293,295 (Okla. Ct. App. 1980). As described above and in the Petition, Defendants have violated the Act, creating a presumption of a likelihood of future violations. Because 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 Defendants and their burden "is a heavy one." S.E.C. v. Culpepper, 270 F.2d 241, 249 (2d Cir. 1959).

Further, unlike private actions for injunctions, Plaintiff's action is a creature of statute subject to a standard of review different from that for a 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., 1980 OK CIV APP 60, ¶ 14, 622 P.2d 293,295 (Okla. Ct. App. 1980) (citing Bradford v. S.E.C., 278 F.2d 566 (9th Cir. 1960)); S.E.C. v. Torre, 87 F.2d 449, 450 (2d Cir. 1937). Although not required, Plaintiff has also shown that the public will suffer irreparable injury if Defendants are not enjoined from further violations of the Act.

B. Disgorgement

The Oklahoma Supreme Court has specifically held that once the equity jurisdiction of the court has been invoked, the Court possesses the necessary power to fashion appropriate remedies for violations of the Act, including the power to require

disgorgement of unlawful profits. State v. Southwest Mineral Energy, Inc., 1980 OK 118, 617 P.2d 1334 (Okla. 1980).

C. Restitution

Section 406.1 of the Act authorizes the Court, upon a showing of a violation of the Act, to order restitution as a remedy for violations of the Act.

D. Civil Penalty

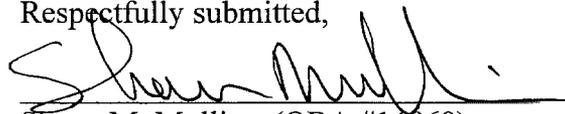
Section 406.1 of the Act also authorizes the Court, upon a showing of a violation of the Act, to impose a civil penalty against each Defendant.

IV.

Conclusion

The allegations in the Petition having been admitted, Plaintiff has established a sufficient basis for its requested relief. Plaintiff respectfully requests that the Court enter judgment in its favor and issue a Permanent Injunction forever enjoining Defendants from further and future violations of Sections 101 and 301 of the Act. Plaintiff further requests that the Court order Defendants to disgorge all ill-gotten gains and make restitution to all investors who purchased securities from Defendants in amounts to be determined in a subsequent evidentiary hearing as ordered by the Court. Finally, Plaintiff requests that the Court impose a civil penalty in the amount of Fifty Thousand Dollars (\$50,000.00), payable to the Oklahoma Department of Securities, against each Defendant.

Respectfully submitted,



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