

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

Oklahoma Department of Securities )  
ex rel. Irving L. Faught, )  
Administrator, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Richard O'Quin, as an individual )  
and dba Harbor Securities, )  
 )  
Defendant. )

FILED IN THE DISTRICT COURT  
OKLAHOMA COUNTY, OKLA.

JUL - 9 1999

PATRICIA PRESLEY, COURT CLERK  
By \_\_\_\_\_  
Deputy

Case No CJ-99-2704-63

**FIRST AMENDED PETITION FOR PERMANENT INJUNCTION**  
**AND OTHER EQUITABLE RELIEF**

COMES NOW the Plaintiff, Oklahoma Department of Securities ex rel. Irving L. Faught ("Department"), and for its claims against the above-named Defendant, alleges and states as follows:

**OVERVIEW**

1. This case involves failure on the part of Richard O'Quin dba Harbor Securities ("Defendant") to register as a broker-dealer as required by Section 201 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. 1998), and fraud in connection with the offer, sale or purchase of securities in violation of Section 101 of the Act.

## **JURISDICTION**

2. The Administrator of the Department brings this action pursuant to Section 406.1 of the Act and is the proper party to bring this action against the Defendant.

3. Pursuant to Sections 2 and 413 of the Act, Defendant, in connection with his activities and the offer, sale, and purchase of securities, is subject to the provisions of the Act. By virtue of his transaction of business by contract and otherwise and commission of other acts in this state, Defendant is subject to the jurisdiction of this Court and to service of summons within or outside of this state.

## **DEFENDANT**

4. Richard O'Quin is an individual who, at all times material hereto, was a resident of Oklahoma doing the acts complained of in his own name or doing business as Harbor Securities.

## **NATURE OF THE CASE**

5. Harbor Securities, L.L.C. (the "L.L.C.") is a New York limited liability company based in New York and is a member of the Philadelphia Stock Exchange. Individuals desiring to trade securities on their own behalf may do so by becoming a member of the L.L.C. and by assenting to and signing the Operating Agreement of the L.L.C. A member must also sign an "Acknowledgment of Membership and Risk" ("Acknowledgment") in which the member acknowledges that he or she is the "sole

owner of the funds contributed” and that he or she has “not entered any profit or loss arrangement regarding the proposed securities trading with any person.”

6. In or around November, 1997, Betty Mitchell (“Mitchell”), a resident of Purcell, Oklahoma, became a member of the L.L.C. and authorized Defendant to make securities trades on her behalf through her L.L.C. account, subject to the same terms and limitations as set forth in the Operating Agreement of the L.L.C. and the Acknowledgment.

7. Defendant held himself out to numerous Oklahoma investors (the “Investors”) as being affiliated with the L.L.C. Defendant’s representations of such affiliation were made through the use of oral communications, business cards showing a business address for Harbor Securities in Norman, Oklahoma, and a telephone directory listing in Norman, Oklahoma for “Harbor Securities.”

8. Defendant required that Investors sign a “trading agreement” or “account agreement” prepared by Defendant stating that the Investors were placing their funds in an investment account to be traded by Richard O’Quin. The trading or account agreement between Defendant and the Investor stated that the Investor would receive monthly checks for any gains up to 10% of their account balance or 10% of their initial capital, with any excess going to Defendant. [See Exhibits B-F attached hereto].

9. From at least May, 1998, Defendant received substantial sums of money from the Investors for the purported purpose of effecting transactions in securities for the Investors. Defendant purported to trade securities for and on behalf of the Investors, or for his own account, in accounts held at various firms, including, but not limited to, Harbor Securities, L.L.C. and Harbor Remote L.L.C.

## **FIRST CAUSE OF ACTION**

### **(Violation of Section 201 of the Act: Failure to Register as a Broker-Dealer)**

10. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 9 above.

11. Defendant, by virtue of his efforts and activities in effecting transactions in securities for the account of others or for his own account, is a broker-dealer, as defined in Section 2 of the Act. The Defendant is not, and has not been, registered under the Act as a broker-dealer as required by Section 201 of the Act. [See Affidavit attached hereto as Exhibit A.] By reason of the foregoing, Defendant has violated, and unless enjoined, will continue to violate, Section 201 of the Act.

## **SECOND CAUSE OF ACTION**

### **(Violation of Section 101(2) of the Act: Untrue Statements of Material Facts and Omissions of Material Facts in Connection With Offer, Sale or Purchase of Securities)**

12. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding cause of action.

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

- a. that Defendant was a member of the Philadelphia Stock Exchange;
- b. that Defendant was affiliated with Harbor Securities, L.L.C.; and

c. that Defendant would effect transactions in securities for or on behalf of the Investors.

14. Defendant, in connection with the offer, sale or purchase of securities, directly and indirectly, omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, the following matters:

a. that Defendant was not qualified to transact business in this state as a broker-dealer;

b. that Defendant was not registered under the Act as a broker-dealer;

c. that when an investor placed funds with Defendant and signed a trading or account agreement, the Investor would not have an account in his or her name with Harbor Securities, L.L.C.;

d. that Defendant was not a member of the L.L.C. and was not affiliated with the L.L.C.;

e. that any securities transactions effected by Defendant on behalf of the Investor would be made in Mitchell's account;

f. that any funds to be deposited into the account of a member of the L.L.C. were restricted to those funds solely owned by the member of the L.L.C.;

g. that a member of the L.L.C. was prohibited from entering into any profit or loss sharing agreement with any other person;

h. that Defendant was not in fact purchasing or selling securities using the money provided to him by Investors;

i. that Defendant was using the money provided to him by Investors for his personal benefit including, but not limited to, withdrawing substantial sums of Investor money in cash; payment of personal expenses relating to travel, credit card payments, utility bills, medical expenses, household items and taxes; purchases of and payments toward personal vehicles; and purchases of equipment and payment of rent for unrelated businesses; and

j. that any payments to Investors for trading profits would be made using the Investors own contributed principal amount or the principal amount contributed by other Investors.

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

### **THIRD CAUSE OF ACTION**

**(Violation of Section 101(3) of the Act:  
Engaging in any act, practice, or course of business which operates or would  
operate as a fraud or deceit upon any person)**

16. The Department realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

17. Defendant, in connection with the offer, sale or purchase of securities, and through the use of the untrue statements of material facts and the omissions of

material facts described in paragraphs 13 and 14 above, engaged in an act, practice, or course of business which operated as a fraud or deceit upon the Investors.

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

### **PRAYER FOR RELIEF**

Defendant has engaged in acts and practices in violation of the Act and has, as a result of these activities, received a substantial amount of money from numerous Investors. Unless enjoined, the Defendant will continue to engage in the acts and practices set forth herein and acts and practices of similar purport and object. A danger exists that the money received by Defendant from the Investors or money or securities held by Defendant on behalf of the Investors will be lost, removed or transferred. A temporary restraining order to issue instanter and temporary and permanent injunctions to issue against Defendant are necessary to preserve these funds, securities and the records relating thereto and prevent further violations of the Act.

WHEREFORE, based upon the foregoing, and pursuant to the authority specifically granted by Section 406.1 of the Act, the Department prays for the court to grant the following relief:

I.

A temporary restraining order to issue instanter and a temporary injunction, restraining and enjoining the Defendant, his agents, servants, employees, assigns,

attorneys, and those persons in active concert or participation with him who receive actual notice of the temporary restraining order and temporary injunction, directly or indirectly, and each of them from:

a. transacting business in this state as a broker-dealer, agent, investment adviser and/or investment adviser representative unless appropriately registered under the Act;

b. making untrue statements of material facts in connection with the offer, sale, and/or purchase of securities from or in this state;

c. omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, in connection with the offer, sale, and/or purchase of securities from or in this state;

d. engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person; and,

e. directly or indirectly, tampering with, altering, concealing, removing, destroying or otherwise disposing of any and all books, records, documents, files, correspondence, computer disks or computer generated data of any type, however created or stored, pertaining to Defendant or any financial or securities transaction by Defendant;

## II.

An order freezing the assets of Defendant;

III.

A permanent injunction forever enjoining and restraining Defendant from:

- a. violating Section 201 of the Act; and,
- b. violating Section 101 of the Act;

IV.

An order requiring Defendant to make restitution to any and all investors who purchased securities from Defendant or who transferred money to Defendant for the purpose of trading securities on their behalf;

V.

An order requiring Defendant to disgorge all ill-gotten gains and such other equitable relief as the Court may deem necessary, just and proper in connection with the enforcement of the Act; and

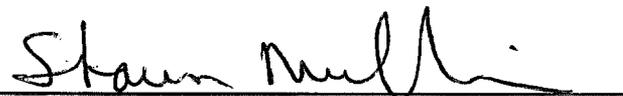
VI.

An order imposing a civil penalty against Defendant in the amount of Fifty Thousand Dollars (\$50,000.00).

Respectfully submitted,

OKLAHOMA DEPARTMENT OF SECURITIES  
Irving L. Faught, Administrator

By:



Shaun M. Mullins, #16869  
Oklahoma Department of Securities  
120 North Robinson, Suite 860  
Oklahoma City, Oklahoma 73102  
(405) 280-7700

STATE OF OKLAHOMA )  
 )  
COUNTY OF OKLAHOMA ) SS.

Melanie Hall, of lawful age, being first duly sworn deposes and says; that she is the Deputy Administrator of the Oklahoma Department of Securities, that she has read the foregoing First Amended Petition for Permanent Injunction and Other Equitable Relief and knows the contents thereof, and that the matters and things stated therein have been provided to her by staff members of the Department under her authority and direction, and are true and correct to the best of her knowledge, information and belief.

(SEAL)

Melanie Hall

Melanie Hall, DEPUTY ADMINISTRATOR OF THE  
OKLAHOMA DEPARTMENT OF SECURITIES  
120 North Robinson, Suite 860  
Oklahoma City, Oklahoma 73102  
(405) 280-7700

Subscribed and sworn to before me this 9<sup>th</sup> day of July,  
1999.

(NOTARIAL SEAL)

Brenda S. London

Notary Public

My Commission Expires:

August 26, 2001