

IN THE DISTRICT COURT OF POTTAWATOMIE COUNTY
STATE OF OKLAHOMA

FILED
IN DISTRICT COURT

JUN 17 2004

POTTAWATOMIE COUNTY, OK
CECIL DUNLAP, COURT CLERK
BY _____ DEPUTY

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

Plaintiff,)

v.)

Case No. C-03-1239

The Hickman Agency, Inc., an Oklahoma)
corporation; Merl William Hickman, Sr.,)
an individual; Sarah L. Hickman,)
an individual; and Merl William)
Hickman, Jr., an individual,)

Defendants,)

and)

Stephanie Hickman Matthews, an individual;)
Angela Friguletto, an individual; Peter)
Friguletto, an individual; Sandra Friguletto,)
an individual; and Christy Hickman,)
an individual,)

Defendants Solely For)
Purposes of Equitable Relief.)

**MOTION FOR DEFAULT JUDGMENT AGAINST THE HICKMAN AGENCY, INC.,
MERL WILLIAM HICKMAN, SR., SARAH L. HICKMAN AND
MERL WILLIAM HICKMAN, JR. 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 The Hickman
Agency, Inc., Merl William Hickman, Sr., Sarah L. Hickman and Merl William Hickman, Jr.
(collectively, "Defendants"), and offers this brief in support of the motion.

I.

Summary of Action

On December 17, 2003, Plaintiff filed a Petition for Permanent Injunction and other Equitable Relief ("Petition") against Defendants pursuant to Section 406.1 of the Oklahoma Securities Act ("Act"), Okla. Stat. Ann. tit. 71, §§ 1-413, 501, 701-703 (West 2004). In its Petition, Plaintiff alleged that Defendants offered and sold unregistered securities in violation of Section 301 of the Act, failed to register as agents and/or employed unregistered agents in violation of Section 201 of the Act, and perpetrated fraud in connection with the offer, sale or purchase of securities in violation of Section 101 of the Act.

Plaintiff also alleged Defendants operated a "ponzi" scheme. The Petition described a "ponzi scheme" as an investment scheme whereby returns to investors are financed, not through the success of an underlying business venture, but from the principal sums of newly attracted investors. Typically, investors are promised large returns for their investments. Initial investors are actually paid the promised returns, attracting additional investors who lose their principal when the scheme eventually collapses.

The Court, upon motion of Plaintiff, issued a Temporary Restraining Order, Order Appointing Receiver, Order Freezing Assets and Order for Accounting ("Temporary Order"), against Defendants. The Court, in its Temporary Order, appointed a receiver over the assets of Defendants, froze the assets of Defendants, and ordered that Defendants provide to the Court an accounting of all funds received pursuant to the matters described in Plaintiff's Petition.

On December 17, 2003, a copy of the Summons issued in this matter by the clerk of the Court, along with a copy of the Petition, Application for Temporary Restraining Order, Order Appointing Receiver, Order Freezing Assets and Order for Accounting ("Application") and the Temporary Order, were personally served by the Pottowatomie County Sheriff upon Defendants

The Hickman Agency, Inc., Merl William Hickman, Sr. and Merl William Hickman, Jr. On December 17, 2003, a copy of the Summons issued in this matter by the clerk of the Court, along with a copy of the Petition, Application and Temporary Order, were mailed to Defendant Sarah L. Hickman by certified mail, return receipt requested and delivery restricted to Sarah L. Hickman. On December 19, 2004, Defendant Sarah L. Hickman signed the return receipt for the Summons, Petition, Application and Temporary Order.

On December 22, 2003, a Temporary Injunction against Defendants was issued by this Court by agreement of all parties. All Defendants were represented by Bradley C. West for purposes of the Temporary Injunction. In connection with the issuance of the Temporary Injunction, Defendants stated: By agreeing to the entry of this order, Defendants waive no defenses to this case or the allegations made herein."

Counsel for Defendants has also appeared for the February 19, 2004 filing of the Application of the West Law Firm Attorneys for Defendants for Payment of Compensation ("Application for Compensation"), and for the February 26, 2004 hearing on the Application for Compensation. Counsel for Defendants has also been involved with the efforts of the Receiver, Stephen J. Moriarty, to comply with the orders of this Court relating to the receivership.

To date, Defendants have failed to answer the Petition or otherwise plead.

II.

Default Judgment is Appropriate

Plaintiff submits that service of the Summons and Petition upon Defendants has been effected pursuant to Okla. Stat. tit. 12, § 2004 (2001 and Supp. 2003). Having received proper service, Defendants are required by Okla. Stat. tit. 12, § 2012(A) (2001 and Supp. 2003) to serve their answer within twenty (20) days after the service of the Summons and Petition upon them.

As referenced above, the Summons, a copy of the Petition, Application and Temporary Order were served upon Defendants on December 17, 2003 and December 19, 2003. From these dates, Defendants had until January 6, 2004 and January 8, 2004, to serve their answers but failed to do so.

Plaintiff further submits that as a result of Defendants' failure to answer, the allegations in Plaintiff's Petition are deemed admitted. Okla. Stat. tit. 12, § 2008(D) (2001), 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, 201, 301 and 402 of the Act. Defendants have not answered the allegations in Plaintiff's Petition. As provided by Okla. Stat. tit. 12, § 2008(D) (2001), such averments must be deemed admitted by Defendants.

Plaintiff therefore respectfully requests that judgment be entered in its favor as requested in the Petition.

III.

Plaintiff's Requested Relief is Appropriate

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).

In its Petition, Plaintiff requested that the Court:

1. permanently enjoin Defendants from:
 - a. offering and selling any security in this state;
 - b. transacting business in this state as a broker-dealer, agent, investment adviser and/or investment adviser representative;
 - c. making untrue statements of material facts in connection with the offer, sale, and/or purchase of securities in and/or from this state;
 - d. 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 in and/or from this state; and
 - e. engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the offer, sale, and/or purchase of securities in and/or from this state.

2. order Defendants to make restitution to any and all investors who purchased securities from Defendants or who transferred money to Defendants for the purpose of making securities investments on their behalf; and
3. impose a civil penalty against each Defendant in the amount of Fifty Thousand Dollars (\$50,000.00).

The allegations in the Petition having been admitted, Plaintiff has established a sufficient basis for the relief requested. The power to enforce implies the power to make effective the right of recovery afforded by the Act. See *Deckert v. Independence Shares Corp.*, 311 U.S. 282 (1940). Justice is only served in this case if all appropriate relief is granted against all Defendants.

First, Plaintiff seeks a permanent injunction against Defendants. 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 the Defendants and their burden "is a heavy one." *S.E.C. v. Culpepper*, supra, at 249.

Second, Plaintiff seeks restitution from Defendants in the sum of Eight Million Four Hundred Sixty-Five Thousand Seventy-Eight Dollars (\$8,465,078.00). This sum is the amount of money Defendants received from investors that can be traced into The Hickman Agency, Inc. bank accounts. The source of the Eight Million Four Hundred Sixty-Five Thousand Seventy-Eight Dollars (\$8,465,078.00) is investor funds.

Third, Plaintiff seeks a civil penalty be imposed against each Defendant in the sum of Fifty Thousand Dollars (\$50,000.00). This is the maximum penalty that can be imposed under the Act and is warranted due to the serious nature of the Defendants' violations of the Act. The serious nature of the violations is evidenced by the amount of investor money received, by the large number of investors, by the age of those investors, and by the devastating results to those investors.

IV.

Conclusion

Plaintiff has obtained proper service on Defendants. The allegations in the Petition being admitted, Plaintiff respectfully requests that the Court enter judgment in its favor by:

1. permanently enjoining Defendants from:
 - a. offering and selling any security in this state;
 - b. transacting business in this state as a broker-dealer, agent, investment adviser and/or investment adviser representative;
 - c. making untrue statements of material facts in connection with the offer, sale, and/or purchase of securities in and/or from this state;
 - d. 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 in and/or from this state; and

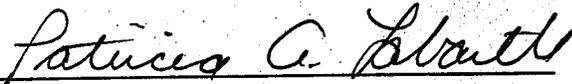
- e. engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the offer, sale, and/or purchase of securities in and/or from this state.

2. ordering Defendants to make restitution to any and all investors who purchased securities from Defendants or who transferred money to Defendants for the purpose of making securities investments on their behalf; and

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

Plaintiff has attached a proposed order to this motion.

Respectfully submitted,



Patricia A. Labarthe OBA #10391
Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, Oklahoma 73102
Telephone (405) 280-7700
Fax (405) 280-7742

Please be advised that this motion has been set for hearing before the Honorable Douglas L. Combs at 9:00 a.m. on the 1st day of July, 2004, at the Pottawatomie County Courthouse.

**IN THE DISTRICT COURT OF POTTAWATOMIE COUNTY
STATE OF OKLAHOMA**

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

Plaintiff,)

v.)

Case No. C-03-1239

The Hickman Agency, Inc., an Oklahoma)
corporation; Merl William Hickman, Sr.,)
an individual; Sarah L. Hickman,)
an individual; and Merl William)
Hickman, Jr., an individual,)

Defendants,)

and)

Stephanie Hickman Matthews, an individual;))
Angela Friguletto, an individual; Peter)
Friguletto, an individual; Sandra Friguletto,)
an individual; and Christy Hickman,)
an individual,)

Defendants Solely For)
Purposes of Equitable Relief.)

**ORDER OF PERMANENT INJUNCTION AND
ORDER OF RESTITUTION**

This matter came on for hearing this _____ day of _____, 2004,
before the undersigned Judge of the District Court in and for Pottawatomie County, State of
Oklahoma, upon motion of Plaintiff, Oklahoma Department of Securities *ex rel.* Irving L.
Faught, Administrator ("Plaintiff"), for default judgment against Defendants The Hickman
Agency, Inc., Merl William Hickman, Sr., Sarah L. Hickman and Merl William Hickman, Jr.
(collectively, "Defendants"). The Court, finding that it has jurisdiction of the parties and the
subject matter of this action and the issues having been heard, finds that Plaintiff's motion for

default judgment against The Hickman Agency, Inc., Merl William Hickman, Sr., Sarah L. Hickman and Merl William Hickman, Jr. should be, and hereby is, granted.

The Court finds that Defendants were validly served with a Summons and the Petition in this case and that the date by which Defendants were required to appear and defend this action has passed. No motion or responsive pleading has been filed by or on behalf of Defendants.

Defendants have thus admitted the allegations in the Petition. The Court, having reviewed the evidence presented, and being fully advised in the premises, and on consideration thereof, finds that the allegations in Plaintiff's Petition are deemed true as set forth therein, and that the basis for an injunction and other equitable relief has been established by Plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment be, and hereby is, entered against Defendants.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a permanent injunction be and is hereby entered, forever enjoining and restraining Defendants from:

- a. offering and selling any security in this state;
- b. transacting business in this state as a broker-dealer, agent, investment adviser and/or investment adviser representative;
- c. making untrue statements of material facts in connection with the offer, sale, and/or purchase of securities in and/or from this state;
- d. 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 in and/or from this state; and
- e. engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in

connection with the offer, sale, and/or purchase of securities in
and/or from this state.

IT IS FURTHER ORDERED that Defendants pay restitution to any and all investors who purchased securities from Defendants or who transferred money to Defendants for the purpose of making securities investments on their behalf in the sum of Eight Million Four Hundred Sixty-Five Thousand Seventy-Eight Dollars (\$8,465,078.00).

IT IS FURTHER ORDERED that each Defendant pay to the Oklahoma Department of Securities a civil penalty of Fifty Thousand Dollars (\$50,000.00).

IT IS FURTHER ORDERED that this Court will retain jurisdiction of this matter for the purpose of enforcement of this Order of Permanent Injunction and Order of Restitution.

IT IS SO ORDERED.

Dated this _____ day of _____, 2004.

DISTRICT COURT JUDGE

Approved as to form and substance:

Patricia A. Labarthe OBA #10391
Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, Oklahoma 73102
(405) 280-7700
Attorney for Plaintiff

Stephen J. Moriarty
Andrew, Davis, Legg, Bixler, Milsten & Price
500 West Main, Suite 500
Oklahoma City, Oklahoma 73102
(405) 272-9241
Receiver

CERTIFICATE OF MAILING

The undersigned certifies that on the 18th day of June, 2004, a true and correct copy of the foregoing was mailed via First Class Mail, postage prepaid, to the following:

Terry West
Bradley C. West
The West Law Firm
124 West Highland
Shawnee, OK 74801

Merl William Hickman, Sr.
Pottawatomie County Public Safety Center
325 North Broadway
Shawnee, OK 74801

Sarah Hickman
Route 3, Box 505
Meeker, OK 74855

Merl William Hickman, Jr.
Route 3, Box 505
Meeker, OK 74855

Stephanie Hickman Matthews
RR 3, Box 88
Meeker, OK 74855

Michael A. Cotteleer
Young & Cotteleer
207-209 N. Washington
Wheaton, IL 60187

Angela Friguletto
550 South Addison Avenue
Lombard, IL 60148

Peter Friguletto
550 South Addison Avenue
Lombard, IL 60148

Sandra Friguletto
618 South LaLonde Avenue
Lombard, IL 60148

Christy Hickman
Route 3, Box 490
Meeker, OK 74855

Stephen J. Moriarty
Andrews Davis Legg Bixler
Milsten & Price
500 West Main, Suite 500
Oklahoma City, OK 73102

Patricia C. Lantley
