

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA JAN 9 2003

Oklahoma Department of Securities)
ex rel., Irving L. Faught, Administrator,)
)
Plaintiff/Appellee,)
)
v.)
)
Accelerated Benefits Corporation;)
C. Keith LaMonda; American Title)
Company of Orlando; and David)
Piercefield,)
)
Defendants/Appellants,)
)
v.)
)
Tom Moran,)
)
Court Appointed Conservator/Appellee.)

MICHAEL S. RICHIE
CLERK

Case No. 98663
(District Court Case No. CJ-99-
2500-66

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

JAN - 9 2003

PATRICIA PRESLEY, COURT CLERK

By _____
Deputy

RESPONSE OF OKLAHOMA DEPARTMENT OF SECURITIES TO
PETITION IN ERROR

Is appellee willing to participate in an attempted settlement of the appeal by predecisional conference under Rule 1.250?

X YES _____ NO

Attached as Exhibit "A" is the statement of the case of the Appellee, Oklahoma Department of Securities.

DATE: January 9, 2003.

Verified by:

Patricia A. Labarthe

Patricia A. Labarthe, OBA # 10391
Melanie Hall, OBA #1209
Oklahoma Department of Securities
First National Center, Suite 860
120 N. Robinson
Oklahoma City, OK 73102
Telephone: (405) 280-7700
Facsimile: (405) 280-7742

EXHIBIT A

SUMMARY OF THE CASE

On February 6, 2001, an Order Appointing Conservator and Transferring Assets ("Order"), was filed in the Oklahoma County District Court in a case brought by the Oklahoma Department of Securities against Accelerated Benefits Corporation ("ABC"). The trial court had previously found that ABC had engaged in violations of the Oklahoma Securities Act in connection with the unlawful and fraudulent sale of securities in the nature of contracts to purchase interests in the proceeds of viated life insurance policies. ABC did not appeal that judgment.

The conservatorship was ordered "in lieu of a judgment for restitution and in order to prevent potential irreparable loss, damage or injury to purchasers of interests in the right to receive the proceeds from the viatical and/or life settlement policies effectuated by ABC Purchase Request Agreements." The Order was issued upon joint application of the Department and Appellants and by agreement of the parties. The Order ordered that Appellants pay all costs of the conservatorship until 75% of the conservatorship assets were transferred to the conservator. When such costs were not paid by ABC, the conservator filed a motion to compel compliance with the Order. Appellants also filed a motion to enforce the Order. On November 20, 2002, the district court ruled that the Order was clear and unambiguous, and ordered ABC to pay all approved costs and expenses of the conservatorship as specified in the Order.

Paragraphs 1 and 2 of the "Issues on Appeal" filed by Appellants as Exhibit "C" to their Petition in Error are the only issues disposed of by the district court on November 20, 2002. Paragraphs 4 and 6 simply restate Paragraphs 1 and 2. Paragraphs 3, 5, and 7 were never considered or adjudicated in the district court and are not ripe for an appeal.

CERTIFICATE OF MAILING AND FILING

I hereby certify that a true and correct copy of the Response to Petition in Error was mailed by U.S. Mail, with postage prepaid thereon, this 9~~K~~ day of January, 2003, to the following:

The Honorable Daniel L. Owens
Judge of the District Court of Oklahoma County
304 Courthouse
321 Park Avenue
Oklahoma City, OK 73102

Melvin R. McVay, Jr. OBA #6096
Thomas P. Manning, OBA #16117
PHILLIPS McFALL McCAFFREY McVAY & MURRAH, P.C.
Twelfth Floor, One Leadership Square
211 N. Robinson
Oklahoma City, OK 73102

Dino E. Viera, OBA # 11556
William H. Whitehill, OBA # 12038
FELLERS, SNIDER, BLANKENSHIP, BAILEY & TIPPENS
Bank One Tower
100 North Broadway, Suite 1700
Oklahoma City, OK 73102-8820

I further certify that a copy of the Response to Petition in Error was mailed to, or filed in, the office of the Oklahoma County Court Clerk this 9~~K~~ day of January, 2003.

Patricia A. Blatto