

IN THE DISTRICT COURT OF POTTAWATOMIE COUNTY
STATE OF OKLAHOMA

FILED
IN DISTRICT COURT

JUL 06 2004

POTTAWATOMIE COUNTY, OK.
GEGIL 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.)

Hearing is set for Thursday,
July 29, 2004, at 9:00 a.m.

**MOTION FOR DEFAULT JUDGMENT AGAINST
STEPHANIE HICKMAN MATTHEWS 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 Relief Defendant
Stephanie Hickman Matthews (“Hickman Matthews”), 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, The Hickman Agency, Inc., Merl William Hickman, Sr., Sarah L. Hickman and Merl William Hickman, Jr. (collectively, "Defendants"), for violations of the Oklahoma Securities Act ("Act"), Okla. Stat. Ann. tit. 71, §§ 1-413, 501, 701-703 (West 2004).

On February 3, 2004, Plaintiff filed the First Amendment to Petition for Permanent Injunction and other Equitable Relief ("Amended Petition") against Hickman Matthews pursuant to Section 406.1 of the Act. In its Amended Petition, Plaintiff alleged that Hickman Matthews received cash and other property and/or controls property that are the proceeds, or are traceable to the proceeds, of the unlawful activities of Defendants (collectively, "Investor Assets"), from one or more Defendants as part of and in furtherance of the securities violations alleged in the Amended Petition and in the Petition. On February 3, 2004, a copy of the summons issued by the clerk of the Court to Hickman Matthews and a copy of the Amended Petition were mailed by certified mail, return receipt requested, delivery restricted to addressee, to Hickman Matthews.

On February 3, 2004, this Court, issued an Order Granting Equitable Relief ("Temporary Order") on the Application for Equitable Relief filed by Plaintiff on February 3, 2004. The Temporary Order froze the Investor Assets received or held by Hickman Matthews and ordered that Hickman Matthews provide to the Court an accounting of all funds received pursuant to the matters described in Plaintiff's Amended Petition. The Temporary Order included a hearing date set by the Court on February 24, 2004.

On February 3, 2004, a copy of the Temporary Order and the Application for Equitable Relief were mailed by first class mail to Hickman Matthews.

On February 5, 2004, a copy of the summons issued by the clerk of the Court to Hickman Matthews, the Amended Petition, an Application for Equitable Relief and an Order Granting Equitable Relief were served by certified mail upon Hickman Matthews.

On February 18, 2004, an Accounting of Stephanie Hickman-Mathews was filed with this Court by Hickman Matthews.

On February 24, 2004, an Order Granting Equitable Relief against Stephanie Hickman Matthews ("Order") was issued by this Court by agreement of the parties. Hickman Matthews was represented by Bradley C. West for purposes of the Order. In the Order, this Court found that "in agreeing to the entry of this Order, Relief Defendant waives no defenses to this case or the allegations made herein." To date, Hickman Matthews has failed to answer the Amended Petition or otherwise plead.

On July 1, 2004, an Order of Permanent Injunction and Order of Restitution was issued by this Court against Defendants.

II.

Default Judgment is Appropriate

Plaintiff submits that service of the Summons and Amended Petition upon Hickman Matthews has been effected pursuant to Okla. Stat. tit. 12, § 2004 (2001 and Supp. 2003). Having received proper service, Hickman Matthews is required by Okla. Stat. tit. 12, § 2012(A) (2001 and Supp. 2003) to serve her answer within twenty (20) days after the service of the summons and Amended Petition upon her. As referenced above, the summons and a copy of the

Amended Petition were served upon Hickman Matthews on February 5, 2004. From this date, Hickman Matthews had until February 25, 2004, to serve her answer but failed to do so.

Plaintiff further submits that as a result of Hickman Matthews' failure to answer, the allegations in Plaintiff's Amended 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 Amended Petition alleges Hickman Matthews received Investor Assets from one or more Defendants as part of and in furtherance of the securities violations of Defendants. Hickman Matthews has not answered the allegations in Plaintiff's Amended Petition. As provided by Okla. Stat. tit. 12, § 2008(D) (2001), such averments are deemed admitted by Hickman Matthews.

Plaintiff therefore respectfully requests that judgment be entered in its favor as requested in the Amended 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 Amended Petition, Plaintiff requested that the Court order Hickman Matthews to make restitution to any and all Investors from whom Investor Assets were received or held by Hickman Matthews. The allegations in the Amended Petition having been admitted and the judgment entered against Defendants by order dated July 1, 2004, Plaintiff has established a sufficient basis for the relief requested.

The power to enforce the securities laws 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). Securities statutes vest courts with jurisdiction over claims against non-violators who receive funds as a result of securities fraud violations. *Deckert, supra*; *Securities and Exchange Commission v. Antar*, 831 F. Supp. 380, 398-99 (D.N.J. 1993); *Securities and Exchange Commission v. Cherif*, 933 F.2d 403, (7th Cir. 1991), cert. denied, 502 U.S. 1071, 112 S.Ct. 966, 117 L.Ed.2d 131 (1992). Restitution from Hickman Matthews, who received funds derived from Investor Assets, is such equitable relief.

Plaintiff seeks restitution from Hickman Matthews in the sum of Ninety-Nine Thousand Twenty-Two Dollars and Seventy-Two Cents (\$99,022.72). This sum is the amount of Investor

Assets that can be traced through The Hickman Agency, Inc. bank accounts to Hickman Matthews. The source of the restitution amount is Investor Assets.

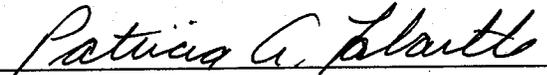
IV.

Conclusion

Plaintiff has obtained proper service on Hickman Matthews. The allegations in the Amended Petition being admitted, and the judgment entered against Defendants by order dated July 1, 2004, Plaintiff respectfully requests that the Court enter judgment in its favor by ordering Hickman Matthews to pay restitution in the sum of Ninety-Nine Thousand Twenty-Two Dollars and Seventy-Two Cents (\$99,022.72).

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

This motion is set for hearing before the Honorable Douglas L. Combs at 9:00
a.m. on the 29th day of July, 2004.

CERTIFICATE OF MAILING

The undersigned certifies that on the 6th day of July, 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

Brenda London Smith

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STATE OF OKLAHOMA

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Case No. C-03-1239

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

Defendants Solely For)
Purposes of Equitable Relief.)

ORDER OF RESTITUTION AGAINST RELIEF DEFENDANT
STEPHANIE HICKMAN MATTHEWS

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 Relief Defendant Stephanie
Hickman Matthews (“Hickman Matthews”). 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 Hickman Matthews should be, and hereby is, granted.

The Court finds that Hickman Matthews was validly served with a Summons and First Amendment to Petition for Permanent Injunction and other Equitable Relief ("Amended Petition") in this case, and that the date by which Hickman Matthews was required to appear and defend this action has passed. No motion or responsive pleading has been filed by or on behalf of Hickman Matthews.

Hickman Matthews has thus admitted the allegations in the Amended 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 Amended Petition are deemed true as set forth therein, and that the basis for equitable relief has been established by Plaintiff.

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

IT IS FURTHER ORDERED that Hickman Matthews pay restitution in the sum of Ninety-Nine Thousand Twenty-Two Dollars and Seventy-Two Cents (\$99,022.72).

IT IS FURTHER ORDERED that this Court will retain jurisdiction of this matter for the purpose of enforcement of this Order of Restitution Against Relief Defendant Stephanie Hickman Matthews.

IT IS SO ORDERED.

Dated this _____ day of _____, 2004.

DISTRICT COURT JUDGE

Approved as to form and substance:

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(405) 280-7700
Attorney for Plaintiff

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Receiver