

STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
THE FIRST NATIONAL CENTER
120 NORTH ROBINSON, SUITE 860
OKLAHOMA CITY, OKLAHOMA 73102



In the Matter of:

Geary Securities, Inc., fka Capital West Securities, Inc.;
Keith D. Geary; Norman Frager; and CEMP, LLC,

Respondents.

File No. 09-141

**ORDER DENYING GEARY RESPONDENTS' MOTION
FOR PRECLUSION ORDER AND ORDER STRIKING DEPARTMENT
WITNESSES (BANK OF UNION DIRECTORS) AND EXHIBIT
(BANK OF UNION DIRECTORS' AFFIDAVIT)**

This matter having come before the Hearing Officer on the Respondents' Geary Securities, Inc. (formerly known as Capital West Securities, Inc.), Keith D. Geary and CEMP, LLC, Motion for Preclusion Order and Order Striking Department Witnesses (Bank of Union Directors) and Exhibit (Bank of Union Directors' Affidavit), and the parties having submitted written arguments on the same and a hearing having been held on said Motion on January 24, 2012, and the Hearing Officer having considered said arguments hereby finds that:

1. Subpoenas for depositions of the subject Bank of Union Directors (the "BOU Directors") and for production of documents from said witnesses were issued by the Hearing Officer at the request of the Respondents without objection in accordance with Rule 660:2-9-3(b)(2) and Rule 660:2-9-4 of the Rules of the Oklahoma Securities Commission and Administrator of the Department of Securities (the "Rules"), and served on the BOU Directors by Respondents;
2. The BOU Directors have been identified as potential witnesses in the hearing on this matter by the Department of Securities ("Department") in the Final and Amended Lists of Witnesses filed March 15 and 28, 2011;

3. The Department has taken all reasonable steps under the Rules so as to permit Respondents to conduct the depositions of the BOU Directors and to obtain documents as specified in the subject subpoenas, as provided for in Rule 660:2-9-3(b)(1) and (2) and Rule 660:2-9-4;

4. Due to apparent scheduling conflicts and disagreement between counsel for the Respondents and counsel for the BOU Directors, Respondents' counsel declined the opportunity to take the depositions of certain of the BOU Directors scheduled for September 29th and 30th, 2011, and has apparently been unable to reschedule said depositions;

5. The inability of the Respondents to take the depositions of the BOU Directors as set forth in their Motion has occurred through no fault of the Department, and the Department is not obligated under the Rules to produce the BOU Directors to the Respondents for discovery;

6. The proper remedy available to the Respondents under the Rules in the event the BOU Directors refuse to submit to depositions to which they have been properly served with subpoenas in this proceeding is to seek the assistance of the Administrator of the Department under Rule 660:2-9-4(e)(1) to obtain judicial enforcement of the subpoenas;

7. Counsel for the BOU Directors has apparently advised Respondents' counsel that all documents in the possession of the BOU Directors as specified in the subject subpoenas have been produced to the Respondents, and Respondents are not entitled under the Rules or the subject subpoenas to a privilege log if no privileges have been asserted, and/or a bates listing of documents produced pursuant to the subject subpoenas, as suggested in their Motion;

8. Respondents' right to discovery under the Rules is not unlimited, but instead is to be judged by a standard of reasonableness as necessary to comport with principles of due process;

9. The parties to this proceeding have not sought to utilize the BOU Directors' Affidavit (the "Affidavit") in a manner that would justify the Respondents' request to preclude it at this time;

10. The Respondents have been provided with notice of the grounds upon which the allegations made by the Department against the Respondents in the Enforcement Division

Recommendation are based and have been allowed substantial discovery to date, and so are hardly acting "blindfolded" or in the "dark" as proposed in their Motion, such that entry of a preclusion order and/or an order striking the testimony of the BOU Directors and Affidavit, as prayed for by the Respondents in their Motion, are not warranted under the Rules at this time; and

11. Issuance of a preclusion order regarding the testimony of the BOU Directors or order to strike the Affidavit under Rule 660:2-9-3(f) at this time is not in the opinion of the Hearing Officer a proper remedy for the inability of the Respondents to obtain the depositions of the BOU Directors. Instead, in the event one or more of the BOU Directors refuses to comply with a subpoena lawfully issued and served under the Rules, but nonetheless attempts to testify in the hearing on the merits in this matter, or if exhibits that have not been produced to the Respondents pursuant to the subject subpoenas are sought to be introduced at the hearing, it might then be appropriate for the Hearing Officer to consider a motion to preclude or strike such testimony or to preclude or strike the introduction of said exhibits at the hearing.

Accordingly, it is ordered that the Respondents' Motion for Preclusion Order and Order Striking Department Witnesses (Bank of Union Directors) and Exhibit (Bank of Union Directors' Affidavit) is hereby DENIED.

Dated this 7th day of February, 2012.



Bruce R. Kohl
Hearing Officer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 8th day of February, 2012, a true and correct copy of the above and foregoing *Order Denying Geary Respondents' Motion for Preclusion Order and Order Striking Department Witnesses (Bank of Union Directors) and Exhibit (Bank of Union Directors' Affidavit)* was emailed and mailed, with postage prepaid, to:

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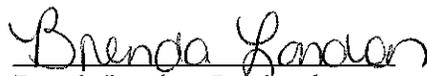
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