

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

OKLAHOMA DEPARTMENT OF)	
SECURITIES <i>ex rel.</i> IRVING L. FAUGHT,)	
Administrator,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-04-1205-T
)	
SUNSET FINANCIAL GROUP, INC., an)	
Oklahoma corporation, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

On September 24, 2004, Defendant Emzie Huletty removed this case from the District Court of Oklahoma County. (Doc. No. 1.) On October 25, 2004, Plaintiff filed a motion to remand. Despite the passage of more than eighteen days, neither Defendant Huletty nor any other party has responded to Plaintiff's motion. The matter is at issue.

In the motion to remand, Plaintiff recites that it filed its Petition in the District Court of Oklahoma County on September 19, 2003, asserting that Defendant Huletty and others "engaged in violations of the registration and anti-fraud provisions of the Oklahoma Securities Act." Plaintiff further recites that Defendant Huletty was personally served with the Petition and a temporary restraining order on September 19, 2003.

Plaintiff also cites 28 U.S.C. §1446(b) which requires a party to remove a case

within thirty (30) days after the receipt . . . , through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based" or "within thirty days after receipt . . . , through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained

that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.

It is clear, upon review of the state court record and Defendant Huletty's notice of removal that the removal of this case was not authorized by law. First, as argued by Plaintiff, the notice of removal was untimely as it was not filed within thirty (30) days of the service of a pleading or motion "from which it may first be ascertained that the case is one which is or has become removable." Moreover, Defendant Huletty's notice of removal was filed more than one year after the commencement of the action in the District Court of Oklahoma County.

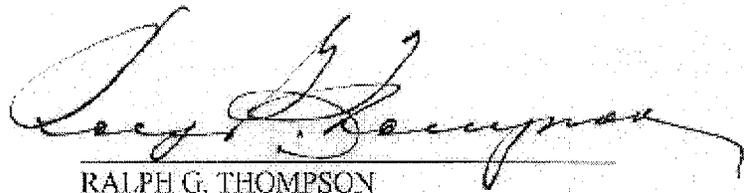
In addition, the Court finds that Defendant Huletty's bare assertion that this case is one that arises under federal law to be without support in the record. As Plaintiff demonstrates, the claims set forth in the Petition arise solely under the Oklahoma Securities Act.

Finally, the Court rejects Defendant Huletty's assertion that diversity jurisdiction exists. As the documents appended to Plaintiff's motion demonstrate, complete diversity does not exist. Accordingly, the Court cannot exercise jurisdiction under 28 U.S.C. §1332.

CONCLUSION

For the foregoing reasons, the Court finds Plaintiff's Motion to Remand (Doc. No. 3) should be and is GRANTED. The case is hereby remanded to the District Court of Oklahoma County.

IT IS SO ORDERED this 17th
day of November, 2004.


RALPH G. THOMPSON
UNITED STATES DISTRICT JUDGE