

IN THE DISTRICT COURT OF POTTAWATOMIE COUNTY
STATE OF OKLAHOMA

FILED
IN DISTRICT COURT
DEC 17 2003
POTTAWATOMIE COUNTY, OK
CECIL DUNLAP, COURT CLERK
BY _____ DEPUTY

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

Case No. C-03-1239

PETITION FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF

COMES NOW the Plaintiff, Oklahoma Department of Securities, *ex rel.* Irving L. Faught, ("Department"), and for its claims against the above-named Defendants, alleges and states as follows:

OVERVIEW

1. This case involves violations of the Oklahoma Securities Act (the "Act"), Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (West 2003), by The Hickman Agency, Inc., Merl William Hickman, Sr., Sarah L. Hickman and Merl William Hickman, Jr. ("Defendants"). Specifically, the Department alleges Defendants offered and sold unregistered securities in violation of Section 301 of the Act, failed to register as agents and 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.

2. As alleged below, Defendants operate a "ponzi" scheme. The term "ponzi scheme" refers to 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.

JURISDICTION

3. The Administrator of the Department brings this action pursuant to Section 406.1 of the Act and is the proper party to bring this action against the Defendants.

4. Pursuant to Sections 2 and 413 of the Act, Defendants, in connection with their activities in the offer, sale, and purchase of securities, are subject to the provisions of the Act. By virtue of their transaction of business by contract and otherwise and commission of other acts in this state, Defendants are subject to the jurisdiction of this Court and to service of summons within or outside of this state.

5. Defendants have engaged and are engaging in acts and practices in violation of the Act. Unless enjoined, they will continue to engage in the acts and practices set forth herein and acts and practices of similar purport and object.

DEFENDANTS

6. The Hickman Agency, Inc. ("The Hickman Agency") is an Oklahoma corporation, purporting to operate as an insurance agency, with its principal place of business in Shawnee, Oklahoma. At all times material hereto, The Hickman Agency issued, offered and/or sold securities in and/or from Oklahoma as described herein.

7. Merl William Hickman Sr. ("Bill Hickman Sr."), an individual and Oklahoma resident, is the founder and chief executive officer of The Hickman Agency and controlled all acts of The Hickman Agency. At all times material hereto, Bill Hickman, Sr. offered and/or sold securities in and/or from Oklahoma as described herein.

8. Sarah L. Hickman ("Sarah Hickman"), an individual and Oklahoma resident, is the President of The Hickman Agency. At all times material hereto, Sarah Hickman offered and/or sold securities in and/or from Oklahoma as described herein.

9. Merl William Hickman, Jr. ("Bill Hickman Jr."), an individual and Oklahoma resident, is the Vice-President of Marketing of The Hickman Agency. At all times material hereto, Bill Hickman, Jr. offered and/or sold securities in and/or from Oklahoma as described herein.

NATURE OF THE CASE

10. Beginning in or about April, 1999, and continuing to the present, Defendants engaged in the issuance, offer and/or sale of securities in and/or from the state of Oklahoma to investors ("Investors") in the nature of interests in an investment program ("Investment Program Interests") in which Defendants represented they would pool and invest Investor funds returning large profits to Investors. Defendants solicited and are soliciting Investors to invest savings and retirement money in the Investment Program Interests. Defendants' representations are made through the use of oral communications and written sales materials.

11. To purchase Investment Program Interests, Investors sign an agreement ("Agreement") prepared by or on behalf of the Defendants. The Agreement recites the amount of money deposited by Investors with Defendants and Investors are guaranteed payment of fifteen to twenty percent (15-20%) annual interest as long as Defendants have use of the

Investors' funds. Defendants promise to protect the deposited principal with reserves of no less than the deposited amount. Defendants also represent that all fees and charges due Defendants will not be deducted from Investors' deposited principal. In some cases, Defendants have promised to pay a bonus of five percent (5%) of the deposited principal to induce Investors to transfer funds to Defendants. Defendants represent that Investors can withdraw their invested funds from Defendants at any time on an average of ten (10) to fourteen (14) days' notice.

12. Defendants represent to Investors that Defendants have specialized knowledge and expertise to make the investments profitable. Defendants represent to Investors that they "specialize in many different investment programs." Investors have no role in the success or outcome of the investments or in affecting the promised profit on their Investment Program Interests. Investors rely completely on the judgment and discretion of the Defendants for the promised profit. Defendants do not disclose to Investors how Defendants will invest Investors' money.

13. Defendants have not invested Investor funds or earned a profit on all Investor funds. Defendants have spent the principal deposited by Investors by using Investor funds for payment of personal expenses and salaries of the Defendants and for monthly interest payments to earlier Investors.

FIRST CAUSE OF ACTION

(Violation of Section 301 of the Act: Offering and/or Selling Unregistered Securities)

14. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 13 above.

15. The Investment Program Interests are securities as defined by Section 2 of the Act.

16. The securities offered and sold by Defendants are not and have not been registered under the Act nor have the securities been offered or sold pursuant to an exemption from registration pursuant to Section 401 of the Act.

17. By reason of the foregoing, Defendants have violated, are violating, and unless enjoined, will continue to violate Section 301 of the Act.

SECOND CAUSE OF ACTION

(Violation of Section 201 of the Act: Failure to Register as Agents and Employing Unregistered Agents)

18. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding cause of action.

19. Defendants are not registered under the Act as issuer agents under Section 201 of the Act.

20. Defendant The Hickman Agency, Inc. is an issuer as defined in Section 2 of the Act. Defendant The Hickman Agency, Inc. employed agents who were not registered under the Act to effect or attempt to effect sales of securities.

21. Defendants Bill Hickman, Sr., Sarah Hickman and Bill Hickman, Jr., by virtue of their efforts and activities in this state in effecting or attempting to effect transactions in securities, are issuer agents, as defined in Section 2 of the Act. Defendants Bill Hickman, Sr., Sarah Hickman and Bill Hickman, Jr. transacted and are transacting business in this state as issuer agents without benefit of registration under the Act.

22. By reason of the foregoing, Defendants have violated, are violating, and unless enjoined, will continue to violate Section 201 of the Act.

THIRD CAUSE OF ACTION

**(Violation of Section 101(2) of the Act:
Untrue Statements of Material Facts and Omissions of Material Facts
in Connection With Offer, Sale or Purchase of Securities)**

23. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

24. Defendants, in connection with the offer or sale of securities, directly and indirectly, made and are making untrue statements of material facts including, but not limited to, that Investment Program Interests would provide guaranteed profits or returns in the nature of annual interest of fifteen or twenty percent (15-20%) when, in fact, Defendants have not invested the Investors' funds in any manner to generate such profits or returns.

25. Defendants, in connection with the offer or sale of securities, directly and indirectly, omitted and are omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were and are made, not misleading, including, but not limited to, the following matters:

- a. any general or specific risk factors associated with the Investment Program Interests;
- b. that the Investment Program Interests are securities under the Act;
- c. that the securities have not been and are not registered under the Act;
- d. that the Defendants who offered and sold the Investment Program Interests were and are not registered under the Act;
- e. the actual background or business experience of the Defendants;
- f. information on the manner in which profits would be generated on the Investment Program Interests or Investors' funds would be disposed; and
- g. that Defendants would use Investor funds for the payment of personal expenses and salaries of the Defendants and for monthly interest payments to earlier Investors.

26. By reason of the foregoing, Defendants, directly and indirectly, have violated, are violating, and unless enjoined, will continue to violate Section 101(2) of the Act.

FOURTH CAUSE OF ACTION

**(Violation of Section 101(3) of the Act:
Engaging in any Act, Practice, or Course of Business Which Operates or
Would Operate as a Fraud or Deceit upon any Person)**

27. The Department realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

28. Defendants, in connection with the offer, sale or purchase of securities, and through the use of the untrue statements of material fact and the omissions of material facts described in paragraphs 24 and 25 above, have engaged and are engaging in an act, practice, or course of business that has operated and continues to operate as a fraud or deceit upon investors.

29. By reason of the foregoing, Defendants, directly and indirectly, have violated, are violating, and unless enjoined, will continue to violate Section 101(3) of the Act.

PRAYER FOR RELIEF

Defendants have engaged in acts and practices in violation of the Act and have, as a result of these activities, received a substantial amount of money from Investors. Unless enjoined, Defendants will continue to engage in the acts and practices set forth herein and acts and practices of similar purport and object. A danger exists that the money received by Defendants from the Investors or money or securities held by Defendants on behalf of the Investors will be lost, removed or transferred. A temporary restraining order to issue *instanter* and temporary and permanent injunctions to issue against Defendants are necessary to preserve the money received and money or securities held and the records relating thereto and to prevent further violations of the Act.

WHEREFORE, based upon the foregoing, and pursuant to the authority specifically granted by Section 406.1 of the Act, the Department prays for the court to grant the following relief:

I.

A temporary restraining order to issue *instanter* and a temporary and permanent injunction, restraining and enjoining the Defendants, their agents, servants, employees, assigns and all those persons, directly or indirectly, acting on their behalf, under their direction and control, and/or in active concert or participation with them, who receive actual notice of the restraining order or temporary and/or permanent injunction, by personal service, facsimile or otherwise, and each of them 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;

II.

An order prohibiting Defendants, their agents, servants, employees, assigns and all those persons, directly or indirectly, acting on their behalf, under their direction and control, and/or in active concert or participation with them, who receive actual notice of the order, by personal service, facsimile or otherwise, and each of them from tampering with, mutilating, altering, erasing, concealing, removing, destroying or otherwise disposing of any and all books, records, documents, files, correspondence, computer disks, tapes or other data recordings of any type, pertaining to or referring to Defendants or any financial transactions by Defendants or to which Defendants were parties;

III.

An order *instanter* freezing the assets of Defendants and ordering that all financial or depository institutions comply with the Court's order;

IV.

An order *instanter* appointing a receiver *pendente lite* for Defendants, empowering said receiver to marshal and take possession of the books, records, funds and assets of Defendants; to undertake whatever manner of legal or equitable action is required to preserve or maintain the assets of Defendants; and to operate or liquidate the assets of Defendants for the benefit of the Investors, as equity may require;

V.

An order *instanter* requiring Defendants to file with this Court and to serve on Plaintiff, within ten (10) days of the filing of this petition, an accounting, under oath, detailing all of their assets and detailing all funds received from Investors and the disposition and/or use of those funds;

VI.

An order requiring 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;

VII.

An order requiring Defendants, their agents, servants, employees, assigns, and all persons, directly or indirectly, acting on their behalf, under their direction and control, and/or in active concert or participation with them, to disgorge all ill-gotten gains;

VIII.

An order imposing a civil penalty against Defendants in the amount of Fifty Thousand Dollars (\$50,000.00) each; and

IX.

Such other equitable relief as the Court may deem necessary, just and proper in connection with the enforcement of the Act.

Respectfully submitted,

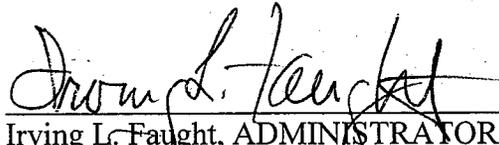
OKLAHOMA DEPARTMENT OF SECURITIES
Irving L. Faught, Administrator

By: 
Patricia A. Labarthe (OBA #10391)
Melanie Hall (OBA #1209)
Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, Oklahoma 73102
(405) 280-7700

STATE OF OKLAHOMA)
)
COUNTY OF OKLAHOMA) SS.

Irving Faught, of lawful age, being first duly sworn deposes and says: that he is the Administrator of the Oklahoma Department of Securities, that he has read the foregoing Petition for Permanent Injunction and Other Equitable Relief and knows the contents thereof, and that the matters and things stated therein have been provided to him by staff members of the Department under his authority and direction, and are true and correct to the best of his knowledge, information and belief.

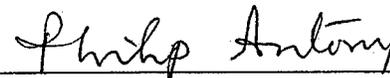
(SEAL)



Irving L. Faught, ADMINISTRATOR OF THE
OKLAHOMA DEPARTMENT OF SECURITIES
120 North Robinson, Suite 860
Oklahoma City, Oklahoma 73102
(405) 280-7700

Subscribed and sworn to before me this 16th day of December, 2003.

(NOTARIAL SEAL)



Notary Public
14515

My Commission Expires:

Sept 18, 2004