

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



In the Matter of:

Southmark of Tulsa, Inc.
Wendell D. Belden, and
Gertrude M. Edwards,

Respondents.

File No. ODS 01-150

Opinion and Order Denying Respondents' Motion to Dismiss

On February 14, 2002, Respondents filed a motion for summary judgment dismissing this proceeding on the grounds that no dispute exists with respect to any material fact and Respondents are entitled to judgment as a matter of law. Having considered the motion and supporting and opposing briefs, I conclude that the motion must be denied.

In order to obtain registration as an investment adviser or investment adviser representative under the Oklahoma Securities Act, 71 O.S. 202(a), Respondents must file with the Department an application for registration in proper form, the filing fee, and "any other information determined to be necessary by the Administrator." The parties have stipulated that on April 2, 2001, the Department received Southmark's new application for its registration as an investment adviser and new applications to register Belden and Edwards as investment advisor representatives. However, the parties did not stipulate as to when the application was "complete." The statute is quite clear that if no denial order is in effect and no proceeding is pending under sec. 204, registration becomes effective thirty days after a "complete" application is filed and proper payment is made, 71 O.S. 202(b). I therefore find that an issue of fact is presented as to when the application was "complete." Since the parties have stipulated that no denial order has been entered, if the application was "complete" more than thirty days prior to the institution of a sec. 204 proceeding, then registration became effective automatically under the statute.

Prior to 1997, the statute provided that if no denial order was in effect and no sec. 204 proceeding was pending, registration became effective thirty days after "an application" was filed, unless the Administrator by rule or order deferred effectiveness until thirty days after the filing of any amendment to the application. In 1997, the statute was amended to add the word "complete," and effect must be given to this amendment, Laws 1997, c. 279, sec. 4, eff. July 1, 1997. This does not mean that the application is incomplete merely because an investigation is pending by the Department or because the applicants and the Department have not resolved

charges of alleged violation of the Act. The word "complete" means that the applicant has adequately responded to all proper requests by the Administrator for information necessary to the application, cf. Uniform Securities Act (1985) sec. 208(a).

Even if the registration became effective automatically under the statute, that does not render this proceeding moot, because sec. 204 provides alternative courses of action to the Administrator, 71 O.S. 204(a). Although the Administrator can no longer issue a final order denying effectiveness to the registration, he can still suspend or revoke the effectiveness of the registration, although he can only do so within ninety days following the effective date of registration if the grounds for suspension or revocation were known to him at the date of effectiveness, 71 O.S. 204(b). Even in that case, however, the Administrator may still impose any sanction authorized by section 406 for any of the causes listed in sec. 204(a), 71 O.S. 204(a). The sanctions authorized by sec. 406 include several options other than denying, suspending, or revoking the effectiveness of registration, 71 O.S. 406(a).

For all of these reasons, Respondents' motion for summary judgment must be and hereby is denied in all respects.

It is so ordered.


Norwood P. Beveridge
Hearing Officer

Dated: Oklahoma City, OK
March 7, 2002