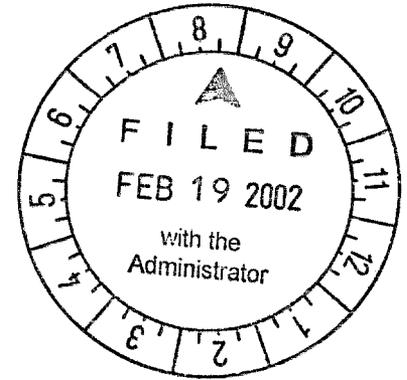


**First National Center, Suite 860  
120 North Robinson  
Oklahoma City, Oklahoma 73102**



In the Matter of:

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

Respondents,

File No. ODS 01-150

**RESPONDENTS' BRIEF IN SUPPORT OF ITS MOTION TO QUASH**

COME NOW the Respondents, Southmark of Tulsa, Wendell D. Belden, and Gertrude M. Edwards, in support of their "RESPONDENTS' MOTION TO QUASH" filed contemporaneously with this Brief, and state as follows:

**I. REQUESTED DOCUMENTS ARE IRRELEVANT AND REDUNDANT**

Even Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of undue delay and needless presentation of cumulative evidence. Title 12 O.S. 2403.

Most of the documents requested by the Department are just more of what has already been provided to them. For example, every document from client files is virtually the same. Transactions for every Potomac account during the same period of time will be the same. Any potential information gained by examining a few statements, which are already in the Department's possession.

## II. THE SUBPOENA FAILS TO ALLOW A REASONABLE TIME FOR COMPLIANCE

Oklahoma Statutes at Title 12 Section 2004.1 (C3) provides that the Subpoena shall be quashed if it fails to allow a reasonable time for compliance. In a 1958 case the Supreme Court of Oklahoma stated "The reasonableness of the demand and time for compliance is a question of fact to be determined from the circumstances of each case." *Lyons v. Robson*, 1958 OK 232, 330 P.2d 593, 596. In the present case, a very small entity with limited resources is being asked to produce a large volume of documents in three working days.

## III. THE SUBPOENA REQUIRES DISCLOSURE OF PROTECTED MATTER

Title 71 O.S. 405 (b) of the Oklahoma Securities Act provides in part:

"However, no provision of this act shall be construed to require, or to authorize the Administrator, or his or her designee, to require, any investment adviser engaged in rendering investment advisory services to disclose the identity, investments, or affairs of any client of such investment adviser, except insofar as such disclosure may be necessary or appropriate in a particular proceeding or investigation having as its objective the enforcement of a provision of this act."

Providing the information required by the Subpoenas would require disclosing all of our customers' identities and investments. The Department has made no allegations that necessitate these disclosures and should specify why any particular account is required.

Title 71 O.S. 405 (c) provides:

(c) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the district court of Oklahoma county or the district court in any other county where service can be obtained on one or more of the defendants, upon application by the Administrator, may issue to the person an order requiring him to appear before the Administrator, or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

Only documentary evidence that touches the matter under investigation or in question may be subpoenaed.

The Administrative Procedures Act also contains relevancy language. In Title 75 Section 315 the APA states:

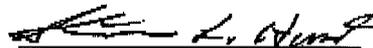
A. 1. The agency conducting any individual proceeding shall have power to require the furnishing of such information, the attendance of such witnesses, and the production of such books, records, papers or other objects as may be necessary and proper for the purposes of the proceeding.

IV. THE SUBPOENA SUBJECTS RESPONDENTS TO UNDUE BURDEN

Oklahoma Statutes at Title 12 Section 2004.1 (C4) requires a court to quash a Subpoena that subjects a person to an undue burden.

Dated this 15<sup>th</sup> day of February, 2002.

Respectfully Submitted,



Steven L. Hunt, OBA#4495  
5110 South Yale, Suite 100  
Tulsa, Ok 74135  
(918) 492-5541

**ATTORNEY FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I, Steven L. Hunt, hereby certify that on the date reflected below, I served the above and foregoing Document by mailing a true and correct copy of said document, with first class postage fully prepaid, to:

THE OKLAHOMA DEPARTMENT OF SECURITIES  
First National Center, Suite 860  
120 North Robinson  
Oklahoma City, Oklahoma 73102

Norwood Beveridge  
First National Center, Suite 860  
120 North Robinson  
Oklahoma City, Oklahoma 73102

DATED: 2/15/02



Steven L. Hunt