

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

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

SEP 19 2003

Plaintiff,)

PATRICIA PRESLEY, COURT CLERK
By _____
Deputy

v.)

Case No.

Sunset Financial Group, Inc., an Oklahoma)
corporation; Vision Services, Inc., an Oklahoma)
corporation; Amsterdam Fidelity Business Trust,)
a Nevada limited liability partnership; EASE)
Corporation, an Oklahoma corporation; Gold Star)
Properties, Inc., an unincorporated association;)
Rebates International, Inc., a Nevada corporation;)
Betty Solomon Brokerage, Inc., an Oklahoma)
corporation; Emzie Huletty, an individual;)
Grover H. Phillips, an individual; Nicholas Krug,)
an individual; Charles E. Elliott, an individual;)
Terry Mahon, an individual; Denver Large,)
an individual; Betty G. Solomon, an individual; and)
Donald J. Wood, an individual,)

CJ-2003-7899 1

Defendants.)

**PLAINTIFF'S APPLICATION FOR TEMPORARY RESTRAINING
ORDER, ASSET FREEZE, ACCOUNTING, AND
TEMPORARY INJUNCTION AND BRIEF IN SUPPORT**

I. INTRODUCTION

The Oklahoma Department of Securities ex rel. Irving L. Faught, Administrator ("Department"), respectfully submits this application for a temporary restraining order against Defendants Sunset Financial Group, Inc., Vision Services, Inc., Amsterdam Fidelity Business Trust, EASE Corporation, Gold Star Properties, Inc., Rebates International, Inc., Betty Solomon Brokerage, Inc., Emzie Huletty, Grover H. Phillips, Nicholas Krug, Charles E. Elliott, Terry

Mahon, Denver Large, Betty G. Solomon and Donald J. Wood (collectively, "Defendants"), an order freezing assets of Defendants, an order for an accounting of Defendants, and an order appointing a receiver for Defendants Sunset Financial Group, Inc., Vision Services, Inc., Amsterdam Fidelity Business Trust, EASE Corporation and Betty Solomon Brokerage, Inc. (collectively, "Receivership Defendants"), pursuant to Section 406.1 of the Oklahoma Securities Act ("Act"), Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (2001 & Supp. 2002).

The Department petitions this Court to halt further violations of the Act, to protect the rights of the Department in its obligation to safeguard the public interest, to prevent any dissipation or loss of investor funds and property and to remedy actions that Defendants have already committed.

The Department moves this Court for a temporary restraining order, order freezing assets, order appointing receiver, and an order for an accounting to issue *instanter* against Defendants until the Court may afford the parties a hearing, and additionally moves for the entry of a temporary injunction at such hearing against Defendants. The entry of such orders are necessary for the reasons set forth below, to preserve the *status quo* and to protect the Department's rights in enforcing the Act.

II. THE DEFENDANTS

Sunset Financial Group, Inc. ("Sunset") is an Oklahoma corporation with its principal place of business in Oklahoma City, Oklahoma. At all times material hereto, Sunset issued, offered and/or sold securities in and/or from Oklahoma.

Vision Services, Inc. ("Vision Services") is an Oklahoma corporation with its principal place of business in Oklahoma City, Oklahoma. Vision Services was suspended by the Oklahoma Secretary of State on June 21, 2001, but was reinstated on March 13, 2002. At all

times material hereto, Vision Services issued, offered and/or sold securities in and/or from Oklahoma.

Amsterdam Fidelity Business Trust ("Amsterdam") is a Nevada limited liability partnership with its principal place of business in Stillwater, Oklahoma. At all times material hereto, Amsterdam issued, offered and/or sold securities in and/or from Oklahoma.

Gold Star Properties, Inc. ("Gold Star") is an unincorporated association with its principal place of business in Henderson, Arkansas. At all times material hereto, Gold Star offered and sold securities in and/or from Oklahoma.

EASE Corporation ("EASE") is an Oklahoma corporation with its principal place of business in Oklahoma City, Oklahoma. At all times material hereto, EASE offered and sold securities in and/or from Oklahoma.

Rebates International, Inc. ("Rebates") is a Nevada corporation with its principal place of business in Hollister, Missouri. At all times material hereto, Rebates offered and sold securities in and/or from Oklahoma.

Betty Solomon Brokerage, Inc. ("Solomon Brokerage") is an Oklahoma corporation with its principal place of business in Oklahoma City, Oklahoma. At all times material hereto, Solomon Brokerage issued, offered and/or sold securities in and/or from Oklahoma.

Emzie Huletty ("Huletty") is an individual who, at all times material hereto, was a resident of Oklahoma doing the acts complained of in his own name and/or in the name of Sunset, Vision Services and EASE. At all times material hereto, Sunset, Vision Services and EASE acted through and under the control of Huletty.

Grover H. Phillips ("Phillips") is an individual who, at all times material hereto, was a resident of Oklahoma doing the acts complained of in his own name and/or in the name of

Amsterdam. At all times material hereto, Amsterdam acted through and under the control of Phillips.

Nicholas Krug ("Krug") is an individual who, at all times material hereto, was a resident of Arkansas doing the acts complained of in his own name and/or in the name of Gold Star. At all times material hereto, Gold Star acted through and under the control of Krug.

Charles E. Elliott ("Elliott") is an individual who, at all times material hereto, was a resident of Arkansas doing the acts complained of in his own name and/or in the name of Gold Star. At all times material hereto, Gold Star acted through and under the control of Elliott.

Terry H. Mahon ("Mahon") is an individual who, at all times material hereto, was a resident of Missouri doing the acts complained of in his own name and/or in the name of Rebates. At all times material hereto, Rebates acted through and under the control of Mahon.

Denver Large ("Large") is an individual who, at all times material hereto, was a resident of Missouri doing the acts complained of in his own name and/or in the name of Rebates. At all times material hereto, Rebates acted through and under the control of Large.

Betty G. Solomon ("Solomon") is an individual who, at all times material hereto, was a resident of Oklahoma doing the acts complained of in her own name and/or in the name of Solomon Brokerage. At all times material hereto, Solomon Brokerage acted through and under the control of Solomon.

Donald J. Wood ("Wood") is an individual who, at all times material hereto, was a resident of Oklahoma doing the acts complained of in his own name and/or in the name of EASE. At all times material hereto, EASE acted through and under the control of Wood.

III. NATURE OF THE CASE

Beginning in or around January, 2001, Defendants offered and sold interests in a fraudulent scheme characterized as an international or domestic high-yield investment program ("Investment Program") in and/or from the state of Oklahoma to investors ("Investors"). Defendants worked in association with one another, and each Defendant played a separate role for which they each received a separate fee.

Defendants offered the interests in the Investment Program in connection with their residential and commercial loan services. Investors were required to pay at least seventeen percent (17%) of the appraised or market value of the real estate or business to be financed. Defendants represented that the fees would be held in trust by Defendant Amsterdam and invested in the Investment Program. It was further represented that Defendants would return to the Investors one hundred percent (100%) of the principal value of the loan at the end of five (5) years. The promise of the future payment was evidenced by a "Cash-Back" Rebate Coupon Certificate issued by Defendant Rebates.

Defendants represented to Investors that their money would be invested in or through "G7 Qualified Investment Banks" and the "top 100 banks in the world." Defendants promised high, unrealistic returns.

Defendants represented that the investment was guaranteed by Defendants Rebates and Amsterdam, that there was no risk of loss and that certain Defendants were bonded and/or insured.

Defendants' representations were made through the use of oral communications and written sales materials.

Investors had no control over or responsibility for their funds once the funds were provided to the Defendants.

From at least January, 2001, Defendants received substantial sums of money from the Investors including residents of Oklahoma County, Oklahoma, for the purported purchase of the interests in the Investment Program.

IV. VIOLATIONS OF THE OKLAHOMA SECURITIES ACT

A. Violation of Section 301 of the Act: Failure to Register Securities

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

The securities offered and sold by Defendants are not and have not been registered under the Act as required by Section 301 of the Act. See Affidavit attached as Exhibit C. The securities have not been offered or sold pursuant to an exemption from registration pursuant to Section 401 of the Act. See Affidavit attached as Exhibit C.

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

B. Violation of Section 201 of the Act: Failure to Register as Broker-Dealer and Agents and Employing Unregistered Agents

Defendants are not registered under the Act as broker-dealers, broker-dealer agents, or issuer agents under Section 201 of the Act. See Affidavits attached as Exhibits D and E.

Defendants Sunset, Vision Services, Amsterdam and Solomon Brokerage are issuers as defined in Section 2 of the Act. Defendants Sunset, Vision Services, Amsterdam and Solomon Brokerage employed agents who were not registered under the Act to offer or sell securities.

Defendants Huletty, Phillips, Krug, Elliott, Mahon, Large, Solomon and Wood, by virtue of their efforts and activities in this state in effecting transactions in securities for the account of others or for their own account are issuer agents, as defined in Section 2 of the Act. Defendants Huletty, Phillips, Krug, Elliott, Mahon, Large, Solomon and Wood transacted business in this state as issuer agents without benefit of registration under the Act.

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

**C Violation of Section 101 of the Act:
Untrue Statements of Material Fact and Omissions of Material Fact
in Connection with Investment Program Interests**

From at least January, 2001, and continuing to the present, Defendants, in connection with the offer, sale or purchase of interests in the Investment Program, directly and indirectly, made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. The untrue statements include, but are not limited to, the following:

- a. that there was no risk of losing the investment;
- b. that the Investment Program is not a security;
- c. that the rebate coupon is a "gift" when the purchase of an interest in the Investment Program is required to receive the coupon;
- d. that Investor funds would be forwarded to the "G7 Qualified Investment Banks"; and
- e. that one or more mortgage companies had endorsed the use of the Investment Program for use by their customers.

The omissions include, but are not limited to, the following:

- a. that on April 9, 2001, Oklahoma Department of Consumer Credit revoked the mortgage broker license of Truth Financial Services, Inc., a company for which Defendant Huletty was an officer and the representative, for violations of Oklahoma law including fraudulent loan documentation;
- b. that on October 20, 2000, Truth Financial Services, Inc. and its founder and chief executive officer, Defendant Huletty, were ordered by the Arkansas Securities Commissioner, State of Arkansas Securities Department, to cease and desist from further actions in the state of Arkansas in connection with the business of mortgage loans and loan brokering until such time as they were properly registered or exempted from registration;
- c. that on March 9, 2001, Defendant Large was convicted, in the Circuit Court of Pearl River County, State of Mississippi, of seventy-eight (78) counts of sales of unregistered securities, securities fraud by misrepresentation, and violation of the Mississippi RICO Act; was ordered to pay restitution to his victims in the sum of \$562,000.00; and was sentenced to a suspended term of seventy-eight (78) years in prison, subject to certain terms and conditions;
- d. that as a condition of his suspension, Defendant Large was prohibited from engaging in the sale of securities, real property, time shares or other interests in real property;
- e. that the Investment Program interests are securities;
- f. that the Investment Program interests were not registered as securities under the Act nor were they exempt from registration;

- g. specific information about Defendants' uses of Investor funds;
- h. an explanation of how Investor returns are earned and calculated; and
- i. that Investors might not get the profit promised by Defendants.

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

**D. Violation of Section 101 of the Act:
Engaging in any Act, Practice, or Course of Business that Operates
or Would Operate as a Fraud or Deceit upon any Person**

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 above, engaged in an act, practice, or course of business that operated as a fraud or deceit upon Investors.

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

**E. Violation of Section 402 of the Act:
Unlawfully Distributing Sales Literature**

Defendants, in connection with the offer and/or sale of securities, distributed sales literature to Investors without filing such sales literature with the Department.

By reason of the foregoing, Defendants, directly and indirectly, violated, are violating, and unless enjoined, will continue to violate Section 402 of the Act.

V. NEED FOR TEMPORARY RESTRAINING ORDER, ASSET FREEZE, APPOINTMENT OF A RECEIVER AND TEMPORARY INJUNCTION

A. Temporary Restraining Order

Section 406.1 of the Act provides in part:

- (a) Upon a showing by the Administrator that a person has violated or is about to violate the Oklahoma Securities Act, except under the provisions of Section 202.1 or 305.2 of this title, or a rule or order of the Administrator under the Oklahoma Securities Act or that a person has engaged or is about to engage in dishonest or unethical practices in the securities business, the Administrator, prior to, concurrently with, or subsequent to an administrative proceeding, may bring an action in the district court of Oklahoma County or the district court of any other county where service can be obtained on one or more of the defendants and **the district court may grant or impose one or more of the following appropriate legal or equitable remedies:**
 - (1) Upon a showing of a violation of the Oklahoma Securities Act or a rule or order of the Administrator under the Oklahoma Securities Act or conduct involving dishonest or unethical practices in the securities business:
 - (i) a temporary restraining order, permanent or temporary prohibitory or mandatory injunction, or a writ of prohibition or mandamus;
 - (ii) a civil penalty up to a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or of Fifty Thousand (\$50,000.00) for multiple violations in a single proceeding or a series of related proceedings;
 - (iii) a declaratory judgment;
 - (iv) restitution to investors;
 - (v) the appointment of a receiver or conservator for the defendant or the defendant's assets, and
 - (vi) other relief the court deems just (emphasis added).

A temporary restraining order (TRO) has the object of preserving the *status quo*, in order to prevent irreparable injury until such time as the Court may determine Plaintiff's application for temporary injunction. *Granny Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 439, 94 S.Ct. 1113, 1124 (1974); *Morse v. Earnest, Inc.*, 547 P.2d 955 (Okla. 1976). Issuing a

TRO is in the public interest because the failure to grant this relief allows dishonest businesses and individuals to take advantage of vulnerable Investors. The protection of the public interest is paramount in this matter, as is the Department's right to safeguard the public interest.

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 numerous Investors. A danger exists that the money received from the Investors and/or held by Defendants will be lost, removed or transferred. A temporary restraining order to issue instanter against Defendants is necessary to preserve these funds, securities, and the records relating thereto, and to prevent further violations of the Act.

In addition, no injury will befall Defendants by granting such relief since Defendants have no right to act in the state of Oklahoma in violation of the Act, or to engage in fraudulent conduct in connection with securities activities. The interference with Defendants' rights by granting the temporary restraining order will be minimal, if any, while protecting the public from immediate and irreparable injury or loss.

B. Asset Freeze and Accounting

Section 406.1 of the Act specifically grants this Court the power to fashion appropriate equitable relief to provide effective enforcement of the Act. Once the equity powers of the court are invoked, the court possesses the power to fashion appropriate interim remedies. *SEC v. Manor Nursing Centers*, 458 F.2d 1082, 1103 (2nd Cir. 1972). Within this power is the authority to grant effective equitable relief by temporarily freezing specific assets. *SEC v. General Refractories Co.*, 400 F.Supp. 1248, 1259 (D.D.C. 1975); *SEC v. International Swiss Investments Corp.*, 895 F.2d 1272, 1276 (9th Cir. 1990); *SEC v. Manor Nursing Centers*, 458 F.2d at 1105-06 (upholding district court's order freezing assets in part because "...at the time

the court's order was entered, a great deal of uncertainty existed with respect to the total amount of proceeds received and their location.") Within the equity power of the court is the authority to order an accounting. *SEC v. R.J. Allen & Associates*, 386 F. Supp. 866, 880. (S.D.N.Y. 1974); *SEC v. Manor Nursing Centers*, *supra* at 1103, 1104.

Defendants made use of untrue statements of material fact and omitted to state material facts as alleged in Plaintiff's verified petition, in violation of Section 101 of the Act. The whereabouts of the money raised from violations of the Act is not known at this time. These circumstances make it necessary that the court freeze specific assets to preserve the status quo by preventing the dissipation of assets and to account for the money raised from violations of the Act so as to protect Investors and to provide effective relief.

C. Appointment of a Receiver

The violations of the Act, as described above, give the Department the right to seek one or more of the remedies available by statute and in equity. *Oklahoma Securities Commission v. CFR International, Inc.*, *supra*. One such remedy is that of the appointment of a receiver. In *SEC v. American Bd. Of Trade, Inc.*, 830 F.2d 431 (2d Cir. 1987), the court, quoting *SEC v. Manor Nursing Centers, Inc.* 458 F.2d 1082, 1105 (2d. Cir, 1972), stated that the primary purpose of the appointment of a receiver is to help "preserve the status quo while the various transactions were unraveled" so that an accurate picture of what happened could be formulated. *Id.* at 436.

In circumstances of egregious fraud where the interests of public investors are in substantial jeopardy, it has been recognized that the appointment of a receiver is necessary to prevent "diversion or waste of assets to the detriment of those for whose benefit, in some measure, the injunction action is brought." *Securities and Exchange Commission v. Capital*

Counsellors, Inc., 332 F.Supp. 291, 304, (S.D.N.Y., 1971). The form and quantum of evidence required is a matter of judicial discretion. *U.S. v. O'Connor*, 291 F.2d 520 (2d Cir. 1961); *Haase v. Chapman*, 308 F.Supp. 399 (W.D.Mo.1969). Here, the evidence is admissible and compelling that Defendants have engaged in a fraudulent course of business to induce the public to purchase unregistered securities. It is critical that a receiver be appointed to prevent dissipation of Investor assets and to prevent continued violations of the law. There is no definitive list of facts by which the Court must abide; however, the Sixth Circuit in *Tennessee Pub. Co. V. Carpenter*, 100 F.2d 728, 732 (6th Cir. 1938), identified factors which can be considered, each of which is applicable here and justify the appointment of a receiver for the Receivership Defendants:

“Factors typically influencing the district court’s exercise of discretion include the existence of a valid claim by the moving party; the probability that fraudulent conduct has occurred or will occur to frustrate the claim; imminent danger that property will be lost, concealed, or diminished in value; inadequacy of legal remedies, lack of a less drastic equitable remedy; and the likelihood that appointment of a receiver will do more harm than good.”

D. Temporary Injunction

Once the plaintiff has shown the Defendants’ past conduct is in violation of the Act, the proper test for the issuance of a statutory injunction is where there is a reasonable expectation of future violations by Defendants. *SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082 (2d Cir. 1975); *SEC v. Culpepper*, 270 F.2d 241, 249 (2d Cir. 1959). In considering this issue, past illegal conduct is strong support for the likelihood of future violations. *Oklahoma Securities Commission v. CFR International, Inc.*, 622 P.2d 293, 295 (Okla. Ct. App. 1980). Here, the Defendants have violated the Act which created a presumption of likelihood of future violations. Because the Plaintiff has conclusively demonstrated the existence of past violations, injunctive relief is appropriate and the burden of showing there is no reasonable expectation of future

violations will shift to the Defendants and their burden "is a heavy one." *SEC v. Culpepper*, 270 F.2d 241, 249 (2d Cir. 1959); *Oklahoma Securities Commission v. CFR International, Inc.*, 622 P.2d 293, 295 (Okla. Ct. App. 1980).

Unlike private actions for injunctions, the Department's action is based on statute and no showing of irreparable injury or the inadequacy of other remedies is required. *Oklahoma Securities Commission v. CFR International, Inc.*, 622 P.2d 293, 295 (Okla. Ct. App. 1980) (citing *Bradford v. SEC* 278 F.2d 566 (9th Cir. 1960)). Although not required, the Department has also shown that the public will suffer irreparable injury if Defendants are not enjoined from further violations of the Act.

E. An Ex Parte Order Should be Issued

While Courts have been cautious with the use of ex parte orders, they are approved in appropriate cases. *Covington, Knox, Inc. v. Texas*, 577 S.W. 2d 323 (Tex. App. Houston [14th Dist.] 1979, no writ). The Department alleges facts that demonstrate a strong likelihood of ongoing violations of the Act by Defendants.

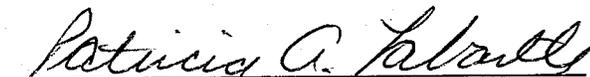
In addition, there is a great risk that Defendants will take measures to dissipate assets if provided notice of this action before a temporary restraining order is issued and a receiver is appointed. Providing notice of this action to Defendants would lead to loss of Investor funds, and consequently cause irreparable injury to the Department's ability to safeguard the public interest by providing monetary redress and by preventing irreparable loss and injury to potential Investors. The issuance of a temporary restraining order instant, an asset freeze, an order for an accounting and the appointment of a receiver *pendente lite* will help maximize the relief to Investors.

VI. Conclusion

The Department, pursuant to Section 405 of the Act, conducted an investigation into Defendants' activities in and/or from the state of Oklahoma. The investigation produced evidence that clearly indicates Defendants issued, offered and/or sold unregistered securities, acted as unregistered agents and/or employed unregistered agents. The investigation also revealed that Defendants, in connection with the offer, sale and/or purchase of securities: (1) made untrue statements of material fact; (2) omitted to state certain material facts; and (3) engaged in a course of business which has operated as a fraud or deceit upon Investors. Defendants have engaged in substantial violations of the Act, including fraudulent practices. The Department submits that the evidence firmly establishes a prima facie case for the issuance of a temporary restraining order, an asset freeze, the appointment of a receiver, an accounting, and a temporary injunction.

In light of the facts presented and the authorities cited, the Department respectfully requests that this Court issue a temporary restraining order, an order freezing the assets of Defendants, an order appointing a receiver for the Receivership Defendants, and an order for an accounting, until such time as the Court may afford the parties a hearing on the Plaintiff's motion for temporary injunction, all to halt Defendants' unlawful practices and to provide effective relief to Investors and to the Department.

Respectfully submitted,



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