

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

U.S. COMMODITY FUTURES TRADING)
COMMISSION and OKLAHOMA)
DEPARTMENT OF SECURITIES *ex*)
rel IRVING FAUGHT,)

Plaintiffs,)

v.)

Case No. CIV-09-1284-R

PRESTIGE VENTURES CORP.,)
a Panamanian corporation, FEDERATED)
MANAGEMENT GROUP, INC., a Texas)
corporation, KENNETH WAYNE LEE,)
an individual, and SIMON YANG)
(a/k/a XIAO YANG, a/k/a SIMON CHEN,)
an individual,)

Defendants.)

and)

SHEILA M. LEE, an individual, DAVID)
A. LEE, an individual, and DARREN)
E. LEE, an individual,)

Relief Defendants.)

ORDER

This matter comes before the Court on the Motion to Stay Execution of Order Dated November 8, 2010 [Document No. 142]. Therein Defendant Kenneth Lee and Relief Defendants Sheila Lee, Darren Lee and David Lee request that the Court stay the execution of the Order and Judgment entered on November 29, 2010. In support of the motion Defendant and Relief Defendants cite to Federal Rule of Civil Procedure 62, parts (c) and (e).

Rule 62(c) of the Federal Rules of Civil Procedure provides:

While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights.

The Court considers the following factors to determine whether to issue a stay of an injunction pending appeal: (1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will suffer irreparable injury unless the stay is granted; (3) whether granting the stay will result in substantial harm to the other parties to the appeal; and (4) the effect of granting the stay upon the public interest. *See Hilton v. Braunskill*, 481 U.S. 770, 776 (1987).

Defendant and Relief Defendants have made no attempt to make arguments in support of their request for a stay. The Court concludes although there is the possibility of irreparable harm to Defendant and Relief Defendants, that there is no likelihood they will prevail on the merits of the appeal, because they neither responded to Plaintiffs' motion for summary judgment nor appeared for trial. Additionally, granting a stay in this action would have a negative effect on the public interest, this action having been pursued by the federal and state governments in an effort to terminate Defendant Kenneth Lee's fraudulent and deceptive trading practices. As such, the Court declines to enter a stay in this matter under the authority of Rule 62(c).

Defendant and Relief Defendants also cite to Rule 62(e) in support of their request for a stay. Rule 62(e) provides that "[t]he court must not require a bond, obligation, or other security from the appellant when granting a stay on an appeal by the United States, its

officers, or its agencies or on an appeal directed by a department of the federal government.”

The appeal herein is not being pursued by the United States or any of its agents or officers, nor is it being directed by a department of the federal government, and thus Rule 62(e) provides no basis for a stay in this matter.

Defendant and Relief Defendant’s Motion to Stay Execution [Document No. 142] is hereby DENIED.

IT IS SO ORDERED this 13th day of January 2011.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE