

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA

MAR 31 2010

MICHAEL S. RICHIE
CLERK

Jeff Burke,)
)
 Plaintiff/Appellant,)
)
 vs.)
)
 Oklahoma Department of Securities)
 ex rel. Irving L. Faught, Administrator,)
)
 Defendant/Appellee.)

No. 108101

Oklahoma County No. CJ-2009-2773

**RESPONSE OF OKLAHOMA DEPARTMENT OF SECURITIES
TO PETITION IN ERROR**

Is appellee willing to participate in an attempted settlement of the appeal by predecisional conference under Rule 1.250?

X YES NO

Attached as Exhibit "A" is the statement of the case of the Appellee, Oklahoma Department of Securities.

In accelerated appeals from orders granting motion for summary judgment or motion to dismiss **only** appellee shall also file concurrently with response any supplement to record on accelerated appeal. See Rule 1.36.

DATE: March 31, 2010.

Verified by:

Patricia A. Labarthe
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CERTIFICATE OF MAILING TO ALL PARTIES AND COURT CLERK

I hereby certify that a true and correct copy of the Response of Oklahoma Department of Securities to Petition in Error was mailed by U.S. Mail, with postage prepaid thereon, this 31st day of March, 2010, to the following:

The Honorable Noma D. Gurich
Judge of the District Court of Oklahoma County
304 Courthouse
321 Park Avenue
Oklahoma City, OK 73102

Jeff Burke
2512 Covell Lane
Edmond, OK 73034

Stephen J. Moriarty
Fellers, Snider, Blankenship, Bailey and Tippens, PC
100 N. Broadway, Ste. 1700
Oklahoma City, OK 73102

I further certify that a copy of the Response of Oklahoma Department of Securities to Petition in Error was mailed to, or filed in, the office of the Oklahoma County Court Clerk this 31st day of March, 2010.


Patricia C. Lantz

EXHIBIT A-STATEMENT OF THE CASE

In March, 2009, the Oklahoma Department of Securities ex rel. Irving L. Faught, Administrator (ODS), filed a civil injunctive action against Joe Don Johnson and James Farnham and against Heritage Estate Service LLC (Heritage). Jeff Burke, a non-party to this case, was the registered agent for Heritage. The Oklahoma County District Court (Court) issued a *Temporary Restraining Order, Order Freezing Assets and Order for Accounting* against Johnson and Farnham. On April 23, 2009, the Court appointed a Special Master over the assets of Heritage and gave the Special Master the authority to take possession of Heritage assets, including the collection of all money due, owed or to become due to Heritage, for payment of restitution to investors. The Court entered restitution orders against Johnson, Farnham and Heritage.

In January, 2009, Burke contracted with the Oklahoma Department of Corrections, and presented the Department of Corrections with a signed affidavit, notarized by Joe Don Johnson, stating that Burke was an agent of Heritage. Burke signed and submitted an Oklahoma Office of State Finance (OSF) Vendor/Payee Form as President of Heritage, under penalty of perjury, that named Heritage as the Vendor/Payee. A Purchase Order was issued on February 24, 2009, between the Department of Corrections and Heritage. As a result of this contract, Burke received a State of Oklahoma check dated July 24, 2009, payable to Heritage, in the amount of \$34,065.00, which was cashed. ODS later learned of the payment and notified OSF of the Court's orders. OSF confirmed that one additional payment was to be made to Heritage. On January 13, 2010, OSF mailed the additional payment of \$7,150.00, to the Special Master in compliance with the Court's order. Burke filed a motion for release of the \$7,150.00 which the Court denied. The Court also denied the request of the ODS that Burke return the initial payment of \$34,065.00.