

IN THE DISTRICT COURT OF LOGAN COUNTY  
STATE OF OKLAHOMA

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LOGAN COUNTY SS:  
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Oklahoma Department of Securities )  
*ex rel.* Irving L. Faught, )  
Administrator, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Marsha Schubert, an individual and )  
*dba* Schubert and Associates; )  
Richard L. Schubert, an individual and )  
*dba* Schubert and Associates; and )  
Schubert and Associates, )  
an unincorporated association, )  
 )  
Defendants. )

Case No. CJ 2004-256

**RESPONSE TO BARRY POLLARD'S MOTION TO DISMISS**

Plaintiff, Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator (Department), respectfully submits this memorandum in opposition to the motion to dismiss (Motion) filed by Barry Pollard (Pollard). Pollard will have the opportunity to present his defenses to the Motion at the trial set in this matter for February 4, 2008.

Pollard requests dismissal for lack of jurisdiction. Although Pollard is not a party in the above captioned case, he is seeking relief from the Defendant Marsha Schubert *dba* Schubert and Associates in Case No. CJ-2005-71 before this Court. Pollard has violated this Court's orders by attaching a lien to Receivership property.

On October 14, 2004, this Court entered a *Temporary Restraining Order, Order Appointing Receiver, Order Freezing Assets and Order for Accounting* against the above-named Defendants that stayed "all creditors and other persons seeking money, damages or other relief

from the Defendants” from “doing any act or thing whatsoever to interfere with the orderly transfer of the Receivership assets to the Receiver or with the possession of or management by the Receiver of the Receivership assets” except upon leave of court. Further, the Receiver has authority “to take the necessary steps to protect the interests of investors, including the liquidation or sale of assets of Defendants....” On November 15, 2004, this Court entered a Permanent Injunction that incorporated the provisions cited above.

Pollard filed Case No. CJ-2005-71 seeking money, damages and other relief from Defendant Marsha Schubert *dba* Schubert and Associates and others. Pollard subsequently received a default judgment against Defendant Marsha Schubert *dba* Schubert and Associates and provided notice to the Receiver of that judgment. Pollard did not provide notice of the judgment to the Department. Without leave of this Court or notice to the Department or the Receiver, Pollard filed a lien against property owned by Defendant Marsha Schubert (the “Crescent Property”). At the time Pollard filed his lien, the Crescent Property was an asset of the Receivership and subject to this Court’s stay protecting Receivership property from interference by the creditors of Marsha Schubert. The Crescent Property is now under contract for sale by the Receiver and the transaction cannot be closed due to Pollard’s lien.

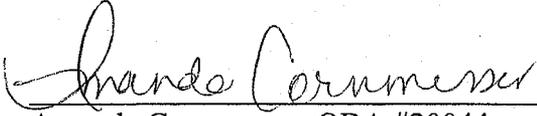
By letter dated August 30, 2007, the Department notified Pollard that the lien was in violation of this Court’s orders and was impeding the Receiver from selling a receivership asset. The Department asked Pollard to release the lien, but he refused to do so. As a result, the Receiver has been unable to complete the sale of the Crescent Property, thereby delaying the return of Receivership assets, and causing additional hardship to the investors who were actually harmed by Marsha Schubert’s investment fraud and to the Receiver in his efforts to timely fulfill his duties under this Court’s orders.

Contrary to Pollard's argument, the Department has not brought this contempt citation because Pollard obtained a judgment against Defendant Marsha Schubert *dba* Schubert and Associates. Rather, the Department believes that Pollard's placement of the lien upon the Crescent Property and his refusal to release the lien upon notice of the relevant provisions of this Court's orders constitutes contempt of this Court.

Wherefore, the Department requests that this Court deny Pollard's Motion to Dismiss and order the immediate release of the lien against the Crescent Property.

Respectfully Submitted,

OKLAHOMA DEPARTMENT OF SECURITIES  
IRVING L. FAUGHT, ADMINISTRATOR

By:   
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 18th day of December, 2007, a true and correct copy of the foregoing was mailed by first class mail with postage prepaid thereon addressed to:

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