

IN THE DISTRICT COURT OF LOGAN COUNTY
STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF SECURITIES)
ex rel. Irving L. Faught,)
Administrator)

Plaintiff,)

vs.)

Case No. CJ-2004-256

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.)

SUPPLEMENT TO BARRY POLLARD'S MOTION TO DISMISS AND
RESPONSE TO OKLAHOMA DEPARTMENT OF SECURITIES RESPONSE
TO BARRY POLLARD'S MOTION TO DISMISS

Barry Pollard, hereinafter "Pollard," respectfully submits this Supplement and Response in support of his Motion to Dismiss Application for Citation of Indirect Contempt Against Barry Pollard, hereinafter "Motion."

At the time that this Court issued the Permanent Injunction, therein incorporating the previous Temporary Restraining Order, Order appointing Receiver, Order Freezing Assets and Order for Accounting, hereinafter "Injunction," alleged to be violated by Pollard, Pollard was not a party to this action, and was not served notice of the Order imposing the Injunction. Nor was Pollard a party to this action at the time that Pollard filed a Civil Petition in Case No. CJ-2005-71 against Defendant, Marsha Schubert, *dba* Schubert and Associates, hereinafter "Schubert," and was subsequently awarded a Judgment

and Order for Execution in the same, attached Exhibits "A" and "B." Pollard was not a party to this action, was not personally served, and therefore is not in indirect contempt of this Court's Order.

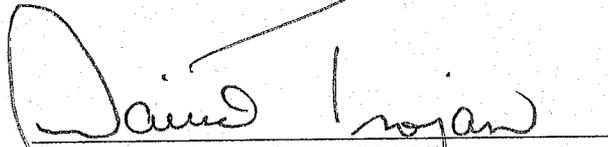
An injunction binds the party from the time he has notice thereof, and the undertaking required by the applicant therefore is executed. 12 Okla. St. § 1388. Moreover, judgment for contempt may only be sustained where the evidence shows that defendants personally had notice or knowledge of the granting of the injunction or the terms and conditions thereof. *Clark et al. v. Most Worshipful St. John's Grand Lodge of Ancient Free and Accepted Masons of Oklahoma*, 181 P.2d 229, 232 (1947). Pollard is not a party and had no prior notice of the Injunction, therefore a Citation of Contempt for alleged violation of the same is not proper.

To be found guilty for indirect contempt of the court, Pollard must be found to have either willfully disobeyed or resisted an Order by the court. 21 Okla. Stat. § 565. Willfulness should not be found where Pollard acted pursuant to an Order made subsequent to the Injunction by the *Same Court* that issued the Injunction. To interpret the subsequent Judgment and Order in Case No. CJ-2005-71 as necessarily conflicting with the Injunction yields results contradictory to the purpose of the Judgment in Case No. CJ-2005-71, which Judgment has become final. 12 Okla. Stat. §1031 et seq. Specifically, such an interpretation would prevent Pollard from receiving or recovering any damages which the Court found owing to him and Ordered execution for the same. It is further noted that Schubert was not the record owner of the subject Real Property until the 11th day

of December, 2005, more than one year after the Injunction was issued.

WHEREFORE, Pollard prays that the Application for Citation of Indirect Contempt be dismissed against him and that this Court finds that he has not in any manner violated any permanent injunction by his obtaining judgment against Marsha Schubert dba Schubert and Associates and that he have such other and further relief as is just and proper including the award of attorney fees and costs in the defense of this action. In the alternative Pollard prays that said Citation be dismissed and all proceeds from the sale of the subject Real Property be held by this Court until the relative rights of the parties to said property can be determined.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David Trojan", written over a horizontal line.

David G. Trojan, OBA #9095

FIELD, TROJAN, LONG & SEDBROOK, P.C.

Post Office Box 5676

106 West Randolph

Enid, Oklahoma 73702

(580) 233-4625

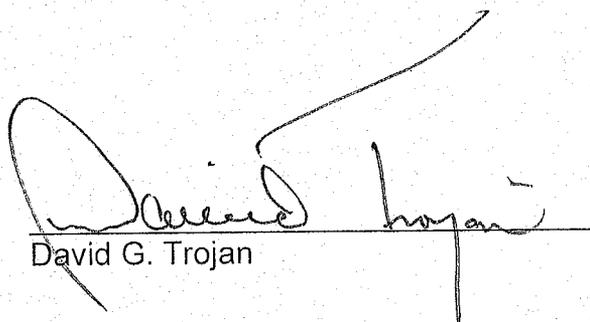
(580) 233-8874 (fax)

Attorney for Defendant Pollard

CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the above and foregoing *Motion to Dismiss the Application for Citation of Indirect Contempt* was deposited in the United States Mail, postage fully prepaid, on the 28th day of December, 2007, to:

Amanda Cornmesser
Gerri Stuckey
Melanie Hall
First National Center, Suite 860
120 North Robinson
Oklahoma City, OK 73102
Attorneys for Plaintiff

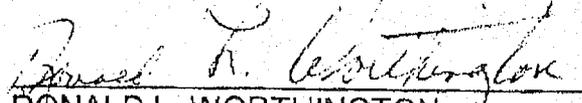


David G. Trojan

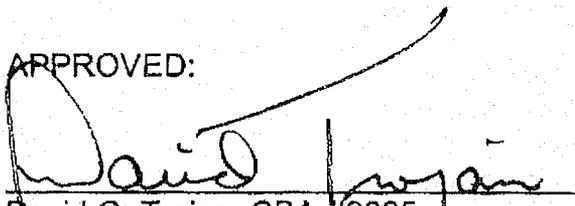
the damages sustained by the Plaintiff and that this court shall hear evidence as to the amount damages due to the Plaintiff in a separate hearing as hereinafter set forth.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff, BARRY L. POLLARD, shall have and recover a judgment of and from Defendant, MARSHA SCHUBERT d/b/a/ SCHUBERT & ASSOCIATES for liability for all damages suffered by the Plaintiff as set out in his petition. This court will determine the amount of all Plaintiff's damages at a hearing set for the 8th day of July, 2005 at 3:00 p.m.

IT IS SO ORDERED.


DONALD L. WORTHINGTON
JUDGE OF THE DISTRICT COURT

APPROVED:


David G. Trojan, OBA #9095
Field, Trojan, Long & Sedbrook, P.C.
P.O. Box 5676
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(580) 233-4625
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Attorney for Plaintiff

IN THE DISTRICT COURT OF LOGAN COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA
LOGAN COUNTY SS:
FILED FOR RECORD ON

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BARRY L. POLLARD,
Plaintiff,



vs.

MARSHA SCHUBERT d/b/a
SCHUBERT & ASSOCIATES,
AXA ADVISORS LLC, a Delaware
Limited Liability Company; and AXA
EQUITABLE LIFE INSURANCE
COMPANY, f/k/a EQUITABLE LIFE
ASSURANCE SOCIETY OF THE
UNITED STATES

Defendants.

Case No. CJ-2005-71

JOURNAL ENTRY OF JUDGMENT

On this 14th day of July, 2005, this case comes on regularly for evidentiary hearing to determine the amount of damages due and owing to the Plaintiff, BARRY L. POLLARD, resulting from the allegations set forth in Plaintiff's Petition to all of which allegations Marsha Schubert was found to be in default pursuant to Order entered herein on the 10th day of June, 2005. Plaintiff appearing in person and by and through his Attorney, David Trojan of FIELD, TROJAN, LONG & SEDBROOK, the Court thereupon takes sworn testimony and evidence from the Plaintiff and witnesses in this matter and upon hearing the evidence finds:

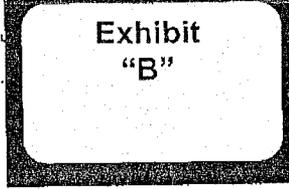
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff, BARRY L. POLLARD, shall have a judgment against the Defendant, MARSHA SCHUBERT d/b/a/ SCHUBERT & ASSOCIATES for the amount of \$ 827,000.00.

For all of which let execution issue.

IT IS SO ORDERED.

Donald L. Worthington
DONALD L. WORTHINGTON

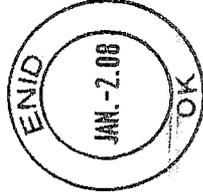
CLERK OF THE DISTRICT COURT



FIELD, TROJAN & LONG, P.C.

Attorneys at Law
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Address Service Requested



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