

FILED IN THE DISTRICT COURT  
IN THE DISTRICT COURT OF OKLAHOMA COUNTY, OKLA.  
STATE OF OKLAHOMA

MAR 11 2008

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

PATRICIA PRESLEY, COURT CLERK

by Deputy

v. )

Case No. CJ-2004-6295

Trade Partners, Inc., a Michigan corporation, )  
et al, )  
 )  
Defendants. )

Consolidated with:

\_\_\_\_\_  
Oklahoma Department of Securities )  
*ex rel* Irving L. Faught, Administrator, )  
 )  
Plaintiff, )

v. )

Case No. CJ-2007-2415

Clyde Edward Elkins, et al., )  
 )  
Defendants. )

**MOTION TO DISMISS APPLICATION TO**  
**ACCELERATE DEFERRED SENTENCE**  
**AND SUPPORTING BRIEF**

Defendant Eddie Elkins. ("Elkins") hereby moves the Court for dismissal of the Application to Accelerate Deferred Sentence filed herein by plaintiff Oklahoma Department of Securities, *ex rel* Irving L. Faught, Administrator ("Department"). In support of this motion, defendant Elkins would show as follows:

1. On August 3, 2007, defendant Elkins entered into a plea of guilty to one count of indirect contempt of court relating to his non-compliance with an earlier injunctive order of this Court. The parties jointly proposed, and the Court approved,

an order deferring any sentencing on the violation conditioned upon the defendant's compliance with the terms and conditions set out in the Summary of Facts Upon Plea of Guilty to Indirect Contempt ("Plea Order") that was approved by the parties and formally entered by the Court. A true and correct copy of this Plea Order is appended hereto as Exhibit 1.

2. Under the terms of a settlement agreement, the parties took action on August 3, 2007 to "jointly request the Court defer the imposition of any sentence for such violation, pending Elkins' compliance with the terms of the deferred sentence as described in the Summary of Facts Upon Plea of Guilty to Indirect Contempt appended hereto as Exhibit 5."

3. The Plea Order itself referenced the parties joint request that sentencing on the confessed violation would be deferred for five years so long as Elkins abided by a series of specific conditions. These conditions were that he not engage in the sale of securities and that he annually submit to the Department a compliance affidavit, certain financial records, and client certifications confirming that he was not involved in security sales or investment advisory activities, directly or indirectly. Strict compliance with the terms and conditions of the settlement agreement was not a stated condition of the continuing validity of the sentencing deferral order.

4. Although not included as express conditions of the Plea Order, the settlement agreement included various additional agreements, including an undertaking

by defendant Elkins to pay designated amounts to certain persons. Specifically, paragraph 2 of the settlement agreement provided as follows:

*Investor Payments.* At closing, Elkins shall disgorge all amounts of compensation he received as a result of the sale of investment contracts by Earthly Mineral Solutions, Inc. and Monarch Visual Solutions, Inc. Specifically, he shall deliver by U. S. mail the funds in the amounts and to the persons as set forth on Exhibit 3 on or before August 10, 2007.

Elkins shall also by December 31, 2007, pay \$1,000.00 to each person identified on the attached Exhibit 4; provided, however, there shall be no obligation that Elkins pay such additional amounts under this Agreement to persons listed on Exhibit 4 if Monarch Visual Solutions, Inc. completes and funds a rescission offer for sales of securities made to such persons by December 31, 2007.

5. On February 27, 2008, the Department filed an application to accelerate the deferred sentence, alleging that defendant Elkins committed actions in violation of the Plea Order. The allegations explaining the factual basis of the acceleration request are set forth in paragraphs 11 through 13 of the subject Application. Simply stated, the Department there alleges that two investors who admittedly received the stipulated payments from Elkins were improperly induced to return the funds to Elkins.

6. The Department does not allege any action of the defendant that supports a finding that he violated any of the express conditions of the Plea Order.

7. The Department does not allege that any person who desired to retain the funds paid by Elkins had been denied the use and enjoyment of the funds. Indeed, there is no indication in the Application that the two anonymous investors, or any other person, was unable to receive the reimbursement funds had they later come to the

conclusion that they did not have all material information when they made their initial decision to refuse to accept or to return the reimbursement payments from Elkins.

8. The Department does not explain if it took any action to advise or communicate with the recipients of the funds in order to explain the reason why the payments were required in resolution of the Department's enforcement action.

### **Supporting Brief**

The continuing validity of the deferred sentence was conditioned upon the defendants' compliance with several specific requirements negotiated by the parties and approved by the Court. These conditions set forth at Section C.2. of the Plea Order as follows: (a) no offers or sales of securities, (b) annual submission of a compliance affidavit to the Department, (c) annual submission of income tax returns to the Department, (d) annual provision of an income schedule, and (e) annual provision of written confirmations from Elkins' clients that he has not engaged in investment advisory activities.

Compliance with any other terms of the settlement agreement were not included as conditions to the continuation of the deferred sentence order. It was not contemplated by the terms and provisions of the Plea Order that defendant Elkins could lose the benefit of the deferred sentence order merely because one or more recipients of the fund reimbursements might elect to return or not accept the payments received from Elkins.

The express terms of the settlement agreement were that Elkins would “deliver” funds to designated persons in August 2007 and “pay additional amounts” to certain persons if Monarch Visual Solutions did not complete and fund a rescission offer to such persons by December 31, 2007. The Department does not deny that these payments were delivered and paid by Elkins. Rather, it argues that, subsequent to the delivery of the funds, two of the investors were improperly convinced to reject or return the monies.<sup>1</sup>

Defendant Elkins strongly denies these allegations. He had no knowledge of the alleged investor objections before receiving the motion papers in this proceeding. The Department should acknowledge that, prior to the filing of the Application, neither of the referenced investors notified Elkins that they had changed their minds about declining the funds or asked Elkins to make the reimbursement payments despite their initial indication of intent to not retain the funds.

Defendant Elkins has provided the Department with complete disclosure as to the disposition of the reimbursement checks paid and delivered pursuant to the terms of the settlement agreement. He has no objection to allowing any person who has rejected acceptance of the funds to reconsider their decision after receipt of an

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<sup>1</sup>According to the Department’s allegations, Elkins’ Svengali-like effect on the two investors arose from his claimed statements that he had not received any compensation from their investments and that he would have to send them a Form 1099 reflecting the fact of the reimbursement payments. Curiously, the Department characterizes these seemingly innocuous alleged statements as “resulting in the threat of intervention of the Internal Revenue Service.”

explanation of the terms of the settlement from the Department. Such disclosure should correct any misunderstanding of the underlying factual situation, or the duties imposed upon Elkins under the settlement or the Plea Order, and all parties will be sure that the spirit and intent of the settlement will be observed.

Notwithstanding this proposed solution to the controversy, defendant Elkins would ask the Court to find that the Department has not stated facts upon which the requested relief may be granted.

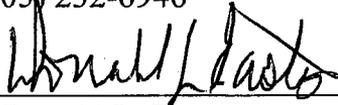
WHEREFORE, defendant Eddie Elkins respectfully requests that the Application for Acceleration of Deferred Sentence be dismissed.

Dated: March 11, 2008.

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McDonald & Fredrickson, P.C.  
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and

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By: 

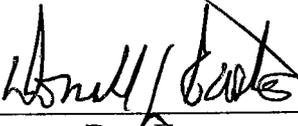
Donald L. Easter

*Attorneys for defendant Eddie Elkins*

CERTIFICATE OF SERVICE

I hereby certify that on this 11 day of March, 2008, a true and correct copy of the above and foregoing Motion to Dismiss and Supporting Brief was served by United States mail to the following:

Patricia A. Labarthe, Esq.  
Shaun Mullins, Esq.  
Oklahoma Department of Securities  
120 North Robinson, Suite 860  
Oklahoma City, Oklahoma 73102  
*Attorneys for plaintiff*

  
\_\_\_\_\_  
Don Easter

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

AUG - 3 2007

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

PATRICIA PRESLEY, COURT CLERK  
By \_\_\_\_\_  
Deputy

Plaintiff, )

v. )

Case No. CJ-2004-6295

Trade Partners, Inc., a Michigan corporation, )  
et al, )

Defendants. )

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Oklahoma Department of Securities )  
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Consolidated With:

Plaintiff, )

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Case No. CJ-2007-2415

Clyde Edward Elkins, et al., )

Defendants, )

v. )

Big Boys Investments, L.L.C. )

Relief Defendant. )

SUMMARY OF FACTS UPON PLEA OF GUILTY  
TO INDIRECT CONTEMPT

1. Is the name just read to you your true name? Yes EE No \_\_\_

2. Is your age 57 years; and is your date of birth 11-4-49 ? Yes EE No \_\_\_

3. Is Donald Easter your attorney? Yes EE No \_\_\_

4. Are you taking any kind of medication? Yes \_\_\_ No EE

a. If yes, what kind and when did you take it?  
\_\_\_\_\_

b. If yes, does this medication affect your judgment now? Yes \_\_\_ No \_\_\_

5. Have you been prescribed any medication that you should be taking but that you are not taking? Yes \_\_\_ No EE

a. If yes, what kind and when should you have taken it?  
\_\_\_\_\_

b. If yes, does not taking the medication affect your judgment now? Yes \_\_\_ No \_\_\_

6. Have you ever been seen by a doctor or confined in a hospital for mental illness? Yes \_\_\_ No EE

If yes, explain: \_\_\_\_\_  
\_\_\_\_\_

7. Counselor, do you have any reason to believe that your client is not mentally competent to appreciate and understand the nature, purpose and consequences of this proceeding and to assist you in presenting any defense that may exist to any charge? Yes \_\_\_ No EE

8. Counselor, do you have any reason to believe that your client was not mentally competent to appreciate and understand the nature, purpose and consequences of his act at the time he committed it and out of which this allegation of indirect contempt arose? Yes \_\_\_ No EE

9. Do you understand that the Oklahoma Department of Securities alleges that you committed the act of sale of an unregistered security at a time when a temporary injunction forbidding the same had been entered in this case? Yes EE No \_\_\_

10. Have you been served with a copy of the Application for Citation of Indirect Contempt Against Eddie Elkins? Yes EE No \_\_\_

11. Do you understand that upon a finding by the Court that you did sell an unregistered security at a time when a temporary injunction forbidding such an act was in full force and effect against you and in wilfull violation of the temporary injunction, you could be fined an amount not to exceed Five Hundred Dollars (\$500.00) and/or sentenced to a term not to exceed Six (6) Months in the Oklahoma County jail? Yes EE No \_\_\_

12. Do you understand that upon a plea of guilty to indirect contempt you can be sentenced to a term of imprisonment and/or fined with the above total range of punishment? Yes EE No \_\_\_

13. Do you understand that you are entitled to a speedy jury trial on the charge of indirect contempt, to confront all witnesses who will testify against you at the trial, to remain silent, and to have your witnesses ordered to Court even at the expense of the State? Yes EE No
14. Do you understand that the law presumes you are not guilty of indirect contempt as alleged in the Application for Citation of Indirect Contempt Against Eddie Elkins? Yes EE No
15. Do you understand that your denial of the facts alleged in the Application for Indirect Contempt require the Plaintiff to prove each and every element of indirect contempt beyond a reasonable doubt to a jury, or to the Court if a jury is waived, and if Plaintiff was unable to do so you would be not be found guilty of indirect contempt? Yes EE No
16. Do you understand that you have a right to stand on your denial of the alleged facts stated in the Application for Citation of Indirect Contempt Against Eddie Elkins and in doing so keep these rights? Yes EE No
17. Do you understand that if you enter a plea of guilty you give up all these rights? Yes EE No
18. Have you talked over the allegations relating to your alleged act of indirect contempt and have you had your lawyer's advice in this matter? Yes EE No
19. Has he served you well? Yes EE No
20. You stand now on a plea of not guilty. Should you change your plea to guilty do you understand that there has been an agreement reached in this matter? Yes EE No

What is your understanding of the agreement?

A global settlement agreement involving this plea, disgorgement and a permanent injunction has been reached by the parties. The global agreement includes settlement of all controversies among the parties relating to two legal proceedings pending in District Court of Oklahoma County, Oklahoma, styled *Oklahoma Department of Securities ex rel. Irving L. Faught, Administrator v. Trade Partners, Inc., et al*; Case No. CJ-2004-6295, and *Oklahoma Department of Securities ex rel. Irving L. Faught, Administrator v. Clyde Edward Elkins, et al.*, Case No. CJ-2007-2415 ("Securities Enforcement Actions") whether currently known or unknown. As part of the global agreement, I am entering a plea of guilty to indirect contempt involving one sale of an unregistered security in willful violation of the temporary injunction entered in this matter in August of 2004. I agree to enter this plea of guilty but all parties agree that sentencing shall be deferred for five (5) years during which time I shall abide by the following conditions:

1. I shall not offer or sell any security as defined by the Oklahoma Uniform Securities Act of 2004 ("Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003), during the term of the deferred sentence.

2. I shall submit to the Oklahoma Department of Securities an affidavit, signed under penalty of perjury, on or before June 1 of each year during this sentence, stating:

I have not directly, indirectly or through any third party, offered or sold any security, as defined by the Oklahoma Uniform Securities Act of 2004, Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003)(the "Act");

I have not recommended, or provided advice concerning or discussed any security, as defined by the Act, to or with any person;

I have not discussed in any way my personal investments with any person other than a registered securities professional;

I have not directly, indirectly or through any third party, acted as a broker-dealer, agent, investment adviser or investment adviser representative as those terms are defined by the Act;

I have not discussed with, recommended to or advised any person to consult, confer or transact any securities and/or investment related business with any person; and

I did not, directly or indirectly, receive any income from the offer or sale of any security as defined by the Act or for providing any investment related advice during the preceding calendar year.

3. I shall submit a copy of my state and federal income tax returns and any subsequent amendment thereto to the Administrator of the Oklahoma Department of Securities no later than June 1 of each year from June 2008 through 2012.

4. Contemporaneously with providing the tax returns, I shall provide to the Oklahoma Department of Securities a schedule of income that identifies the following:

- a. the amount of income received from tax preparation or bookkeeping services; and
- b. the sources and amounts of all other income of any nature directly or indirectly received.

5. I may continue to sell life insurance or other insurance products such as fixed annuity contracts so long as I maintain my license through the Oklahoma Department of Insurance and so long as such products are authorized by such license.

6. I shall obtain written confirmation from each client for whom I provide tax or bookkeeping services, that I have not discussed with, recommended to, offered or sold to them any type of investment product, and that I have not discussed with, recommended to or advised them to consult, confer or transact any securities or investment related business with any person.

7. Do you want to enter your plea now and be sentenced at a later date? Yes EE No 06
8. What is your plea to one act of indirect contempt? Guilty
9. Do you plead guilty because you wilfully committed one act of selling an unregistered security following the entry of a temporary injunction enjoining you from selling an unregistered security? Yes EE No 06
10. Do you plead guilty of your own free will and without any coercion or compulsion other than the settlement agreement heretofore referenced? Yes EE No 06

THE COURT FINDS:

- a. Defendant Eddie Elkins is mentally competent to understand the nature, purpose and consequences of this proceeding and was mentally competent to understand and appreciate his act of sale of an unregistered security following entry of the temporary injunction enjoining him from selling the same.
- b. The settlement agreement between the parties including this plea as a part thereof is fair and just and Plaintiff acknowledges the agreement by the signature of its representative hereon.
- c. Mr. Elkins plea was knowingly and voluntarily entered.

THE COURT ORDERS:

- A. The plea of guilty is accepted by the Court;
- B. The sentencing date is deferred to August 2<sup>nd</sup> 2012, at 9:00 a.m.;
- C. The terms and conditions of the deferred sentence are as follows:
  - 1. You shall not offer or sell any security as defined by the Act during the term of the deferred sentence.
  - 2. You shall submit to the Oklahoma Department of Securities an affidavit, signed under penalty of perjury, on or before June 1 of each year during this sentence, stating:

You have not directly, indirectly or through any third party, offered or sold any security, as defined by the Oklahoma Uniform Securities Act of 2004, Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003)(the "Act");

You have not recommended, or provided advice concerning or discussed any security, as defined by the Act, to or with any person;

You have not discussed in any way my personal investments with any person other than a registered securities professional;

You have not directly, indirectly or through any third party, acted as a broker-dealer, agent, investment adviser or investment adviser representative as those terms are defined by the Act;

You have not discussed with, recommended to or advised any person to consult, confer or transact any securities and/or investment related business with any person; and

You did not, directly or indirectly, receive any income from the offer or sale of any security as defined by the Act or for providing any investment related advice during the preceding calendar year.

3. You shall submit a copy of your state and federal income tax returns and any subsequent amendment thereto to the Administrator of the Oklahoma Department of Securities, no later than June 1 of each year from June 2008 through 2012.

4. Contemporaneously with providing the tax returns, you shall provide to the Oklahoma Department of Securities a schedule of income that identifies the following:

- a. the amount of income received from tax preparation or bookkeeping services; and
- b. the sources and amounts of all other income of any nature directly or indirectly received.

5. You may continue to sell life insurance or other insurance products such as fixed annuity contracts so long as you maintain your license through the Oklahoma Department of Insurance and so long as such products are authorized by such license.

6. You shall obtain written confirmation from each client for whom you provide tax or bookkeeping services, that you have not discussed with, recommended to, offered or sold to them any type of investment product, and that you have not discussed with, recommended to or advised them to consult, confer or transact any securities or investment related business with any person.

AFFIDAVIT OF EDDIE ELKINS

*In the Fall of 2004*

On the \_\_\_ day of \_\_\_\_\_, 200\_\_\_, I committed the following act:

*I sold un rest. Security At the time A injection  
WAS IN FORCE*

Have you fully understood the questions that have been asked?

*EE*  
Yes  No

Were your answers freely and voluntarily given?

*EE*  
Yes  No

NOTICE OF RIGHT TO APPEAL

To appeal from a conviction on a plea of guilty you must file a written Application with this Court within ten (10) days from today. You must set forth in detail the grounds for your withdrawal and request an evidentiary hearing in the trial court. The trial court must hold a hearing and rule upon your application within thirty (30) days from the date it is filed. If the trial court denies your Application you have ninety (90) days from the date of the denial to file a Petition for Writ of Certiorari to the Court of Criminal Appeals to appeal the trial court's decision. If you are indigent, these appeals can be prosecuted at public expense and you can have an attorney appointed to represent you.

Do you understand your right to appeal?

Yes et No    

DONE IN OPEN COURT this 3<sup>rd</sup> day of August, 2007.

Clyde E. Elkins  
EDWARD ELKINS, Del.

Daniel L. Owens  
HON. DANIEL OWENS, DISTRICT JUDGE

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