

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT  
OKLAHOMA COUNTY, OKLA.

DEC 18 2008

PATRICIA PRESLEY, COURT CLERK  
by \_\_\_\_\_  
DEPUTY

Oklahoma Department of Securities )  
ex rel. Irving L. Faught, )  
Administrator, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Jerry D. Cash, )  
 )  
Defendant. )

Case No. CJ-2008-7963

**MOTION TO QUASH**  
**SUBPEONA DUCES TECUM**

On December 16, 2008, counsel for Plaintiff, Oklahoma Department of Securities, ex rel. Irving L. Faught, was served with a Subpoena Duces Tecum (the "Subpoena"), attached hereto as Exhibit "A", by counsel for Sherry Cash, the wife of Defendant Jerry D. Cash. The Subpoena was not validly issued and requests privileged information from Plaintiff. Therefore, Plaintiff requests that the Subpoena be quashed.

On December 4, 2008, Mrs. Cash filed a *Motion to Intervene* in this matter. Such motion has not been heard or ruled upon by the Court. On December 16, 2008, prior to a ruling upon the motion to intervene, Plaintiff received service of the Subpoena requiring the production of privileged documents on December 19<sup>th</sup> at 9:00 a.m.

**I. The Subpoena is not valid.**

The Subpoena is invalid and should be quashed. As of this date, Mrs. Cash is not a party to this proceeding. Pursuant to 12 O.S. § 2004.1, those who may issue subpoenas in a matter are limited to those who are a party. Such statute states in part:

(4) The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise blank, to a *party* requesting it, who shall fill it in before service. As an officer of the court, an attorney authorized to practice law in this state may also issue and sign a subpoena on behalf of a court of this state. [Emphasis added.]

Although Mrs. Cash may ultimately be permitted to intervene in this matter, Mrs. Cash may not initiate discovery for her pending divorce in a case in which she is not a party.

**II. Information sought is confidential and privileged.**

Upon receipt of any request or order relating to the production of documents, Plaintiff has the responsibility of complying with the Oklahoma Uniform Securities Act of 2004 (Act), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003). Specifically, Section 1-607 of the Act provides in part:

B. The following records are not public records and are not available for public examination under subsection A of this section:

1. A record obtained by the Administrator or created by a representative of the Administrator in connection with an audit or inspection under subsection K of Section 14 or subsection D of Section 27 of this act [Section 1-305 or 1-410 of this title] or an investigation under Section 40 of this act [Section 1-602 of this title];

\* \* \*

4. A record in a litigation file[.]

\* \* \*

C. If disclosure is for the purpose of a civil or administrative investigation, action, or proceeding brought by the Administrator or a criminal referral made by the Administrator or to a person specified in subsection A of [Section 1-608], the Administrator may disclose a record obtained in connection with an audit or inspection under subsection K of [Section 1-305] or subsection D of [Section 1-410] or a record obtained or created in connection with an investigation under [Section 1-602] . . . .

Subsection A of Section 1-608 of the Act provides as follows:

The Administrator shall, in its discretion, cooperate, coordinate, consult, and, subject to Section 45 of this act [Section 1-607 of this title], share records and information with the securities regulator of another state, Canada, a Canadian province or territory, a foreign jurisdiction, the Securities and Exchange Commission, the United States Department of Justice, the Commodity Futures Trading Commission, the Federal Trade Commission, the Securities Investor Protection Corporation, a self-regulatory organization, a national or international organization of securities regulators, a federal or state banking and insurance regulator, and a governmental law enforcement agency to effectuate greater uniformity in securities matters among the federal government, self-regulatory organizations, states, and foreign governments.

The meaning of Section 1-607 is plain and unambiguous. The Department's investigatory and litigation files **shall not** be disclosed except in the three instances approved by the Oklahoma Legislature: for use in an action brought by the Administrator, to make a criminal referral, or to assist another law enforcement, governmental or regulatory agency. To date, Plaintiff has not publicly used any information regarding Defendant's assets that may satisfy Mrs. Cash's request. If and when such evidence is presented by Plaintiff, the information will become public and available to Mrs. Cash. In the interim, Mrs. Cash may seek the requested information from her husband through discovery in their divorce proceeding.

Important public policies underlie the codification of Section 1-607. Maintaining the integrity and confidentiality of the Department's investigatory and litigation files prevents subjects of the Department's investigations from learning agency investigatory theories, directions and strategies and preserves the confidentiality of the Department's inter and intra-agency communications. Confidentiality also protects innocent parties who may be subject to investigation, but later exonerated. Confidentiality encourages

witnesses or other regulatory agencies who desire confidential treatment of documents to cooperate with an investigation. Confidentiality also allows the Department to focus on its statutory mandate of regulating the offer and sale of securities in the state of Oklahoma. The Department's attention and limited resources should not be diverted from its investigations to produce information for private civil actions, to include the pending divorce of the Defendant and his spouse.

**Conclusion**

Plaintiff's intent in seeking an asset freeze in this case was to achieve maximum preservation of Defendant's assets for purpose of restitution. The attempt by Mrs. Cash to conduct discovery in connection with her pending divorce has no relevance to further the maximum preservation of Defendant's assets through establishment of a monthly budget for Mrs. Cash pending resolution of this case.

Respectfully Submitted,

OKLAHOMA DEPARTMENT OF SECURITIES  
IRVING L. FAUGHT, ADMINISTRATOR

By:

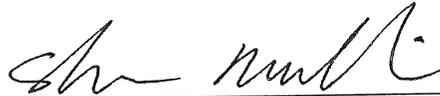
  
Shaun Mullins, OBA# 16869  
Amanda Cornmesser, OBA# 20044  
Jennifer Shaw, OBA# 20839  
Oklahoma Department of Securities  
120 North Robinson, Suite 860  
Oklahoma City, Oklahoma 73102  
Telephone (405) 280-7735  
Fax (405) 280-7742

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 18<sup>th</sup> day of December, 2008, a true and correct copy of the foregoing was hand delivered and mailed by first class mail with postage prepaid thereon addressed to:

Patrick M. Ryan  
Ryan, Whaley, Coldiron & Shandy, P.C.  
900 Robinson Renaissance  
119 N. Robinson  
Oklahoma City, OK 73102

James A. Kirk  
Kirk & Chaney  
101 Park Avenue  
Suite 800  
Oklahoma City, OK 73102

  
\_\_\_\_\_