

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA**

Oklahoma Department of Securities)
ex rel. Irving L. Faught,)
 Administrator,)
)
 Plaintiff,)
)
 v.)
)
 Bothwell Consulting, LLC, an Oklahoma)
 LLC; Lawrence G. Bothwell, an individual;)
 Christopher S. VonWerder, an individual;)
 and Tommy L. Richardson, an individual,)
)
 Defendants,)
)
 and)
)
 Amy J. Richardson, an individual,)
)
 Defendant Solely For)
 Purposes of Equitable Relief.)

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

JUL 24 2009

PATRICIA PRESLEY, COURT CLERK
by _____
DEPUTY

Case No.

CJ-2009-6989

**APPLICATION FOR TEMPORARY RESTRAINING ORDER,
ORDER FREEZING ASSETS AND ORDER FOR ACCOUNTING**

The Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator (“Department”), respectfully submits this application for a temporary restraining order against Defendants Bothwell Consulting, LLC, Lawrence G. Bothwell, Christopher S. VonWerder, and Tommy L. Richardson (“Defendants”); an order freezing the assets of Defendants; and an order for an accounting or the records to support an accounting (“accounting”) by Defendants, pursuant to the Oklahoma Uniform Securities Act of 2004 (the “Act”), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003). The Department petitions this Court to halt further violations of the Act, to protect the rights of the Department in its obligation to safeguard the public

interest, to prevent any dissipation or loss of investor funds and property, and to remedy actions that Defendants have already committed.

The Department moves this Court to issue *instanter* a temporary restraining order, an order freezing assets, and an order for an accounting by Defendants, until the Court may afford the parties a hearing, and additionally moves for the entry of a temporary injunction at such hearing against Defendants. The entry of such orders are necessary for the reasons set forth below, to preserve the *status quo* and to protect the Department's rights in enforcing the Act.

I. THE DEFENDANTS

Bothwell Consulting, LLC ("Bothwell Consulting") is an Oklahoma limited liability company, with purported business addresses in Oklahoma City, Oklahoma. The addresses identified by Bothwell Consulting as its addresses are actually The UPS Store located at 4 N.E. 10th Street and a parking lot located at 10 E. Main Street. At all times material hereto, Bothwell Consulting issued, offered and/or sold securities in and/or from Oklahoma as described herein. Such securities have not been registered under the Act or any predecessor act.

Lawrence G. Bothwell ("Bothwell"), an individual and Oklahoma resident, is "the Chairman", the Chief Executive Officer, and the registered agent of Bothwell Consulting and controls all acts of Bothwell Consulting. At all times material hereto, Bothwell offered and/or sold securities in and/or from Oklahoma as described herein. Defendant Bothwell has not been registered under the Act in any capacity.

Since 2007, Bothwell has had multiple debt collection actions brought against him. Washington Mutual Bank and Deutsche Bank Trust Company have foreclosed on Bothwell's properties. In addition, creditors, including the University of Oklahoma, have judgments against Bothwell for failure to pay his debts.

Christopher Von Werder (“VonWerder”), an individual and Oklahoma resident, offered and/or sold securities in and/or from Oklahoma on behalf of Bothwell Consulting as described herein. Defendant VonWerder has not been registered under the Act in any capacity.

Tommy L. Richardson (“T. Richardson”), an individual and Oklahoma resident, offered and/or sold securities in and/or from Oklahoma on behalf of Bothwell Consulting as described herein. Defendant T. Richardson was registered as an investment advisor representative between April 2005 and April 2008; however, he is not currently registered under the Act in any capacity.

RELIEF DEFENDANT

Relief Defendant Amy J. Richardson (“A. Richardson”), an individual and Oklahoma resident and the wife of Defendant T. Richardson, received, directly and/or indirectly, cash that is the proceeds, or is traceable to the proceeds, of the unlawful activities of Defendants described herein (“Investor Assets”).

II. NATURE OF THE CASE

Beginning as early as July 2007, and continuing to the present, Defendants have engaged in the issuance, offer and/or sale of an investment opportunity in and/or from the state of Oklahoma to investors (“Investors”), in the nature of a debenture (“Debenture”). Defendants promise investors a guaranteed annual rate of return of between 12% and 20% on the principal investment.

Investors sign an agreement (“Agreement”) provided by Bothwell Consulting. The Agreement maintains that Bothwell Consulting shall use the “Principle Investment” at its discretion and without influence from the Investor.

Defendants falsely represent that the Debentures are backed by Bothwell’s personal wealth.

Defendants have failed to deliver any offering materials or other similar documents to Investors.

In certain instances, Defendants are soliciting Investors who own Conseco insurance policies that are maturing and for which the policyholders are entitled to a return of money. Defendants encourage Investors to take these Conseco insurance policy funds and invest them in the Debentures. Investors are led to believe that they are investing their funds in a Conseco product.

Investor funds have been deposited into accounts held at Oklahoma banks. Defendants have not invested the funds to generate the promised returns.

III. VIOLATIONS OF THE ACT

A. Violation of Section 1-301 of the Act: Offer and/or Sale of Unregistered Securities

The Debenture is a security as defined by Section 1-102 of the Act.

Defendants offered and sold the Debentures in and/or from Oklahoma.

The securities offered and sold by Defendants are not and have not been registered under the Act nor have the securities been offered or sold pursuant to an exemption from registration under Sections 1-201 through 1-203 of the Act.

By reason of the foregoing, Defendants have violated, are violating, and unless enjoined, will continue to violate Section 1-301 of the Act.

B. Violation of Section 1-402 of the Act: Failure to Register as Agents and Employing Unregistered Agents

Bothwell Consulting is an issuer as defined in Section 1-102 of the Act.

Defendants Bothwell, VonWerder, and T. Richardson, by virtue of their efforts and activities in representing Bothwell Consulting in effecting or attempting to effect purchases or sales of its securities, are agents as defined in Section 1-102 of the Act.

Defendants Bothwell, VonWerder, and T. Richardson are not registered under the Act as agents. Defendants Bothwell, VonWerder, and T. Richardson transacted and are transacting business in this state as agents without benefit of registration under the Act.

Bothwell Consulting has employed and currently employs at least three unregistered agents.

By reason of the foregoing, Defendants have violated, are violating, and unless enjoined, will continue to violate Section 1-402 of the Act.

**C. Violation of Section 1-501 of the Act:
Untrue Statements of Material Fact and Omissions of Material Fact
in Connection with the Offer, Sale or Purchase of Securities**

Defendants, in connection with the offer and/or sale of securities, directly and indirectly, have made, and are making, untrue statements of material fact including, but not limited to, the following matters:

- a. that the Debentures are backed by Bothwell's personal wealth, and,
- b. Defendants would invest the Investors' funds in any manner to generate the promised returns.

Defendants, in connection with the offer and/or sale of securities, directly and indirectly, omitted and are omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were and are made, not misleading, including, but not limited to, the following matters:

- a. any general or specific risk factors associated with an investment in the Debenture;

- b. that the Debenture is a security under the Act;
- c. that the Debenture has not been, and is not, registered under the Act;
- d. that the individuals who offered and sold the Debenture were not, and are not registered under the Act;
- e. that Bothwell Consulting employed at least three unregistered agents;
- f. that Bothwell Consulting has provided false and misleading addresses to Investors;
- g. that Defendants would use Investor funds for the payment of personal expenses of the Defendants; and
- h. that the Debentures are backed by Bothwell's personal wealth, when multiple debt collection actions, including foreclosures, have resulted in uncollected judgments against Bothwell.

By reason of the foregoing, Defendants, directly and/or indirectly, have violated, are violating, and unless enjoined, will continue to violate Section 1-501 of the Act.

**D. Violation of Section 1-501 of the Act:
Engaging in any Act, Practice, or Course of Business that Operates
or Would Operate as a Fraud or Deceit upon any Person**

Defendants, in connection with the offer, sale or purchase of securities, and through the misrepresentations and omissions of material fact described in the paragraphs above, have engaged and are engaging in an act, practice, or course of business that has operated and continues to operate as a fraud or deceit upon other persons.

By reason of the foregoing, Defendants, directly and indirectly, have violated, are violating, and unless enjoined, will continue to violate Section 1-501 of the Act.

E. Relief Defendant

A. Richardson received, directly and/or indirectly, Investor Assets.

A. Richardson has received Investor Assets as part of and/or in furtherance of the securities violations alleged above. Under the circumstances, it is not just, equitable or conscionable for A. Richardson to retain the Investor Assets at the expense of Investors.

IV. NEED FOR TEMPORARY RESTRAINING ORDER, ASSET FREEZE, ACCOUNTING AND TEMPORARY INJUNCTION

A. Temporary Restraining Order

Section 1-603 of the Act provides:

A. If the Administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act or constituting a dishonest or unethical practice or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this act or a rule adopted or order issued under this act or a dishonest or unethical practice, the Administrator may, prior to, concurrently with, or subsequent to an administrative proceeding, maintain an action in the district court of Oklahoma County or the district court of any other county where service can be obtained to enjoin the act, practice, or course of business and to enforce compliance with this act or a rule adopted or order issued under this act.

B. In an action under this section and on a proper showing, the court may:

1. Issue a permanent or temporary injunction, restraining order, or declaratory judgment;
2. Order other appropriate or ancillary relief, which may include:
 - a. an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the Administrator, for the defendant or the defendant's assets,
 - b. ordering the Administrator to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property,
 - c. imposing a civil penalty up to a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or up to Two Hundred Fifty Thousand Dollars (\$250,000.00) for more than one violation; an order of rescission, restitution, or disgorgement directed to a

person that has engaged in an act, practice, or course of business constituting a violation of this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act, and

d. ordering the payment of prejudgment and postjudgment interest;
or

3. Order such other relief as the court considers appropriate.

A temporary restraining order has the object of preserving the *status quo*, in order to prevent irreparable injury, until such time as the Court may determine Plaintiff's application for temporary injunction. *Granny Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 439, 94 S.Ct. 1113, 1124 (1974); *Morse v. Earnest, Inc.*, 547 P.2d 955 (Okla. 1976). Issuing a temporary restraining order is in the public interest when the failure to grant the relief would allow dishonest businesses and individuals to take advantage of vulnerable investors. The protection of the public interest is paramount in this matter.

Defendants have engaged in acts and practices in violation of the Act and have, as a result of these activities, received a substantial amount of money from numerous Investors. A danger exists that the money received from the Investors and/or held by Defendants will be lost, removed or transferred. A temporary restraining order to issue *instanter* against Defendants is necessary to preserve these funds, securities, and the records relating thereto, and to prevent further violations of the Act.

In addition, no injury will befall Defendants by granting such relief since Defendants have no right to act in the state of Oklahoma in violation of the Act, to include engaging in fraudulent conduct in connection with securities activities. The interference with Defendants' rights by granting the temporary restraining order will be minimal, if any, while protecting the public from immediate and irreparable injury or loss.

B. Asset Freeze and Accounting

Section 1-603 of the Act specifically grants this Court the power to fashion appropriate equitable relief to provide effective enforcement of the Act. Once the equity powers of the court are invoked, the court possesses the power to fashion appropriate interim remedies. *SEC v. Manor Nursing Centers*, 458 F.2d 1082, 1103 (2nd Cir. 1972). Within this power is the authority to grant effective equitable relief by temporarily freezing specific assets. *SEC v. General Refractories Co.*, 400 F.Supp. 1248, 1259 (D.D.C. 1975); *SEC v. International Swiss Investments Corp.*, 895 F.2d 1272, 1276 (9th Cir. 1990); *SEC v. Manor Nursing Centers*, 458 F.2d at 1105-06. Within the equity power of the court is the authority to order an accounting by the Defendants. *SEC v. R.J. Allen & Associates*, 386 F. Supp. 866, 880 (S.D.N.Y. 1974); *SEC v. Manor Nursing Centers*, *supra* at 1103-1104.

Defendants make use of untrue statements of material fact and omit to state material facts as alleged in Plaintiff's verified petition, in violation of Section 1-501 of the Act. The whereabouts of all of the money raised by Defendants through violations of the Act is not known at this time. These circumstances make it necessary that the court freeze specific assets to preserve the status quo by preventing the dissipation of assets and to account for the money raised through violations of the Act so as to protect Investors and to provide effective relief.

C. Temporary Injunction

Once the plaintiff has shown the Defendants' past conduct is in violation of the Act, the proper test for the issuance of a statutory injunction is whether there is a reasonable expectation of future violations by Defendants. *SEC v. Manor Nursing Centers, Inc.*, *supra*; *SEC v. Culpepper*, 270 F.2d 241, 249 (2^d Cir. 1959). In considering this issue, past illegal conduct is strong support for the likelihood of future violations. *Oklahoma Securities Commission v. CFR International, Inc.*, *supra*. Here, the Defendants have violated the Act which creates a

presumption of likelihood of future violations. Because the Plaintiff has conclusively demonstrated the existence of past violations, injunctive relief is appropriate and the burden of showing there is no reasonable expectation of future violations will shift to the Defendants and their burden “is a heavy one.” *SEC v. Culpepper, supra; Oklahoma Securities Commission v. CFR International, Inc., supra.*

Unlike private actions for injunctions, the Department’s action is based on statute and no showing of irreparable injury or the inadequacy of other remedies is required. *Oklahoma Securities Commission v. CFR International, Inc., 622 P.2d 293, 295 (Okla. Ct. App. 1980)* (citing *Bradford v. SEC, 278 F.2d 566 (9th Cir. 1960)*). Although not required, the Department has also shown that the public will suffer irreparable injury if Defendants are not enjoined from further violations of the Act.

D. An Ex Parte Order Should be Issued

While courts have been cautious with the use of ex parte orders, they are approved in appropriate cases. *Covington, Knox Inc. v. Texas, 577 S.W. 2d 323 (Tex. App. Houston [14th Dist.] 1979, no writ)*. The Department alleges facts that demonstrate a strong likelihood of ongoing violations of the Act by Defendants.

In addition, there is a great risk that Defendants will take measures to dissipate assets if provided notice of this action before a temporary restraining order is issued and assets are frozen. Providing notice of this action to Defendants could lead to loss of Investor funds, and consequently cause irreparable injury to the Department’s ability to safeguard the public interest by *inter alia* providing monetary redress. The issuance of a temporary restraining order *instanter*, an asset freeze, and an order for an accounting by the Defendants will help maximize the relief to Investors and protection of the public interest.

V. Conclusion

The Department, pursuant to Section 1-602 of the Act, conducted an investigation into Defendants' activities in and/or from the state of Oklahoma. The investigation produced evidence that clearly indicates Defendants have issued, offered and/or sold unregistered securities in and/or from this state. Such activity is continuing. The investigation also revealed that Defendants, in connection with the offer, sale and/or purchase of securities: (1) made, and are making, untrue statements of material fact; (2) omitted, and are omitting, to state certain material facts; and (3) engaged, and are engaging, in a course of business that has operated as a fraud or deceit upon other persons. Defendants have engaged and are engaging in substantial violations of the Act, including fraudulent practices. The Department submits that the evidence firmly establishes a *prima facie* case for the issuance of a temporary restraining order, an asset freeze, an accounting, and a temporary injunction.

In light of the facts presented and the authorities cited, the Department respectfully requests that this Court issue an order freezing assets of Defendants, an order for an accounting, and a temporary restraining order, until such time as the Court may afford the parties a hearing on the Plaintiff's motion for temporary injunction, all to halt Defendants' unlawful practices and to provide effective relief to Investors and to the Department.

Respectfully submitted,



Amanda Cornmesser, OBA #20044
Jennifer Shaw, OBA #20839
Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, Oklahoma 73102
Telephone (405) 280-7700
Fax (405) 280-7742

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA**

Oklahoma Department of Securities)	
ex rel. Irving L. Faught,)	
Administrator,)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	
Bothwell Consulting, LLC, an Oklahoma)	
LLC; Lawrence G. Bothwell, an individual;)	
Christopher S. VonWerder, an individual;)	
and Tommy L. Richardson, an individual,)	
)	
Defendants,)	
)	
and)	
)	
Amy J. Richardson, an individual,)	
)	
Defendant Solely For)	
Purposes of Equitable Relief.)	

AFFIDAVIT

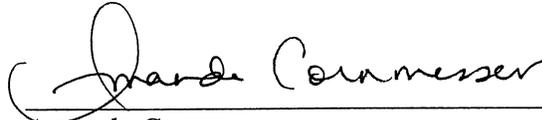
STATE OF OKLAHOMA)
) SS.
COUNTY OF OKLAHOMA)

Amanda Cornmesser, of lawful age, being first duly sworn deposes and says:

1. I am an Attorney for the Oklahoma Department of Securities.
2. I have prepared and filed in the District Court of Oklahoma County, the Plaintiff's Application for a Temporary Restraining Order, Asset Freeze, and Order for Accounting, ("Plaintiff's Motion") and know the contents thereof.

3. I have no knowledge that Bothwell Consulting, LLC, Lawrence G. Bothwell, Christopher S. Von Werder, Tommy L. Richardson, or Amy J. Richardson are represented by counsel.

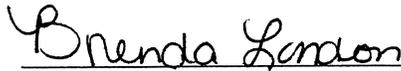
Further affiant sayeth not.



Amanda Cornmesser
Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, Oklahoma 73102
(405) 280-7700

Subscribed and sworn to before me this 24th day of July, 2009.

(NOTARIAL SEAL)



Notary Public

