

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

DEC 16 2011

PATRICIA PRESLEY, COURT CLERK
BY _____ DEPUTY

Oklahoma Department of Securities)
ex rel. Irving L. Faught,)
)
Plaintiff,)
)
v.)
)
The Bank of Union, John Shelley,)
Mike Braun, and Timothy Headington,)
)
Defendants.)

Case No. CJ-2011-2277

HEARING SET FOR
1/4/12 @ 1:30 P.M.

**MOTION FOR WRIT AND COMMISSION
TO TAKE DEPOSITION OUT OF STATE**

Plaintiff, Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator, (the "Department") respectfully moves the Court, pursuant to 12 O.S. § 3228, to issue a writ and commission to take the deposition upon oral examination of Timothy Headington, a resident of the state of Texas.

1. On September 22, 2010, an administrative proceeding (the "Administrative Proceeding") was initiated by the Department against Geary Securities, Inc. f/k/a Capital West Securities, Inc; Keith D. Geary; Norman Fragar; and CEMP, L.L.C. (collectively, the "Respondents") under the Oklahoma Uniform Securities Act of 2004 ("Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2009) and 660:2-9-1 of the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (the "Rules").

2. On October 15, 2010, Respondents requested a hearing.

3. On November 9, 2010, Respondents' request for a hearing was granted and a hearing officer ("Hearing Officer") was appointed.

4. On February 14, 2011, and pursuant to Section 1-602(B) of the Act, an administrative subpoena was issued by the Hearing Officer on behalf of Respondents Geary Securities, Inc. f/k/a Capital West Securities, Inc ("GSI") ; Keith D. Geary ("Geary") to Timothy Headington, a resident of the state of Texas (the "Headington Subpoena"). The Headington Subpoena required his appearance for an oral deposition in connection with the Administrative Proceeding. Timothy Headington is not a party or respondent in Administrative Proceeding.

5. Timothy Headington failed to appear.

6. On April 6, 2011, the Administrator filed an *Application for Order Enforcing Subpoenas and Authority in Support* (the "Application"). Among other items, the Application sought direct judicial enforcement of the Headington Subpoena. On July 21, 2011, the Court declined to extend the jurisdictional reach of the Headington Subpoena beyond the boundaries of the state of Oklahoma.

7. Section 3228 of the Oklahoma Discovery Code addresses and permits the taking of depositions outside of the state of Oklahoma through the issuance of a mandate, writ and/or commission by the Court. Section 3228 provides in pertinent part:

B. DEPOSITIONS TAKEN OUTSIDE OF OKLAHOMA. Depositions may be taken outside of Oklahoma:

1. On notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of this state; or
2. Before a person commissioned by the court, and a person so commissioned shall have the power by virtue of his commission to administer any necessary oath and take testimony; or
3. Pursuant to a letter rogatory.

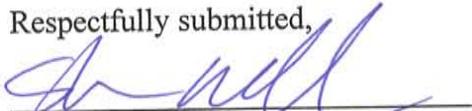
8. Rule 201.2 of the Texas Rules of Civil Procedure, *Tex Rev. Civ. Stat. Ann.*, §9, *Rules 201.2* (West 2010), specifically addresses the taking of a deposition in Texas for use in proceedings in foreign jurisdictions and states:

"If a court of record of any other state or foreign jurisdiction issues a mandate, writ or commission that requires a witness's oral or written deposition testimony in this State, the witness may be compelled to appear and testify in the same manner and by the same process used for taking testimony in a proceeding pending in this State."

9. In furtherance of the procedures established above, attached hereto as exhibit "A" is a subpoena issued by the Hearing Officer to Timothy Headington requiring his appearance for an oral deposition.

Plaintiff respectfully requests that the Court issue a writ requiring Headington appearance for a deposition upon oral examination and that the Court commission a court reporter, licensed in Texas, to transcribe the examination.

Respectfully submitted,


Shaun M. Mullins (OBA#16869)
Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, Oklahoma 73102
Telephone (405) 280-7700
Fax (405) 280-7742
SMullins@securities.ok.gov
Attorney for Plaintiff

John J. Shirger, Esq.
Matthew W. Lytle, Esq.
MILLER SCHIRGER, LLC
4520 Main Street, Suite 1570
Kansas City, MO 64111
(816) 561-6500 - General
(816) 561-6501 - Fax
www.millerschirger.com
mlytle@millerschirger.com
Attorneys for Defendants

CERTIFICATE OF MAILING

The undersigned certifies that on the 16th day of December, 2011, a true and correct copy of the foregoing was mailed to:

John J. Shirger, Esq.
Matthew W. Lytle, Esq.
MILLER SCHIRGER, LLC
4520 Main Street, Suite 1570
Kansas City, MO 64111
Attorneys for Defendants



Shaun M. Mullins

STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
FIRST NATIONAL CENTER, SUITE 860
120 NORTH ROBINSON
OKLAHOMA CITY, OKLAHOMA 73102

In the Matter of:

Gearly Securities, Inc. *aka* Capital West Securities, Inc.;
Keith D. Geary; Norman Frager; and CEMP, LLC,

Respondents.

File No. 09-141

SUBPOENA

To: Timothy Headington
3515 Crescent Avenue
Dallas, TX 75205

IN THE NAME OF THE STATE OF OKLAHOMA, and pursuant to Section 1-602(b) of the Oklahoma Uniform Securities Act of 2004, Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2010), and Rules 660:2-9-3(b) and 660:2-9-4 of the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (as amended July 1, 2007), **YOU ARE COMMANDED TO APPEAR AND TESTIFY** in an oral deposition in the referenced matter at the offices of Henjum Goucher Reporting at 2501 Oak Lawn Avenue, #600, Dallas, Texas 75219 on **Wednesday, January 18, 2012 at 9:00 a.m.** You have the right to consult with and be represented by counsel in connection with this matter. The deposition may be recorded by audio visual means.

Witness my Hand and the Official Seal of the Oklahoma Department of Securities this
1st day of December, 2011.

(SEAL)



BRUCE R. KOHL, HEARING OFFICER

EXHIBIT

A

Requested By:

Shaun Mullins (OBA #16869)
Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, OK 73102
Phone: (405) 280-7700
Facsimile: (405) 280-7742
Email: smullins@securities.ok.gov

On behalf of and pursuant to
the previous requests of:

Respondents, Geary Securities, Inc. *fka* Capital West Securities, Inc.;
Keith D. Geary; Norman Frager; and CEMP, LLC,

CERTIFICATE OF SERVICE

I hereby certify that on December _____, 2011, a copy of the foregoing document was served on the following by email and mail:

John Schirger
Miller Schirger, LLC
4520 Main Street, Suite 1570
Kansas City, MO 64111
jschirger@millerschirger.com

Mr. Bruce R. Kohl
Hearing Officer
201 Camino del Norte
Santa Fe, NM 87501
bruce.kohl09@gmail.com

Joe M. Hampton, Esq.
Amy J. Pierce, Esq.
A. Ainslie Stanford II, Esq.
Corbyn Hampton, PLLC
211 North Robinson, Suite 1910
Oklahoma City, OK 73102
JHampton@Corbynhampton.com

Donald A. Pape, Esq.
Donald A. Pape, PC
401 W. Main, Suite 440
Norman, OK 73069
don@dapape.com

Susan E. Bryant
Bryant Law
P.O. Box 596
Camden, ME 04843
sbryant@bryantlawgroup.com

Shaun Mullins