

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

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

DEC 16 2011

PATRICIA PRESLEY, COURT CLERK
By _____
DEPUTY

Case No. CJ-2011-2277

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

MOTION TO ADD NECESSARY PARTY

Plaintiff, Oklahoma Department of Securities, *ex rel.* Irving L. Faught, Administrator (the "Department"), hereby moves, pursuant to 12 O.S. § 2019, that Geary Securities, Inc. f/k/a Capital West Securities, Inc and Keith D. Geary, be added as a party plaintiff in this action.

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") and 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 Subpoena's 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. Contemporaneous with the filing of this *Motion to Add Necessary Party*, Plaintiff has filed a *Motion for Writ and Commission to Take Deposition Out of State* (the "*Motion for Writ*"). The *Motion for Writ* requests, pursuant to 12 O.S. 3228(B), that the Court issue a writ requiring the appearance of Timothy Headington for an oral deposition in the state of Texas. The writ would be effected through the procedure established by Rule 201.2 of the Texas Rules of Civil Procedure, *Tex Rev. Civ. Stat. Ann.*, §9, *Rule 201.2* (West 2010).

8. Attached as exhibit "A" to the *Motion for Writ* is a subpoena requiring the appearance for the deposition of Timothy Headington.

9. 12 O.S. §2019, provides in pertinent part:

A. PERSONS TO BE JOINED IF FEASIBLE. A person who is subject to service of process shall be joined as a party in the action if:

1. In his absence complete relief cannot be accorded among those already parties; or
2. He claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may:
 - a. as a practical matter, impair or impede his ability to protect that interest, or
 - b. leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

10. GSI and Geary are both subject to service of process in the state of Oklahoma. Geary is a resident of the state of Oklahoma. GSI maintains its principal place of business in the state of Oklahoma and is registered as a broker-dealer under the Act. As a broker-dealer registered under the Act, GSI has consented to service of process.

11. GSI and Geary clearly have an interest relating to the subject of this action. The appearance of Timothy Headington for an oral deposition, in connection with the Administrative Proceeding, is being sought by the Respondents, *not* by the Department.

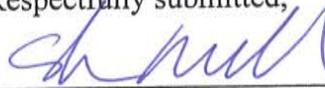
12. Unlike civil actions in which the subpoena power of the Court is delegated, no such delegation of subpoena power is contained in the Act or within the provisions of the Rules relating to administrative proceedings. A respondent in an administrative proceeding initiated under the Act must request the issuance of a subpoena

and only the Administrator or a designated hearing officer may issue a subpoena under the Act. *See Okla. Stat. tit. 71, § 1-602(B) and 660:2-9-4 of the Rules.*

13. In addition to having requested the issuance of the subpoena for the testimony of Timothy Headington, Respondents have argued on numerous occasions during the course of the Administrative Proceeding that the deposition of Timothy Headington is necessary and critical to their defense. As such, Respondents are uniquely able to articulate to the Court why the testimony would be relevant and should be present to protect their interests in obtaining their requested deposition.

The Department respectfully requests that the Court join GSI and Geary as party plaintiffs.

Respectfully submitted,



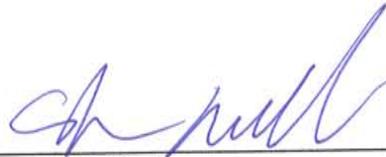
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CERTIFICATE OF MAILING

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

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