

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

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

vs. )

Case No. CJ-2014-4515

Seabrooke Investments, LLC, an )  
Oklahoma limited liability company: )  
Seabrooke Reality, LLC, an )  
Oklahoma limited liability company: )  
Oakbrooke Homes, LLC, an )  
Oklahoma limited liability company: )  
Bricktown Capital, LLC, an )  
Oklahoma limited liability company: )  
KAT Properties, LLC, an )  
Oklahoma limited liability company: )  
Cherry Hill, LLC, an Oklahoma limited )  
liability company doing business as )  
Cherry Hill Apartments: )  
Tom W. Seabrooke, individually and as )  
trustee of Tom Seabrooke 2007 Revocable )  
Trust and J. Karyn Seabrooke 2007 Revocable )  
Trust: )  
Judith Karyn Seabrooke, individually and as )  
trustee of Tom Seabrooke 2007 Revocable )  
Trust and J. Karyn Seabrooke 2007 Revocable )  
Trust )  
 )  
Defendants )

**FILED IN DISTRICT COURT  
OKLAHOMA COUNTY**

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TIM RHODES  
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**DEFENDANT'S OBJECTION TO OKLAHOMA DEPARTMENT OF SECURITIES'  
MOTION TO RETAIN COMMISSION FOR SALE OF PROPERTY  
AND  
BRIEF IN SUPPORT**

On November 4, 2014, the Oklahoma Department of Securities filed a Motion to Retain Commission for Sale of Property. This Motion is filed subsequent to two rulings of the Court allowing Judith Karyn Seabrooke (Karyn Seabrooke) to continue to be employed by the receiver and

setting the guidelines for that employment. Nothing has changed since either order was issued. The Oklahoma Department of Securities' Motion to Retain Commission for Sale of Property is based upon unproven factual allegations and conclusions and should be overruled.

### **BACKGROUND**

On September 9, 2014, this Court found that Karyn Seabrooke should be compensated for past efforts on behalf of the Receiver and that she receive a fee of one-half (1/2) of a regular realtor's fee for the sale of properties. (See: transcript of 9-9-14 hearing page 34, line 1-7).

In a separate hearing on October 14, 2014, this Court again found that Karyn Seabrooke should be compensated in the amount of one-half (1/2) of a regular realtor's fee for the sale of properties with specific reference to Cherry Hill. This Court specifically referenced the sale and commission on the Cherry Hill property in that hearing. "So even on Cherry Hill I'm not so certain that I still don't think she's entitled to her 3 percent because she brought the buyer to the table in addition to just listing the property" (See: transcript of 10-14-14 hearing page 68, lines 21-24) This Court further explains that if Karyn Seabrooke did not bring the buyer to the table that the Cherry Hill property may have not been sold.

Since the hearing on October 14, 2014, Karyn Seabrooke has continued to preform the duties of a Realtor and has closed the sale of the Cherry Hill Apartments and other property and has obtained contract now pending on seven (7) more properties under the authority granted to her by this Court. She has continued to aid the receivership, by continuing to represent the receivership in the sale of these properties, with a significantly reduced commission.

### **ARGUMENT AND AUTHORITIES**

The Securities Department in its Motion to Retain Commission for Sale of Property has stated in case where the liabilities will likely exceed the assets, it is a important public interest to

preserve all assets of the receivership, and that public interest is not fulfilled if Karyn Seabrooke is allowed to receive the one-half (1/2) of the usual realtor's fee which the Court has ordered her to receive in two different hearings.

This conclusion is not based in fact and flawed in three primary ways. First, the Securities Department stated in the Petition for Permanent Injunction and Other Relief, that the total amount of Investors funds totals in excess of Four Million Dollars (\$4,000,000). This amount was restated in the Emergency Motion to Remove Defendants Tom W. Seabrooke and J. Karyn Seabrooke from Employment as Five Million Dollars (\$5,000,000); then again restated at Four Million Dollars (\$4,000,000) in the Motion to Retain Commission for Sale of Property. The amount varies and does not include monies that have already been used to repay investors. Claims have yet to be even solicited. Additionally, Mr. Leonard, the receiver, testified in the October 14, 2014 hearing that based upon the list value of the properties owned by the Seabrookes, the value is approximately \$5.2 million, "so there is money in this receivership to repay investors." (See: transcript of 10-14-14 hearing page 48, lines 1-9). It is premature to state that the receivership does not contain the assets to repay investors, particularly when claims have not yet been made.

Secondly, the Securities Department has failed to recognize the reduced commission Mrs. Seabrooke is entitled to receive is a benefit - not a detriment to the receivership. Mrs. Seabrooke has continued to work toward the best interests of the receivership by using the skills that she possesses as a realtor to broker deals to increase the amount of liquid assets of the receivership, at a significantly reduced fee then she would receive if she left and began her own business. Neither the Securities Department nor the Receiver have provided another entity or person that will agree to work for this reduced fee, ultimately providing for a higher commission realized by the receivership. Additionally, it is difficult to quantify the value of the particular and specialized knowledge

possessed by Mrs. Seabrooke regarding the properties owned, leased and maintained by Seabrooke Realty, LLC. Mrs. Seabrooke has not been ordered to work for the receivership and a reduced commission. However, she has accepted this reduced fee, in lieu of taking her skills elsewhere, in order to assist the receivership in preserving the assets and generating funds to repay everyone.

Finally, the Securities Department has failed to state any specific allegations against Karyn Seabrooke. All allegations against Mrs. Seabrooke surround a joint account, there is no allegation that Karyn Seabrooke sold securities or actively participated in any act of fraud. However, they maintain that her “acts” (to which there is no evidence and no specific allegation) constitute enough of a public interest inquiry to warrant her to not be compensated for work done. This Court has opined and ordered twice that Mrs. Seabrooke is not to work for free, and that she is entitled to fair compensation at the rate of one-half (1/2) her normal commission. The Securities Department by its Motion to Retain Commission for Sale of Property is in effect attempting to create an indentured servitude for Mrs. Seabrooke for “debts owed”, without evidence of the amount of debt or that those debts are owed by her. Mrs. Seabrooke is entitled to be compensated for work performed and under the Orders of this Court.

None of the cases cited by the Securities Department, provide precedent for retaining a commission previously authorized by the Court, twice. Nor have they established a factual basis for retention of the commission. Therefore, the Motion to Retain Commission for Sale of Property should be dismissed.

#### **REQUEST FOR EXPEDITED RELIEF**

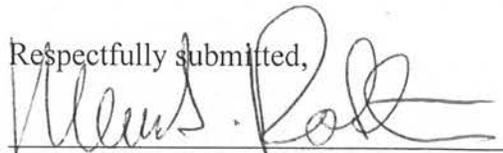
Karyn Seabrooke requests for relief to be expedited due to financial hardship. Karyn Seabrooke has continued to work at a reduced fee, expecting that fee to be paid. She has not supplemented her income by seeking employment or having listings elsewhere. The income she is

entitled to receive, and that this Court has ordered her to receive, twice, is necessary to pay her living expenses.

### CONCLUSION

The Motion to Retain Commission for Sale of Property is lacking a foundation and basis in law as well as in fact and should be dismissed. Karyn Seabrooke has preformed her duty as a realtor and broker under the guidelines and order of this Court, and is entitled to just compensation. This Court has decided the Motion brought by the Securities Department on two separate occasions, both with the same outcome: that Karyn Seabrooke is entitled to receive a reduced commission of one-half (1/2) of her normal commission. This Court has specifically opined on the commission for the Cherry Hill property. There is no basis to sustain the Motion of the Securities Department, as it is based on conclusions without evidence or foundation in law. Karyn Seabrooke requests that she be awarded attorneys' fees for fees incurred due to this motion pursuant to 12 O. S. § 941, which authorizes a defendant in a civil action brought by a state department to recover reasonable attorneys fees if the court determines the action was "brought without reasonable basis or is frivolous." The Motion to Retain the Commission is without basis and frivolous and has been determined a fair commission by this Court, twice.

Respectfully submitted,



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**CERTIFICATE OF MAILING**

This is to certify that on this 14<sup>th</sup> of November, 2014 a true and correct copy of the

above and foregoing was mailed to:

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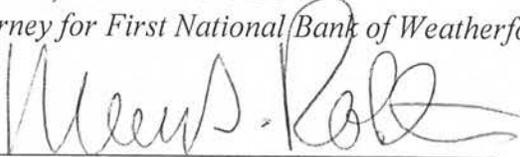
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Mark A. Robertson



1           I will pay Ms. Seabrooke her \$2,500 plus -- is it a  
2 3 percent commission?

3           MR. ROBERTSON: One-half of whatever the commission  
4 is.

5           THE COURT: And this is on the property that I  
6 approved the sale for?

7           MR. ROBERTSON: Yes.

8           MR. HAYNES: That was the question.

9           THE COURT: I recently approved -- where was the  
10 property at, again? Cushing? I approved the sale of a home  
11 for, like, 95,000 in Cushing.

12          MR. LEONARD: That's correct, your Honor. The  
13 property is at 917.

14          MR. HAYNES: I thought I would just ask.

15          THE COURT: Okay. So that's what I will approve  
16 for the past. Now, for the future, do we even need  
17 Mr. Seabrooke, other than his real estate license, for  
18 anything?

19          MR. LEONARD: Your Honor, if I may just ask a  
20 question of clarification. On the \$4,000, does that come  
21 from the \$40,000 that Bricktown Capital is retaining?

22          THE COURT: Yes. Not from the -- not from what --  
23 well, yes. Their monies. well, it is their money anyway,  
24 right?

25          MR. LEONARD: Your Honor, under the agreement,



1 MS. LABARTHE: Yes, your Honor.

2 THE COURT: Okay. All right. I'm just so  
3 struggling with this because I understand the equitable  
4 arguments of the -- but it just seems like the most  
5 important thing is to get the most money into their hands.  
6 And I just -- I'm just leaning towards -- I mean, it is  
7 another \$65,000 or \$75,000. If nothing else that pays the  
8 receiver for part of its work.

9 So I'm -- I will tell you what I'm inclined -- and  
10 I don't know what Ms. Seabrooke's -- Mr. Robertson, what  
11 your position would be on this. The 3 percent on the larger  
12 properties is -- but that is still when there is no one else  
13 involved. But then I keep thinking, too, on the Cherry Hill  
14 property if they didn't bring the buyer to the table Cherry  
15 Hill may be sitting there forever.

16 Because the ones that I think they truly have the  
17 best input and help to this receivership is when they bring  
18 the buyer to the table. Because I don't care who lists it.  
19 I could list it, and if someone else is going to bring me  
20 the buyer, you know, I really haven't had to do a whole lot.  
21 So even on Cherry Hill I'm not so certain that I still don't  
22 think she's entitled to her 3 percent because she brought  
23 the buyer to the table in addition to just listing the  
24 property.

25 Because I think there is no doubt that Urbanworks

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Oklahoma Department of  
Securities, ex. rel., Irving L.  
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Seabrooke Investments, LLC, an  
Oklahoma limited liability  
company, et al.,  
Defendants.

**COPY**

Case No. CJ-2014-4515

\* \* \* \* \*

TRANSCRIPT OF PROCEEDINGS  
HAD ON THE 14TH DAY OF OCTOBER, 2014  
BEFORE THE HONORABLE PATRICIA G. PARRISH,  
DISTRICT JUDGE

Reported by: Karen Twyford, RPR

1 value, based upon list values provided by the Seabrookes, if  
2 you look at their entire portfolio it is \$5.2 million in  
3 list value. So, obviously, we won't sell everything for  
4 \$5.2 million, but there is some number that we will and we  
5 think those are competitively priced, and there is value in  
6 these properties.

7           There is roughly \$2.3 million in mortgages, so  
8 there is equity in these properties, so there is money in  
9 this receivership to repay investors. As Mr. Robertson  
10 pointed out, if you just look at the numbers, the numbers  
11 with Mrs. Seabrooke are more favorable than hiring an  
12 outside broker, even though the outside broker -- both  
13 brokers have -- one quote is lower than the other, but both  
14 have taken a discount off the standard.

15           So I've not felt like it was my role to make a  
16 determination as to whether or not the Seabrookes stay in or  
17 go. I can tell you that I feel very confident that we,  
18 regardless of who is there, we have a very tight fist on the  
19 finances of these businesses. And, you know, no money is  
20 going to go anywhere that it shouldn't go.

21           So I guess the answer to the question is I don't  
22 know that it is my place to have a position. I can work  
23 with Mrs. Seabrooke, or I can work with an outside broker.

24           THE COURT: Thank you. Mr. Robertson.

25           MR. ROBERTSON: Just a few questions, your Honor,