

IN THE DISTRICT COURT IN AND
FOR OKLAHOMA COUNTY, OKLAHOMA

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

SOUTHEAST INVESTMENTS, N.C. INC.,)
A NORTH CAROLINA CORPORATION; and)
FRANK H. BLACK,)
)
Plaintiffs/Petitioners,)
)
vs.)
)
THE STATE OF OKLAHOMA *ex rel.*)
THE OKLAHOMA SECURITIES COMMISSION)
)
Defendant/Respondent.)

OCT 26 2015
TIM RHODES
COURT CLERK
31_____

Case No. CV-2015-86

RESPONSE TO PETITIONERS' MOTION FOR A STAY AND EXPEDITED RULING

Petitioners Frank H. Black (Black) and Southeast Investments, N.C., Inc. (Southeast) (collectively, the "Petitioners") move this Court for a stay of this District Court proceeding and for an expedited ruling on their motion (Motion). This Motion should be denied in its entirety.

Arguments

Courts will look at four factors to determine whether to grant a stay in an appeal: 1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; 2) the likelihood that the moving party will suffer irreparable injury unless the stay is granted; 3) whether granting the stay will result in substantial harm to the other parties; and 4) the effect of granting the stay upon the public interest. *See Lang v. Lang*, 414 F.3d 1191, 1201 (10th Cir. 2005). Petitioners fail to provide any legal authority in support of the Motion and fail to address any one of the factors cited above. Petitioners do raise judicial economy and saving time and resources as incentives to staying this matter. Respondent, however, finds this sole argument to be disingenuous considering all that has transpired since the commencement of this action in 2013.

Petitioners will not suffer any harm.

Petitioners have not and will not suffer irreparable harm if the stay is not granted. Petitioners have been ordered to cease and desist from violating the Oklahoma Securities Act and certain of the rules adopted and promulgated thereunder. A cease and desist order is simply an order of an administrative agency prohibiting a course of conduct that violates a statute or a rule. *See Precious Metals Associates v. Commodity Futures Trading Commission*, 620 F.2d 900 (1st Cir. 1980). The Commission's Order does not prevent Petitioners from doing business as a broker-dealer; it merely mandates that they be in compliance with Oklahoma securities laws when conducting their business in this state.

A stay is not warranted.

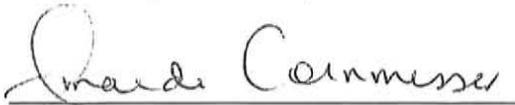
Petitioners incorrectly argue that a ruling at the Supreme Court will bind this Court. Section 1-609(B) of the Act states an appeal by a person aggrieved by a final cease and desist order of the Commission shall be taken to the district court of Oklahoma County. Petitioners filed their appeal of the cease and desist order with this Court. Petitioners simultaneously filed an appeal **limited** to the imposition of the \$5,000 monetary penalty with the Oklahoma Supreme Court as authorized by the Oklahoma Uniform Securities Act of 2004 (Act), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (2011). Respondents agree with Petitioners that the facts and law are primarily the same in both appeals; however, the sanctions the Commission seeks are clearly different. "In order to authorize a stay of proceedings on the grounds of another action pending the two actions must present a substantial identity as to parties, subject matter, issues involved and *relief demanded* so that the trial of one will effectually dispose of the other." (Emphasis added). *See Farmers' Co-op. Gin Co. v. Harper*, 1928 OK 224. Because the appeal at the Oklahoma Supreme Court is limited to the monetary penalty, this Court will still be left with the

determination of whether the Petitioners should remain subject to the cease and desist order of the Commission.

CONCLUSION

Respondent respectfully requests that the Court deny the Petitioner's Motion in its entirety and proceed with the hearing on the merits on October 28, 2015, at 9 a.m.

Respectfully Submitted,



Jennifer Shaw, OBA #20839

Amanda Cornmesser, OBA #20044

Oklahoma Department of Securities

204 North Robinson, Suite 400

Oklahoma City, OK 73102

Telephone: (405) 280-7700

Facsimile: (405) 280-7742

jshaw@securities.ok.gov

acornmesser@securities.ok.gov

Attorneys for Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 26th day of October, 2015, a true and correct copy of the above and foregoing *Response to Petitioners' Motion (1) For a Stay, or, in the Alternative, for Deferral of Ruling on Appeal from Agency Action Pending Appellate Court Ruling; and (2) for Expedited Ruling on this Motion* was mailed with postage prepaid thereon, addressed to:

Patrick O. Waddel, OBA #9254
J. David Jorgenson, OBA #4839
Sneed Lang PC
1700 Williams Center Tower
One W. 3rd Street
Tulsa, OK 74103-3522
*Counsel for Southeast Investments, N.C. Inc.
and Frank H. Black*