

FILED
SUPREME COURT
IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

JAN 8 2003

MICHAEL S. RICHIE
CLERK

OKLAHOMA DEPARTMENT OF SECURITIES,)
ex rel., IRVING L. FAUGHT, ADMINISTRATOR)
)
Plaintiff/Appellee,)

v.)

ACCELERATED BENEFITS CORPORATION;)
C. KEITH LaMONDA; AMERICAN TITLE)
COMPANY OF ORLANDO; and)
DAVID PIERCEFIELD,)
)
Defendants/Appellants)

v.)

TOM MORAN,)
)
Court-Appointed Conservator/)
Appellee.)

Case No. 98663
Oklahoma County
Case No. CJ-99-2500-66

RESPONSE TO PETITION IN ERROR

Is appellee willing to participate in an attempted settlement of the appeal by predecisional conference under Rule 1.250?

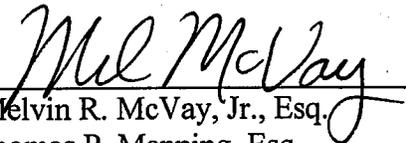
_____ Yes X No

Attached as Exhibit "A" is the statement of the case by Appellee/Conservator Tom Moran.

In accelerated appeals from orders granting motion for summary judgment or motion to dismiss **only** appellee shall also file concurrently with response any supplement to record on accelerated appeal. See Rule 1.36.

DATE: January 8 , 2003.

Verified by:


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CERTIFICATE OF MAILING TO ALL PARTIES AND COURT CLERK

I hereby certify that a true and correct copy of the Response to Petition in Error was mailed this 8th day of January, 2003, by depositing it in the U.S. Mails, postage prepaid, to:

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Attorney for Plaintiff/Appellee
Oklahoma Department of Securities

With a copy hand delivered to
the Honorable Daniel L. Owens

I further certify that a copy of the Response to Petition in Error was mailed to, or filed in, the Office of the Court Clerk of the Oklahoma County., Oklahoma City, Oklahoma 73105, on the 8th day of January, 2003.



A handwritten signature in cursive script, appearing to read "Michael McDay", is written over a horizontal line.

EXHIBIT A - SUMMARY OF THE CASE

On February 6, 2002, the District Court entered an Order Appointing Conservator and Transferring Assets (the "Order"). Appellants, found liable for defrauding unsophisticated elderly investors, participated in the drafting and agreed to the terms of the Order to avoid offering restitution to their defrauded investors. On August 21, 2002, Appellants moved the District Court to construe the Order for the purpose of attempting to avoid paying premium shortfalls due on certain viatical policies. On August 30, 2002, the Conservator moved the Court for an order assessing fees and expenses against Appellants pursuant to the Order. The parties both argued that the Order was clear and unambiguous. The Order states in pertinent part:

ABC [shall] pay and maintain all office expenses, salaries, and other costs of the Conservatorship until at least seventy-five percent (75%) of all Conservatorship Assets have been transferred to the Conservator.

After hearing the parties' motions, the District Court found that its Order was "clear and unambiguous," and that it intended for Appellants to pay all costs of the Conservatorship, including premiums, until 75% of the Conservatorship Assets were transferred to the Conservator. The District Court found that Appellants had not shown that 75% of the Conservatorship Assets had been transferred and that Appellants remained responsible for paying premiums shortfalls and all Conservatorship expenses approved by the Court through November 1, 2002. On October 17, 2002, the Conservator filed his motion to settle journal entries. The motion to settle was sustained by the Court on November 15, 2002. The journal entries were executed and filed with the Court Clerk on November 20, 2002.

This appeal is improper because the District Court did not open or vacate the Order under 12 O.S. §993(A)(7) and its decision is not otherwise appealable by right. Appellee, therefore, respectfully requests that this Court dismiss this appeal.