IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
CIVIL DIVISION

A. HEATH ABSHURE, ARKANSAS SECURITIES COMMISSIONER

Plaintiff,

v.

CV09- 5346-6

Case No.

CLEAN TECHNOLOGY INTERNATIONAL CORPORATION; DIAMOND CAPITAL CLEAN TECHNOLOGY INTERNATIONAL CORPORATION; DIAMOND CAPITAL CORPORATION; WILLIAM DARRELL LAINHART, INDIVIDUALLY, AND AS TRUSTEE OF CAPITAL HERITAGE IRREVOCABLE TRUST AND CAPITAL HERITAGE REVOCABLE TRUST; IRENE M. F. LAINHART; REX ROBERTSON; AND JAMES STEAD, JR.

Defendants

and

CAPITAL HERITAGE IRREVOCABLE TRUST AND CAPITAL HERITAGE REVOCABLE TRUST

Relief Defendants

MEMORANDUM BRIEF IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND ORDERS PROHIBITING THE DESTRUCTION OF DOCUMENTS AND EVIDENCE; FREEZING ASSETS; APPOINTING A RECEIVER; AND ORDERING ACCOUNTINGS

The plaintiff, A. Heath Abshure, Arkansas Securities Commissioner (Commissioner), charged with administration of the Arkansas Securities Act (Act), codified at Ark. Code Ann. § 23-42-101 *et seq.* (Repl. 2000) , seeks injunctive relief and ancillary relief, including a temporary restraining order, orders preventing the destruction and spoliation of evidence, freezing of assets, disgorgement, ordering accountings and other emergency relief pursuant to Ark. Code Ann. § 23-42-209 (Repl. 2000). The plaintiff seeks this equitable and emergency relief in an effort to rectify damage that has occurred to investors in the past through the defendants' violations of the Act and to prevent further damage by future violations. Accordingly, the plaintiff seeks this relief and

these remedies without prior notice to the defendants pursuant to Ark.R.Civ.P. 65(a)(1) to prevent dissipation of assets and destruction and spoliation of evidence.

STATEMENT OF FACTS

The plaintiff seeks injunctive relief and relief ancillary thereto for flagrant violations of the Act. In a nutshell, the plaintiff alleges the sale of unregistered securities by unregistered persons effected by means of securities fraud over a long period of time. A large amount of money was raised by these sales, approximately $12.8 million.

DEFENDANTS

Clean Technology International Corporation (CTIC) was originally incorporated in Texas in 1993. Irene M. F. Lainhart (I. Lainhart) incorporated Diamond Capital Corporation (DCC) in 1986 in Arkansas. I. Lainhart is the sole shareholder, and William Darrell Lainhart (D. Lainhart) is the sole director, chairman of the board and its managing consultant. DCC is now a subchapter S corporation operated by and for the benefit of the Lainharts. By means of the settlement of a lawsuit by DCC, the Lainharts, through their ownership and control of DCC, acquired majority ownership and control of CTIC in June 1998. The address for all these defendants is the address of the Lainharts, who are married, in Sherwood, Arkansas.

Eventually, on December 31, 2002, CTIC, the Texas corporation, was merged into a Nevada corporation by the same name. CTIC has been a Nevada corporation since that date.

These two corporations and these two individuals are the primary defendants, and D. Lainhart was the primary actor in events that spawned this litigation. Two other defendants play a more minor role.

Rex Robertson is a resident of Arkansas who resides at 281 River Ridge Point, Little Rock. Unregistered in any way in the securities industry pursuant to the Act, (Certification of A. Heath Abshure, Exhibit 9), Robertson purchased 3,645,000 shares of CTIC common stock

(stock) through his company, River Ridge Investments, Inc., and resold most of it.

James Stead, Jr., registered as a broker-dealer agent of Birkelbach Investment Securities, Inc., in Chicago, Illinois, but unregistered in any capacity in Arkansas pursuant to the Act, (Certification of A. Heath Abshure, Exhibit 9), acted as an agent of CTIC by selling CTIC stock, mostly in the Chicago area. He sold this CTIC stock off the books of his employer, and he was indirectly paid commissions for his sales.

RELIEF DEFENDANT and OTHER RELEVANT ENTITY

Capital Heritage Irrevocable Trust (CHIT) is an irrevocable trust established under Arkansas law in 1997, by I. Lainhart. The trustee of CHIT is D. Lainhart. It appears that CHIT has received money securities– including CTIC stock– and other property from the defendants, D. Lainhart and I. Lainhart.

Diamond Capital Corporation of Texas (DCC-TX) was incorporated in Texas by D. Lainhart and I. Lainhart in 1998. In August 2000, its charter was forfeited. Nevertheless, bank accounts in DCC-TX's name were maintained well past the date of dissolution and active until some time in 2003. The Lainhart defendants acted as if it were a corporation in good standing for some time after it was dissolved by the Texas Secretary of State.

WILLIAM DARRELL LAINHART'S PAST

D. Lainhart's history in the securities business is long and marked by several instances of conduct that would be material to any prospective investors.

1) In 1989, D. Lainhart settled a complaint filed by the National Association of Securities Dealers (NASD), now known as the Financial Industry Regulatory Authority (FINRA) concerning Delta Financial Investment Corporation (Delta), a broker-dealer selling mostly municipal bonds which D. Lainhart ran as the registered principal, chief executive officer, president and chairman of the board. Most of the complaint concerned Delta's having fallen

below the required minimum net capital requirement, but it was made more serious because several of the agents of Delta fraudulently tried to hide a customer's losses by tampering with the records. Although D. Lainhart was not personally found guilty of the record tampering, he was censured, fined $7,500 and suspended for four months and Delta was fined $50,000, censured and expelled. Expulsion means put of out business. D. Lainhart has not been registered in any capacity in the securities industry since then. (FINRA Order, Exhibit 10)

2) On August 12, 1986, the Commissioner held D. Lainhart responsible for Delta's violation of the mark-up guidelines of the Arkansas Securities Department (Department). Delta was fined $20,000, and D. Lainhart was sent a letter of caution. (ASD Orders, Exhibit 11)

3) In August 1972, D. Lainhart consented to a judgment in Topeka, Kansas, whereby he was permanently enjoined from "engaging in any fraudulent or deceptive advertising practice" and from "engaging in the business of selling securities" in violation of Kansas securities laws and without being properly registered to offer or sell securities pursuant to Kansas securities laws. (Kansas Order, Exhibit 12)

NATURE OF THE CASE

As noted above, the Lainharts acquired control of CTIC in June 1998, by the settlement of a lawsuit against another owner of CTIC and by their ownership and control of DCC and DCC-TX. A great amount of CTIC stock was issued to DCC and DCC-TX and evidenced by the delivery of stock certificates showing blocks of CTIC stock issued to DCC and DCC-TX. Lainhart offered and sold these shares of CTIC stock as well as CTIC stock that had not been sold and issued to any purchaser. It is the sale of this stock and the issues surrounding those sales that form the factual basis of the complaint filed herein.

From 1991 through 2006, DCC and DCC-TX were the recipients of over $8 million in CTIC stock sale proceeds from the sale of shares that had been issued to DCC or DCC-TX. CTIC

was the recipient of over $4.8 million in CTIC stock sale proceeds from the sale of shares of CTIC stock directly to investors. (Hall Affidavit, ¶ 11.f)

CTIC was touted as a company developing two new and innovative technologies. The first new technology was a process to dispose of hazardous waste with the use of a molten aluminum bath. The second new technology was actually a byproduct of the first. CTIC discovered that the waste disposal process also produced carbon nano material. D. Lainhart and others representing CTIC have stated to prospective investors that CTIC holds and/or is applying for many patents on these technologies. (Carroll Affidavit, ¶¶ 4, 10) CTIC had built three small, machines, a mid size machine and eventually built a large, 80,000 pound commercial scale machine. (Carroll Affidavit, ¶ 8)

An initial public offering (IPO) of CTIC stock was never made, and CTIC stock was never listed on any stock exchange or registered with the Act so that it could be legally sold. Nevertheless, D. Lainhart, acting as an agent for both DCC and CTIC, sold shares of CTIC stock to individuals throughout the years by means of material misstatements of fact and omissions of material fact. When selling shares that had been issued to DCC or DCC-TX, D. Lainhart and/or I. Lainhart would execute a stock power located on the back of the stock certificate or in another document to complete the sale.

MATERIAL MISREPRESENTATIONS

D. Lainhart sold stock by means of material misstatements of fact that would fall into four broad categories.

1) STATEMENTS THAT AN INITIAL PUBLIC OFFERING (IPO) WAS IMMINENT, usually within thirty to sixty days, but sometimes as far off as six months or a year to year and one-half. D. Lainhart would make these statements more believable by stating that well known broker-dealers such as Merrill Lynch, Morgan Stanley and Morgan Keegan were going to handle the IPO.

(Cross Affidavit, ¶¶ 4, 6, 12; Carroll Affidavit, ¶ 6; Wardlaw Affidavit, ¶ 4; Wallace Affidavit, ¶ 4; Harris Affidavit, ¶ 2; Strickland Affidavit, ¶ 3; Andrews Affidavit, ¶ 4)

2) STATEMENTS THAT ONCE THE IPO OCCURRED, THE STOCK'S PRICE WOULD BECOME WORTH MUCH, MUCH MORE MONEY, opening in the IPO for $25 and going up to $100 to $200 per share after being purchased for $ .67 to $5 per share. These projections were totally baseless. (Wardlaw Affidavit, ¶ 4; Harris Affidavit, ¶¶ 2, 3, 5; Strickland Affidavit, ¶¶ 3, 4, 6; Andrews Affidavit, ¶ 4)

3) STATEMENTS THAT CTIC HAD CONTRACTS FOR THE USE OF ONE OF THE TWO PROPRIETARY TECHNOLOGIES WITH VARIOUS COMPANIES OR GOVERNMENT ENTITIES, including LG Electronics, Samsung, EADS (the parent company of Airbus), Boeing, the U.S. Army, the U.S. Air Force, the Department of Defense and the Department of Energy. (Cross Affidavit, ¶ 14; Strckland Affidavit, ¶ 6) D. Lainhart made these statements more credible by further stating to some that he was working with governmental officials, such as the governors of Nevada, Ohio and Florida, an Ohio congressman and even officials in the White House. Actually, CTIC had no sales or services contracts that would result in income to CTIC, which is what D. Lainhart implied when he told investors that CTIC had these contracts.

4) STATEMENTS THAT THE MONEY INVESTORS WERE PAYING TO PURCHASE CTIC STOCK WAS BEING PUT INTO CTIC FOR THE BENEFIT OF CTIC TO MAKE IT PROFITABLE, These statements included representations that investment funds were going to be used to 1) prepare an IPO and 2) develop the technologies CTIC owned, including maintaining the few machines CTIC had and building a much larger and commercially feasible one. (Cross Affidavit, ¶¶ 3, 9; Carroll Affidavit, ¶ 11; Wallace Affidavit, ¶ 7)

5) STATEMENTS THAT D. LAINHART WAS ACTING ON BEHALF OF CTIC. In making sales to prospective investors, D. Lainhart represented that he was the chief operating officer or president

of CTIC and led prospective investors to believe that he was acting on behalf of CTIC. It was only when the prospective investors were very close to agreeing to purchase stock or actually writing checks or preparing wire transfers that they learned that the stock D. Lainhart was selling them was CTIC stock that had already been sold to DCC or DCC-TX.

MATERIAL OMISSIONS

DARRELL LAINHART'S PAST. D. Lainhart did not disclose to the vast majority of investors his past disciplinary history in the securities industry or his permanent injunction in Kansas. To the few to whom he did disclose his past, the disclosure was incomplete and misleading, dismissing it as unimportant and portraying himself as the victim of his employees and associates at Delta. (Wardlaw Affidavit, ¶ 11; Andrews Affidavit, ¶ 8)

PERSONAL USE OF INVESTOR FUNDS. D. Lainhart and I. Lainhart did not disclose to investors, all of whom had been led to believe that their purchase money was invested in CTIC for the benefit of CTIC, that he and I. Lainhart would use investor funds paid in for CTIC stock purchases for their own purposes, paying for personal living expenses; maintenance, improvements and upkeep on both real and personal property; antique and new automobile collections; a Winnebago recreational vehicle; heavy farm and construction equipment; securities investments; and to repay indebtedness on their real property assets, including a personal residence in Sherwood, Arkansas (Lainhart Residence); a 2,400 acre parcel of land known as Little Switzerland–a property comprised of partially developed land in Hot Spring and Garland Counties, Arkansas, used for hunting and other recreational purposes and storage of the automobile collection–;an eight acre parcel of land nearby with a house on it; real property located near Malvern, Arkansas (Malvern Property); a twenty-six acre parcel of land with a home on it located at 602 Mt. Carmel Road, Hot Springs, Arkansas (Hot Springs Property); and a 9.4 acre parcel of real property near Austin, Texas, in Bee Caves, Texas, which might have been

used by CTIC, but was an asset of DCC (Bee Caves Property). (Hall Affidavit, ¶ 11.g, 11.h; Cross Affidavit, ¶¶ 9, 16-19)

STOCK SALES AND LOANS ONLY SOURCES OF LAINHART INCOME. D. Lainhart and I. Lainhart also did not disclose to investors that their only sources of income were loans made to them or the corporate defendants and the sale of CTIC stock, the proceeds of which were used to make payments on the loans. (Hall Affidavit, ¶ 11.g, 11.h)

INVESTOR FUNDS NOT USED AS REPRESENTED. D. Lainhart told many investors their money would be used to develop CTIC's products and business but did not disclose that much money used for CTIC business expenses came from other sources and that CTIC is indebted for those expenses now. Three examples are as follows: 1) a debt of over $2 million to a Texas investor for housing CTIC machines, retrofitting and maintaining them and constructing a new, commercial scale machine; 2) a debt of over $600,000 to an Ohio investor for trying to maintain an office in Cincinnati, Ohio and 3) a debt of almost $250,000 to the same investor advanced for five vehicles for CTIC. (Carroll Affidavit, ¶¶ 5, 8, 9)

REX ROBERTSON & ROBERT STEAD

As noted above, neither Robertson, nor Stead were registered pursuant to the Act to sell securities in or from Arkansas, yet they both sold CTIC stock in or from Arkansas, Robertson acting as a broker-dealer and Stead acting as an agent of the issuer, CTIC. In making these sales, both Robertson and Stead made some of the same material misstatements and material omissions D. Lainhart made, as noted above.

VIOLATIONS. Application of the law to the facts shows the following violations, which are set out in the complaint as causes of action:

1) SALE OF UNREGISTERED SECURITIES, ARK. CODE ANN. § 23-42-501. There is no question that the CTIC stock in question was not registered with the Department, as required by Ark. Code

Ann. § 23-42 -501 (Repl. 2000). (Certification of A. Heath Abshure.) The corporate defendants sold by means of their agents, D. Lainhart for both DCC and CTIC and Stead for CTIC. I. Lainhart aided in sales of CTIC stock that had been issued to DCC and DCC-TX by helping D. Lainhart in executing stock powers on behalf of DCC and DCC-TX. Because those sales could not have happened without her assistance, I. Lainhart sold unregistered stock as much as her husband did. Robertson sold unregistered CTIC stock on his own initiative as a broker-dealer.

2) FAILURE TO REGISTER AS AGENT OF THE ISSUER, ARK. CODE ANN. § 23-42-301(A). Stead acted as an agent of CTIC, the issuer of the stock, in that he was paid a commission for sales by CTIC, albeit indirectly. It is undisputed that Stead was not registered as an agent of CTIC in accordance with the Act. (Certification of A. Heath Abshure, Exhibit 9)

3) EMPLOYMENT OF UNREGISTERED AGENT OF THE ISSUER, ARK. CODE ANN. § 23-42-301(B)(1). Stead acted as an unregistered agent of CTIC. CTIC in turn violated the Act by employing an unregistered agent.

4) FAILURE TO REGISTER AS A BROKER-DEALER, ARK. CODE ANN. § 23-42-301(A). Robertson bought CTIC stock, which was issued to him or his company, and he sold much or most of it to others. It is undisputed that neither Robertson, nor his company was registered in accordance with the Act in any way. (Certification of A. Heath Abshure, Exhibit 9).

5) SECURITIES FRAUD: MATERIAL MISSTATEMENTS AND MATERIAL OMISSIONS, ARK. CODE ANN. § 23-42-507(2). The material misstatements and material omissions attributed to D. Lainhart above were also made by both Robertson and Stead in selling CTIC stock. All three committed securities fraud by these misstatements and omissions. CTIC and DCC committed securities fraud through D. Lainhart and Stead, their agents. There can be no doubt that D. Lainhart knew of the falsity of his statements and omissions. It matters not, however, whether Robertson and Stead knew of the falsity of their statements or not. The mere statement of

material misstatements or material omissions is sufficient, and no proof of intent or scienter is necessary. *See Trivectra v. Ushijima, Commissioner*, 112 Hawai'i 90, 144 P.3d 1 (2006) (an exhaustive treatment of this issue in the states with the 1956 Uniform Securities Act).

6) SECURITIES FRAUD: ACT, PRACTICE OR COURSE OF BUSINESS OPERATING AS A FRAUD OR DECEIT, ARK. CODE ANN. § 23-42-507(3). The use of the same material misstatements and material omissions that form the basis of securities fraud pursuant to Ark. Code Ann. § 23-42-507(2) (Repl. 2000) support securities fraud committed pursuant to Ark. Code Ann. § 23-42-507(3) (Repl. 2000). Again, it matters not whether Robertson or Stead knew of the falsity of their statements or omissions. *See Trivectra v. Ushijima, supra.*

ARGUMENT

The defendants sold some forty-five to fifty million shares of CTIC common stock to an undetermined number of people for at least $12.8 million. Neither the stock, nor the individuals selling the stock were properly registered to do so pursuant to the Act. Stock was offered and sold through material misstatements of fact and omissions of material fact, as set forth above. Totally unaware of D. Lainhart's unsavory past, the Lainharts' use of investor funds to their own purposes and the Lainhart's lack of any other source of income than the sale of CTIC stock, investors purchased this stock believing they were about to be owners of a corporation owning a world changing, monumental new technology and would be correspondingly wealthy.

Of great significance is the fact that the Lainharts have no significant source of funds other than the proceeds from CTIC stock sales. Although the investigation of the staff of the Arkansas Securities Department (Staff) is not as complete as a receiver could do, the affidavit of Examiner Gretchen Hall is clear that at all times relevant to this action, the only source of funds available to the Lainharts are loans to them and the corporate defendants, DCC and CTIC, and the proceeds from CTIC stock sales, which are used as funds and to make payments on those

loans.

I. TEMPORARY RESTRAINING ORDER SHOULD ISSUE IMMEDIATELY- SPECIAL STANDARDS APPLY FOR COMMISSIONER

When a state agency has a "specific statutory mandate to protect the public interest, the traditional common-law prerequisites for an injunction in a civil litigation ... are not applicable." *Southern College of Naturopathy v. Arkansas* 360 Ark 543, 553-54, 203 S.W.3d 111, 117 (2005). The Act "is intended to prevent fraudulent practices and activities from becoming a burden upon unsophisticated investors and the general public." *Grand Prairie Savings and Loan Ass'n., Stuttgart v. Worthen Bank and Trust Co.*, 298 Ark. 542, 546, 769 S.W.2d 20, 22 (1989); *see also Schultz v. Rector-Phillips-Morse, Inc.*, 261 Ark 769, 552 S.W.2d 4 (1977); *Graham v. Kane*, 264 Ark 949, 576 S.W.2d 711 (1979); *McMullan v. Molnaird*, 24 Ark.App. 126, 749 S.W.2d 352 (1988); *Smith v. State*, 266 Ark. 861, 587 S.W.2d 50 (1979).

The plaintiff need only show a violation of the Act, for the "violation of the act . . . triggers the prayer" for injunction. *Mercury Marketing Technologies of Delaware, Inc., v. State of Arkansas*, 358 Ark 319, 328, 189 S.W.3d 414, 420 (2004). A state agency need only demonstrate that there is "some credible evidence, even if disputed, that reasonable cause exists to believe that the [defendant] is engaging in or is likely to engage in conduct sought to be restrained." *Id.*. In *Smith v. Florida*, 570 So.2d 1315 (Fla.App. 1990), the court issued a temporary injunction against a defendant based on evidence she had and was currently violating state securities laws. *Id.* at 1316. The court emphasized, "the legislature enacted [the statute] to protect the public from fraud and deceit in the investment of securities...because of the statutes' public importance, the state should not be unduly restricted in its attempt to enforce them." *Id.* at 1318. Further, it would be "too heavy of a burden on the state to require absolute proof that [the defendant] would violate the law during the notice period before allowing an ex parte

injunction." *Id; see also State v. Beeler,* 530 So.2d 932 (Fla. 1988).

The Arkansas cases holding that the traditional common law prerequisites for a injunctions do not apply, *Mercury Marketing, supra*, and *Southern College, supra*, concern the Deceptive Trade Practices Act. *Smith v. Florida, supra*, quoted above, applies the same law to Florida's version of the 1956 Uniform Securities Act, which Arkansas also has. For decisions of the courts of other states applying this same provision of the 1956 Uniform Securities Act in the same way, *see MortgageBanc & Trust, Inc., et a. v. State*, 718 S.W.2d 865 (Tex.Civ.App. 1986); *People v. Edgar*, 110 Ill.App.3d 264, 441 N.E.2d 1328 (1982); *Oklahoma Securities Commission v. CFR International, Inc.*, 622 P.2d 293 (Okla.Ct.App. 1980);

It is clear that in this case the defendants have violated the Act for a long period of time. Violations of the registration provisions and of the anti-fraud provisions of the Act are clearly shown. Several of the defendants, D. Lainhart and I. Lainhart, have used investor funds to their own purposes. Because of the prior violations of the Act by D. Lainhart and the fact that the primary defendants, the Lainharts, have no other visible means of support other than the proceeds from the sale of CTIC stock, there is reason to believe that violations will be committed again.

A temporary restraining order will or should cause the defendants to cease all sales activities relating to CTIC. At first blush, this might seem harsh, but it must be remembered that those activities are all illegal. When viewed in that light, the remedy seems fair and right because it will stop a continuing violation of law. Hence, a temporary restraining order should issue forthwith and without notice.

II. AN ASSET FREEZE AND ACCOUNTINGS FROM EACH DEFENDANT SHOULD ISSUE IMMEDIATELY

Although the Staff has located some of the assets involved in this matter, all of the funds received and all of the assets that might have been purchased with those funds have not yet been

located. Also, there is a danger that the assets that have been located– especially the real property in Garland, Hot Spring and Pulaski County, Arkansas– will be dissipated by the defendants if an order preventing dissipation is not entered. Because of the nature of securities law violations, asset freezing is "an effective way of stopping violations of the securities act." *People ex rel. Edgar v. Miller*, 441 N.E.2d 1328, 1332 (Ill.App. 1982).

The plaintiff need prove only a possibility of dissipation of assets, not the likelihood of dissipation, in order to warrant an asset freeze. *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1112 (9th Cir. 1982); *Commodity Futures Trading Comm. v. Muller*, 570 F.2d 1296 (5thCir. 1978); *Federal Trade Commission v. Southwest Sunsites, Inc.*, 665 F.2d 711 (5thCir. 1982); *S.E.C. v. Manor Nursing Centers, Inc.*, 458 F.2d 1082 (2d.Cir. 1972); *S.E.C. v. R.J. Allen & Associates, Inc.*, 386 F.Supp. 866, 874 (D.C.Fla. 1974).

Disgorgement is requested in the prayer for relief in the complaint. To make disgorgement a realistic remedy, "a freeze of assets may be appropriate to assure compensation to those who are victims of securities fraud." *S.E.C. v. General Refractories Co.*, 400 F.Supp. 1248, 1259 (D.D.C. 1975). An asset freeze is critical in this case to preserve property that should be disgorged. The Lainhart defendants and DCC have put much of the funds converted to their own use in real estate, and some of that is listed for sale. There is therefore a need for a freeze on the sale of those parcels of real estate.

In order for the asset freeze to be effective, it is necessary to identify all assets that could be used to satisfy any order of disgorgement. *S.E.C. v. International Swiss Investment Corp.*, 895 F.2d 1272, 1276 (9th Cir. 2003). An accounting is one of the specifically mentioned types of ancillary relief mentioned in Ark. Code Ann. § 23-42-209(b) (Repl. 2000), and it will help identify assets that are subject to disgorgement. It is also within the equity powers of the court to order an accounting in an appropriate case. *S.E.C. v. R. J. Allen & Associates, supra* at 880;

S.E.C. v. Manor Nursing Centers, Inc., supra, at 1103-1104. The exact dimensions of this matter and the extent of disgorgement will have to determined by a receiver. An accounting would greatly facilitate the receiver's task in this matter.

III. A RECEIVER SHOULD BE APPOINTED IMMEDIATELY

A receiver is appointed for equitable purposes, where "deemed necessary and proper." *Williams v. Brushy Island Public Water Authority*, 368 Ark. 219 (2006); Ark. R. Civ. P. 66. Generally, a receiver is necessary to protect "the property or fund [that] is in danger of being lost, removed, materially injured," or was fraudulently obtained, "for the purpose of preserving, liquidating, or operating property involved pending final disposition of case before [the] court." *Chapin v. Stuckey*, 286 Ark. 359, 365 (1985) and *Davis v. Johnston*, 251 Ark. 1078, 1079 (1972). A prima facie showing of a need for a receiver is required, but the court need not hold an evidentiary hearing. *Williams*, 368 Ark. 222; *Thomason v. Hester Mobile Home Manufacturer, Inc.*, 235 Ark. 529, 531 (1962).

If there is danger the property or funds at issue may be lost, removed, or materially injured, the appointment of a receiver is proper. *Chapin*, 286 Ark. at 365. Specifically, when dealing with securities cases, the focus is on "'the protection of those who already have been injured by a violator's actions from further despoliation of their property or rights.'" *Esbitt v. Dutch-American Mercantile Corp.*, 335 F.2d 141, 143 (C.A.2.N.Y. 1964) (quoting *S.E.C. v. H.S. Simmons & Co.*, 190 F.Supp. 432, 433 (S.D.N.Y. 1961). The court in *Esbitt* refused the defendant's argument that enjoining future violations was the sole reason for the appointment of a receiver and temporary restraining order. *Id.* Rather, the court noted that "protecting the investing public which has been defrauded," is of equal importance. *Id.*

In this case the plaintiff has shown that the defendants have habitually violated the Act over many years. By means of material misstatements and omissions, the defendants, particularly

D. Lainhart, have sold CTIC stock and converted much of the funds raised to their own use. Past violations of law may give rise to an inference that there will be future violations. *S.E.C. v. Murphy*, 626 F.3d 633, 655 (9th Cir. 1980). To safeguard the assets that are available for disgorgement to the defrauded victims of these defendants, the court should immediately appoint a receiver.

IV. CONCLUSION

The plaintiff has established that the defendants have for a very long period of time sold unregistered securities or employed unregistered agents to sell unregistered securities by means of securities fraud, all violations of the Act. In doing so, the defendants have taken in a great deal of money, at least $12.8 million, from many people. Assets traceable to this money exist, but are in danger of being sold and dissipated. Because the primary defendants, the Lainharts, have no visible means of support other than the proceeds from the sale of CTIC stock, it is likely that assets would be dissipated and/or attempted to be placed beyond the reach of the court and the receiver.

Based on the verified complaint, motion and brief in support filed herein and the affidavits attached thereto, the plaintiff has shown a *prima facie* case for the issuance pursuant to Ark.R.Civ.P. 65(a)(1) of a temporary restraining order, an order preventing the destruction or spoliation of evidence, an asset freeze, accountings and a receiver, all without prior notice to the defendants. The plaintiff therefore respectfully requests the court to issue those orders, all without prior notice to the defendants.

Respectfully submitted,

A. Heath Abshure
ARKANSAS SECURITIES COMMISSIONER

By: _____
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