

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STEPHEN M. COLEMAN, ET AL.

APPELLANTS,

v.

**MISSOURI SECRETARY OF STATE,
COMMISSIONER OF SECURITIES**

RESPONDENT.

DOCKET NUMBER WD71390

DATE: May 25, 2010

Appeal From:

Cole County Circuit Court
The Honorable Patricia S. Joyce, Judge

Appellate Judges:

Division One: Karen King Mitchell, Presiding Judge, Lisa White Hardwick and Cynthia L. Martin, Judges

Attorneys:

Larry D. Coleman, Raytown, MO, for appellants.

J. Scott Stacey, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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APPELLANTS,

v.

**MISSOURI SECRETARY OF STATE,
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RESPONDENT.

No. WD71390

Cole County

Before Division One: Karen King Mitchell, Presiding Judge, Lisa White Hardwick and Cynthia L. Martin, Judges

Stephen Coleman, Daedalus Capital, LLC, Chicken Little Fund Group, Daedalus Alpha, Inc., and Alpha Strategy Fund, L.P. (collectively, "Coleman") appeal from the trial court's judgment dismissing their petition for review due to Coleman's failure to exhaust administrative remedies. Coleman claims that the trial court erred in: (1) holding that it lacked subject matter jurisdiction to determine the propriety of the "final order" entered by the Commissioner of Securities; (2) holding that Coleman failed to exhaust administrative remedies; and (3) failing to hold that the Commissioner failed to discharge his duties as required by law.

AFFIRMED.

Division One holds:

(1) Coleman failed to exhaust his administrative remedies when he withdrew his request for a hearing. His failure to exhaust administrative remedies prevents him from obtaining judicial review of the Commissioner's final order. The trial court thus lacked the authority to take any action on Coleman's petition for review other than to dismiss the petition for review.

(2) The trial court did not reach the merits of Coleman's petition for review because it lacked the authority to do so. It is axiomatic that a review of the merits is thus beyond the proper scope of this appeal.

Opinion by: Cynthia L. Martin, Judge

May 25, 2010

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