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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	**Case No. 11-35165-SGJ**
	§	
RETIREMENT VALUE, LLC,	§	**Involuntary Chapter 11**
	§	
DEBTOR.	§	

MOTION TO REQUIRE POSTING OF BOND

Eduardo S. Espinosa, in his capacity as the State Court Receiver (the "Receiver") for Retirement Value, LLC (the "Alleged Debtor") appointed by the District Court of Travis County, Texas for the 126th Judicial District (the "State Court") in *Texas v. Retirement Value, LLC, Richard H. "Dick" Gray, and Bruce Collins, and Keisling, Porter & Free, P.,C., Relief Defendant*, Cause No. D-1-GV-10-000454 (the "Receivership Action") hereby moves the Court (the "Motion") to require Richard Stafford, Frank Marlow, Yvonne Staley, and Hugh Dunn (together, the "Petitioners") to post a bond related to this involuntary Chapter 11 bankruptcy case (the "Involuntary"). In support of this Motion, the Receiver states the following:

I. SUMMARY

1. Contemporaneously with the filing of this Motion, the Receiver filed in the Involuntary his Motion to Abstain or Dismiss (the "Motion to Abstain").[1] In the Motion to Abstain, the Receiver argues, in part, that the Court should dismiss or abstain from hearing the Involuntary, because the Petitioners filed it in bad-faith. In the contemporaneously filed answer and counterclaim, the Receiver asked the Court to award him his costs and fees in opposing the Involuntary, as well as the Alleged Debtor's actual damages from the filing of the Involuntary and punitive damages, all as authorized by Bankruptcy Code § 303(i). Through this Motion, the Receiver asks the Court to require the Petitioners to post a bond in an amount of at least $1 million to assure that the Receiver will be able to recover his damages from the Petitioners' bad-faith filing of the Involuntary.

II. BACKGROUND

A. THE ALLEGED DEBTOR'S FRAUDULENT ENTERPRISE

2. The Alleged Debtor's sole business was to perpetrate a securities fraud on the general public. It was extraordinarily successful. Using false claims, the Alleged Debtor stole approximately $77.6 million from more than 900 investors to whom it promised approximately $125 million in return. The proceeds of this scam were used to acquire insurance policies at a grossly inflated purchase price of approximately $28 million from a co-conspirator and to establish a premium reserve of approximately $25 million; the balance was dissipated to the Alleged Debtor's principals and to other co-participants in its fraud.

[1] The Receiver incorporates by reference the allegations made in the Motion to Abstain as if they were fully restated in this Motion.

B. THE RECEIVERSHIP ACTION

3. Upon learning of the Alleged Debtor's fraudulent scheme, the Texas State Securities Board issued a cease and desist order on March 29, 2010. The Texas Department of Insurance followed shortly with a cease and desist order of its own. The State of Texas filed the Receivership Action against the Alleged Debtor and two of its principals on May 5, 2010, alleging that the defendants had perpetrated a massive fraud on the investing public through the sale of "participations" in policies of life insurance to be purchased by the Alleged Debtor.

4. At the request of the State, the State Court appointed the Receiver. The State Court directed the Receiver to: (a) collect and preserve the receivership assets; (b) notify the investor-victims of the Receivership Action; (c) attempt to effect fair restitution to the investor-victims based on a plan to be approved by the State Court; and (d) assist the State in its investigation of the Alleged Debtor, its principals, and those who dealt with them. On May 28, 2010, the State Court continued the Receiver's appointment indefinitely.

5. Eventually, the State Court set a May 9, 2011 deadline for parties to intervene in the Receivership Action. Three sets of interveners, including investors in the same policies as the Petitioners, took the Court up on this invitation before that deadline passed. The Petitioners, who had the same notice the interveners did, declined, only seeking to intervene in the Receivership Action at the end of July 2011.

C. RESULTS ACHIEVED AND COSTS INCURRED IN THE RECEIVERSHIP ACTION THROUGH INVOLUNTARY FILING

6. During the Receiver's 15 months on the job before the Petition Date (as defined below), he actively managed the affairs of the Alleged Debtor and discharged his State-Court imposed duties. All told, the Receiver has brought more than $14 million into the Alleged Debtor's estate over the course of the Receivership Action, at a cost of only $1.4 million. He has

filed a plan of distributions that promises to repay investors between 80% and 120% ($62.5 million to $92.5 million) of their investment, including 10% or $7.7 million this year.

D. STAYED AUGUST 15TH HEARING AND FILING OF THE INVOLUNTARY

7. As described above, before the filing of this Involuntary by the Petitioners, the Receiver proposed a plan of distribution in the Receivership Action and provided notice of the procedures that plan would establish. The State Court was set to consider that plan (and the two objections filed to it, along with other matters) at an August 15, 2011 hearing.

8. One business day before that hearing, on the afternoon of August 12, 2011 (the "Petition Date"), the Petitioners filed the Involuntary. While the Petitioners knew the agenda for the scheduled August 15th State Court hearing, they did not file an objection to the Receiver's plan with the State Court. This inaction was consistent with their pattern in the Receivership Action. After all, the Petitioners had missed the deadline to intervene in the Receivership Action, despite more than a year of actual notice of the Receivership Action and the active involvement in the Receivership Action of other interveners. The Petitioners took no action in the Receivership Action to resolve their asserted but disputed status as holding claims preferred to those of other investors in the Alleged Debtors' fraudulent enterprise, even when other interveners litigated a parallel argument for preferential treatment.

9. But-for the filing of the Involuntary, the active phase of the Receivership Action would now be all but over. The work of reorganizing the Alleged Debtor would be complete. A plan would be in place determining who would be paid what and when. The methodology by which the Receiver would generate the assets necessary to pay them would have been established. The Receiver's plan called for an abbreviated proof of claims process that would allow claims not listed on the Receiver's schedule of claims to be added and any disputes as to

amount, classification, and status of claims to be resolved. The only other remaining steps would have been to resolve the Alleged Debtor's causes of action and to continue to manage the Alleged Debtor's insurance portfolio over time.

III. MOTION TO REQUIRE POSTING OF BOND

A. APPLICABLE STANDARDS

10. Pursuant to Bankruptcy Code Section 303(i), if the Court dismisses the Involuntary, the Receiver may recover from the Petitioners for the Alleged Debtor his costs and fees defending the Involuntary. If the Court finds that the Involuntary was filed in bad-faith, it may also assess against the Petitioners both the Alleged Debtor's actual damages from the filing of the Involuntary and punitive damages.

11. Furthermore, pursuant to Bankruptcy Code § 303(e), on the Alleged Debtor's request, the Court may require the Petitioners to post a bond to cover these damages "for cause."

B. PRESENCE OF BAD-FAITH

12. For all the reasons set out more fully in the Motion to Abstain, the Receiver has asked the Court to rule that the Petitioners filed the Involuntary in bad-faith. In short, though, the Petitioners' bad-faith is demonstrated by: (i) the timing of the Involuntary on the last possible day of the Receivership Action, despite their complete lack of participation in the Receivership Action, shortly after learning that they were the lone dissenters to the Receiver's proposed plan of restitution; (ii) their shifting rationales for why the Involuntary was necessary and why a trustee should be appointed within it; (iii) their baseless, abandoned contentions of "waste;" (iv) their more recent discovery and assertion of alleged procedural problems with the Receivership, which they lack the standing to present to the Court; (v) their apparent opposition to "collapsing" the Alleged Debtor's estate, even though this is legally required and better in

purely economic terms for three (3) of the four (4) Petitioners then the alternative;[2] and (vi) their allegation that the Receiver has inadequately investigated the potential to maintain the Alleged Debtor as a going-concern, even though the Alleged Debtor is *not* a going concern and has not been one since the State Court, at the request of the Attorney General of Texas, enjoined it from doing further business.

C. NECESSITY OF BOND

13. The Receiver asks the Court to require the posting of a bond in an amount no less than $1 million. The Receiver has no information concerning the liquidity of the Petitioners or their ability to satisfy an assessment against them of the Alleged Debtor's fees and costs in fighting the Involuntary. However, their assertion that the Receiver's State-Court-approved fees from the Receivership Action were "waste" despite yielding a 10:1 recovery for the estate leaves the Receiver questioning their ability to pay the months of fees their filing of the Involuntary has forced onto the Alleged Debtor's estate. When coupled with the very real possibility of damages far in excess of those fees (the Receiver at least takes the Court's discretion to impose punitive damages for bad-faith filings seriously), the Receiver believes the Petitioners' sticker-shock reaction to legal fees constitutes "cause" for requiring the posting of a bond in some amount.

14. The Receiver cannot estimate the punitive damages the Court may choose to impose for the Petitioners' bad faith in filing this action. He does note that should the automatic staying of the August 15, 2011 hearing lead to the unwinding of the Receiver's settlement with the Grays, which would have closed and funded by now in the absence of this filing, the Receiver's actual damages would be $650,000.00, before considering the costs and fees of this

[2] Without "collapsing" investors across policies, Marlow, Stafford, and Staley would be worse off, receiving an estimated $4,350, $5,200, and $8,400 *less* from the Alleged Debtor's estate, respectively. While the Receiver estimates that Dunn's position would marginally improve, the difference of $3,110 appears less than the cost to the Petitioners of having litigated through the August 22, 2011 hearing, before even considering the likelihood that they will eventually also be liable for the Receiver's costs in defeating this Involuntary and damages.

litigation. In addition, the filing of this case puts at risk the Receiver's $710,000 settlement with the Kiesling Porter firm. On that basis, the Receiver asks the Court to require the posting of a bond in a reasonably higher amount, which the Receiver requests should exceed $1 million.

IV. PRAYER

WHEREFORE, the Receiver respectfully asks the Court to: (i) require the Petitioners to post a bond in the amount of at least $1 million; and (ii) grant such other and further relief as the Court deems just and proper.

DATE: September 6, 2011

Respectfully submitted,

By: */s/ Daniel I. Morenoff*

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CERTIFICATE OF SERVICE

I certify that on September 6, 2011, a true and correct copy of the attached Answer was served via email through the Bankruptcy Court's Electronic Case Filing System on those parties that have consented to such service and via first class U.S. Mail upon the parties listed below.

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