

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

DEC 22 2005

PATRICIA PRESLEY, COURT CLERK
by _____
Deputy

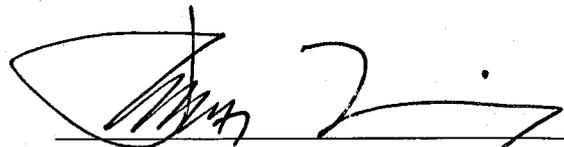
Oklahoma Department of Securities,)
ex rel. Irving L. Faught, Administrator,)
)
Plaintiff,)
)
vs.)
)
Accelerated Benefits Corporation, a Florida)
Corporation, *et al.*,)
)
Defendants.)

Case No. CJ-99-2500-66
Judge Daniel L. Owens

NOTICE OF HEARING

Please be advised that a hearing on Conservator's Motion for Order Allowing Conservator to Retain Funds and Brief in Support has been set for the 20th day of JAN., 2006, at 9:00 a.m., before the Honorable Judge Daniel L. Owens.

Respectfully submitted,



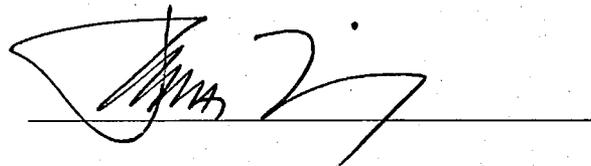
Melvin R. McVay, Jr., OBA No. 06096
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ATTORNEYS FOR CONSERVATOR,
TOM MORAN

CERTIFICATE OF MAILING

The undersigned certifies that on the 22nd day of December, 2005, a true and correct copy of the foregoing Notice of Hearing was mailed, first-class with postage prepaid, to:

Patricia A. Labarthe, Esq.
Oklahoma Department of Securities
First National Center, Suite 860
120 North Robinson
Oklahoma City, OK 73102
Attorney for Plaintiff

Dino E. Viera, Esq.
Fellers, Snider, Blankenship,
Bailey & Tippens, P.C.
100 North Broadway Avenue, Suite 1700
Oklahoma City, Oklahoma 73102
*Attorney for Defendants,
Accelerated Benefits Corporation and
American Title Company of Orlando*

A handwritten signature in black ink, appearing to read "Dino Viera", is written over a horizontal line.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

DEC 22 2009

PATRICIA PRESLEY, COURT CLERK
by _____
Deputy

Oklahoma Department of Securities,)
ex rel. Irving L. Faught, Administrator,)
)
Plaintiff,)
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vs.)
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Accelerated Benefits Corporation, a Florida)
corporation, et al.,)
)
Defendants.)

Case No. CJ-99-2500-66

**CONSERVATOR'S MOTION FOR ORDER ALLOWING
CONSERVATOR TO RETAIN FUNDS AND BRIEF IN SUPPORT**

Conservator, Tom Moran ("Conservator"), hereby respectfully moves the Court for an Order allowing the Conservator to retain funds relating to Defendant, Accelerated Benefits Corporation ("ABC") and American Title Company of Orlando ("ATCO"), C. Keith LaMonda ("LaMonda") and David S. Piercefield ("Piercefield") (collectively the "ABC Parties"). In support of this motion, the Conservator submits the following brief in support.

BRIEF IN SUPPORT

The core litigation underlying this matter was a fraud action brought by the Oklahoma Department of Securities against Defendants and three Oklahoma residents (the "Oklahoma Defendants") who offered and sold investments in life settlement policies (the "Viaticals") on ABC's behalf. On December 17, 1999, the District Court entered an agreed order and judgment finding that the Oklahoma Defendants, acting as unregistered broker-dealers or agents, had sold unregistered securities in and from Oklahoma.

Thereafter, the District Court held a non-jury trial of ABC and adopted Findings of Fact and Conclusions of Law (the "Findings"), which among other things: (i) enumerated the misstatements and omissions of material facts ABC made to investors in connection with the offer and sale of the Viaticals; and (ii) stated that ABC committed fraud in the sale of such securities.

The facts misrepresented in the Purchase Request Agreements included, without limitation, those relating to the "guaranteed payment of premiums" on the life insurance policies underlying the Viaticals. In fact, ABC set aside funds for the payment of such premiums according to a formula based on ABC's estimates of the viator's life expectancies, which proved very inaccurate resulting in premium shortfalls.

At the conclusion of the trial the District Court entered an Order of Permanent Injunction against ABC. After extensive negotiations the parties agreed that it was in the investors' best interests to appoint a conservator to take over administration of the Viaticals, in lieu of a judgment for restitution against ABC.

On February 6, 2002, the Court entered its Order Appointing Conservator and Transferring Assets (the "Conservatorship Order") and appointed Tom Moran as Conservator. The Conservatorship Order transferred certain assets of ABC and its agents, including but not limited to ATCO and Piercefield¹, (the "Conservatorship Assets"), including:

- a. All life insurance policies owned or held beneficially, directly or indirectly, by or for the benefit of ABC and/or ABC Investors, that were purchased prior to October 1, 2000 (the "Policies");
- b. All assets of ABC necessary to accomplish the objectives of the

¹ As the Court is well aware, LaMonda was also an agent of ABC. However, only ATCO and Piercefield were specifically listed in the Conservatorship Order because they were the escrow agents holding title to the Viaticals.

Conservatorship, including, but not limited to, computer hardware, databases, software, ABC Investor and viator files relating to the Policies, accounting and financial records pertaining to premium payments and receipt and distribution of proceeds on the Policies, any deposit of cash, bond or guarantee, filing cabinets, office supplies, the lease to office space at 105 East Robinson Street, Suite 320, Orlando, Florida, and telephone systems;

- c. All premium reserve accounts and bank accounts into which ABC Investor funds or proceeds from the Policies have been deposited; and
- d. The right to recoup from the proceeds of the Policies all funds advanced by ABC to finance the payment of premiums on the Policies.

See Exhibit "A", Conservatorship Order.

The Conservator was further given the direction and authority to accomplish the following:

- a. To take custody, possession and control of the Conservatorship Assets as they are transferred to the Conservator;
- b. To manage all Conservatorship Assets pending further action by the Court including, but not limited to, the evaluation of the Policies, and to take necessary steps to protect the ABC Investors' interests including, but not limited to, the liquidation or sale of the Policies to institutional buyers and the assessment to ABC Investors of the future premium payments;
- c. Receive and collect any and all sums of money due or owing on the Policies to ABC or its agents;
- d. Seek the return of any cash, bond or guarantee on deposit with any regulatory agency or other entity on behalf of ABC or its agents;
- e. Make such payments and disbursements as may be necessary and advisable for the preservation of the Conservatorship Assets and as may be necessary and advisable in discharging his duties as Conservator including, but not limited to, the timely payment of all premiums for Policies that have not yet matured;

- f. Monitor the viators of the Policies by tracking the location of the viators and periodically checking the health of the viators;
- g. Receive notice of the death of viators, file death claims on the viators, and collect the proceeds paid on the Policies as such mature;
- h. Disburse to each ABC Investor his proportionate share of the proceeds, after deducting premiums advanced, paid in matured Policies;
- i. Establish open communication with ABC Investors with proper disclosure of available options and consequences including, but not limited to, notice to ABC Investors of the Conservatorship Order within 30 days;
- j. Retain and employ attorneys, accountants, computer consultants and other persons as may be advisable or necessary to the exercise of the duties of the Conservator, and compensate such persons, subject to application and approval by the Court;
- k. Open and inspect any and all mail and/or deliveries related to the existence, location, identity and/or collection, preservation, maintenance or operation of Conservatorship Assets, and to notify any insurance company or third party administrator and the United States Postal Service to effect the forward delivery of any mail related to the Conservatorship Assets to a mail depository under the control of the Conservator;
- l. Institute, prosecute, defend, intervene in or become a party to such actions or proceedings in any state court, federal court or United States Bankruptcy Court as may in the Conservator's opinion be necessary or proper for the protection, maintenance and preservation of Conservatorship Assets, or the carrying out of the Conservatorship Order; and
- m. Exercise those powers necessary to implement the Conservator's conclusions with regard to the disposition of the Conservatorship pursuant to the orders and directives of the Court.

See Exhibit "A", Conservatorship Order.

Based upon viatical purchase agreements entered into between ABC and individuals from whom ABC solicited investments (the "ABC Investors"), ABC Investors were matched to various Viaticals. *See* Exhibit "B," Affidavit of H. Thomas Moran, ¶5. In most cases, the ABC Investors were only matched to fractional interests in the Viaticals and many of the Viaticals had numerous investors matched. Some of the Viaticals had less than one hundred percent of the face value matched to ABC Investors. *See* Exhibit "B," Affidavit of H. Thomas Moran, ¶6. The remaining fractional interests were retained by ABC and assigned to various individuals and companies, including ABC, ATCO, Piercefield, LaMonda and LaMonda Brokerage. The interest retained by these persons and entities were not the result of any investment in the Viaticals. *See* Exhibit "B," Affidavit of H. Thomas Moran, ¶7.

On October 25, 2002, the Conservator filed his Motion for Order Approving Sale of Conservatorship Assets (the "Motion to Sell"). Following a hearing on the Motion to Sell, the Court entered its ruling on December 23, 2002, approving the sale of Conservatorship Assets to Infinity Capital Services, Inc. (the "Buyer"). Exhibit "B," Affidavit of H. Thomas Moran, ¶5. The order approving the sale was entered by the Court on January 16, 2003 and subsequently modified by the Court on January 24, 2003. Exhibit "B," Affidavit of H. Thomas Moran, ¶6.

On November 20, 2002, the Court entered an order directing ABC to reimburse the Conservator, within 30 days from the date of the order, for all court-approved Conservator fees and expenses, and attorney's fees and expenses as of the date of the order. *See* Exhibit "C", Journal Entry. At the time the Court entered its order, the Court had approved Conservator fees and expenses in the amount of \$156,401.38, and attorney's fees and expenses in the amount of

\$143,880.85. *See* Exhibit "B," Affidavit of H. Thomas Moran, ¶11. To date, ABC has not reimbursed the Conservator for any of the court-approved Conservator fees and expenses, or attorney's fees and expenses, as ordered by this Court. *See* Exhibit "B," Affidavit of H. Thomas Moran, ¶12.

On January 10, 2003, the Court entered an order directing ABC to reimburse the Conservator, within 30 days from the date of the order, for advances made by the Conservator for premium shortfalls in the amount of \$173,445.82. *See* Exhibit "D", Order. To date, ABC has not reimbursed the Conservator as ordered by the Court. *See* Exhibit "B," Affidavit of H. Thomas Moran, ¶14.

Following the Court's ruling on the Motion to Sell, the Conservator began negotiations with the Buyer on the purchase contracts (the "Purchase Contracts"). On March 12, 2003, the Court entered its order approving the Purchase Contracts. *See* Exhibit "B," Affidavit of H. Thomas Moran, ¶16.

Since the consummation of the sale, the Conservatorship has processed and disbursed to the ABC investors certain sums representing partial proceeds of the sale. Pursuant to the records of ABC, a fractional interest in certain Viaticals is owned by ABC, Piercefield, ATCO, LaMonda² and LaMonda Brokerage. The Conservator has retained funds, which might otherwise be disbursed to these persons and entities, pending determination by the Court of the

2 On July 13, 2005, LaMonda was indicted by the U.S. Attorney's office in the Middle District of Florida, Orlando Division, in Case No. 6:05-cr-131-ORL-19KRS, which alleges that LaMonda directed and controlled ABC's activities and owned ABC through various entities. The indictment further alleges that LaMonda, as part of a scheme and conspiracy to defraud the ABC investors, diverted \$1.25 million dollars from premium reserve monies collected from ABC investors to make personal investments in an oil and gas exploration project.

Conservatorship's rights to these funds. *See* Exhibit "B," Affidavit of H. Thomas Moran, ¶17.

To date, these retained funds are as follows:

ABC	-	\$ 16.71
David Piercefield/ATCO	-	\$ 11,211.38
David Piercefield/Underwriting Account	-	\$.17
Keith LaMonda	-	\$ 5,108.23
Lamonda Brokerage	-	\$ 851.75
		=====
Total		\$ 17,188.24

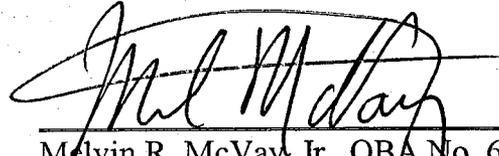
See Exhibit "B," Affidavit of H. Thomas Moran, ¶18.

The Conservator believes that the retained funds are the property of the Conservatorship under the terms of the Conservatorship Order. In the alternative, the Conservator believes that the retained funds should be applied as an offset against the amounts owed to the Conservator under the Court's prior orders dated November 20, 2002 and January 10, 2003 as set forth above.

WHEREFORE, premises considered, Conservator, Tom Moran, respectfully requests this Court enter an Order allowing the Conservator to retain and apply the funds, which might otherwise be disbursed to ABC, ATCO, Piercefield, LaMonda and LaMonda Brokerage, as assets of the Conservatorship.

In the alternative, should the Court determine that there is not a basis at this time to allow the Conservator to apply all or some of the retained funds as assets of the Conservatorship, Conservator, Tom Moran, respectfully requests this Court enter an Order allowing the Conservator to retain such funds, pending completion of the Conservatorship or further order of the Court.

Respectfully submitted,



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Thomas P. Manning, OBA No. 16117

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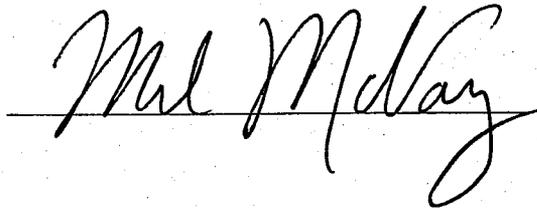
H. THOMAS MORAN

CERTIFICATE OF MAILING

The undersigned certifies that on the 22nd day of December, 2005, a true and correct copy of the foregoing Motion was mailed via First Class Mail, postage prepaid, to the following:

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Attorney for Defendants,
Accelerated Benefits Corporation,
American Title Company of Orlando,
C. Keith LaMonda and
David S. Piercefield

A handwritten signature in cursive script, reading "Mel McKay", is written over a horizontal line.