

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In Re:	§	Chapter 11
A&O LIFE FUND, LLC;	§	Case No. 09 B 32678
(pending Debtors' motion to consolidate	§	
under this number)	§	
LIFE FUND, 5.1, LLC;	§	Case No. 09 B 32672
LIFE FUND, 5.2, LLC;	§	Case No. 09 B 32674
HOUSTON TANGLEWOOD PARTNERS, LLC;	§	Case No. 09 B 32676
A&O RESOURCE MANAGEMENT, LP.;	§	Case No. 09 B 32677
A&O BONDED LIFE ASSETS, LLC;	§	Case No. 09 B 32679
A&O BONDED LIFE SETTLEMENT, LLC;	§	Case No. 09 B 32681
	§	
	§	
Debtors.	§	Judge A. Benjamin Goldgar

OBJECTION TO MOTION FOR THE APPOINTMENT OF A CHAPTER 11 TRUSTEE

A group of investor/creditors¹ (“Group of Investors”), through undersigned counsel,² for their objection to the procedural deficiencies of the Motion for the Appointment of a Chapter 11 Trustee filed by the United States Trustee for the Northern District of Illinois (docket no. 14 in Case No. 09-32678, and docket no. 9 in the other cases; hereinafter, “Motion”), states as follows:

JURISDICTION

1. The Motion does not state a jurisdictional basis for these Case(s), but only a Bankruptcy Code (hereinafter, the “Code”) provision for the Motion; that is, section 1104(a) of

¹ As of this writing, Sunday, September 13, 2009, JS has been contacted to be retained to represent the following investors/creditors: John E. and Laura H. Spalding; Michelle Fancher; Doug Parsons; Eileen Parsons; Harry L. Parlette IV; Adela Parlette; Harry L. Parlette IV & Adela Parlette; Dina A. Pyron; Sumner Kai ; Thomas & Vessie Ferrell; Cheryl Northam; Sheryl Bennett; Connie Kieschnick; Mark & Pamela Brooks; Chalet Morella; Jayanti & Suman Patel; Jayanti Patel; Suman Patel; Barbara Natham; Clyde B. and Norma E. Loan; Rudolph & Dawn Abeyta; Lourdes S. Savana; and John C. & Lourdes S. Savana.

² Brian M. Graham with the law firm of SmithAmundsen LLC, Chicago, Illinois (“SA”) appears as local counsel for the law firm of Johnson, Spalding, Doyle, West & Trent, L.L.P., Houston, Texas (“JS”), and two attorneys with JS, Lori A. Hood and Deborah J. Fritsche, each of whom have pending Motions for Leave to Appear Pro Hac Vice before this Court for this bankruptcy case(s), referenced in the style.

the Code. Without waiver of its right to challenge the jurisdiction of this Court, the Group of Investors admit that section 1104 is the correct provision of the Code for authority to appoint a trustee, and make this Objection for the limited purpose of challenging the lack of notice (both in time and parties to be served) and compliance with this Court's procedures to shorten the notice period. Group of Investors in fact do challenge the jurisdiction, alternatively the venue, of these Cases with this Court and seek the opportunity to properly address that issue before any significant actions are taken by this Court.

FACTUAL BACKGROUND

2. On September 2, 2009, an entity named Shepherd Capital Management LLC ("Shepherd")³, by its purported Managing Member, Russell Mackert⁴, executed and authorized petitions for relief under the Code for seven entities, which are the following: LIFE FUND, 5.1, LLC, case no. 09- 32672; LIFE FUND, 5.2, LLC, case no. 09- 32674; HOUSTON TANGLEWOOD PARTNERS, LLC, case no. 09-32676; A&O RESOURCE MANAGEMENT, LP., case no. 09-32677; A&O LIFE FUND, LLC, case no. 09-32678; A&O BONDED LIFE ASSETS, LLC, case no. 09-32679; and A&O BONDED LIFE SETTLEMENT, LLC, case no. 09-32681(individually,"Case," or collectively, "Cases"). In all instances (docket no. 4 in all Cases), the basis for Mr. Mackert's alleged authority is a Certificate of Resolution which references an Exhibit "A" (apparently not electronically filed for all Cases) which purports to be a declaratory judgment, taken by default, on August 27, 2009, in Case No. 09 CH 22301, *Shepherd Capital Management, LLC vs. A&O Life Funds, LP and Physicians Trust, LLC*, in the Circuit Court of Cook County, Illinois. Note that Shepherd, located in Bellaire, Texas, is the

³ The business entity's letterhead, as seen in Exhibit A to this Motion, is Bellaire, Texas (in the surrounding Houston, Texas area).

⁴ On information and belief, Mr. Mackert lives in Houston, Texas.

plaintiff against the alleged “managing” entity, A&O Life Funds, LP (one of the Cases before the Court). The role, if any, of Physicians Trust, LLC is unexplained and the entity does not appear in any capacity before this Court.⁵ The disclosure of the real parties in interest does not appear to be made.

3. To date, the Cases filed have failed to provide complete schedules and statements.

4. Counsel in the Cases has filed, for hearings on September 23, 2009, applications to employ professionals (three—attorneys, financial advisors, and actuaries), to administratively consolidate the Cases, and a motion pursuant to section 363 of the Code.

5. On Friday, September 11, 2009, the United States Trustee for the Northern District of Illinois (docket no. 14 in Case No. 09-32678, and docket no. 9 in the other cases) filed the Motion to which this Objection is made, and set it for hearing at 9:30 a.m. on Monday, September 14, 2009. This is just one business day (well, really a half of one business day) after filing. No request or certification was made for an emergency hearing.

6. To give the Court just a brief introduction to what these Cases concern, they are about a failing or failed investment. The underlying investment to which all of the Cases relate in some way is called a “life settlement.” The owner of a life insurance policy sells his or her policy to a third party for something more than the cash surrender value but less than the face value. As an investment, a life settlement’s risk and value turns on the life expectancy of the insured and the expense of the premiums to maintain the policy. As this industry has developed there have been variations on the form of “ownership” of the investment. There have also been attempts to reduce the risk, such as, by inserting a bonding company to assume the longevity

⁵ Note a different explanation is given by counsel in the Cases before this Court in “Background” sections (usually, paragraph 3 with a footnote) of pleadings filed to employ professionals and in “motion for cash collateral.” Counsel for these Cases would have you believe the management of the entities is in Chicago, Illinois, and not Houston, Texas.

risk—the insured does not die within the time anticipated in the pricing of the investment, and/or an escrow company to hold and pay the premiums. There are, as the Court can image, enough moving parts and enough money in the life settlement industry to provide the opportunity to have bad things happen.

RELIEF REQUESTED

7. The Group of Investors request that the Motion be stricken, pursuant to Local Rule 9013-3(A), for failure to provide meaningful notice required by 11 U.S.C. §1104(a), and for failure to comply with the applicable Local Rules and procedure for an emergency motion and for shortened notice. Alternatively, the Motion should be continued until such time as proper notice is given to creditors and parties in interest, with adequate time to respond. Further, Group of Investors respectfully request this Court allow them to present, prior to any further substantive motions or actions in these Cases and on shortened notice if appropriate, a motion to address the jurisdiction and venue of these Cases in this Court.

ARGUMENT AND AUTHORITIES

8. Group of Investors are without sufficient information to admit or deny any factual statements, if any, in fact made in the Motion, in particular paragraphs 4 and 5. There appears to be a lack of disclosure regarding the authority to act for the entities seeking bankruptcy protection. Group of Investors are indeed quite interested in hearing, at a properly noticed hearing, the evidence of “actual fraud, dishonesty or criminal conduct in the management of the Debtor.” Motion, para. 4, page 2.

9. The appointment of a trustee is an important action which should not be completed without full notice, disclosure and evidence. The Code, 11 U.S.C. §1104(a), provides for the appointment of a chapter 11 trustee “*on request of a party in interest or the United States*

trustee...after notice and a hearing” (emphasis added). Local Rule 9013-3 requires notice of the presentation of a motion to be served on the third business day preceding the date of presentment, except in the case of an emergency motion. This Court’s motion procedures require an emergency motion to contain “an explanation why the matter has to be heard on an emergency basis [and] [t]o qualify as an ‘emergency,’ a motion must stem from an unforeseen circumstance that arises suddenly and unexpectedly and that requires immediate action to avoid serious or irreparable harm.” Procedures for Cases Assigned to Judge A. Benjamin Goldgar (<http://www.ilnb.uscourts.gov/Judge/Goldgar>, last visited 9/11/09). Local Form Order No. 6, entitled “Certification Concerning Emergency Motion,” is generally required by the Judges of this Court to accompany emergency motions.

10. The Motion before the Court was filed only one business day before presentment. Only A&O Bonded Life Settlements, LLC at a Chicago address was served by US First Class mail, and counsel for these Cases, though ECF, were served. No creditor was in fact served. Counsel for Group of Investors found the filing of the Motion by checking the Cases on PACER. The Motion does not contain a request for emergency treatment, nor an explanation of any emergency. The alleged “consent” by Mr. Mackert on behalf of Shepherd offered in Exhibit “A” to the Motion does not in any way relieve the movant from the notice and evidence obligations under the Code in order to appoint a trustee.

FOR THE REASONS AND AUTHORITIES STATED ABOVE, counsel for the Group of Investors requests the Court strike the Motion, or alternatively, continue the Motion until such time as proper notice is given to all creditors and parties in interest, and grant such other and further relief to which the Group of Investors may be entitled.

Dated: September 13, 2009.

GROUP OF INVESTORS (see footnote 2)

Respectfully submitted,

By: /s/ Brian M. Graham
One of the attorneys for the
Group of Investors

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CERTIFICATE OF SERVICE

I, Brian M. Graham, an attorney, do hereby certify that I caused true and correct copies of the foregoing OBJECTION TO MOTION FOR THE APPOINTMENT OF A CHAPTER 11 TRUSTEE to be served on the parties listed below via either the Court's CM/ECF system, electronic mail, or both, on September 13, 2009.

/s/ Brian M. Graham

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