

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

In Re:

LIFE FUND, 5.1, LLC et al.,

§ Chapter 11
§ Case No. 09 B 32672
§
§ Administratively consolidating cases nos.
§ Case No. 09 B 32674
§ Case No. 09 B 32676
§ Case No. 09 B 32677
§ Case No. 09 B 32678
§ Case No. 09 B 32679
§ Case No. 09 B 32681

Debtors.

§ Judge A. Benjamin Goldgar

**OBJECTION TO DEBTORS' APPLICATION FOR ENTRY OF ORDER
AUTHORIZING RETENTION AND EMPLOYMENT OF MICHAEL L. GESAS,
THOMAS P. YARDLEY, MIRIAM R. STEIN, AND THE LAW FIRM OF
ARNSTEIN & LEHR LLP AS COUNSEL FOR THE DEBTORS**

COMES NOW counsel¹ for a group of investor/creditors² ("Group of Investors")
objecting to Debtors' Application for Entry of Order Authorizing Retention and Employment of

¹ 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 Orders approving Leave to Appear Pro Hac Vice before this Court for the bankruptcy case(s), referenced in the style. Ms. Fritsche is designated lead counsel.

² As of this writing, Tuesday, September 29, 2009, JS has been retained, or contacted to be retained, to represent the following investors/creditors (all of whom have been identified by Debtors as unsecured creditors): John E. and Laura H. Spalding; Kenneth & 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; Sherryll Bennett; Connie Kieschnick; Mark E. Brooks; Pamela C. Brooks; Chalet Morella; Jayanti & Suman Patel; Jayanti Patel; Suman Patel; Barbara Natham; Clyde B. and Norma E. Loan; Rudolph & Dawn Abeyta; Lourdes S. Savana; John C. & Lourdes S. Savana; Charles & Nancy Aubin; Cary Bauer; Barry H. Cohn & Glenna Cohn; Bruce D. Davis; Frank DiMaria; Anthony & Joan DiRienzo; John & Claire Fielding; Daniel Galfione; Mary Barbara Gold; Clarence D. Hall, III; Roy & Ilse Harris; Richard Henke; Don Stanley Hite; Sydney Hite; Michael & Brenda Kessler; Daniel G. Krueger; Mark John Le; Daniel Lenehan; Clyde B. & Norma E. Loan; Ronald N. & Nedra D. Miller; Danny L. Moseley; Danny O. Rush; Martha C. Sappington; Daniel & Gerlinde Schmerbach; Edward J. Shannon, Jr.; Lucy B. St. George; Wilbern E. Warnell, Jr.; Leonard Wenig; Guy

Michael L. Gesas, Thomas P. Yardley, Miriam R. Stein, and the Law Firm of Arnstein & Lehr LLP (the “Applicant”) as Counsel for the Debtors (docket no. 18 in Case No. 09-32672; hereinafter, “Application”), and states as follows:

JURISDICTION

1. Subject to its Motion to Dismiss or Transfer Venue, and without waiver of its right to challenge the jurisdiction of this Court and the venue of these proceedings, the Group of Investors admits retention of professionals for the Debtors is a core proceeding and this Court has jurisdiction to handle same.

FACTUAL BACKGROUND

2. Group of Investors is without sufficient facts to admit or deny the factual statements in paragraphs 1 through 11 of the Application and make their own statement of facts.

3. On September 2, 2009, an entity named Shepherd Capital Management LLC (“Shepherd”)³, by its purported Managing Member, Russell Mackert⁴, executed and authorized filing 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

Thomas Wood; Dorothy Wright; Elma P. Marsh; Luther D. Pritchard, Jr.; Georgia Monkres; and Eugene Monkres.

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.

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 Circuit Court of Cook County, Illinois (the “State Court Lawsuit”).

4. The Plaintiff in the State Court Lawsuit was represented by Thomas P. Yardley, and the law firm of Arnstein & Lehr LLP, one of the same attorneys and the same law firm before this Court seeking to be employed to represent the entities adverse to, or adversely effected by, the Plaintiff in the State Court Lawsuit.

5. Applicant has failed to provide complete schedules and statements. On September 17, 2009, when the schedules and statements should have been filed, Applicant filed a motion to extend the deadline to file schedules and statements. On September 23, 2009, the Court entered an order extending the time to file schedules and statements to October 7, 2009. The section 341 meeting of creditors was noticed for October 14, 2009.

6. Applicant did file, 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 (the “363 Motion”). Applicant filed a second application to employ attorneys for the Debtors, and set that Application for hearing on September 30, 2009. This objection is to that Application.

7. 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 a Motion to Appoint a Trustee and set it for hearing at 9:30 a.m. on Monday, September 14, 2009. Group of Investors objected to the lack of notice and requested time to file a motion to dismiss the cases.

8. On September 14, 2009, Group of Investors did file a motion to dismiss the cases or to transfer venue to Houston, Texas. It has been continued to September 30, 2009. No response or objection has been filed.

9. On September 16, 2009, the Court granted an order appointing a Trustee, and on September 21, 2009, the Court confirmed the appointment of Patrick Collins (the "Trustee"). At the hearing on September 23, 2009, the Trustee requested that the 363 Motion filed by Applicant be continued for hearing to September 30, 2009, and Applicant withdrew its motions to employ professionals, including the first such application made to hire Applicant.

10. On September 24, 2009, Trustee filed an emergency motion to obtain an order pursuant to section 28 of the Texas Securities Act, to authorize the Texas Securities Board to release to the Trustee its current, ongoing investigation of the Debtor entities ("Motion for Section 28 Order"), provided it is kept confidential and not disclosed in the bankruptcy proceedings. Group of Investors objected to the lack of disclosure to them, and from the pleadings presented, the apparent lack of certification that "good cause" existed. At a hearing on September 25, 2009, the Court made findings of "good cause" and entered a Section 28 Order, authorizing the Texas Securities Board to release its investigation to the Trustee confidentially.

RELIEF REQUESTED

11. The Application should be denied completely for several reasons. First, as stated in the Group of Investors' Motion to Dismiss these Cases, the petitions initiating these Cases are without authority and not properly before this Court. Second, from September 2, 2009 until the appointment of the Trustee on September 21, 2009, the proposed counsel for the Debtors cannot meet the disinterestedness test. Mr. Yardley and the firm of Arnstein & Lehr represented the Plaintiff in the State Court Lawsuit *against the Debtors* used to provide alleged authority to put

the Debtors into bankruptcy, basically involuntarily, without the use of the involuntary procedures of the Bankruptcy Code. Third, Applicant has failed to meet its obligations under sections 521 and 1106 of the Bankruptcy Code. There has been a complete lack of disclosure and inadequate notice to the creditors. Given the very recent revelation of the existence of an investigation of the Texas Securities Board, it is likely the only credible information for completion of the schedules and statements will come through the Trustee from the information provided by the Texas Securities Board. Finally, there is no basis, or explanation provided, to make the Application *nunc pro tunc* (retroactive) to September 2, 2009, as requested by Applicant.

ARGUMENT AND AUTHORITIES

12. The disinterestedness test of section 327(a) is that a professional person hired to represent the estate may not hold, or represent, an interest adverse to the estate. 11 U.S.C. § 327(a). *See also* Bankruptcy Code section 101(14), defining “disinterestedness”. In paragraph 18 of the Application, Applicant asserts that it meets, “to the best of Debtors’ knowledge,” the “disinterested person” test.

13. Bankruptcy Rule 2014(a) provides that the professional provide an affidavit setting forth the professional’s evidence and disclosures of disinterestedness. The Applicant has disclosed its representation of the Plaintiff in the State Court Lawsuit at paragraph 7.b. on page 2 of the Affidavit of Michael L Gesas provided with the Application (“Disclosure of State Court Lawsuit”). The Disclosure of the State Court Lawsuit, however, fails to accurately describe the adversarial relationship between the Plaintiff, Shepherd Capital Management LLC (“Shepherd”), and the Debtors in this Case. The description provided in the Disclosure of State Court Lawsuit leads one to believe that Shepherd is a Debtor, and clearly Shepherd is not a Debtor before this

Court. Put another way, if there was no controversy, there was no basis for the declaratory judgment brought in the State Court Lawsuit, allegedly needed to “obtain state court authorization to file the instant bankruptcy cases.” Clearly to be on opposite sides of a lawsuit is to be materially adverse. Or are they not really materially adverse at all and the State Court Lawsuit was a game of charade?

14. Perhaps the questions to ask are: Who is and who was represented by the Applicant? Applicant is applying to represent the seven Debtor entities who directly were not parties to the State Court Lawsuit which essentially makes this bankruptcy Case an involuntary proceeding. Applicant discloses it represented Shepherd because it is adverse to the Debtors’ interests, as the party who placed the Debtor entities in bankruptcy. Does Applicant still represent Shepherd after the filing of the bankruptcy petitions? If not, why not? If Shepherd “managed” the Debtor entities pre petition, who managed the Debtor entities until the appointment of a trustee? Did Shepherd pay Applicant for the State Court Lawsuit and the filing of this essentially, involuntary proceeding? Where did those funds come from? This is not disclosed and the question is begged by Applicant’s actions in the State Court Lawsuit. If Shepherd is not an equity holder or member of any Debtor entity, as management, how was it paid and does it hold any claim it intends to make in these proceedings? If Shepherd or its sole member, Russell Mackert, is really the managing member of the Debtor entities, why not file the bankruptcy petitions properly? And where are the schedules and statements? If Applicant wishes to be employed, they have many questions to answer to fulfill their disclosure requirements under section 327, and their obligations under sections 521 and 1106.

15. On its face, this appears to be a bad faith filing of bankruptcy petitions, particularly in light of the recent disclosure of the existence of an investigation by the Texas

Securities Board. See Docket No. 27. It appears that this bankruptcy was filed to be one step ahead of the posse chasing Mr. Mackert and whoever runs or is responsible for the Debtor entities, and the Applicant has assisted in that process.

16. Finally, at a minimum, the Applicant appears, but it is hard to say given the lack of disclosures, to not be disinterested from the time of filing the petitions up to the appointment of the trustee. As no application was timely made and no basis is provided to make the Application nunc pro tunc, none should be allowed for this period, at a minimum.

FOR THE REASONS AND AUTHORITIES STATED ABOVE, counsel for the Group of Investors requests the Court, in all ways, deny the Application and grant such other and further relief to which the Group of Investors may be entitled.

Dated: September 29, 2009.

GROUP OF INVESTORS (see footnote 2)

Respectfully submitted,

By: /s/ Deborah J. Fritsche
Lead Counsel for Group of Investors

OF COUNSEL:

SMITHAMUNDSEN LLC
Brian M. Graham (IL Bar No. 6243015)
150 North Michigan Avenue
Suite 3300
Chicago, Illinois 60601
(312) 894-3309 (Telephone)
(312) 894-3210 (Facsimile)

JOHNSON, SPALDING, DOYLE,
WEST & TRENT, L.L.P.
Lori Hood
Texas State Bar No.: 009943430
Deborah J. Fritsche
Texas State Bar No. 07481150
919 Milam, Suite 1700
Houston, Texas 77002
(713) 222-2323 (Telephone)
(713) 222-2226 (Facsimile)

CERTIFICATE OF SERVICE

I, Bryan E. Minier, an attorney, do hereby certify that I caused true and correct copies of the attached Objection to Debtors' Application for Entry of Order Authorizing Retention and Employment of Michael L. Gesas, Thomas P. Yardley, Miriam R. Stein, and the Law Firm of Arnstein & Lehr LLP as Counsel for the Debtors to be served upon the attached service list via the Court's CM/ECF electronic filing system and e-mail on this the 29th day of September, 2009.

/s/ Bryan E. Minier

SERVICE LIST

Michael M. Eidelman, ESQ

Vedder Price
222 N. LaSalle Street
Suite 2600
Chicago, IL 60601
312 609-7636
312 609-5055 (fax)
meidelman@vedderprice.com

representing **Eric Boutte, as Trustee for the AB
Revocable Living Trust**
(Interested Party)

Deborah J. Fritsche

Johnson Spalding Doyle West &
Trent, LLP
919 Milam, Suite 1700
Houston, TX 77002
(713) - 8600532
dfritsche@js-llp.com

representing **Group of Investors**
(Creditor)

Arlene N Gelman

Vedder Price P.C.
222 North LaSalle Street
26th Floor
Chicago, IL 60601
(312) 609-7500
(312) 609-5005 (fax)
agelman@vedderprice.com

representing **Eric Boutte, as Trustee for the AB
Revocable Living Trust**
(Interested Party)

Michael L. Gesas

Arnstein & Lehr, LLP
120 South Riverside Plaza
1200
Chicago, IL 60606-3910
312 876-7125
312 876-6260 (fax)
mlgesas@arnstein.com

representing **Life Fund 5.1, LLC**
203 N. LaSalle Street, Suite 2100
Chicago, IL 60603
(Debtor)

Brian M. Graham

SmithAmundsen LLC
150 N. Michigan Ave.
Chicago, IL 60601
312-894-3309
312-894-3210 (fax)

representing **Group of Investors**
(Creditor)

bgraham@salawus.com

Lori A Hood

Johnson Spalding Doyle West &
Trent, LLP
919 Milam, Suite 1700
Houston, TX 77002
(713) - 8600547
lhood@js-llp.com

representing **Group of Investors**
(*Creditor*)

David M Neff

Perkins Coie LLP
131 South Dearborn
Suite 1700
Chicago, IL 60603
312 324-8400
dneff@perkinscoie.com

representing **Patrick Collins, as Ch. 11 Trustee**
Perkins Coie LLP
131 South Dearborn Street suite 1700
Chicago, IL 60603
312-324-9400
(*Trustee*)

Miriam R. Stein

Arnstein & Lehr LLP
120 South Riverside Plaza
Suite 1200
Chicago, IL 60606
312 876-7119
312 876-0288 (fax)
mrstein@arnstein.com

representing **Life Fund 5.1, LLC**
203 N. LaSalle Street, Suite 2100
Chicago, IL 60603
(*Debtor*)