

Hearing Date: September 7, 2016 at 10:00 a.m.
Objection Deadline: August 31, 2016 at 4:00 p.m.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
In re:	:	Chapter 11
	:	
AIRFASTTICKETS, INC.,	:	Case No. 15-11951 (SHL)
	:	
Debtor.	:	
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**DEBTOR’S APPLICATION FOR AN ORDER
AUTHORIZING TO EMPLOY AND RETAIN BMC GROUP, INC. AS
ADMINISTRATIVE AGENT, NUNC PRO TUNC TO AUGUST 11, 2016**

The debtor and debtor in possession in the above-captioned case (the “Debtor”) hereby files this application (the “Application”), as supported by the Declaration of Tinamarie Feil (the “Feil Declaration”) annexed hereto as **Exhibit A**, for entry of an order, substantially in the form annexed hereto as **Exhibit B** (the “Proposed Order”) under sections 105, 327(a) and 328 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), authorizing the

Debtor to employ and retain BMC Group, Inc. (“BMC Group”) as its administrative agent (the “Administrative Agent”) in the Debtor’s chapter 11 case. In support of the Application , the Debtor respectfully represents as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Application under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue in this Court is proper under 28 U.S.C. §§ 1408 and 1409.
3. The bases for the relief requested herein are sections 105, 327(a) and 328 of the Bankruptcy Code, Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2014-1 and 2016-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

BACKGROUND

4. On July 21, 2015, the Delaware Court of Chancery appointed Adam Meislik as the receiver of the Debtor.
5. On July 27, 2015, certain of the Debtor’s creditors filed an involuntary petition against the Debtor in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), seeking an order for relief under chapter 7 of the Bankruptcy Code.
6. The Debtor and the petitioning creditors entered into a stipulation extending the deadline to answer the involuntary petition, which stipulation was approved by this Court on or about August 21, 2015, extending the deadline through and including September 21, 2015 for the Debtor to file an answer.
7. On September 21, 2015, the Debtor filed an answer consenting to the entry of an order for relief under the Bankruptcy Code and concurrently filed its Motion to Convert Chapter

7 Case to Chapter 11 Pursuant to 11 U.S.C. § 706(a) (the “Motion to Convert”) seeking to convert the Debtor’s case to one under chapter 11 of the Bankruptcy Code.

8. On October 27, 2015 (the “Relief Date”), the Bankruptcy Court granted the Motion to Convert and entered an order for relief under the Bankruptcy Code. Thereafter, the Debtor has been managing its affairs as a debtor in possession under sections 1107(a) and 1108 of the Bankruptcy Code. As of the filing of this Application, no trustee, examiner or committee has been appointed.

9. On December 2, 2015, this Court signed an Order [ECF No. 68] authorizing retention and appointment of BMC Group as Claims and Noticing Agent (the “Claims and Noticing Agent Retention Order”). The Claims and Noticing Agent Retention Order provided that the Debtor may submit a separate retention application, under 11 U.S.C. § 327 and/or any applicable law, for work that is to be performed by Claims and Noticing Agent but is not specifically authorized by the Claims & Noticing Agent Retention Order.

10. At a hearing held on August 11, 2016, this Court approved the Debtor’s *Motion for an Order (i) Approving its Disclosure Statement, (ii) Establishing Plan Solicitation and Voting Procedures, (iii) Scheduling a Confirmation Hearing, and (iv) Establishing Notice and Objection Procedures for Confirmation of the Debtor’s Chapter 11 Plan of Liquidation* (the “Plan Solicitation Procedures Motion”), authorizing the Debtor to solicit votes on the *Debtor’s First Amended Chapter 11 Plan of Liquidation* (as amended form time to time, the “Plan”), as accompanied by the approved *First Amended Disclosure Statement for Debtor’s First Amended Chapter 11 Plan of Liquidation* (as amended form time to time, “the Disclosure Statement”).

11. In connection with the Plan Solicitation Procedures Motion, the Debtor contemplates using BMC Group to facilitate the solicitation of votes on the Debtor’s proposed

Plan and tabulation thereof. Therefore, in accordance with the Court's *Protocol for the Employment of Claims and Noticing Agents under 28 U.S.C. § 156(c)*, the Debtor is filing this Application authorizing the retention and appointment of BMC Group as the Administrative Agent for the solicitation and tabulation services *nunc pro tunc* to August 11, 2016.

RELIEF REQUESTED

12. Under this Application, and consistent with the Court's Claims and Noticing Agent Retention Order and *Protocol for the Employment of Claims and Noticing Agents under 28 U.S.C. § 156(c)*, the Debtor seeks authority to retain and employ BMC Group as the Administrative Agent for the solicitation and tabulation services *nunc pro tunc* to August 11, 2016. Specifically, the Debtor seeks to retain BMC to provide, among other things, the following administrative services (the "Administrative Services"), if and to the extent the Debtor requests:

- a. assisting with, among other things, solicitation, balloting and tabulation and calculation of votes for purposes of plan voting;
- b. preparing any appropriate reports, exhibits and schedules of information;
- c. prepare an official ballot certification and, if necessary, testify in support of the ballot tabulation results;
- d. generating, providing and assisting with claims objections, exhibits, claims reconciliation and related matters;
- e. facilitating any distributions pursuant to a confirmed plan; and
- f. providing such other noticing, solicitation, balloting, tabulation and administrative services as described in the Services Agreement, to the extent not included in the Claims and Noticing Agent Retention Order [ECF No. 68], as may be requested from time to time by the Debtor.

Compensation and Representation Regarding Disinterestedness

13. Under the Application, BMC will charge its fees for the Administrative Services to the Debtor at the standard hourly rates as set forth in the Services Agreement between the Debtor and BMC, a copy of which is attached as **Exhibit 1** to the Feil Declaration. BMC's rates

are competitive and comparable to the rates BMC's competitors charge for similar services, and are reasonable given the quality of BMC's services and BMC's bankruptcy expertise.

14. The Debtor is advised that BMC intends to apply to the Court for allowance of compensation and reimbursement of out-of-pocket expenses incurred on or after August 11, 2016 in connection with the services it provides pursuant to this Application, subject to the Court approval and in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the *Amended Guidelines for Fees and Disbursements for Professionals in the Southern District of New York Bankruptcy Cases effective February 5, 2013* [SDNY Administrative Order M-447], the *Amended Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [ECF No. 95] (the "Compensation Order"), and any further order of this Court.

15. The Feil Declaration represents that, to the best of her knowledge and belief, BMC is not connected with the Debtor, its creditors or equity interest holders, or other relevant parties, their respective attorneys and accountants, any United States Bankruptcy Judge for the Southern District of New York, the United States Trustee for the Southern District of New York, or any person employed by that office of the United States Trustee, and that, to the best of her knowledge, after due inquiry, BMC does not by reason of any direct or indirect relationship to, connection with or interest in the Debtor, hold or represent any interest adverse to the Debtor, its estate or any class of creditors or equity interest holders with respect to the matters upon which it is to be engaged. Except as disclosed in the Feil Declaration as it pertains to amounts owed by the Debtor for services rendered as Claims and Noticing Agent, BMC Group is a "disinterested person," as that term is defined in section 101(14) of the Bankruptcy Code. Should BMC Group

discover any relevant facts or relationships bearing on the matters described herein, BMC Group will use reasonable efforts to promptly file a supplemental declaration with the Court.

Basis for Relief

16. Section 327(a) of the Bankruptcy Code provides that a debtor, subject to the court's approval:

may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the [debtor] in carrying out the [debtor]'s duties under this title.

11 U.S.C. § 327(a).

17. Section 328(a) of the Bankruptcy Code authorizes the employment of a professional person “on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis” 11 U.S.C. § 328(a).

18. Bankruptcy Rule 2014(a) requires that an application for retention include:

[S]pecific facts showing the necessity for the employment, the name of the [firm] to be employed, the reasons for the selection, the professional services to be rendered, and proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the [firm's] connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

Fed. R. Bankr. P. 2014.

19. Additionally, Local Rule 2014-1 requires an entity seeking approval of employment under 11 U.S.C. § 327(a) to file a motion, supporting affidavit and proposed order, all of which are included in this Application.

20. To help the Debtor manage certain administrative tasks with respect to the solicitation of the Debtor's proposed Plan, vote tabulation and other Administrative Services, the Debtor submits that BMC's employment is necessary and in the best interests of the Debtor and the Debtor's estate. Accordingly, the Debtor respectfully submits that that Court should approve

this Application and authority the Debtor to employ BMC as the Administrative Agent in this chapter 11 case.

Nunc Pro Tunc Relief Is Appropriate

21. The Application seeks BMC's retention as the Debtor's Administrative Agent *nunc pro tunc* to August 11, 2016. Before the hearing on approval of the Disclosure Statement held on August 11, 2016, counsel for the Debtor was advised by counsel for the Office of the United States Trustee that it will not object to BMC's retention *nunc pro tunc* to August 11, 2016. Moreover, the Debtor believes that no party in interest will be prejudiced by the granting of the *nunc pro tunc* expansion of employment of BMC Group, since BMC Group has provided and continues to provide valuable services to the Debtor's estate.

22. Based on the foregoing, the Debtor submits that it has satisfied the requirements of the Bankruptcy Code, Bankruptcy Rules, and Local Rules. Accordingly, the Debtor respectfully requests that the Court enter the Proposed Order authorizing the Debtor to retain and employ BMC as Administrative Agent *nunc pro tunc* to August 11, 2016.

NOTICE

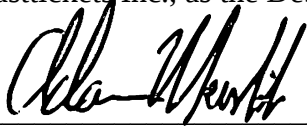
23. The Debtor has provided notice of this Application to the Office of the United States Trustee for the Southern District of New York and on all parties entitled to such notice in accordance with Bankruptcy Rule 2002. The Debtor submits that no further notice is necessary. No prior application for the relief requested herein has been made to this or any other court.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Debtor respectfully requests that the Court enter the Proposed Order, substantially in the form attached hereto as **Exhibit B**, granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: August 15, 2016

Airfasttickets Inc., as the Debtor

By: 

Adam Meislik