

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re

CASE NO. 9:08-bk-04360-MGW

ULRICH FELIX ANTON ENGLER,
PRIVATE COMMERCIAL OFFICE, INC.,
and PCO CLIENT MANAGEMENT, INC.,

CHAPTER 7
(Substantively Consolidated)

Debtors.

TRUSTEE'S OBJECTION TO CLAIMS OF SWISS CONFEDERATION

**NOTICE OF OPPORTUNITY TO
OBJECT AND FOR HEARING**

Pursuant to Local Rule 2002-4, the Court will consider this motion, objection, or other matter without further notice or hearing unless a party in interest files a response within sixty (60) days from the date set forth on the proof of service attached to this paper plus an additional three days for service. If you object to the relief requested in this paper, you must file your response with the Clerk of the Court at Sam M. Gibbons United States Courthouse, 801 North Florida Avenue, Tampa, Florida 33602-3899, and serve a copy on counsel for the Trustee at Heather L. Harmon, Esq., Genovese Joblove & Battista, P.A., 200 East Broward Boulevard, Suite 1110, Fort Lauderdale, FL 33301, hharmon@gjb-law.com, and any other appropriate persons within the time allowed.

If you file and serve a response within the time permitted, the Court may schedule and notify you of a hearing, or the Court may consider the response and may grant or deny the relief requested without a hearing. If you do not file a response within the time permitted, the Court will consider that you do not oppose the relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

**For additional information regarding these Chapter 7 cases,
please visit www.englerbk.com**

ROBERT E. TARDIF, JR. (the "Trustee"), as Chapter 7 Trustee for the substantively consolidated bankruptcy estates of Ulrich Felix Anton Engler ("Engler"), Private Commercial Office, Inc. ("PCO"), and PCO Client Management, Inc. ("PCOM") (collectively, the

“Debtors”), pursuant to 11 U.S.C. §502(b), Federal Rule of Bankruptcy Procedure 3007 and Local Rule 3007-1, hereby files this objection (the “Objection”) to the claims filed by the Swiss Confederation, and states in support thereof as follows:

1. On March 31, 2008 (the “Petition Date”), a group of creditors filed involuntary petitions for relief under Chapter 7 of Title 11 of the United States Code (the “Bankruptcy Code”) against Engler and PCO with the Clerk of this Court.

2. On April 29, 2008, the Court entered Orders for Relief against Engler and PCO (collectively, the “Initial Debtors”).

3. On April 30, 2008, the Trustee was appointed and continues to serve as the permanent Chapter 7 Trustee for the Debtors’ estate.

4. On June 24, 2008, the Court entered an Order substantively consolidating the assets and liabilities of the Initial Debtors’ bankruptcy estates.

5. On July 31, 2008, the Clerk of the Court issued a Notice fixing November 3, 2008 (the “Bar Date”) as the deadline for filing proofs of claim in the Debtors’ estate (Doc. 72).

6. On November 3, 2008, Swiss Confederation filed Claim Number 1019 in Case Number 9:08-bk-04360-MGW as a general unsecured claim in the amount of \$58,840,491.20 (the “Swiss Confederation Claim”)¹.

7. The Swiss Confederation Claim was filed on behalf of certain individual investors.

8. On April 23, 2010, the Court entered an Order substantively consolidating the assets and liabilities of PCOM with and into the Initial Debtors’ estate *nunc pro tunc* to March 31, 2008.

1 On March 20, 2009, the Swiss Confederation Claim was inadvertently re-docketed as Claim Number 210 in Case Number 9:08-bk-04365-MGW and Claim Number 894 in Case Number 9:08-bk-04360-MGW (collectively, the “Duplicate Claims”). The Trustee asks that these Duplicate Claims be stricken and disallowed in their entirety.

9. On July 28, 2010, the Court entered an *Order Granting Trustee's Motion To Establish Certain Notice, Case Management And Administrative Procedures* (Doc. 451) which, *inter alia*, authorized the Trustee to serve filings via the website EnglerBk.com.

10. By this Objection, the Trustee seeks an Order of the Court reducing the Swiss Confederation Claim to the amount of the aggregate allowable claims of the individual investors.

11. First, the backup attached to the Swiss Confederation Claim only details individual investor claims of \$57,701,111.63. The Trustee requests that a portion of the Swiss Confederation Claim in the amount of \$1,139,357.57 be reduced and disallowed as not providing adequate detail as to why the backup does not match the face amount of the Swiss Confederation Claim.

12. Exhibit "A" lists the individual claims which are the subject of the Trustee's Objection for one or more of the reasons set forth below and the recommended disposition of each such individual claim underlying the Swiss Confederation Claim.

13. However, the Trustee reserves the right to amend the Objection, to object on additional grounds not set forth in the Exhibit and/or to object to any further claims not presently set forth on the Exhibit. By filing this Objection, the Trustee does not waive the right to file further objections or to pursue other courses of action as may be deemed appropriate under applicable law.

GROUND FOR OBJECTION TO INDIVIDUAL CLAIMS

Duplicate: This claim is duplicative of another claim filed in the substantively consolidated bankruptcy cases of Engler and/or PCO. As a result, the duplicative claim should be stricken and disallowed in its entirety. Exhibit "A" specifies claimant's remaining claim against the Debtors' consolidated estate. The remaining claim may be subject to further objection.

Claim Exceeds Net Investment: The amount of the claim exceeds the net investment set forth in the Debtors' books and records including, but not limited to, the Debtors' bank records. A "net investment" is the principal of the investment, less any amounts received from the Debtors as either return of principal or interest payments. As a result, such claims should be reduced to the amount indicated on the Exhibit, to the extent the Trustee does not seek to strike and disallow such claim for additional reasons set forth herein.

Claimant is Net Profiteer: The Debtors' books and records including, but not limited to, the Debtors' bank records, show that claimant is a "net profiteer" in the Debtors' Ponzi scheme. A net profiteer is an individual or entity who received return of principal or interest payments in excess of the principal amount invested with the Debtors. Because the claimant's principal was returned in full prior to the petition date, claimant is not entitled to any further claim against the Debtors' consolidated estate. As a result, the claim should be stricken and disallowed in its entirety.

Claim Filed With No Amount: The proof of claim form does not specify a claim amount. The documentation attached to the proof of claim does not indicate the claimant's intent with respect to the claim amount. As a result, the claim should be stricken and disallowed in its entirety.

WHEREFORE, the Trustee respectfully requests the Court to enter an Order: (i) reducing the Swiss Confederation Claim to the amount of the aggregate allowable claims of the individual investors as set forth on the attached Exhibit; (ii) disallowing the Duplicate Claims as being duplicative of the Swiss Confederation Claim; and (iii) granting such other and further relief as is just and appropriate.

Dated this 19th day of August, 2015.

Respectfully submitted,
GENOVESE JOBLOVE & BATTISTA, P.A.
Special Counsel to the Trustee
200 East Broward Boulevard, Suite 1110
Fort Lauderdale, Florida 33301
Telephone: (954) 453-8000
Telecopier: (954) 453-8010

By: /s/ Robert F. Elgidely

Robert F. Elgidely, Esq.
Florida Bar No. 111856
relgidely@gjb-law.com
Heather L. Harmon, Esq.
Florida Bar No. 013192
hharmon@gjb-law.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Trustee's Objection To Claims Swiss Confederation* has been furnished to counsel for the claimant list below, all creditors and/or interested parties registered on the Court's CM/ECF System and was also posted on the website "englerbk.com" in accordance with the Order Granting Trustee's Motion To Establish Certain Notice, Case Management And Administrative Procedures (Doc. 451) on January 23, 2015.

By: /s/ Robert F. Elgidely
Robert F. Elgidely

(Via Federal Express)

SWISS CONFEDERATION
Federal Office of the Attorney General of Switzerland
Zurich Branch, Federal Attorney Rene Eichenberger
Werdstr. 138/140, CH-8036 Zurich
SWITZERLAND
Counsel for Claimant