

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

In re

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

ULRICH FELIX ANTON ENGLER and  
PRIVATE COMMERCIAL OFFICE, INC.,

CHAPTER 7  
(Substantively Consolidated)

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**MOTION TO SUBSTANTIVELY CONSOLIDATE NON-DEBTOR  
PCO CLIENT MANAGEMENT, INC. WITH AND INTO THE DEBTORS'  
BANKRUPTCY ESTATES *NUNC PRO TUNC* TO MARCH 31, 2008**

ROBERT E. TARDIF, JR., As Trustee For The Chapter 7 Bankruptcy Estates of Ulrich Felix Anton Engler and Private Commercial Office, Inc. (hereinafter the "Trustee"), by and through his undersigned counsel, hereby files his Motion To Substantively Consolidate Non-Debtor PCO Client Management, Inc. With And Into The Debtors' Bankruptcy Estates *Nunc Pro Tunc* To March 31, 2008 pursuant to 11 U.S.C. § 105(a), and states in support thereof as follows:

1. On March 31, 2008, a group of creditors filed involuntary petitions for relief under Chapter 7 of the Bankruptcy Code against Ulrich Felix Anton Engler a/k/a Richie Engler (hereinafter "Engler") and Private Commercial Office, Inc. (hereinafter "PCO") with the Clerk of this Court (hereinafter the "Petition Date").

2. On April 29, 2008, the Court entered Orders for Relief against Engler and PCO (hereinafter sometimes referred to collectively as the "Debtors").

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

4. Plaintiff was appointed and currently serves as the permanent Chapter 7 Trustee for the Debtors' bankruptcy estates.

5. As of February 10, 2010, 1,221 Proofs of Claim in the aggregate amount of

\$312,999,841.01 (consisting of general unsecured claims in the amount of \$276,953,198.65 and secured claims in the amount of \$36,046,642.36) were filed in the Engler bankruptcy case and 210 Proofs of Claim in the aggregate amount of \$205,085,382.63 (consisting of general unsecured claims in the amount of \$169,658,251.00, secured claims in the amount of \$35,416,816.63 and priority claims in the amount of \$10,315.00) were filed in the PCO bankruptcy case.

6. Engler is a German citizen who perpetrated a massive, transnational Ponzi scheme from this District in which funds received from later investors were used to repay earlier investors.

7. Engler purported to be a highly experienced investor who had a long history of generating significant investment returns through “conservative” day trading activities in securities listed on the New York Stock Exchange.

8. Engler represented that he possessed sophisticated software that was capable of analyzing approximately 35,000 shares of stock every five seconds and that he was therefore capable of capturing significant investment returns before other day traders or investment bankers.

9. Engler conducted the Ponzi scheme through PCO and PCO Client Management, Inc. (hereinafter “PCOM”) using the same office address at a Mailboxes, Etc. location in Cape Coral, Florida.

10. Engler solicited investments from individuals and entities throughout the world (hereinafter the “Investors”) through a network of sales agents, through use of the mails and wires, and by means of newspaper advertisements and telephone solicitations.

11. Engler initially instructed Investors to deposit funds into a bank account

maintained by PCO at Suntrust Bank in this District and subsequently instructed Investors to deposit funds into bank accounts maintained by PCOM at Suntrust and Wachovia Banks in this District (hereinafter referred to collectively as the "Bank Accounts"). True and correct copies of documents issued by the Debtors entitled "Loan Agreement" and reflecting the wire transfer instructions for the Bank Accounts are attached hereto as Composite Exhibit "A" and are incorporated herein by this reference.

12. In accordance with Engler's instructions, the Investors deposited over \$150 Million into the Bank Accounts maintained by PCO and PCOM with the expectation that Engler would invest those funds in securities listed on the New York Stock Exchange.

13. Engler also diverted \$35,112,948.23 in Investors' funds from PCO's bank account to open and fund PCOM's bank account and to close PCO's bank accounts (including several checks written in August 2007 to close the PCO bank accounts and which were deposited into the PCOM bank accounts on August 23, 2007). True and correct copies of the forensic accounting analysis reflecting the transfers from PCO to PCOM are attached hereto as Composite Exhibit "B" and are incorporated herein by this reference.

14. Upon information and belief, Engler never engaged in day trading activities on behalf of the Investors but, rather, fraudulently transferred those funds to numerous affiliates, alter egos, friends, and/or family members located throughout Europe, Canada, and the United States.

15. The German authorities have issued an international warrant for Engler's arrest with respect to the foregoing activities.

16. Engler is currently a fugitive from justice.

17. PCOM was a sham corporation or was the Debtors' nominee, alter ego and/or

mere instrumentality in facilitating the Ponzi scheme. True and correct copies of an Investigation Report prepared by the German State Office for Criminal Investigation which details the relationship between PCO and PCOM as well as correspondence issued by the Debtors as “P.C.O. Private Commercial Office Inc./Ulrich Engler” are attached hereto as Composite Exhibit “C” and are incorporated herein by this reference.

18. PCOM also acted a mere conduit through which the Investors’ funds flowed from the Debtors to numerous other nominees, affiliates, alter egos, friends, and family members located throughout Europe, Canada and the United States (hereinafter referred to collectively as the “Transferees”).

19. PCO and PCOM were completely dominated and controlled by Engler, operated by Engler as a single economic unit, failed to observe requisite formalities, commingled their assets, and existed for the sole purpose of hindering, delaying and/or defrauding creditors.

20. The Trustee owes a fiduciary duty to the Debtors’ bankruptcy estates and such duty can only be fulfilled by filing numerous avoidance actions against the Transferees in Europe and the United States prior to the expiration of the April 29, 2010 limitations period under Bankruptcy Code Section 546(a).

21. Since there is a substantial identity between the Debtors and PCOM and the benefits of substantive consolidation to the Debtors’ bankruptcy estates overwhelmingly outweighs any prejudice, the Trustee respectfully submits that PCOM should be substantively consolidated with and into the Debtors’ bankruptcy estates *nunc pro tunc* to March 31, 2008. See *Sampsell v. Imperial Paper & Color Corp.*, 313 U.S. 215 (1941); *In re Bonham*, 229 F.3d 750 (9th Cir. 2000); *Eastgroup Properties v. Southern Motel Ass’n, Ltd.*, 935 F.2d 245 (11th Cir. 1991); *Walls v. Centurion Asset Management, Inc. (In re Bolze)*, 2009 WL 2232802 (E.D. Tenn.

July 23, 2009) (substantively consolidating non-debtor into debtor's bankruptcy estate because, *inter alia*, investment funds were transferred between accounts maintained by the debtor and the non-debtors in connection with a Ponzi scheme); and *In re Alico Mining Inc.*, 278 B.R. 586 (Bankr. M.D. Fla. 2002).

22. Substantive consolidation of PCOM with and into the Debtors' bankruptcy estates *nunc pro tunc* to March 31, 2008 is non-prejudicial and appropriate because PCOM was voluntarily dissolved on October 12, 2007. True and correct copies of the public inquiry report and Articles of Dissolution for PCOM are attached hereto as Composite Exhibit "D" and are incorporated herein by this reference.

23. Since the limitations period for filing avoidance actions expires on April 29, 2010 pursuant to Bankruptcy Code Section 546(a) and numerous actions must be prepared and filed in Europe and the United States well in advance of the April 29, 2010 deadline, the Trustee respectfully requests a prompt hearing on this Motion.

**WHEREFORE**, the Trustee respectfully requests this Honorable Court to enter an Order substantively consolidating PCO Client Management, Inc. with and into the Debtors' bankruptcy estates *nunc pro tunc* to March 31, 2008 and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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By: /s/ Robert F. Elgidely  
Robert F. Elgidely, Esq.  
Florida Bar No. 111856

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Motion To Substantively Consolidate Non-Debtor PCO Client Management, Inc. With And Into The Debtors' Bankruptcy Estates *Nunc Pro Tunc* To March 31, 2008 has been furnished by the Court's CM/ECF System and/or first class mail to all parties identified on the attached Service List and to COUNSEL TO ANGELIKA NEUMEIER-FUCHS, Scott A. Stichter, Esq./Stephen R. Leslie, Esq., Stichter, Riedel, Blain & Prosser, P.A., 110 East Madison Street, Suite 200, Tampa, Florida 33602, on the 10<sup>th</sup> day of February, 2010.

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