

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

In re:	§	
	§	Chapter 7
PRIVATE COMMERCIAL OFFICE, INC. and ULRICH ENGLER.,	§	
	§	Jointly Administered under
	§	Case No. 08-04360-ALP
Debtors.	§	

**MARKUS HERMANEK’S MOTION FOR
AUTHORITY TO FILE AND TO ALLOW LATE CLAIM**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

NOW COMES Markus Hermanek (“Hermanek”) and files this Motion for Authority to File and to Allow Late Claim (the “Motion”). In support hereof, Hermanek respectfully states as follows:

I.

JURISDICTION

1. The Court exercises subject matter jurisdiction with regard to the Motion pursuant to 28 U.S.C. §§ 157 and 1334. The Motion constitutes a core proceeding under 28 U.S.C. §§ 157(b)(2)(A)(B) and (O).
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

II.

FACTUAL AND PROCEDURAL BACKGROUND

3. Hermanek made three separate loan agreements to the Debtors for which he has not been paid. The amount outstanding is \$156,200 (the “Claim”). Hermanek was not listed on the Debtors’ Schedules nor did he receive any notification from the Debtors or the Bankruptcy

Court advising him of the bankruptcy case or that he may be a creditor. A declaration from Hermanek supporting the proposed late claim is attached hereto as "Exhibit A."

4. Hermanek understands that the Debtors have not yet made any distributions and the bar date has just recently passed.

5. Hermanek respectfully requests that the Court authorize Hermanek to file a late claim. Counsel for Hermanek has conferred with the Trustee who indicated he would not object to Hermanek's request that he be authorized to file a late claim. The parties did not discuss the merits of the Claim itself.

III.

ARGUMENT & AUTHORITY

6. FEDERAL RULE OF BANKRUPTCY PROCEDURE 3003(c)(3) authorizes the Court to extend the time for filing proofs of claim in Chapter 11 cases for cause shown. Section 501 of the Bankruptcy Code further authorizes the Court to allow late claims as permitted under 11 U.S.C. §§ 726(a)(1), (2) or (3) or under the FEDERAL RULES OF BANKRUPTCY PROCEDURE. Section 726(a)(2)(C)(i) permits the distribution of property of the estate to creditors who, as a result of lack of notice or actual knowledge of the bankruptcy case, failed to file timely claims, but who assert such claims "in time to permit payment."

7. In light of the foregoing, Hermanek respectfully submits that cause exists to authorize Hermanek to file a late claim. A copy of the proposed late claim, with supporting documentation, is attached hereto as "Exhibit B."

WHEREFORE, PREMISES CONSIDERED, Hermanek respectfully requests that the Court enter an order (i) authorizing Hermanek to file a late claim; (ii) deeming the proof of claim

attached hereto as "Exhibit B" properly filed; and (iii) granting Hermanek any and all other relief, at law or in equity, to which he may show himself justly entitled.

Dated: November 20, 2008

Respectfully submitted,

BAKER & MCKENZIE, LLP

By: /s/ Effie D. Silva

Effie D. Silva

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And

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ATTORNEYS FOR MARKUS HERMANEK

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that on and before November 17, 2008, he conferred with Robert E. Tardif, Jr., Trustee, and that Mr. Tardiff indicated that he would likely not object to Hermanek's request to file a late claim.

/s/ Elliot D. Schuler

Elliot D. Schuler

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true and correct copy of the foregoing Motion has been served upon the following:

Robert E. Tardif, Jr.
Trustee
2430 Shadowlawn Drive, Suite 18
Naples, FL 34112

Roberta A. Colton
PO Box 1102
Tampa, FL 33601

Ronald G Neiwirth
Fowler White Burnett PA
1395 Brickell Avenue, 14th Floor
Miami, FL 33131

Robert F Elgidely
Genovese Joblove & Battista PA
Bank of America Tower - 44th Floor
100 Southeast Second Street
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Fowler, White, Boggs, Banker PA
PO Box 1438
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Miller & Hollander PA
2430 Shadowlawn Drive, Suite 18
Naples, FL 34112

John L Urban
Urban & Thier PA
200 South Orange Avenue
Suite 2025
Orlando, FL 32801

United States Trustee
Timberlake Annex, Suite 1200
501 E Polk Street
Tampa, FL 33602

via United States mail, first class, postage prepaid and properly addressed, on November 20, 2008.

/s/ Elliot D. Schuler
Elliot D. Schuler