

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:)
)
MADISON PARK CHURCH OF GOD, INC.,) CASE NO. 13-07430 RLM 11
)
Debtor.)

**UNITED STATES TRUSTEE’S OBJECTION TO DEBTOR’S MOTION FOR
AUTHORITY TO: (A) MAINTAIN EXISTING BANK ACCOUNTS;
(B) CONTINUE USE OF EXISTING CASH MANAGEMENT SYSTEM; AND
(C) CONTINUE USE OF BUSINESS FORMS**

Nancy J. Gargula, United States Trustee, by counsel, Ronald J. Moore, Assistant United States Trustee, objects to Madison Park Church of God, Inc.’s (“Debtor”) Motion for Authority to: (A) Maintain Existing Bank Accounts; (B) Continue Use of Existing Cash Management System; and (C) Continue Use of Business Forms (“Bank Account Motion”), and for her objection states as follows:

United States Trustee Chapter 11 Guidelines

The United States Trustee has broad duties to monitor and take action, when she determines it to be appropriate, in any bankruptcy case pursuant to 28 U.S.C. § 586 and 11 U.S.C. § 307. In order to assist with her duties the United States Trustee has published Guidelines regarding the operation of chapter 11 cases.

As part of the Guidelines the United States Trustee requires that debtors in chapter 11 cases close pre-petition bank accounts and relocate those funds to a depository included on the list of authorized depositories that the United States Trustee maintains and supplies to chapter 11 debtors.

In order to be an authorized depository, a depository must agree to certain conditions. Some of the conditions include supplying the United States Trustee with monthly bank account statements for debtor-in-possession bank accounts, and that the depository fully insures the account balances via FDIC insurance; posting a surety bond; or, posting collateral with the Federal Reserve Bank. The agreement between the United States Trustee and an authorized depository is memorialized by the execution of a written Uniform Depository Agreement.

The United States Trustee imposes these requirements upon debtors in chapter 11 and their depositories for numerous reasons. First, the authorized depositories may send the bank account statements directly to the United States Trustee. This procedure prevents the alteration of the statements and ensures that the United States Trustee at least will have some up-to-date financial information regarding a debtor even if the debtor fails to file monthly operating reports, an all too frequent occurrence in chapter 11 cases. Second, the requirements ensure that debtor's bank accounts are fully insured regardless of how much money is in the account at any given time. In the event of a bank failure, chapter 11 accounts that are properly collateralized will not experience a loss of value. The collateralization requirement also ensures that a debtor remains in compliance with 11 U.S.C. § 345(b), which requires the accounts to be fully insured or bonded.

Congress enacted § 345 presumably fully aware of the full range of financial laws, regulations, and governmental oversight in place regarding national banks and other financial institutions. Despite that knowledge, Congress enacted § 345(b) requiring that funds be collateralized to the extent they are not otherwise insured. Congress clearly expressed its concern regarding loss of estate funds, not from robbers or thieves, but rather from failing banks or other financial institutions.

By requiring the placement of the funds in an authorized depository, the United States Trustee can more easily track funds in bank accounts and take steps to insure those funds if they exceed the FDIC insurance limits. To do otherwise requires that the Court rely upon the debtor to immediately advise the Court and the United States Trustee if the funds on deposit exceed the insurance limits (currently \$250,000).

Finally, it should also be noted that the United States Trustee treats the fiduciaries in all chapters of bankruptcy the same. The United States Trustee requires that all chapter 13 standing trustees and all chapter 7 panel trustees maintain their financial accounts in approved depositories and the United States Trustee routinely monitors collateralization of those accounts and ensures the depositories collateralize those accounts via deposits with the Federal Reserve.

Debtor's Request

The Bank Account Motion indicates that Debtor had one bank account with STAR Financial Bank ("STAR") prior to the filing of the bankruptcy petition in this case and that the Debtor seeks to maintain that account. STAR previously was an authorized depository as described above. However, in January 2013, STAR advised the Office of the United States Trustee that it no longer wished to be an authorized depository and it canceled the Uniform Depository Agreement between STAR and the United States Trustee. As a result, for the reasons stated above, the United States Trustee objects to the Debtor's request to maintain the STAR account.

Debtor's rationale for maintaining the existing STAR account is that (1) the account affect the timing and receipt of transactions; (2) the change may disrupt certain programs offered by the Debtor; and (3) additional strain on relationships vital to the Debtor's reorganization.

Bank Account Motion ¶¶ 19 and 20. Filing bankruptcy grants many benefits upon a debtor but it also imposes restrictions and fiduciary obligations to account for and protect estate assets. The United States Trustee concedes that closing a bank account and opening another always imposes a burden on a debtor, but the advantages of being able to maintain stricter oversight of the new bank account, and the ability to properly collateralize the account, far outweighs the inconvenience and cost of not doing so.

While the United States Trustee requests that debtors move with alacrity when transferring bank accounts, a delay in doing so of 30 days is not uncommon for a variety of reasons. Accordingly, the United States Trustee does not object to leaving the STAR account open for a 30 day period during which the Debtor could investigate other, authorized, depositories. The Debtor could then select an authorized depository that best meets the Debtor's needs.

Moreover, there is nothing that prevents STAR from requesting to again become an authorized depository. If STAR wishes to do so the United States Trustee is willing and able to supply the required Uniform Depository Agreement and review the same upon return from STAR. If the agreement is approved by both the United States Trustee and STAR, STAR would once again become an authorized depository and the United States Trustee would consider this matter resolved.

WHEREFORE the United States Trustee prays that the Court DENY Debtor's request to maintain the STAR account; allow Debtor 30 days to either close the STAR account or for STAR to become an authorized depository; and, for such further relief as is just and proper.

Respectfully Submitted,

Nancy J. Gargula
UNITED STATES TRUSTEE

By: /s/ Ronald J. Moore

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CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2013, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

Jerald I. Ancel on behalf of Debtor Madison Park Church of God, Inc.
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Whitney L Mosby on behalf of Creditor Reliance Trust Company and OSK I, LLC
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I further certify that on July 15, 2013, a copy of the foregoing was mailed by first-class U.S. Mail, postage prepaid, and properly addressed to the following:

None

/s/ Ronald J. Moore

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