

UNITED STATES BANKRUPTCY COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

IN RE: : CHAPTER 11
:
BERNSTEIN FAMILY REALTY, LLC, : CASE NO. 22-13009-EPK
:
Debtor. :

**EMERGENCY MOTION OF U.S. TRUSTEE TO DISMISS OR CONVERT THIS CASE
TO A CASE UNDER CHAPTER 7 AND REQUEST FOR EXPEDITED HEARING**

REASON FOR EXPEDITED HEARING PURSUANT TO LOCAL RULE 9075-1

The Debtor has failed to comply with the U.S. Trustee Operating Guidelines by failing to provide compliance including proof of property insurance to the U.S. Trustee. The failure to provide insurance may leave the estate at risk and is harmful to estate. Additionally, the Debtor failed to comply with this Court's order setting certain deadlines. Therefore, the U.S. Trustee requests that a hearing on the motion be set at the Court's earliest convenience.

The United States Trustee pursuant to 11 U.S.C. Section 1112 (b) for an order dismissing this case or converting this case to a case under chapter 7 for failure to comply with a Court order and failure to provide proof of insurance to the United States Trustee. In support, the United States Trustee states as follows:

1. On April 19, 2022, an involuntary Chapter 11 petition was filed against the Debtor by Joshua Bernstein, Jacob Bernstein and Daniel Bernstein (jointly, "the Bernsteins"). Pursuant to the involuntary petition, the Bernsteins state they are the sole owners and members of the Debtor through irrevocable trusts.

2. Upon information and belief, the Debtor owns, amongst other assets, real property located at 2753 NW 34th Street, Boca Raton, FL (ECF #1, page 6 of 14).

3. On May 23, 2022, the Court entered an order granting the involuntary relief and setting a deadline by which various documents were to be filed with the Court (ECF #8).

4. The Court also set a status conference on the involuntary petition for May 25, 2022

(ECF #7).

5. At the May 25, 2022 status conference, the Bernsteins appeared along with their counsel. The Court noted that, because the Debtor is an artificial entity and not an individual, it needs legal representation to remain in bankruptcy. The Court continued the status hearing to June 1, 2022 to afford the Debtor additional time to find counsel (ECF #15).

6. At the June 1, 2022 status hearing, David Marshall Brown appeared as proposed counsel to the Debtor (“Proposed Counsel”). Proposed counsel asked for an extension to file the schedules and Statement of Financial Affairs. The United States Trustee raised concern that due to the fact hurricane season commenced June 1, 2022, proof of insurance was required to ensure that the real property. The United States Trustee raised an additional concern that, without a creditor matrix, creditors are not aware of this bankruptcy proceeding and a §341 meeting of creditors cannot be scheduled.

7. As a result of the hearing, on June 2, 2022, the Court entered its *Order setting Deadline to File Matrix and Employment Application and Extending Other Deadlines* (the “Order,” ECF #22). The Order required that the following pleadings be filed no later than June 3, 2022:

- a. Creditor Matrix
- b. Rule 2016 disclosure of compensation by Proposed Counsel
- c. Application to Employ filed by Proposed Counsel conforming to Bankruptcy Rule 2014 and Local Rule 2014-1.

8. The Order further stated that failure to comply with its terms may result in a dismissal or conversion of the case without further notice or hearing.

9. Separately, the United States Trustee requested proof of adequate insurance be provided not later than close of business on June 3, 2022.

10. Since the June 1, 2022 status hearing, the United States Trustee sent correspondence to Proposed Counsel requesting an update regarding compliance with the Order.

11. Late afternoon on June 3, 2022, the United States Trustee spoke with Proposed Counsel who stated he would be unable to comply with the Order. Proposed Counsel further failed to not provide the United States Trustee with proof of insurance.

12. The docket reflects no requests for extension of the deadlines contained in the Order.

13. Section 1112(b)(1) provides that after notice and a hearing, the Court shall dismiss or convert a case to a case under chapter 7 if the movant establishes cause. Section 1112(b)(4) lists several items which would constitute "cause" for purposed of conversion or dismissal.

14. The failure to comply with a Court order setting deadlines for the filing of documents is cause for dismissal or conversion pursuant to 11 U.S.C. §1112(b)(4)(E).

15. Pursuant to 11 U.S.C. §1112(b)(4)(H), the failure to timely provide information requested by the United States Trustee establishes cause to dismiss or convert a case to a case under chapter 7. The failure to provide proof of adequate insurance that poses a risk to the estate or to the public is cause for dismissal or conversion pursuant to 11 U.S.C. §1112(b)(4)(C).

16. The United States Trustee submits any uninsured property damage will result in financial harm to this estate, especially in light of the fact that Florida has entered into hurricane season.

17. The Debtor's failure to maintain adequate insurance to protect the estate indicates gross mismanagement of the estate, cause for dismissal or conversion pursuant to 11U.S.C. §1112(b)(4)(B).

18. The U.S. Trustee submits that it would be in the best interests of the creditor to dismiss this case or to convert the case to Chapter 7.

WHEREFORE, the United States Trustee respectfully requests the Court to set an emergency hearing and enter an order dismissing or converting of this case to a case under chapter 7 and for such other and further relief as may seem just and proper.

MARY IDA TOWNSON
United States Trustee

_____/S/_____
HEIDI A. FEINMAN
Trial Attorney
Florida Bar No. 0879460

Office of the U.S. Trustee
51 S.W. First Ave., Room 1204
Miami, FL 33130
(305) 536-7285

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **EMERGENCY MOTION OF U.S. TRUSTEE TO DISMISS OR CONVERT THIS CASE TO A CASE UNDER CHAPTER 7 AND REQUEST FOR EXPEDITED HEARING** was electronically filed with the Court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system and via U.S. Mail to the following:

Alan B Rose arose@mrachek-law.com, mchandler@mrachek-law.com
Bradley S Shraiberg bss@slp.law, dwoodall@slp.law; dwoodall@ecf.courtdrive.com;
pmouton@slp.law
David Marshall Brown davidbrownfl@gmail.com

Daniel Bernstein
2753 NW 34th Street
Boca Raton, FL 33434

Jacob Bernstein
2753 NW 34th Street
Boca Raton, FL 33434

Joshua Bernstein
2753 NW 34th Street
Boca Raton, FL 33434

Bernstein Family Realty, LLC
2753 NW 34th Street
Boca Raton, FL 33434

I hereby certify that I am admitted to the Bar of the United States District Court for the Southern District of Florida and the I am in compliance with the additional qualifications to practice in this court as set forth in Local Rule 2090-1(A).

DONE this the 4th day of June, 2022.

_____/s/_____
HEIDI A. FEINMAN
Trial Attorney
Office of the U.S. Trustee
51 SW First Avenue
Miami, FL 33130
(305) 536-7285