

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 04-60573-CIV-MORENO

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

MUTUAL BENEFITS CORP., JOEL STEINGER
a/k/a JOEL STEINER, LESLIE STEINGER a/k/a
LESLIE STEINER, and PETER LOMBARDI,
VIATICAL BENEFACTORS, LLC, VIATICAL
SERVICES, INC., KENSINGTON
MANAGEMENT, INC., RAINY CONSULTING
CORP., TWIN GROVES INVESTMENTS, INC.,
P.J.L. CONSULTING, INC., SKS
CONSULTING, INC., and CAMDEN
CONSULTING, INC.,

Defendants.

ORDER GRANTING RECEIVER'S MOTION TO APPROVE SALES OF POLICIES

On March 11, 2008, Roberto Martínez, court-appointed receiver ("Receiver") of Mutual Benefits Corp. ("MBC"), Viatical Benefactors, LLC ("VBLLC"), Viatical Services, Inc. ("VSI"), and Anthony Livoti, Jr. and Anthony Livoti, Jr., P.A., solely in their capacity as trustee (collectively the "Receivership Entities"), filed a motion (the "Sale Motion") requesting this Court to approve the proposed sale of a certain insurance policy issued by New York Life Insurance and Annuity Corporation (designated by MBC as Policy AP# 99-0007778 and which has a policy number from the issuing insurance company ending in digits "4487") (the "Policy") and all related rights, including

beneficial interests, free and clear of all liens, claims, interests and encumbrances, to Silver Point Capital Fund, L.P. ("Silver Point" or "Buyer") for a total of \$8,850,000 (subject to adjustment pursuant to the terms of the Purchase Agreement (as defined below)). This Court has considered the Sale Motion, the attached Asset Purchase Agreement (the "Purchase Agreement"), the representations of the Receiver therein, the record in these cases, and relevant authorities, and makes the following findings and conclusions:

A. On May 3, 2004 the Securities and Exchange Commission ("SEC") filed an action seeking entry of a temporary restraining order, preliminary injunction, permanent injunction and other relief with respect to the Receivership Entities (D.E. No. 1). On May 4, 2004, this Court entered a Temporary Restraining Order and Other Emergency Relief (D.E. No. 25), and entered an Order Appointing Receiver (D.E. No. 26). On February 14, 2005 this Court entered its Order Granting Motion for Preliminary Injunction (D.E. No. 711), sustaining the Report and Recommendation of Magistrate Judge Garber dated November 10, 2004 (D.E. No. 522), as supplemented on November 16, 2004 (D.E. No. 529).

B. The Order Appointing Receiver (D.E. No. 26) authorizes and directs the Receiver to "take immediate possession of all MBC, VBLLC and VSI property, assets and estate, and all other property of MBC, VBLLC and VSI of every kind whatsoever and wheresoever located belonging to or in the possession of MBC, VBLLC and VSI," and further authorizes and directs the Receiver to "administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court." That Order provides that "[t]itle to all property, real or personal, all contracts, rights of action and all books and records of MBC, VBLLC and VSI and their principals, wherever located within or without this state, is vested

by operation of law in the Receiver." It further authorizes the Receiver to "make, or authorize the making of, such agreements as may be reasonable, necessary and advisable in discharging the Receiver's duties"

C. On September 14, 2005, this Court entered its Order on Disposition of Policies and Proceeds (D.E. No. 1339)(the "Disposition Order"). On November 22, 2005, this Court entered its Order Clarifying Disposition Order and Approving Form of Notice (D.E. No. 1474) (the "Clarification Order"). These Orders collectively directed that investors be provided an opportunity to vote on whether to keep, sell or surrender the policy(s) in which they had an interest, and authorized the manner by which the Receiver was to solicit investors' elections. The decision as to how to dispose of each policy was to be determined by the vote of the majority of the interests in a policy that properly submitted votes with respect to the policy.

D. In accordance with these Orders, voting on each of the policies was conducted, the result of which is that approximately 3,138 policies with a face value of approximately \$383,850,782 were designated to be sold (the "Salable Policies").

E. On May 21, 2007 the Receiver initiated the sale process for certain of the Salable Policies (a group sometimes referred to as the "Bid 2 Policies") by sending out a letter soliciting bids for the Bid 2 Policies, which were divided into four portfolios (each, a "Portfolio"), together with a description of the bidding procedures (the "Bidding Procedures") to be followed by the Receiver with respect to the Bid 2 Policies. The Bid 2 Policies consisted of 1,949 Policies with a total face value of \$241,218,185. The letter was sent to approximately fifty parties who had expressed an interest in purchasing policies from the Receiver or who were otherwise known to the Receiver to be potentially interested in such purchases. The Mutual Benefits case and potential availability of

policies for purchase are well known to interested parties who are potentially in the market for purchase of viaticated policies, including through the advertisement of the prior auction, and the Receiver appropriately concluded that additional marketing was unnecessary in the circumstances.

F. The Bidding Procedures followed by the Receiver for the Bid 2 Policies provided an opportunity for qualified bidders to submit an initial qualifying bid for each or any of the Portfolios, and if multiple qualifying bids were received for any of the Portfolios, for an auction to be conducted in order to determine the highest and best bid for such Portfolio. The Bidding Procedures required that bids be submitted substantially in accordance with the form of a specified purchase agreement. The Bidding Procedures further provided that upon the conclusion of the auction, the Receiver could: (a) determine, in his business judgment, which bid, if any, was the highest bid; and (b) reject, at any time before the entry of a sale order, any bid that (i) was inadequate or insufficient, (ii) was not in conformity with the Bidding Procedures, any order of this Court, or the terms and conditions of the Receiver's specified purchase agreement, or (iii) was contrary to the best interests of the Receiver. If the Receiver advised a bidder that its bid was selected as the "Highest Bid" or "Backup Bid," then such bidder was required to make a deposit equal to 10% of the proposed purchase price within one business day thereafter.

G. In accordance with the Bidding Procedures, and after receiving qualifying bids, the Receiver proceeded to conduct an auction of each of the Portfolios on June 22, 2007. At the auction, each qualified bidder was given an opportunity to increase its bid with respect to each Portfolio for which it had submitted a qualified bid, with bidding proceeding until each qualified bidder indicating that it would increase its bid no higher. Upon the conclusion of the auction, the highest and next-highest bids as to each Portfolio (with respect to each Portfolio, the "Highest Bid" and the

"Backup Bid," respectively) submitted in conformity with the Bidding Procedures were identified.

H. After considering the bids received, the Receiver, in the exercise of his business judgment, determined that the Highest Bids on Portfolios #1, 2, and 4 were in the best interests of the Receivership and that the purchase and sale of such Portfolios in accordance with the terms of the Purchase Agreements, should be approved. The Receiver determined that the Highest Bid on Portfolio #3 did not represent sufficient value for that Portfolio and accordingly elected, in his business judgment, not to seek approval of a sale of Portfolio #3 at this time or of any of the "non-conforming" combined bids. The Court has previously found that the foregoing determinations by the Receiver represented a reasonable, appropriate and sound exercise of the Receiver's business judgment.

I. The Receiver advised all participants in the auction that they could submit higher offers to the Receiver for Portfolio #3 or any of the individual policies therein, and that the Receiver would consider all such offers submitted. The Receiver also re-commenced efforts to identify additional buyers for the Portfolio #3 policies. Every interested party was advised to submit their highest and best offer to the Receiver, and that the highest and best offer which the Receiver determined represented adequate value for Portfolio #3 or any policy therein would be presented for approval to the Court.

J. Thereafter, a number of parties contacted the Receiver and made offers for the purchase of certain of the Portfolio #3 policies, including the Policy. The highest and best offer submitted for the Policy was the offer submitted by Silver Point which is the subject of the Sale Motion. The Silver Point purchase offer provides substantially greater consideration than any other offer received with respect to the Policy, and in the business judgment of the Receiver, which this

Court ratifies and approves, represents appropriate value for the Policy.

K. Simultaneously with the filing of his Sale Motion, the Receiver served a Notice to Investors & Provider of Proposed Sale of Policy upon all investors who held interests in the Policy and to the Provider that issued the Policy. This Court finds that due and adequate notice of the sale of the Policy on the terms set forth in the Purchase Agreement has been provided to all interested parties, and that no further notice or opportunity to object is required.

L. This Court finds that: (i) the sale of the Policy and other Acquired Assets (collectively, the "Acquired Assets", as defined in the Purchase Agreement) in accordance with the Purchase Agreement is in the best interest of the Receivership Entities, the creditors thereof, the investors in the Receivership Entities, and the beneficiaries of the Policy and all other persons and entities with an interest in the Receivership Proceeding; (ii) the sale procedures were designed to obtain the highest and best offer for the sale of the Acquired Assets, and the sale to Buyer on the terms of the Purchase Agreement constitutes the highest and best offer for the Acquired Assets; (iii) the consideration being provided by Buyer for the Acquired Assets, and the terms of the Purchase Agreement, are fair and reasonable, constitute the highest and best offer for the Acquired Assets, and constitute reasonably equivalent value for the Acquired Assets; and (iv) accordingly that the sale of the Acquired Assets to Buyer pursuant to the Purchase Agreement should be authorized and approved.

M. This Court further finds that Buyer has at all times acted without collusion and in good faith in bidding on, and negotiating the purchase of, the Acquired Assets and is a good faith purchaser of the Acquired Assets and is entitled to all of the protections under law accorded to a party with such status. The Purchase Agreement was negotiated, proposed and entered into by the

Receiver and Buyer without collusion and in good faith, and is the end result of arms' length bargaining in which the Receiver and Buyer were represented by competent counsel.

Accordingly, it is hereby **ORDERED, ADJUDGED** and **DECREED** as follows:

1. The Receiver has the sole and absolute authority, on behalf of the Receivership Entities, to convey all claims, options, privileges, right, title and interest in, to and under the Policy and other Acquired Assets.

2. The sale of the Acquired Assets to Buyer in accordance with the terms of the Purchase Agreement is approved. The Purchase Agreement and all of the terms contained therein are approved and the Receiver is authorized to consummate all of the transactions contemplated thereby. Without limiting the generality of the foregoing, the Receiver is authorized to: (i) execute and deliver, and is empowered to perform under, consummate and implement, the Purchase Agreement and any additional instruments or agreements or documents that may be reasonably necessary or desirable to implement the Purchase Agreement; (ii) take all further actions as may be requested by the Buyer for the purpose of assigning, transferring, granting, conveying and conferring to the Buyer and its assigns and designees, or reducing to possession, the Acquired Assets; and (iii) timely comply with all of its obligations under the Purchase Agreement and any such additional instruments, agreements or documents. Any objection to such sale which has not been withdrawn is hereby overruled on its merits.

3. The Buyer has acted in good faith and is a good faith purchaser of the Acquired Assets.

4. The consideration for the Acquired Assets provided by the Buyer pursuant to the Purchase Agreement constitutes reasonably equivalent value and fair consideration under the laws

of the United States, both state and federal.

5. The transfer of the Acquired Assets will be a legal, valid and effective transfer of the Policy and other Acquired Assets and will vest Buyer or its assignee or designee, if applicable, with good and valid title and all right, title and interest in and to the Acquired Assets. At the Closing, Buyer or its assignee or designee, if applicable, will be vested with all claims, options, privileges, right, title and interest in, to and under the Acquired Assets, free and clear of all Encumbrances (as defined in the Purchase Agreement). Any person, including, without limitation, any creditor of or investor in the Receivership Entities, any beneficial interest holder or other holder of the Policy and any insurance company or other entity which issued or is obligated under the Policy and the successors and assigns of any of the foregoing, asserting or having an Encumbrance of any kind or nature against or in any Receivership Entity or the Acquired Assets arising out of, in connection with, or in any way relating to the Receivership Entities, the Policy or other Acquired Assets, or the transfer thereof to Buyer and its successors and assigns, shall be, and hereby are, forever barred, estopped and permanently enjoined from asserting, prosecuting or otherwise pursuing such Encumbrance against Buyer and its successors and assigns or any subsequent owner of the Acquired Assets.

6. From and after the Closing (as defined in the Purchase Agreement), Buyer and any subsequent owner of the Policy are deemed to be designees of Horizon Life Solutions Inc. under that certain Authorization for Release and Use of Medical and/or Insurance Information that was executed by the insured under the Policy on July 24, 2003, and shall have the right to obtain updated medical information from time to time regarding the insured/viator under the Policy including: (a) pursuant to 45 C.F.R. § 164.512(e)(1)(i), all health care providers who are served with a copy of this

Sale Order and a written request by Buyer or any subsequent owner of the Policy shall be authorized and compelled to immediately release copies to Buyer or any subsequent owner of the Policy, as the case may be, of all records relative to the care, treatment and health of the insured/viator under the Policy so requested by Buyer or such subsequent owner thereof, as the case may be, for the purpose of monitoring health and predicting life expectancy; and (b) the insured/viator under the Policy being required to provide Buyer and any subsequent owner of the Policy with contact information for such insured/viator, Health Insurance Portability and Accountability Act of 1996 compliant medical authorizations, contact information for all physicians or other medical providers who have treated such insured/viator since December 31, 2000, and any and all medical information generated since December 31, 2000 pertaining to such insured's/viator's health and medical condition, and Buyer or any subsequent owner of the Policy shall be entitled to seek enforcement of this provision as to any person, including by way of example, and not limitation, an application for a finding of contempt.

7. This Sale Order and the Purchase Agreement shall be binding in all respects upon all creditors of the Receivership Entities, any investor in the Receivership Entities, any beneficial interest holder or other interest holder of the Policy, any insurance company or other entity which issued or is obligated under the Policy, and any other party in interest in the Receivership Proceeding and any of the successors or assigns of the foregoing.

8. The failure to specifically include or describe any particular provision of the Purchase Agreement in the Sale Motion or this Sale Order shall not impair or diminish the effectiveness of such provision, it being the intent of this Court that the Purchase Agreement be authorized and approved in its entirety.

9. The Purchase Agreement and any related agreement, document or other instrument

may be modified, amended or supplemented by parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further notice or order of this Court, provided that any such modification, amendment or supplement does not constitute a material modification of the Purchase Agreement.

10. The sale of the Policy and other Acquired Assets is not precluded by or contrary to any prior order issued by this Court and no further consents by any person (including any governmental authority) are required to convey the Policy and other Acquired Assets to Buyer or to an assignee or designee thereof, if applicable, in accordance with the Purchase Agreement.

11. This Court retains jurisdiction to enforce and implement the terms of the Purchase Agreement, including to resolve any disputes arising under any Purchase Agreement, and to interpret, implement, and enforce the provisions of this Sale Order.

12. This Sale Order constitutes an interlocutory or a final judgment in a receivership action and thus this Sale Order shall become effective immediately upon its entry as provided in Rule 62(a) of the Federal Rules of Civil Procedure.

13. The provisions of this Sale Order are non-severable and mutually dependent.

DONE AND ORDERED in Chambers at Miami, Florida, this 17 day of March, 2008.



FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies provided to:

Counsel of Record