

| Date | Time Line of Frumusa's Attorney Grievance Complaint against Lee Woodard Esq, | Link to File |
|-----------|---|------------------------------------|
| 3/25/2010 | Complaint filed with the Attorney Grievance Committee (GC) Fifth Judicial District against Attorney Lee Woodard - Harris Beach LLP | link to file # 322 |
| 5/19/2010 | Grievance Committee response they received the Complaint | link to file # 344 |
| 5/27/2010 | Frumusa responds to the GC asking them to expedite the investigation as Mr. Woodard has become aware of his efforts and is retaliating. | link to file # 346 |
| 6/3/2010 | Frumusa again responds to the GC giving additional information of Woodard's actions to retaliate. | link to file # 348 |
| 6/5/2010 | Frumusa receives Woodard's response and is advised that he has until June 17, 2010 to comment. | link to file # 349 |
| 6/16/2010 | Frumusa mails an extensive response to Woodard's answer demonstrating Woodard is misleading and lying to the GC. | link to file # 353 |
| 6/16/2010 | Frumusa calls the GC to make them aware that his response is in the mail and they will receive it in time on the June 17,2010 date. However he is informed that the committee has rendered a decision which is in the mail to him. Frumusa asks to have the decision read to him or faxed - he is told to check the mail. He checks the PO Box and finds that the committee has dismissed his complaint without reviewing his answer and before the dead line to respond. He immediately request them re-open the complaint. | link to file # 354 |
| 6/16/2010 | GC decision dismissing Woodard complaint prior to the response dead line and without reviewing Frumusa response. | link to file # 355 |
| 6/18/2010 | Frumusa informs Woodard and Harris Beach PLLP that they are in direct conflict by their own admissions and must stop. | link to file # 356 |
| 6/19/2010 | Frumusa follows up to inform the GC of the conflicts and explain additonal steps they should have taken to properly investigate the complaint. | link to file # 357 |
| 6/21/2010 | Frumusa now follows up dispelling another excuse Woodard makes to justify his actions. | link to file # 359 |
| 6/28/2010 | Letter from the GC "PRINCIPAL COUNSEL" informing them that they are not pursuing this complaint further. | link to file # 365 |
| 7/9/2010 | Frumusa responds to the GC explaining they have not done a complete investigation and telling them other options | link to file # 368 |
| 7/30/2010 | GC responds to Frumusa sarcastically that they know what they are doing. | link to file # 374 |
| 8/15/2010 | Frumusa attempts to politely inform the GC directly by sending a letter to the chairpersons -- no reply | link to file # 379 |

Thursday, March 25, 2010

Grievance Committee for the Fifth Judicial District
Syracuse Square
465 South Salina Street
Syracuse, NY 13202
(315) 471-1835

Re: Complaint regarding Professional Misconduct of Lee Woodard:

Complete address:

Lee E. Woodard, Esq.
Co Chair -Financial Restructuring & Bankruptcy Practice Group
Harris Beach PLLC
300 South State Street 4th Floor
Syracuse, New York, 13202
315-423-7100
315-422-9331 (fax)

Grievance Committee,

I am writing to request an investigation of Professional Misconduct for the actions of Mr. Woodard from August 5, 2009 till to date.

I am a resident in the Town of Webster, New York, County of Monroe. On April 3, 2010 I filed for Bankruptcy under the Federal Bankruptcy Law Chapter 11 to protect my estate from a predatory hard money lender in Monroe County. At the time of filing the bankruptcy I valued my estate at \$43 Million Dollars and the Bankruptcy filing was filed to allow me time to restructure and provide a plan to recover.

As a result of my residence, the Bankruptcy proceeding venue was the Rochester Bankruptcy Court part of the New York Western Judicial District. Without question the involvement of the predatory hard money lender in the bankruptcy proceeding created a very adversary court environment. This was in spite of the fact I had the staunch support of all other Creditors.

This environment resulted in August 5, 2009 the Court on motion of the predatory hard money lender, converted my Personal Bankruptcy case to Chapter 7 liquidation. In addition the US Trustee office appointed Mr. Woodard as Chapter 7 Trustee for my cases. Appointment of an attorney as Trustee is a very critical position in a bankruptcy case. In my view this creates a fiduciary attorney-client relationship for myself and my estate, and it is critical the attorney acts in accordance with the *"Rules of Professional Conduct Client-Lawyer Relationship"*

Voice: 585-872-9999
Fax: 585-872-9000

email: lfrumusa@rochester.rr.com

PO Box 418
Webster, New York 14580

The appointment of Mr. Woodard from the start was very concerning to me. Mr. Woodard, first and foremost an attorney licensed to practice in New York State, was in addition registered as a Federal Chapter 7 Trustee in the New York **Northern** Judicial District. This district includes the Syracuse area where his office is located. However he was chosen as a Trustee in my case out of his registered Federal Judicial District. In fact chosen over some 45 other properly registered Federal Chapter 7 Trustees of the New York **Western** Judicial District.

This appointment was indeed very peculiar and concerning to me, especially in light of the significant role and control the Federal Chapter 7 Trustee has in the proper adjudication of a case. I attempted several time to have Mr. Woodard explain his appointment and unfortunately each time He refused and evaded the issue.

As the case progressed Mr. Woodard involvement became extremely detrimental to my Cases. It was clear he was not acting as a Trustee, but was solely acting to destroy my equity and myself. I have numerous actions detailed that demonstrate Mr. Woodard's breach of his fiduciary responsibilities. However this complaint is not directly about each incident, in fact this complaint is regarding a fundamental violation of the "*Rules of Professional Conduct Client-Lawyer Relationship*", being Rule 1.7 Conflict Of Interest: Current Clients. This violation explains all of Mr. Woodard detrimental actions.

I discovered in the Spring of 2010 that Mr. Woodard and his firm Harris Beach PLLC, concurrently are representing clients which are significant adversaries of mine and involved in the current bankruptcy case.

As detailed in Exhibit B pages 2 through 4. Mr. Woodard and his Firm's clients Fico and Scutti, who typically spend approximately \$750,000 per year in legal fees with Mr. Woodard and his Firm are also staunch adversaries of mine. Recently in a bitter partnership dispute with these co-clients Fico and Scutti, I was awarded a million dollar settlement. At the conclusion of the dispute they warned they would get even, and now it is obvious Mr. Woodard is there Champion. This is very disturbing and unfortunately it makes perfect sense of Woodard's action to destroy me.

Secondly with extensive confusion created by Mr. Woodard, I had not realized that Woodard himself and another attorney on his team directly represent an adversary creditor in my bankruptcy case! Amazing.

I had never been informed, or waived these conflicts!

Finally understanding Mr. Woodard's involvement in my cases, I on March 26, 2010 (Exhibit A) and then amended on March 29,2010 (Exhibit B) filed *pro-se*¹ with the Federal Bankruptcy Court

¹ The Plaintiff is proceeding pro-se not by choice but as of the court. On August 5, 2009 at hearing without Frumusa present, the Judge Ninfo converted the Frumusa's Case to Chapter 7 and released the Frumusa's attorneys effective immediately. These decisions have made it impossible for the Frumusa to retain counsel.

of New York Western Division a motion to have Mr. Woodard removed as Trustee. Mr. Woodard, remarkably in defiance of my rights, entered an objection to my Motion on April 4, 2010 (Exhibit C).

Mr. Woodard response, as all his action are designed to overwhelm myself acting as a pro-se litigant. In fact the explanations that Mr. Woodard proffered in his objection are self serving, in actuate, offer no evidence just Mr. Woodard saying "no I did not do it". In fact he will not even acknowledge the clients Fico and Scutti -- citing their confidentiality, come-on! this is foolish. Woodard is clearly conflicted and his actions show it.

However as I have seen many time before, in fact last seen in the conflict with Fedele Scutti the major conflicted client of Woodard, persons attempting to destroy others become so enraged, their actions incriminate them more than any written words.

As in this case, a hearing was scheduled in the Federal Bankruptcy court to hear arguments and decide my Motion to Remove Mr. Woodard. On April 7, 2010 the hearing was conducted, I unable to attend as I was researching Fraudulent Claims of another Trustee in a related issue, emailed Mr. Woodard and informed him that I was not able to attend, and please reschedule the hearing.

However Mr. Woodard attended the hearing making no mention of my status and Judge Ninfo with Mr. Woodard **unilaterally decided**, without my presents, to deny my motion. See Exhibit D, Judge Ninfo Order denying Frumusa motion.

This action alone, regardless if I contacted Mr. Woodard or not deciding a Motion such as mine without my presents and on the first hearing, concluded the Court's and Mr. Woodard's desire to silence my objections.

Any reasonable proceedings would have automatically inquired as to my where about and if nothing more simply allow me the courtesy of a delay to provide me adequate opportunity to be heard. However neither Judge Ninfo or Mr. Woodard allowed that.

I have attached the pleadings in this issue, I feel that reviewing these will communicate to the committee the detail necessary to support the discussion above and find Mr. Woodard in conflict of the "*Rules of Professional Conduct Client-Lawyer Relationship*". I would ask that this case be treated as a priority, as the action of Mr. Woodard have resulted in extraordinary damages which I have had to endure. Additionally, I request that the committee not consider the ruling of Judge Ninfo, as by his own action in not allowing me the opportunity to speak demonstrate his bias. In addition upon reviewing Judge Ninfo's order, there are no finding of fact to base his ruling on.

I would ask that the Committee immediately revoke Mr. Woodard Licenses to practice until a full investigation can be conducted. Mr. Woodard and Judge Ninfo have intentionally prevented my attempts to interview Mr. Woodard under oath and Mr. Woodard must explain his actions under oath before he can continue to operate in New York.

I trust you will take this into deep consideration, Please advise as soon as possible.

Regards,

A handwritten signature in black ink, appearing to read 'Larry Frumusa', with a long horizontal flourish extending to the right.

Larry Frumusa

Voice: 585-872-9999

Fax: 585-872-9000

email: lfrumusa@rochester.rr.com

PO Box 418

Webster, New York 14580

Exhibit A Frumusa Motion to Remove Woodard

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

Lawrence Frumusa,

Case : 09-21527

Debtor

MOTION TO REMOVE TRUSTEE MR. WOODARD FOR CAUSE

Lawrence Frumusa, submits a Motion To Remove Trustee Michael Arnold For Cause, as Pursuant to 11 U.S.C. § 324, and respectfully represents to the Court as follows:

1. Lawrence Frumusa, is one of four Chapter 11 bankruptcy cases filed by principle Lawrence Frumusa on April 3, 2009 others being MainCliff Properties LLC (09-21124), Rising Tide Development LLC (09-21123) and Lawrence Frumusa Land Development LLC (09-21126), the following 3 cases being referred to as Corporate Cases.
2. Primary reason for seeking protection under the Federal Bankruptcy Laws is to restructure, following a major project lender, National City Bank, who withdrew from the New York market. This occurred in the fall of 2008 as National City was being acquired by PNC bank and resulted in the multimillion dollar funding gap during project construction.
3. From the fall of 2008 to the date of filing April 3, 2009 "Robert Morgan and Paul Adams" conduct several questionable actions to disrupt Debtor's operations and also other Frumusa companies. These individuals, who are trying to assume the role as creditors without proper standing, clearly seeking to leverage a junior debt and the weak global economy to adversely acquire Frumusa' projects in total, "taking down" approximately \$5,000,000 in equity value – through forced liquidations sales – which were orchestrated by the Paul Adams and Robert Morgan and their legal team.
4. All cases are tightly coupled, with cross collateral debt affecting all of my corporate and personal cases.
5. Frumusa also understands now That Mr. Woodard and his Firm Harris Beach PLLC are in direct conflict with Mr. Frumusa. It is now brought the Mr. Frumusa attention that Mr. Woodard and his Firm Harris Beach PLLC, have recently and are now representing several clients in direct conflict and adversary to Frumusa.
6. Oblivious this conflict is why Mr. Woodard has continually violated Mr. Frumusa rights, simply for the betterment of the other clients Mr. Woodard and his Firm Harris Beach PLLC represent.

FILED

2010 MAR 26 PM 4:26

Exhibit A Frumusa Motion to Remove Woodard

Trustee Woodard Actions

7. Trustee Mr. Woodard was appointed August 5, 2009 as Trustee in Frumusa personal case.
8. Trustee Mr. Woodard during the course of his tenure as Trustee has consistently violated his fiduciary responsibility to the Estate, Debtor and Creditors.
9. Trustee Mr. Woodard during the course of his tenure as Trustee has consistently demonstrated collusion with the predatory lender Paul Adams in direct conflict of his Fiduciary responsibilities.
10. Trustee Mr. Woodard during the course of his tenure as Trustee has consistently acted without authorization to harass and violate Frumusa civil liberties.
11. As demonstrated in the latest incident in which Mr. Woodard conspired with a State Court Attorney to harass Mr. Frumusa and illegally remove property from Frumusa.

Woodard Conspires With State Court Attorney to Harass Frumusa

12. January 15, 2010 Lee Woodard files application with the court to hire Auctioneer to remove Frumusa's personal property and conduct an auction. Typically one of the final actions in a proceeding.
13. Woodard intentionally leaves list of items to be pick up vague.
14. Frumusa has identified 32 million dollars in assorted claims the Estate could pursue, however Mr. Woodard prefers to pursue Frumusa few personal items. Clearly demonstrates Woodard intention to simply harass.
15. February 1, 2010, Judge Ninfo issues order allowing auctioneer to enter Frumusa personal property and remove items. Judge Ninfo cites in the Order specific list of items in Woodard application
16. Simple fact is Woodard has no specific list in his application.
17. This lack of a list was done purposely so Woodard could have his auctioneer go, at will and collect anything they feel appropriate. Typical of Mr. Woodard action to cause a conflict.
18. Frumusa identifies Woodard's scheme and appeals Judge Ninfo order, exposing Woodard's plan.
19. Woodard upset with Frumusa seek his rights under Bankruptcy law, and devises another plan to harass Frumusa.
20. Now Woodard conspires with state court attorney to remove Frumusa property prematurely.
21. Using an invalid state court warrant, Woodard has the state court attorney remove Frumusa's property under police escort and citing his execution of a Judgment gives him the right,

Exhibit A Frumusa Motion to Remove Woodard

completely invalid violation of Frumusa rights.

22. However Frumusa once again exposes Woodard scheme and demands the property returned.
(See Exhibit A)
23. Woodard as planned cites "well we have the property now we are Just going to keep it until the Auction" and as always protects his fellow perpetrator by refusing to file charges against the perpetrator for illegally removing property of the Estate.

What Law IS Woodard Working Under -- Please Tell me.

24. **Woodard has specified in the order, which is under appeal, allowing John T. Reynolds to enter Frumusa Property and remove certain specified items in a list.**
25. **Woodard has no order to allow what has happened! John T. Reynolds was not present! The State Court Attorney had no right to remove property from Frumusa!**
26. **The Property must be returned!**
27. **Woodard no authority to allow the above action, which is in direct conflict with the Estate.**
28. As a final demonstration of his intentions Woodard offers to pay all State Court expenses and refuses to press charges against State Court Attorney, another absolute example of Woodard has conspired to remove Frumusa's property.
29. Further Woodard does not care that his actions have cause him to have the property stored outside and being damaged by not properly stored and secured.
30. Exhibit A clearly demonstrates Email Chain which without question demonstrates Woodard scheme.

Continuous Issues With Woodard.

31. Mr. Woodard's refuse to properly dispose assets of the Estate, note Exhibit B as table of assets opportunities provided to Mr. Woodard by Frumusa.
32. Mr. Woodard has not provide the required evaluation of the validity of Frumusa filing of Chapter 7, if so Woodard would demonstrate Frumusa's case must not be a Chapter 7.
33. Note the Benefit to the Estate that Mr. Woodard has provided over his 8 month tenure as Trustee total \$293,000 as opposed to the opportunity of \$34.818 million dollars.
34. In fact Mr. Woodard has impeded Frumusa from pursuing significant claims for the Estate, in complete breach of his Fiduciary responsibilities to the Estate.
35. Now Mr. Woodard openly supports the significant violation of the Federal Automatic Stay of Bankruptcy.

Exhibit A Frumusa Motion to Remove Woodard

36. Further In an attempt to shelter Mr. Adams and the scheme to commit Bankruptcy Fraud, Mr. Woodard has fraudulently transferee assets of the Debtor without proper releases.
37. So who does Mr. Woodard work for? The Estate or Mr. Adams?
38. What is Mr. Woodard purpose, the Estate or harassing Frumusa while Adams illegally steals assets.
39. Mr. Woodard seeks to violate the rights of Frumusa's family member by subjecting them to torments in frivolous search of the Phantom assets.
40. In fact Mr. Woodard offers no evidence as to the need to question certain parties, in the case of Christine Thompson Mr. Woodard is absolutely wrong.
41. Mr. Woodard actions demonstrate an abuse of his position as Trustee.
42. List other issues:
 - i. Conspiring with creditor Paul Adams aka Monroe Capital Inc. and Robert Morgan as demonstrated in communications from Scenic Village Model.
 - ii. Intentionally misleading the court during a hearing of October 7, 2009 as to the Financial Status of the multi-million dollar complex.
 - iii. Concealing the fact that Debtor had on deposit, \$300,000 in cash.
 - iv. Continual filing of false and misleading pleadings.
 - v. Authorized the theft of Frumusa property
 - vi. Illegal seizure of 182 North Ave, Webster New York.
 - vii. Illegal transfer of 1069 Gravel Road, Webster New York.
 - viii. Intentional intimidation and threatening of Frumusa's acquaintance Christa Coir.
 - ix. Conducting the Creditors meetings 341 and 2004 for the benefit of others and not the Estate see Exhibit C.
 - x. Illegally making side deals with others to enhance Mr. Woodard standing in the Legal community.
 - xi. Mr. Woodard openly supports the significant violation of the Federal Automatic Stay of Bankruptcy.
 - xii. Excessive use of Force.
43. As demonstrated, actions above have caused irreparable damage to the Estate, Debtors and all Creditor and provide sufficient grounds to remove the Trustee Mr. Woodard.

Exhibit A Frumusa Motion to Remove Woodard

44. In addition Mr. Woodard and his firm are in direct conflict with Frumusa, Mr. Woodard and his firm have recently represented several adversary case against Frumusa. A direct conflict of interest.
45. Pursuant to 11 U.S.C. § 324 this court has the ability to remove appointed Trustee Mr. Arnold.

WHEREFORE, the Debtor respectfully requests that the Court, pursuant to 11 U.S.C. § 324 to:

46. The immediate removal of Mr. Woodard as Trustee.
47. Order the return of Estate property to Frumusa for proper storage and security.
48. Require Mr. Woodard to provide and disclose all documents, financial accounting and dealings in regards to the estate of Debtor, including any and all correspondence regarding his position as trustee on behalf the Debtor.
49. Instruct the US Trustee office to conduct a Vote on a perminate Trustee for the Frumusa case.
50. Appoint the new third party trustee that is approved by the Unsecured Creditor and in not in conflict with Frumusa cases as Mr. Woodard's firm is, Who having represented recently several cases adversary to Frumusa.

DATED: March 26, 2010 I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge, information and belief.

Executed



Lawrence Frumusa

Exhibit A Emails Demonstrating Bias of Mr. Woodard
Exhibit A Frumusa Motion to Remove Woodard

Larry Frumusa

From: Larry Frumusa [lfrumusa@rochester.rr.com]
Sent: Wednesday, March 24, 2010 4:29 PM
To: 'kathleen.d.schmitt@usdoj.gov'
Cc: 'lwoodard@HarrisBeach.com'; 'marnold@placeandarnold.com'; 'David Capriotti'
Subject: Once again another attempt by the US Trustee office to Violate Federal LAW

Ms. Schmitt,

Today under the pretence of a State Court action, an attorney came and removed property of the Estate from my personal property.

I see this as an attempt by the US Trustee and the Temporary Trustee's to usurp my actions in Federal court to appeal the orders of Judge Ninfo. I now see that the US Trustee is using the State court as a front to disrupt my proceeding.

I have demanded the property return immediately and I also demanding that you do not interfere and protect your co-conspirer, the state court attorney. I am going to press charges to the fullest extent in an effort to have state court attorney expose this significant plot of the US Trustee office.

Regards

Larry Frumusa

Larry Frumusa
Frumusa Enterprise LLC.
PO Box 418,
Webster, New York 14580
email: lfrumusa@rochester.rr.com
585-872-9999
585-265-1545 (fax)
585-943-9999 (cell)

Tracking:

Exhibit Page 1

Exhibit Page 6

Exhibit A Emails Demonstrating Bias of Mr. Woodard
Exhibit A Frumusa Motion to Remove Woodard

From: [Lee Woodard](#)
To: ifrumusa@rochester.rr.com; kathleen.d.schmitt@usdoj.gov
Cc: marnold@placeandarnold.com; [David Capriotti](#)
Subject: RE: Once again another attemp by the US Trustee office to Violate Federal LAw
Date: Wednesday, March 24, 2010 5:13:19 PM

Larry: If what was taken was, in fact, property of an estate, then either Mike Arnold or I need to know what was taken and by whom. If it is truly property of the estate we may be the appropriate entity to file an action to recover it. Please let us know exactly what was taken, from where and by whom. Thank you

Lee

Lee E. Woodard, Esq.
Co Chair -Financial Restructuring & Bankruptcy Practice Group
Harris Beach PLLC
300 South State Street 4th Floor
Syracuse, New York, 13202
315-423-7100
315-422-9331 (fax)
99 Garnsey Road
Pittsford, New York 14534
585-419-8716
585-419-8811 (fax)
Lwoodard@harrisbeach.com

Exhibit Page 2

Exhibit Page 7

Exhibit A Emails Demonstrating Bias of Mr. Woodard
Exhibit A Frumusa Motion to Remove Woodard

From: Larry Frumusa
To: "Lee Woodard"; "kathleen.d.schmitt@usdoj.gov"
Cc: "marnold@placeandarnold.com"; "David Capriotti"
Subject: RE: Once again another attempt by the US Trustee office to Violate Federal LAw
Date: Wednesday, March 24, 2010 7:47:00 PM

Lee,

These games of deception and lies must stop. I believe you know exactly what has happened, and your conspiring with the state court attorney today was another scam to take property.

Further usurping my efforts for a fair treatment in this district. I am demanding that the property be returned immediately! As far as you or Mr. Arnold representing the Estates, you both have demonstrated a complete breach of your fiduciary responsibility, and all have committed extensive Bankruptcy fraud. Without question I will hold you accountable for your actions.

As far as assets for the Estate, I will assure the property taken will be return immediately. I am demanding you not interfere, as you have in all my efforts.

Regards,
Larry Frumusa

Exhibit Page 3

Exhibit Page 8

Exhibit A Emails Demonstrating Bias of Mr. Woodard
Exhibit A Frumusa Motion to Remove Woodard

From: Larry Frumusa
To: "Lee Woodard"; "kathleen.d.schmitt@usdoj.gov"
Cc: "marnold@placeandarnold.com"; "David Capriotti"
Subject: RE: Once again another attempt by the US Trustee office to Violate Federal LAW
Date: Thursday, March 25, 2010 1:34:00 PM

Lee,

I am absolutely certain now that what we are dealing with is a criminal enterprise operating in the US Trustee's office. This is just one more instance of your wrong doing. You know exactly what I am talking about and indeed the property was illegally removed. I am demanding that you return it immediately, and charges a press against your cohorts.

In addition, I further realize that the civil means I am attempting to use in seeking justice (ie filing paper, appeal etc.). Simply do not working in thwarting your enterprise. In fact just as in yesterday hearing, yours and others action insult the federal judicial system.

As I have said I am demanding to have the property returned immediately.

Regards,
Larry

Exhibit Page 4

Exhibit Page 9

Exhibit A Emails Demonstrating Bias of Mr. Woodard
Exhibit A Frumusa Motion to Remove Woodard

From: [Lee Woodard](mailto:Lee.Woodard@harrisbeach.com)
To: lfrumusa@rochester.rr.com; kathleen.d.schmitt@usdoj.gov
Cc: marnold@placeandarnold.com; [David Capriotti](mailto:David.Capriotti@reynoldsauktion.com); jtr@reynoldsauktion.com; jtr@rochester.rr.com
Subject: RE: Once again another attempt by the US Trustee office to Violate Federal Law
Date: Thursday, March 25, 2010 1:51:49 PM

Larry: Good Morning. Although you have not responded to me with the information concerning the seizure of property, I did get a phone call this morning from an attorney at Relin & Goldstein explaining that the Monroe County Sheriff had seized the Cadillac, the corvette and an atv. If you claim more was taken I need to know that immediately.

The property was seized in an attempt to collect a debt to Joe Barone which has previously been declared to be nondischargeable in your chapter 7 case. When the attorney learned that the property seized was property of the chapter 7 estate, he called to ask what I, as chapter 7 trustee, wished to have happen to the property. I have directed him to notify the Monroe Co Sheriff to turn the property over to the estate's auctioneers. The property will not be returned to you.

You have previously indicated that you will voluntarily agree to allow the estate's auctioneer to set a time to take away all the property of the estate. I would like to have that date set sometime within the next 10 days. If I dont have a set time by Monday March 29th, I will file a motion to set a date and ask for the US Marshalls to accompany the auctioneer and I while we collect the assets.

Just so we are clear I will give a list of assets that, at a minimum, I am expecting to be picked up. We do not have a great listing of assets but between the original schedules and your answers to questions at the 341/2004 exams the following, while not exhaustive, is a minimum of what should be available for pick up:

7 snowmobiles (all Polaris), 2002 SnowKing Trailer, 1993 Quantum Boat & trailer, 2002 Bombardier personal watercraft, fire truck, Various vehicles-including 1995 Chevy S-10, 89 Chevy Van, 1997 Jeep Cherokee, 1993 Saturn, 2004 Jeep Grand Cherokee, 1994 Saturn 1994 Jeep Grand Cherokee, 2005 Ford F150, 200 GMC Yukon, and all corporate/LLC books and records. As you know I will be securing the Cadillac, the corvette and the atv.

My guess is that there are more assets and I reserve my right to add or subtract from this list as I continue to learn about assets. Hopefully the 2004 exams of your sister, brother in law and two sons set for next week will help in that regard.

Please advise when in the next 10 days we may come to pick up the above items. Thank you,

Lee

Lee E. Woodard, Esq.
Co Chair -Financial Restructuring & Bankruptcy Practice Group
Harris Beach PLLC
300 South State Street 4th Floor
Syracuse, New York, 13202
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585-419-8811 (fax)
Lwoodard@harrisbeach.com

Exhibit Page 5

Exhibit Page 10

Exhibit A Emails Demonstrating Bias of Mr. Woodard
Exhibit A Frumusa Motion to Remove Woodard

From: [Larry Frumusa](#)
To: "Lee Woodard"; "kathleen.d.schmitt@usdoj.gov"
Cc: "marnold@placeandarnold.com"; "David Capriotti"; "jtr@reynoldsauktion.com"; "jtr@rochester.rr.com"
Subject: RE: Once again another attempt by the US Trustee office to Violate Federal LAW
Date: Thursday, March 25, 2010 3:24:00 PM

Lee,

Your actions are criminal, you have illegally conspired to remove the property from my residence. If you do not return it by 6:00 PM tonight I am breaking off any cooperation with the US Trustee department, and demanding an immediate investigations from the Department of Justice!

Further as I stated before the attorney who stole the property from the Estate with your conspired ridiculous excuse, in fact any fool knows exactly what the **default Ninfo** order covered and the difference between estate property and others, so do not give me that bull.

Therefor I am demanding you and I together press criminals charges against the attorney and request damages. This will happen with or without you, in the event you continue to protect your fellow attorney at the detriment of the estate.

Your evasiveness below is simply discussing, and I am done with it.

Larry

Exhibit Page 6

Exhibit Page 11

Exhibit A Emails Demonstrating Bias of Mr. Woodard
Exhibit A Frumusa Motion to Remove Woodard

From: [Lee Woodard](#)
To: lfrumusa@rochester.rr.com; kathleen.d.schmitt@usdoj.gov
Cc: marnold@placeandarnold.com; [David Capriotti](#)
Subject: RE: Once again another attempt by the US Trustee office to Violate Federal LAw
Date: Thursday, March 25, 2010 4:23:41 PM

Larry: I appreciate your frustration. There is, however, nothing criminal that took place by Mr Barone or his attorneys. The stay was technically violated but there are no damages. The property is being turned over to the estate and they are paying the costs incurred. My auctioneer will pick up and store the 2 vehicles and atv until they are sold. We will add to them the balance of the items that we need to pick up pursuant to my earlier e-mail. Please provide that date asap.

It is your right to contact any authority you wish to. It is my understanding that the Department of Justice has open files on this case already so that probably is the best place to start.

I am not being evasive. Let me be clear. None of the 3 items is being returned to you whether by 6:00 tonight or anytime thereafter unless you are the successful purchaser of the items for fair market value from exempt post petition income at the time they are sold.

As I have indicated, I appreciate your frustration. I will not, however, tolerate threats, direct or veiled. Your last 2 e-mails have included comments that could be considered threatening. Be advised if that type of behavior is even remotely hinted at again, whether directed at me, a member of my law firm or anyone else in the case, I will seek to have every possible sanction brought to bear upon anyone involved. I hope that my position on this matter is clear, as I have a zero tolerance for such behavior.

This case will continue to its correct conclusion with or without your help.

Lee

Exhibit Page 7

Exhibit Page 12

Exhibit A Emails Demonstrating Bias of Mr. Woodard
Exhibit A Frumusa Motion to Remove Woodard

From: [Larry Frumusa](#)
To: "Lee Woodard"; "kathleen.d.schmitt@usdoj.gov"
Cc: "marnold@placeandarnold.com"; "David Capriotti"; "jtr@reynoldsauktion.com"; "jtr@rochester.rr.com"
Bcc: "nickfrumusa@yahoo.com"
Subject: RE: Once again another attemp by the US Trustee office to Violate Federal LAW
Date: Thursday, March 25, 2010 7:17:00 PM

Lee,

Be advised that I have not received the property back and I assume the property is being stored outside in the weather without proper covers. Such actions diminish the values of the Estate and my holdings, which I see is of no concern to you.

Also how can you say the cost of adversely removing the property was the same as if I drove these vehicles to you, you're paying all cost for you cohort, is ridiculous and demonstrates this was the plan at the start.

Further, your actions to acquire property without due process are a violations of Federal Law and Attorney ethics for all parties involved, including anyone transporting the vehicles. In addition your sheltering criminal actions of other attorneys at the determent of the Estate are a breach of your fiduciary responsibility to the estate and myself.

Finally and simply put, I guess I was right all along, "caught with your hand in the cookie jar again". Is this how you administers all you cases?

Regards,
Larry

Exhibit Page 8

Exhibit Page 13

Exhibit B Oportunities For Woodard
Benefit to the Estate of Trustee Woodard Involvement

| # | Issue Claim | Current Status | Trustee Participation | Amount of Claim Frumusa would have received | Actual received by Trustee |
|----|---|---|---|---|----------------------------|
| 1 | L Frumusa Family P1 Enterprise LLC. -- Preserve \$2.1 Million Dollars In equity for the Estate. | Frumusa attempts dismissed. No Attempt by Trustee to recover. | Trustee takes a position adverse to Frumusa preventing case from moving forward. | \$2,100,000 | |
| 2 | Adversary proceeding - Violation of automatic stay in prosecuting the State Court Action | Frumusa attempts dismissed. No Attempt by Trustee to recover. | Trustee takes a position adverse to Frumusa preventing case from moving forward. | \$15,000,000 | |
| 3 | Adversary proceeding - US Trustee office and Trustee regarding fraud, conspiring, etc | Frumusa attempts dismissed. No Attempt by Trustee to recover. | Trustee takes a position adverse to Frumusa preventing case from moving forward. | \$8,000,000 | |
| 4 | Violation of Stay regarding contempt hearing. | Frumusa attempts dismissed. No Attempt by Trustee to recover. | Trustee takes a position adverse to Frumusa preventing case from moving forward. | \$5,000,000 | |
| 5 | Preserve Scenic Village Town Homes equity | Frumusa attempt dismissed. No Attempt by Trustee to recover. | Trustee takes a position adverse to Frumusa preventing case from moving forward. | \$200,000 | |
| 6 | Recover equity of \$2,200,000 from Webster Hospitality | Frumusa attempts dismissed. No Attempt by Trustee to recover. | Trustee takes a position adverse to Frumusa preventing case from moving forward. | \$2,200,000 | |
| 7 | Royal Crest Share value, Lee insists to disrupt the Business of a struggling partnership. | | Trustee cause considerable disruption in Business, simply with the intention of finding out negative information on frumusa | \$0 | \$50,000 |
| 8 | Sell Groundsdale -- Buyers bought a place around the corner | Limbo will be foreclosed | Trustee released the buyer from a purchase contract and the Buyer went down the street and bought another house after living here 3 | \$176,000 | \$0 |
| 9 | Retain Car Wash business | | See below | \$110,000 | \$0 |
| 10 | Liquidate 1069 Gravel Road | | Bakroom deal Trustee take assets of struggling Bnusiness women and uses them to sweeten deal to favorable investors -- | \$345,000 | \$288,000 |
| 11 | Appeal of Wes Belmore Judgment of \$125,000 | No activity by Trustee | Trustee Refuses to move forward | \$125,000 | |
| 12 | Dispute Claim and Standings of Adams / Morgan associated companies. | No activity by Trustee | Trustee Refuses to move forward | \$910,000 | |
| 13 | Dispute Lien filed by Morse Lumber 4-3-2009 on LFLD as preferential. | No activity by Trustee | Trustee Refuses to move forward | \$480,000 | |

Exhibit A Frumusa Motion to Remove Woodard

Exhibit B Oportunities For Woodard
Benefit to the Estate of Trustee Woodard Involmt

| # | Issue Claim | Current Status | Trustee Participation | Amount of Claim Frumusa would have received | Actual received by Trustee |
|----|--|------------------------|---------------------------------|---|----------------------------|
| 14 | Recover \$128,000 Payment made form WHID benefit in December 2008 | No activity by Trustee | Trustee Refuses to move forward | \$128,000 | |
| 15 | Recover \$180,000 Payment made to Lakeside in 2008 | No activity by Trustee | Trustee Refuses to move forward | \$180,000 | |
| 16 | Horse liquidate | No activity by Trustee | Trustee Refuses to move forward | \$50,000 | |
| 17 | Sale of Land In Saint Lawrence County - Adam forced a short sale of property in St. Lawrence | No activity by Trustee | Trustee Refuses to move forward | \$225,000 | |
| 18 | Money Advance to Hotel In 2009 | No activity by Trustee | Trustee Refuses to move forward | \$95,000 | |
| 19 | Barone invalid judgment | No activity by Trustee | Trustee Refuses to move forward | \$60,000 | |
| 20 | Val cashed \$15,000 check from business without authorization | No activity by Trustee | Trustee Refuses to move forward | \$15,000 | |
| | Total Claims | | | \$34,818,000 | \$293,000 |

Exhibit A Frumusa Motion to Remove Woodard

Exhibit A Frumusa Motion to Remove Woodard

Case # 09-21527 -- Distribution list see Attachment A

**CERTIFICATE OF SERVICE
Debtor: Lawrence Frumusa**

I, Lawrence Frumusa, hereby certify on March 26, 2010 on behalf of the Debtor Lawrence Frumusa, I have caused to be transmitted via CM/ECF electronic filing, facsimile, and/or First Class U.S. Mail, a copy to the creditors listed on Attachment of the foregoing as stated below

Notice of Hearing for

MOTION TO REMOVE TRUSTEE MR. WOODARD FOR CAUSE

DATED: March 26, 2010 I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge, information and belief.

Executed



Lawrence Frumusa

FILED
2010 MAR 26 PM 4:21
U.S. BANKRUPTCY COURT
W.D.N.Y. - ROCHESTER

Attachment A Distribution List
Exhibit A Frumusa Motion to Remove Woodard

| | | | |
|-------------------------------------|------------------------------------|------------------------------------|--------------------------------|
| Arnold, Michael as Temp Trustee | 27 Pleasant St. | Fairport, NY 14450 | |
| Bunce, Gary - | SBM Interiors Co., Inc | 380 Cedar Creek Trl | Rochester, NY 14626 |
| Chadsey, Mike - | Chadsey Heating & Cooling | 11 West St | Albion, NY 14420 |
| Cheryl Heller Esq National City | Ward Norris Heller & Reidy LLP | 300 State Street | Rochester, NY 14614 |
| David J. Magnarelli | General Electric Co-Renner | 5111 W. Genesee Street | Camillus, New York 13031 |
| David M. Capriotti, | Harris Beach PLLC-Capriotti | 300 S. State Street | Syracuse, New York 13202 |
| David M. Capriotti, Esq. | Harris Beach, PLLC | 300 S. State Street | Syracuse, New York 13202 |
| Dooley, Mike | MJ Pipe & Supply Corp-Mike | 609 Buffalo Road | Rochester, New York 14611 |
| Electric, Crown - | Crown Electric Supply Co. Inc. | PO Box 86 Route 104 | Union Hill, NY 14563 |
| EVC, Eric - | E.V.C. Enterprise | 410 South Lincoln Rd | East Rochester, NY 14445 |
| Florentino Tovar | 22 Henrietta St | Rochester, NY 14620 | |
| Fredericks, Dave - | Ferrellgas | PO Box 173940 | Denver, CO 80217-3940 |
| Geer, Dan - | Pride Fire Protection LLC | Atten: Dan T. Geer | 1248 Commercial Dr, BLDG A- |
| Giordano, John - | GRP Painting | 15 Sargent Circle | Webster New York 14580 |
| Hassett, Greg - | Residential Steel Services LLC | 500 Lee Road | Rochester, New York 14606 |
| Hovey, Dave - | Truax & Hovey LTD | PO Box 2700 | Liverpool, NY 13089-2700 |
| Iassic, Henry - | Henry Issac Remodeling and Repairs | 28 West Buffalo Street | Churchville, New York 14428 |
| Jeffrey A. Dove, | Menter, Rudin & Trivelpiece, P.C. | Attorneys for Monroe Capital, Inc. | 308 Maltbie Street |
| John R. O'Keefe | Metz Lewis LLC | 11 Stanwix Street (18th Floor) | Pittsburgh, PA 15222 |
| Johnson, Fred - | Johnson Brothers Masonry | 9310 Asbury Rd | Leroy, NY 14482 |
| Joseph Zagraniczny | Bond, Schoeneck & King LLP | One Lincoln Center | Syracuse, NY 13202-1355 |
| Kathleen Dunivin Schmitt | Office of the U.S. Trustee | 100 State Street, Room 6090 | Rochester, NY 14614 |
| Keeana, Tom - | Edge Wood Nursey | 3740 Stalker Rd | Macedon, NY 14502-9325 |
| Lawrence Frumusa | PO Box 418 | Webster New York 14580 | |
| Liftech Equipment Companies, Inc | 6847 Ellicott Drive | E Syracuse, NY 13057 | |
| Malette, Jason - | JTM Custom Construction Inc. | 79 Marblehead Drive | Rochester, New York 14615 |
| Malette, Robert | JTM Custom Construction Inc. | 79 Marblehead Drive | Rochester, New York 14615 |
| Manel Paving Corporation | PO Box 26816 | Rochester, NY 14626 | |
| Marcello, Bob Marcello | Marcello Creative Design | 150 Willow Ridge Trail | Rochester NY 14626 |
| Mark Soucy | Kimball Trucking | 1807 Tebor Rd | Webster, NY 14580 |
| Michael Powers, | Office of the U.S. Trustee | 100 State Street, Room 6090 | Rochester, NY 14614 |
| Morse, Bill - | WM. B. Morse Lumber CO-Bill | 340 West Main Street | Rochester, New York 14608 |
| Mr. Michael Arnold as Temp Trustee | 27 Pleasant St. | Fairport, NY 14450 | |
| Mussumeci, Mike - | Mussumeci Electric LFLD | 1451 Harris Road | Webster, NY 14580 |
| Netzmans, Jim - | Netzmans | 185 West Main St | Webster, NY 14580 |
| Nohle, Andy - | Meier Supply | 123 Brown St | Johnson City, NY 13790 |
| P&R Plumbing | 3763 Latta Rd | Rochester, NY 14612 | |
| Pelusio, Tom - | Rochester Linoleum & Carpet | PO Box 105525 | Atlanta, GA 105525 |
| Rita or Joanne Elam Sand and Gravel | PO BOX 65 | West Bloomfield, New York 14585 | |
| Robert Capellazzi | Domine Builders Supply | 100 East Highland Drive | Rochester, NY 14610 |
| Robert Morgan Limited III LLC | PO Box 1197 | Webster, New York 14580 | |
| Sattora, Dave - | Sattora Siding | 267 North Church Rd | Rochester, NY 14612 |
| Tachin, Mark - | MST Construction Inc. | 80 Huffer Rd | Hilton, NY 14468 |
| Tim Terhaar | Felluca OverHead Doors, Inc | 1674 Norton Street | Rochester, New York 14609 |
| Wayside Garden Center | 124 Pittsford-Palmyra Rd. | Macedon, New York 14502 | |
| Will Russell | Southworth-Milton Cat | P.O. Box 3851 | Boston, MA 02241 |
| Williams, Dave - | Volvo Rents | PO Box 92280 | Rochester, NY 14580 |
| Williamson, Marc - | MIG Building System | 100 Ontario Street | East Rochester, New York 14445 |

Exhibit A Frumusa Motion to Remove Woodard

Case # 09-21527 -- Distribution list see Attachment A

CERTIFICATE OF SERVICE

Debtor: Lawrence Frumusa

I, Lawrence Frumusa , hereby certify on March 26, 2010 on behalf of the Debtor Lawrence Frumusa, I have caused to be transmitted via CM/ECF electronic filing, facsimile, and/or First Class U.S. Mail, a copy to the creditors listed on Attachment of the foregoing as stated below

MOTION TO REMOVE TRUSTEE MR. WOODARD FOR CAUSE

DATED: March 26, 2010 I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge, information and belief.

Executed



Lawrence Frumusa

FILED
2010 MAR 26 PM 4: 26
U.S. BANKRUPTCY COURT
WADSWORTH - ROCHESTER

Attachment A Distribution List
Exhibit A Frumusa Motion to Remove Woodard

| | | | |
|-------------------------------------|------------------------------------|------------------------------------|--------------------------------|
| Arnold, Michael as Temp Trustee | 27 Pleasant St. | Fairport, NY 14450 | |
| Bunce, Gary - | SBM Interiors Co., Inc | 380 Cedar Creek Trl | Rochester, NY 14626 |
| Chadsey, Mike - | Chadsey Heating & Cooling | 11 West St | Albion, NY 14420 |
| Cheryl Heller Esq National City | Ward Norris Heller & Reidy LLP | 300 State Street | Rochester, NY 14614 |
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| David M. Capriotti, Esq. | Harris Beach, PLLC | 300 S. State Street | Syracuse, New York 13202 |
| Dooley, Mike | MJ Pipe & Supply Corp-Mike | 609 Buffalo Road | Rochester, New York 14611 |
| Electric, Crown - | Crown Electric Supply Co. Inc. | PO Box 86 Route 104 | Union Hill, NY 14563 |
| EVC, Eric - | E.V.C. Enterprise | 410 South Lincoln Rd | East Rochester, NY 14445 |
| Florentino Tovar | 22 Henrietta St | Rochester, NY 14620 | |
| Fredericks, Dave - | Ferrellgas | PO Box 173940 | Denver, CO 80217-3940 |
| Geer, Dan - | Pride Fire Protection LLC | Atten: Dan T. Geer | 1248 Commercial Dr, BLDG A- |
| Giordano, John - | GRP Painting | 15 Sargenti Circle | Webster New York 14580 |
| Hassett, Greg - | Residential Steel Services LLC | 500 Lee Road | Rochester, New York 14606 |
| Hovey, Dave - | Truax & Hovey LTD | PO Box 2700 | Liverpool, NY 13089-2700 |
| Iassic, Henry - | Henry Issac Remodeling and Repairs | 28 West Buffalo Street | Churchville, New York 14428 |
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| Johnson, Fred - | Johnson Brothers Masonry | 9310 Asbury Rd | Leroy, NY 14482 |
| Joseph Zagraniczny | Bond, Schoeneck & King LLP | One Lincoln Center | Syracuse, NY 13202-1355 |
| Kathleen Dunivin Schmitt | Office of the U.S. Trustee | 100 State Street, Room 6090 | Rochester, NY 14614 |
| Keeana, Tom - | Edge Wood Nursey | 3740 Stalker Rd | Macedeon, NY 14502-9325 |
| Lawrence Frumusa | PO Box 418 | Webster New York 14580 | |
| Liftech Equipment Companies, Inc | 6847 Ellicott Drive | E Syracuse, NY 13057 | |
| Malette, Jason - | JTM Custom Construction Inc. | 79 Marblehead Drive | Rochester, New York 14615 |
| Malette, Robert | JTM Custom Construction Inc. | 79 Marblehead Drive | Rochester, New York 14615 |
| Manel Paving Corporation | PO Box 26816 | Rochester, NY 14626 | |
| Marcello, Bob Marcello | Marcello Creative Design | 150 Willow Ridge Trail | Rochester NY 14626 |
| Mark Soucy | Kimball Trucking | 1807 Tebor Rd | Webster, NY 14580 |
| Michael Powers, | Office of the U.S. Trustee | 100 State Street, Room 6090 | Rochester, NY 14614 |
| Morse, Bill - | WM. B. Morse Lumber CO-Bill | 340 West Main Street | Rochester, New York 14608 |
| Mr. Michael Arnold as Temp Trustee | 27 Pleasant St. | Fairport, NY 14450 | |
| Mussumeci, Mike - | Mussumeci Electric LFLD | 1451 Harris Road | Webster, NY 14580 |
| Netzmans, Jim - | Netzmans | 185 West Main St | Webster, NY 14580 |
| Nohle, Andy - | Meier Supply | 123 Brown St | Johnson City, NY 13790 |
| P&R Plumbing | 3763 Latta Rd | Rochester, NY 14612 | |
| Pelusio, Tom - | Rochester Linoleum & Carpet | PO Box 105525 | Atlanta, GA 105525 |
| Rita or Joanne Elam Sand and Gravel | PO BOX 65 | West Bloomfield, New York 14585 | |
| Robert Capellazzi | Domine Builders Supply | 100 East Highland Drive | Rochester, NY 14610 |
| Robert Morgan Limited III LLC | PO Box 1197 | Webster, New York 14580 | |
| Sattora, Dave - | Sattora Siding | 267 North Church Rd | Rochester, NY 14612 |
| Tachin, Mark - | MST Construction Inc. | 80 Huffer Rd | Hilton, NY 14468 |
| Tim Terhaar | Felluca OverHead Doors, Inc | 1674 Norton Street | Rochester, New York 14609 |
| Wayside Garden Center | 124 Pittsford-Palmyra Rd. | Macedon, New York 14502 | |
| Will Russell | Southworth-Milton Cat | P.O. Box 3851 | Boston, MA 02241 |
| Williams, Dave - | Volvo Rents | PO Box 92280 | Rochester, NY 14580 |
| Williamson, Marc - | MIG Building System | 100 Ontario Street | East Rochester, New York 14445 |

Exhibit A Frumusa Motion to Remove Woodard

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

Lawrence Frumusa,

Case : 09-21527

Debtor

Notice of Hearing of

MOTION TO REMOVE TRUSTEE MR. WOODARD FOR CAUSE

NOTICE OF Hearing of MOTION TO REMOVE TRUSTEE MR. WOODARD FOR CAUSE by the Honorable Judge Ninfo

PLEASE TAKE NOTICE of a Hearing on April 7, 2010 at 9:30 a.m. of that day, or as soon thereafter as moving party and all other motions scheduled can be heard, at the United States Bankruptcy Court for the Western District of New York, 1220 U.S. Courthouse, 100 State Street, Rochester, New York. In which the Motion as described above and filed on March 26, 2010 , will be heard.

With supporting Motion filed March 26, 2010 ,

DATED: March 26, 2010 I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge, information and belief.

Executed



Lawrence Frumusa

FILED
2010 MAR 26 PM 4:21
U.S. BANKRUPTCY COURT
W.D.N.Y. - ROCHESTER

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

FILED

2010 MAR 29 PM 2:32

In re:

Lawrence Frumusa,

Debtor

U.S. BANKRUPTCY COURT
W.D.N.Y. Case: 09-21527

AMENDED MOTION TO REMOVE TRUSTEE MR. WOODARD FOR CAUSE

Lawrence Frumusa, by *pro-se* representation¹, hereby submits a Motion To Remove Trustee Michael Woodard For Cause, as Pursuant to 11 U.S.C. § 324, and respectfully represents to the Court as follows:

1. Frumusa re-asserts and resubmits each and every allegations and request submitted in the filing of March 26, 2010, the initial "Motion to Remove Trustee Woodard for cause" with additional information as follows.
2. Lawrence Frumusa, is one of four Chapter 11 bankruptcy cases filed by principle Lawrence Frumusa on April 3, 2009 others being MainCliff Properties LLC (09-21124), Rising Tide Development LLC (09-21123) and Lawrence Frumusa Land Development LLC (09-21126), the following 3 cases being referred to as Corporate Cases.
3. Primary reason for seeking protection under the Federal Bankruptcy Laws is to restructure, following a major project lender, National City Bank, who withdrew from the New York market. This occurred in the fall of 2008 as National City was being acquired by PNC bank and resulted in the multimillion dollar funding gap during project construction.
4. From the fall of 2008 to the date of filing April 3, 2009 "Robert Morgan and Paul Adams" conduct several questionable actions to disrupt Debtor's operations and also other Frumusa companies. These individuals, who are trying to assume the role as creditors without proper standing, clearly seeking to leverage a junior debt and the weak global economy to adversely acquire Frumusa' projects in total, "taking down" approximately \$5,000,000 in equity value – through forced liquidations sales – which were orchestrated by the Paul Adams and Robert Morgan and their legal team.
5. All cases are tightly coupled, with cross collateral debt affecting all of my corporate and personal cases.
6. Frumusa also understands now That Mr. Woodard and his Firm Harris Beach PLLC are in direct

¹ The Debtor is proceeding *pro-se* not by choice but as a result of the Federal Court preventing Debtor from obtaining proper representation (see case 2-09-21527-JCN Doc 508 Filed 01/21/10 Appellants Statement of Issues).

and adversary to Frumusa.

7. Oblivious these conflicts raise significant concerns in light of Frumusa's allegations that Mr. Woodard has continually violated Mr. Frumusa rights, simply for the betterment of others.

Clients of Trustee Woodard and Harris Beach PLLC in

Direct Conflict With Frumusa

8. Trustee Mr. Woodard was appointed August 5, 2009 as Trustee in Frumusa personal case.
9. Trustee Mr. Woodard during the course of his tenure as Trustee has consistently drawn allegations from the debtor Frumusa and Unsecured Creditors that he has violated his fiduciary responsibility to the Estate, Debtor and Creditors.
10. Frumusa has now learned that indeed conflicts with significant client of Trustee Mr. Woodard and his firm Harris Beach PLLC exist.
11. These conflicts have not been disclosed or waived by Frumusa or the Unsecured creditors and demonstrate justification for all allegations regarding Mr. Woodard's tenure as Trustee.

Alleged Conflicted Clients Mr. Fedele V. Scutti and Mr. Louis C. Fico

12. Upon information and belief, to be confirmed in discovery Mr. Fedele V. Scutti and Mr. Louis C. Fico are indeed clients of Trustee Woodard's Firm Harris Beach PLLC and possibly directly of Mr. Woodard, Mr. Capriotti or Kevin Tompsett.
13. Upon information and belief, to be confirmed in discovery Mr. Fedele V. Scutti and Mr. Louis C. Fico amount of business done yearly with this firm is substantial.
14. Examples of conflict concerns are:

- a) Trustee Woodard has consistently allowed Mr. Fico to appear in Frumusa 341 meeting and 2004 meetings without acknowledging Mr. Fico and requiring him to state his name on the record.

Even over the object of Frumusa, Trustee Woodard still provides Mr. Fico special considerations to attend without being on the record. (see Exhibit A item 4).

- b) Trustee Woodard was made aware in August 2009, that Mr. Fico was adversely retaining an SUV automobile of the Frumusa Estate and the property should be recovered and secured by the Trustee.

Frumusa has asked repeatedly if the automobile has been pick up from Mr. Fico, with no response or simple evasive response from Trustee Woodard. As of to date the automobile is still in the possession of Mr. Fico.

Exhibit B Frumusa Amended Motion

- c) Trustee Woodard intentionally disrupted an adversary action, in which Mr. Fico was a defendant, were Frumusa was attempting to recover significant assets of the Estate. Trustee Woodard acting in the capacity as a Trustee, submitted affidavits causing this action to be dismissed. Such disruption was once again at the detriment of the Estate, however benefited Mr. Fico.
15. As well know Frumusa, was recently involved in a partnership dispute with these gentlemen, in which as alleged by Frumusa, Mr. Fedele V. Scutti and Mr. Louis C. Fico attempted to cause significant financial damage to Frumusa (docket # 5043-05).
16. However, Mr. Fedele V. Scutti and Mr. Louis C. Fico at the conclusion of the dispute, were required to pay Frumusa a sum of \$1,000,000.
17. Further Frumusa in defense of unsecured creditors, who were also targeted by Mr. Fedele V. Scutti and Mr. Louis C. Fico, supported a Federal Court bankruptcy action which resulted in Mr. Fedele V. Scutti and Mr. Louis C. Fico order to pay all unsecured creditors in full and with 9% interest from the invoice due date. An amount of approximately \$550,000 (Federal Case # 06-20031).
18. As generally known these gentleman have a significant dissatisfaction with Frumusa.
19. Additionally, Mr. Fedele V. Scutti and Mr. Louis C. Fico have a very close relationship with Gunther K. Buerman a significant figure and member of the board at Trustee Woodard's Firm Harris Beach PLLC.

Alleged Conflicted Clients Rochester Countertop, Inc.

dba Premier Cabinet Wholesalers

20. Upon information and belief, to be confirmed in discovery Premier Cabinet Wholesalers are indeed clients of Trustee Woodard's Firm Harris Beach PLLC and possibly directly of Mr. Woodard, Mr. Capriotti or Kevin Tompsett.
21. Once again as publically known Premier Cabinet Wholesalers and Mr. Frumusa have an adversary relationship.
22. In addition, Premier Cabinet Wholesalers has attempted to adversary effect the progress of the Frumusa projects prior to filing Bankruptcy.
23. Upon information and belief, to be confirmed in discovery Trustee Woodard as done nothing to isolate or protect Frumusa, the Estate or other Creditors from these and other conflicts.
24. As demonstrated, actions above and actions alleged in Frumusa motion filed 3-26-2010 have caused irreparable damage to the Estate, Debtors and all Creditor and provide sufficient grounds

Exhibit B Frumusa Amended Motion

to remove the Trustee Mr. Woodard.

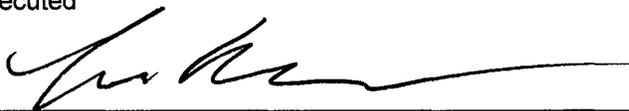
25. In addition Mr. Woodard and his firm are in direct conflict with Frumusa, Mr. Woodard and his firm have recently represented several adversary case against Frumusa. A direct conflict of interest.
26. Pursuant to 11 U.S.C. § 324 this court has the ability to remove appointed Trustee Mr. Woodard.

WHEREFORE, the Debtor respectfully requests that the Court, pursuant to 11 U.S.C. § 324 to:

27. The immediate removal of Mr. Woodard as Trustee.
28. Conduct an immediate and complete audit of Mr. Woodard's actions by the Executive Office for U.S. Trustees and the Office of the Inspector General.
29. Order the return of Estate property to Frumusa that was illegally taken on March 17, 2010 for proper storage and security.
30. Require Mr. Woodard to provide and disclose all documents, financial accounting and dealings in regards to the estate of Debtor, including any and all correspondence regarding his position as trustee on behalf the Debtor.
31. Instruct the US Trustee office to organize unsecured creditors and conduct a proper vote on a perminate Trustee for the Frumusa case.
32. Appoint a new trustee that is approved by the Unsecured Creditors and is assure no conflicts with the Frumusa cases.

DATED: March 29, 2010 I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge, information and belief.

Executed



Lawrence Frumusa

Exhibit B Frumusa Amended Motion

Exhibit A Letter to Lee Woodard questioning actions

Wednesday, January 28, 2010

Lee E. Woodard, Esq.
Harris Beach, PLLC
300 S. State Street
Syracuse, New York 13202

Re: Follow up from 2004 meeting of January 7, 2010 Meeting

Lee,

A couple of import points of clarification from the last meeting as follows:

1. **During the discussions regarding the creditor Robert Morgan Limited III LLC (recording time line 17:25 minutes to 25:31 minutes).** As you recall Robert Morgan Limited III LLC, is listed on the debtors schedule and has also filed a non-disputed notice of claim. You testified as to the following three assertions:
 - a. That Robert Morgan Limited III LLC has no valid claim against the estate.
 - b. That Mr. Dove's client "The Robert Morgan Limited Partnership III" was the valid creditor for these claims.
 - c. That you conclusions are based on the Order State Court Judge Fisher signed July 7, 2009, three days post petition of my filing Federal Bankruptcy Chapter 11.

In order to fully clarify your statements, I restated your statements as follows. "So Lee let me restate your conclusions - regarding "The Robert Morgan Limited Partnership III" are based on the Order Signed by the State Court Judge Fisher on April 7 2009 3 days post petition of my bankruptcy filing" to which you said "yes". Then you testified that the April 7, 2009 was in effect until another judicial order voids or vacates it. Once again I ask for clarification and you said you check on it regarding the order and you are correct.

Lee, I am afraid you are absolutely wrong. You could not have checked, because it is very clear in Federal Law that any State Court order signed post petition of a Bankruptcy filing in which the Federal automatic stay is in place is absolutely **null and void as it stands**. In fact the Federal Law even states that the order is voided as if never entered.

This position is very troubling, as it is in direct conflict of Federal Law and completely contradicts the fundamental reason I filed Bankruptcy.

Voice: 585-872-9999

email: ffrumusa@rochester.rr.com

PO Box 418

Page 1 of 4

Exhibit Page 1

Webster, New York 14580

Exhibit Page 5

Exhibit B Frumusa Amended Motion

Exhibit A Letter to Lee Woodard questioning actions

I will request that you immediately withdraw these statements as they have significant negative impact on the Estate, Creditors and Debtor. I must remind you that you have a fiduciary responsibility to the Estate. This is a significant responsibility that must not be breached.

2. **Involvement of Ms. Nussbaum and Mr. Dove.** During the meeting Ms. Nussbaum, Mr. McDonald and Mr. Dove insisted that they could ask questions regarding my personal estate. Then you, Mr. Woodard insisted that I answer their questions.

I objected to their these parties involvement and I insisted that it was not the intent of the Judicial order setting up this meeting. I further stated these parties involvement are detrimental and disruptive to business of the Estate, and that is why they are specifically excluded allowing us to focus on the Estate needs. Then I asked to take a break so I could get required documents filed upstairs to clarify their involvement. However you insisted I continue.

Interaction such as this are very detrimental to the proper execution of the affairs of the Estate. This adversary posture you take tends to result in an argumentative environment which is nonproductive.

I have attached the Transcripts of the November 9th 2009 hearing and clearly I was absolute correct, that the parties above were not allowed to participate in the hearing. In fact if you review the audio recording they did exactly as predicted — disrupt the proceedings. We spent approximately 2 hours dealing with their disruptions and this is unacceptable. In fact so there is no question, I have copied the pertinent statements from the transcript here.

As to the meeting being held in compliance of the consent order:

Page 10 Line 3

THE CLERK: The docket indicates 2:00.

THE COURT: The 13th is at 2:00.

MR. FRUMUSA: Can we start earlier?

THE COURT: You might want to start earlier, to get all this done.

MR. FRUMUSA: Can I ask one question? Will the 2004 hearing be under the guidelines, I'll call them the consent orders?

THE COURT: Yes, certain parties were listed as those who could participate.

MR. FRUMUSA: That's good

Also as to Dove Attempts to disrupt.

Page 13 Line 5 -

"THE COURT: I don't know what "participate" means, but you are not on that consent order to participate in terms of answering questions. It doesn't matter

Voice: 585-872-9999

email: ifrumusa@rochester.rr.com

PO Box 418

Page 2 of 4

Exhibit Page 2

Webster, New York 14580

Exhibit Page 6

Exhibit B Frumusa Amended Motion

Exhibit A Letter to Lee Woodard questioning actions

if you listen but I don't know that you are entitled to ask questions of Mr. Woodard's case.

MR. DOVE: I understand that."

And finally as I summed it up!

Page 16 Line 13

"THE COURT: Mr. Frumusa clarified that it's like joint administration versus substantive consolidation. This is a joint time but it isn't substantively consolidate.

MR. DOVE: I understand.

MR. FRUMUSA: The key would be its quality questions and not disruptive, and that would be very good."

So I ask why did the meeting become so disruptive as a result of Dove's and Nussbaum's involvement. Therefore, I am requesting that you conduct the meeting tomorrow per the transcripts and discussion in court on November 4, 2009. To that end I am requesting that you limit questions to yourself and specifically as related to the estate.

3. **Vote for Permanent Trustee.** Your actions in response to the election of a permanent Trustee were simply very concerning as to your intentions. More concerning was the complete difference in the way you conducted yourself and the way the US Trustee conducted herself at the meeting and request for election in the corporate. Neither are acceptable, and demonstrate motives to prevent a valid election. Therefore please provide the Creditors and Myself with a documented procedure utilizes to conduct the election per Rule 702. I would also request that the hearing be held open until the procedure is provided and the opportunity to have a election is afforded to the Creditors.
4. **Roll Call for attendance.** At the Start of meeting you went around the room and asked people to Identify themselves on the record, there were 3 people that remained silent. You chose to question one who was Ms. Coir, and question here regarding herself and relation to the case. However later when I asked you to identify the other two, you refused.

I would like to know why is it important to identify Ms. Coir, but not necessary to identify two of Mr. Adams employees, Gary Robinson and Bridget Martin. Especially when Mr. Robinson has had such a dark and adversary involvement in these proceeding. In fact this is the second time this has occurred, the prior meeting it was Mr. Fico, who you would not identify, once again a character I am sure creditors and the estate would want memorialized as to their attendance and involvement in these meeting. There for I am asking we Identify all at the start of the meeting.

I would like to review this letter and your response at the start of the meeting tomorrow. Unfortunately my time has been consumed with dealing with situation such as above and I have

Voice: 585-872-9999

email: lfrumusa@rochester.rr.com

PO Box 418

Page 3 of 4

Exhibit Page 3

Webster, New York 14580

Exhibit Page 7

Exhibit B Frumusa Amended Motion

Exhibit A Letter to Lee Woodard questioning actions

Spending time dealing with issues such as above and recovery of Frumusa Enterprise LLC property illegally seized (that being 182 North Ave real-estate, rents collected etc.) by yourself, Mr. Arnold and the US Trustees to make any progress on my future plans.

Regards,



Larry Frumusa

cc Hon. Michael J Kaplan

Dave Capriotti

US Trustee Kathleen Schmitt

Voice: 585-872-9999

email: lfrumusa@rochester.ny.com

PO Box 418

Page 4 of 4

Exhibit Page 4

Webster, New York 14580

Exhibit Page 8

Exhibit A Letter to Lee Woodard questioning actions

UNITED STATES BANKRUPTCY COURT.

WESTERN DISTRICT OF NEW YORK

-----x
: :
In re: : :
: :
Lawrence Frumusa, : :
: :
Debtor. : :
: :
-----x

BK No. 09-21527 (7)

Transcript of Proceedings
before The Honorable John C. Ninfo, II
United States Bankruptcy Court Judge

4th

November 2009

Rochester, New York 14614

Reported by:

Dorothy Maiorana,
Bankruptcy Court Reporter
REALTIME REPORTING SERVICE, INC.
Main: (585)232-8765 | Fax (585)486-1371

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Exhibit Page 5

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APPEARANCES:

HARRIS BEACH PLLC
Trustee
300 South State Street
Syracuse, NY 13202
BY: Lee Woodard, Esq.

MENTER, RUDIN & TRIVELPIECE, PC
308 Maltbie Street, Suite 200
Syracuse, NY 13204-1498
BY: Jeffery A. Dove, Esq.

Lawrence Frumusa
Pro se

REALTIME REPORTING SERVICE, INC.

Main: (585)232-8765 | Fax (585)486-1371
www.realtime-reporting.com

1 THE COURT: So, this is your motion, Mr. Woodard,
2 correct?

3 MR. WOODARD: It is, Your Honor.

4 THE COURT: It appears that in the first instance
5 you're looking for Rule 2005A, to order.

6 MR. WOODARD: That is correct.

7 THE COURT: But don't you need as a predicate to
8 that an order or subpoena that has been violated? I haven't
9 issued an order, have I?

10 MR. WOODARD: Yes, you issued an order for a 2004
11 exam back in August that has not been complied with.

12 THE COURT: When was this? So August, what was the
13 date of the order; was it attached?

14 MR. WOODARD: It is not attached, Your Honor.
15 Mr. Capriotti in his affidavit, "The trustee has also obtained
16 an order authorizing an examination of the debtor pursuant to
17 2004, which the examination was scheduled for August 19th,
18 2009", just prior. It would have been the second week in
19 August, Your Honor. The 2004 exam was ordered; the original
20 was back in August.

21 THE COURT: I'm just going to let the clerk bring
22 that up so I can see it. So, it was August 18, 2009, at 10:00
23 for a 2004 exam, in the offices of Harris Beach.

24 MR. WOODARD: That's correct, Your Honor.

25 THE COURT: That was dated on 8-19-09, correct?
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1 MR. WOODARD: Correct, Your Honor.

2 THE COURT: How was this served on Mr. Frumusa?

3 MR. WOODARD: I don't have the certificate of
4 service of that order, but it was served on Mr. Frumusa by
5 mail and I believe that he had also consented to them, at the
6 time.

7 THE COURT: It does say consent to order.

8 MR. WOODARD: He was present at the time that was
9 requested and did he did consent to it.

10 MR. FRUMUSA: Your Honor, I did consent to that
11 order and I provided the information required and I submitted
12 my answer to this.

13 THE COURT: I don't know what your answer is,
14 because you didn't appear at the 2004 exam, did you?

15 MR. FRUMUSA: We had an agreement to put that off.
16 And because of the information I supplied to them, we were
17 going to reschedule it, but then we just never rescheduled it.
18 We did, I believe, reschedule it for October, the last we
19 scheduled the 341 Hearing. So we did reschedule it, Your
20 Honor.

21 However, the night before, Mr. Woodard and I had a
22 conversation about actions that were going to be done in court
23 the day after. I misunderstood or he miscommunicated. I
24 thought I had the day free to attend the meeting, I did not,
25 and so -- but if Your Honor looks at my Answer, I cooperated
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1 fully with these people. As a result of that miscommunication
2 I was not able to meet. I had to prepare for court, which was
3 when I presented Your Honor with that valid argument about the
4 adequate protection from Monroe to seize the property.

5 THE COURT: Are you aware of an agreement --

6 MR. WOODARD: No, Your Honor.

7 THE COURT: -- to change the date of August 19th?

8 MR. WOODARD: Mr. Frumusa is referring to -- When
9 he's talking about the night before and all those things, he's
10 referring to 341 meetings, not the 2001 Exam.

11 THE COURT: Which was not rescheduled.

12 MR. WOODARD: Which was not rescheduled.

13 THE COURT: Which was to be at your office?

14 MR. WOODARD: Correct. We had a stenographer, we
15 had Mr. Tompsett, Mr. Capriotti waiting. Mr. Frumusa had gone
16 back after court, when he consented to the order. He did go
17 back to our offices and agreed to provide information. Bits
18 and pieces of information have been sent, have been
19 communicated, nothing under oath, and certainly nothing of the
20 financial documents that are the lifeblood of what we need to
21 do.

22 MR. FRUMUSA: Your Honor, my answer fully addresses
23 every piece of information they want, I've given it to them.
24 I spent an afternoon going around to all the banks and
25 collected funds, I've provided insurance. And here's the
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1 simple thing, do they want to have a hearing or do they just
2 want to discredit me? If they want to have a hearing, then
3 let's schedule it. I'm trying to get representation. I think
4 I have that now. On the consent for the 2004, we had a
5 limited hearing relative to just their needs. We consented,
6 that was part of the consent order. So let's schedule it.
7 Let's stop with this trying to discredit. And if you look,
8 Your Honor, in their pleadings everything they were looking
9 for was given to them in my Answer.

10 THE COURT: What we're looking for is your actual
11 appearance. Substantial compliance doesn't cut it,
12 Mr. Frumusa, with respect to these 2004s or 341s or the things
13 that the trustees need in their business judgement and
14 professional opinion to administer the estate. Some sort of
15 substantial compliance or what you think complies is not the
16 answer.

17 MR. FRUMUSA: I agree, Your Honor.

18 THE COURT: It has to be actual compliance.

19 MR. FRUMUSA: Your Honor, this motion that they put
20 in was totally out of left field for me. It was really a
21 commencement with other motions of the trustee's office. I
22 did not know they were upset. The last 341 that I missed,
23 Mr. Woodard -- I'm not sure what happened. But let's schedule
24 it. We don't need these orders.

25 MR. WOODARD: The simple truth is Mr. Frumusa has
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1 not appeared at any 341 to be questioned. He has appeared at
2 one of Mr. Arnold's 341s and then voluntarily removed himself
3 prior to being sworn. But there has been no appearance at a
4 2004 exam, there has been no appearance at a 341 meeting. He
5 has removed himself from every opportunity --

6 THE COURT: Did I sign the order for the 341?

7 MR. WOODARD: No. There is not a separate order,
8 other than --

9 THE COURT: Which I need under a 2005.

10 MR. WOODARD: Correct, Your Honor. We do have one
11 for the 2004 exam.

12 MR. FRUMUSA: All the meetings that we've been
13 scheduling and cooperating together, there have been
14 situations that resulted that we were okay with postponing
15 them. I don't understand the need for this motion. In the
16 spirit of cooperation --

17 THE COURT: I do know this. You haven't appeared
18 and testified in any 2004 exam in either the individual case
19 or in the corporate cases that have been converted to Chapter
20 7, where you've been designated as the debtor for the purpose
21 of those examinations.

22 Now I don't have the information right before me
23 about how long it's been since those cases were converted and
24 fee designations were made, but it goes back a long way.

25 MR. FRUMUSA: July 20th and August 5th.
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1 THE COURT: So, we're now talking an awfully long
2 time.

3 MR. FRUMUSA: Your Honor, there was a 341 meeting
4 that was conveyed in the corporate cases when it was a Chapter
5 11, and also the personal cases when they were Chapter 11.
6 I've actually supplied tape recordings of that, too. So I
7 have under oath committed in a Chapter 11 case and there has
8 been nothing that's hindered them. And the fact of the matter
9 is we've been working together.

10 THE COURT: So, how do you want to handle this 2004
11 exam, Mr. Woodard?

12 MR. WOODARD: Well, Your Honor, we have one
13 scheduled for today, or Mr. Arnold has one, but there's been
14 no documents produced for that either. I guess what we should
15 do is to pick a date that we could do a joint 2004 exam, have
16 it ordered by this Court, and I would ask that based upon our
17 prior order, that if Mr. Frumusa does not appear and to be
18 sworn and give testimony at that 2004 exam that we be able to
19 present an ex parte order immediately to have him incarcerated
20 and brought before the Court pursuant to the Rule 2005.

21 MR. FRUMUSA: That's severe. I think, Your Honor --
22 ex parte, too. This is typical of the situation I'm involved
23 in where out of cooperating agreements, all of a sudden this
24 comes out. I just don't understand this situation, Your
25 Honor. I just don't understand. I think that's pretty
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1 severe, and I believe that I have cooperated fully.

2 THE COURT: Here's what I'm going to give you,
3 Mr. Woodard: I'm going to give you a two-stage order. I'm
4 giving you an order for both you and Mr. Arnold that covers
5 all of the cases, Mr. Frumusa's individual case and the
6 corporate cases converted to Chapter 7 to appear at a joint
7 2004/341 meeting in each of those cases. And a date you can
8 work out right now. Mr. Frumusa is willing to do that.

9 MR. WOODARD: We have a scheduled 341 meeting, Your
10 Honor, in the individual case, for Friday, November 13th.

11 THE COURT: Does that work?

12 MR. FRUMUSA: That's okay. In the morning or the
13 afternoon? We should do it in the morning.

14 THE COURT: The only person that can waive
15 appearance at that joint 2004/341 for all those cases is this
16 Court or any other judge that may be handling these matters.
17 No agreements among the trustees, no agreements among the
18 party lawyers, this, that, whatever, okay?

19 Then I'm going to give you a part-two order. If
20 Mr. Frumusa doesn't appear and testify at those meetings and
21 stay there until the meeting is closed or adjourned and if you
22 adjourn it, he's to show up at that adjourned date under the
23 same conditions. If he doesn't show up at the Friday the 13th
24 or any adjournment of any of those cases, then pick a
25 subsequent date for his appearance and at a 2005A and then the
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1 marshal service will be directed to pick him up and deliver
2 him for testimony.

3 THE CLERK: The docket indicates 2:00.

4 THE COURT: The 13th is at 2:00.

5 MR. FRUMUSA: Can we start earlier?

6 THE COURT: You might want to start earlier, to get
7 all this done.

8 MR. FRUMUSA: Can I ask one question? Will the 2004
9 hearing be under the guidelines, I'll call them the consent
10 orders?

11 THE COURT: Yes, certain parties were listed as
12 those who could participate.

13 MR. FRUMUSA: That's good.

14 THE COURT: So, if you don't appear on the 13th or
15 any adjournment, the next date the marshal service is going to
16 pick you up and deliver you; got it?

17 MR. WOODARD: Your Honor, as long as the room is
18 available we can start at 10:00. That way we'll have the
19 whole day. The only question I would ask the Court is if we
20 could also include in the order, that pursuant to the order,
21 to the consent order, that there were many documents; if we
22 could have those documents to be able to question him.

23 THE COURT: Yes.

24 MR. FRUMUSA: Could you enumerate?

25 MR. WOODARD: I'll send you another copy.
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1 MR. ARNOLD: And the order directing the 2004 exam
2 which was going to take place today, there are also documents
3 that are required. We were going to have a 2004 exam today at
4 2:00 and no documents were received. So we just want those
5 documents be part of the requirement.

6 MR. FRUMUSA: Your Honor, may I also add to the
7 order, that you hear my motion for sanctions the day after?

8 THE COURT: What motion for sanctions?

9 MR. FRUMUSA: The motion I'm trying, that I'm trying
10 to get scheduled. You would provide a notice, a shortened
11 notice order so we could hear it Monday, the 15th.

12 THE COURT: I don't even know what you're talking
13 about.

14 MR. FRUMUSA: I filed a motion for sanctions for
15 L. Frumusa.

16 THE COURT: It's not on the calendar.

17 MR. FRUMUSA: I understand it's not on the calendar.
18 I'm trying to get it on the calendar. Could you provide an
19 order that to shorten the time and allow it to be scheduled
20 for that Wednesday coming up after Friday the 13th?

21 THE COURT: If you made a motion to shorten time,
22 the Court will look at it and determine whether there is
23 proper cause to shorten time. That's all the Court ever does.
24 You have to have grounds to shorten time. If you've met the
25 requirements to shorten time the Court will sign it. If
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1 there's sufficient notice, still, even when we shorten time,
2 we always look at the facts and circumstances to make sure
3 even shortened time allows parties enough notice so they can
4 respond. If you filed a motion I'll take look at it.

5 MR. FRUMUSA: Well, in light of the 2004 meeting
6 and --

7 THE COURT: I don't know what the sanction motion
8 that you are referring to, how it relates to a 2004 exam. I
9 don't even know what you are talking about. So, for me to sit
10 here and say, of course I'll do it, would be something I can't
11 do. I have to look at it in the ordinary course and see if it
12 meets the requirements to shorten it.

13 MR. DOVE: Your honor, just so it's on the record,
14 Monroe has previously been authorized under the 2004 order
15 entered by Mr. Arnold's cases. He's the trustee to appear and
16 question Mr. Frumusa at the 2004 exam and receive documents in
17 advance, it's our intention to participate in the 2004 exam
18 we've just been discussing, just so Mr. Frumusa is aware of it
19 and doesn't object to the proceeding based on our presence.

20 THE COURT: The 2004 exam consent order for
21 Mr. Woodard didn't include you?

22 MR. WOODARD: It did not.

23 THE COURT: That's not what you intend to
24 participate in?

25 MR. DOVE: Apparently, it's going to be a joint 2004
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1 examination, including the one we were going to have this
2 afternoon. And we were specifically authorized to participate
3 in that event. So we will now plan on participating in the
4 event scheduled.

5 THE COURT: I don't know what "participate" means,
6 but you are not on that consent order to participate in terms
7 of answering questions. It doesn't matter if you listen but I
8 don't know that you are entitled to ask questions of
9 Mr. Woodard's case.

10 MR. DOVE: I understand that.

11 THE COURT: That's all I'm talking about.
12 Mr. Arnold's case, you are on it, so you can participate in
13 that. Am I missing something?

14 MR. DOVE: Your Honor, I believe you called it a
15 joint 2004/341 meeting.

16 THE COURT: Mr. Frumusa clarified that it's like
17 joint administration versus substantive consolidation. This
18 is a joint time but it isn't substantively consolidate.

19 MR. DOVE: I understand.

20 MR. FRUMUSA: The key would be its quality questions
21 and not disruptive, and that would be very good.

22 THE COURT: I think Mr. Woodard is more than capable
23 of asking any questions that need to be asked. I'm saying
24 Mr. Woodard doesn't need any help from anybody.

25 Okay, thank you.
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1 MR. WOODARD: Thank you, Your Honor. I'll supply
2 the order.

3 (The matter concluded.)
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REPORTER CERTIFICATION

I, Dorothy Maiorana, do hereby certify that I reported in
stenotype machine shorthand, CaseCatalyst software the
proceedings held in the above-entitled matter;

Further, that the foregoing transcript is a true and
accurate transcription of my said stenographic notes taken at
the time and place hereinbefore set forth.

Dorothy Maiorana

Dated this 9th day of November, 2009
At Rochester, New York.

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Case # 09-21527 -- Distribution list see Attachment A

CERTIFICATE OF SERVICE

Debtor: Lawrence Frumusa

I, Lawrence Frumusa , hereby certify on March 29, 2010 on behalf of the Debtor Lawrence Frumusa, I have caused to be transmitted via CM/ECF electronic filing, facsimile, and/or First Class U.S. Mail, a copy to the creditors listed on Attachment of the foregoing as stated below

AMENDED MOTION TO REMOVE TRUSTEE MR. WOODARD FOR CAUSE

DATED: March 29, 2010 I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge, information and belief.

Executed



Lawrence Frumusa

Certificate of Service

AMENDED MOTION TO REMOVE TRUSTEE MR. WOODARD FOR CAUSE

Page 1 of 1

Exhibit Page 24

Exhibit B Frumusa Amended Motion
Attachment A Distribution List

| | | | |
|-------------------------------------|------------------------------------|------------------------------------|--------------------------------|
| Arnold, Michael as Temp Trustee | 27 Pleasant St. | Fairport, NY 14450 | |
| Bunce, Gary - | SBM Interiors Co., Inc | 380 Cedar Creek Trl | Rochester, NY 14626 |
| Chadsey, Mike - | Chadsey Heating & Cooling | 11 West St | Albion, NY 14420 |
| Cheryl Heller Esq National City | Ward Norris Heller & Reidy LLP | 300 State Street | Rochester, NY 14614 |
| David J. Magnarelli | General Electric Co-Renner | 5111 W. Genesee Street | Camillus, New York 13031 |
| David M. Capriotti, | Harris Beach PLLC-Capriotti | 300 S. State Street | Syracuse, New York 13202 |
| David M. Capriotti, Esq. | Harris Beach, PLLC | 300 S. State Street | Syracuse, New York 13202 |
| Dooley, Mike | MJ Pipe & Supply Corp-Mike | 609 Buffalo Road | Rochester, New York 14611 |
| Electric, Crown - | Crown Electric Supply Co. Inc. | PO Box 86 Route 104 | Union Hill, NY 14563 |
| EVC, Eric - | E.V.C. Enterprise | 410 South Lincoln Rd | East Rochester, NY 14445 |
| Florentino Tovar | 22 Henrietta St | Rochester, NY 14620 | |
| Fredericks, Dave - | Ferrelgas | PO Box 173940 | Denver, CO 80217-3940 |
| Geer, Dan - | Pride Fire Protection LLC | Atten: Dan T. Geer | 1248 Commercial Dr, BLDG A- |
| Giordano, John - | GRP Painting | 15 Sargenti Circle | Webster New York 14580 |
| Hassett, Greg - | Residential Steel Services LLC | 500 Lee Road | Rochester, New York 14606 |
| Hovey, Dave - | Truax & Hovey LTD | PO Box 2700 | Liverpool, NY 13089-2700 |
| Iassic, Henry - | Henry Issac Remodeling and Repairs | 28 West Buffalo Street | Churchville, New York 14428 |
| Jeffrey A. Dove, | Menter, Rudin & Trivelpiece, P.C. | Attorneys for Monroe Capital, Inc. | 308 Maltbie Street |
| John R. O'Keefe | Metz Lewis LLC | 11 Stanwix Street (18th Floor) | Pittsburgh, PA 15222 |
| Johnson, Fred - | Johnson Brothers Masonry | 9310 Asbury Rd | Leroy, NY 14482 |
| Joseph Zagraniczny | Bond, Schoeneck & King LLP | One Lincoln Center | Syracuse, NY 13202-1355 |
| Kathleen Dunivin Schmitt | Office of the U.S. Trustee | 100 State Street, Room 6090 | Rochester, NY 14614 |
| Keeana, Tom - | Edge Wood Nursey | 3740 Stalker Rd | Macedeon, NY 14502-9325 |
| Lawrence Frumusa | PO Box 418 | Webster New York 14580 | |
| Liftech Equipment Companies, Inc | 6847 Ellicott Drive | E Syracuse, NY 13057 | |
| Mallette, Jason - | JTM Custom Construction Inc. | 79 Marblehead Drive | Rochester, New York 14615 |
| Mallette, Robert | JTM Custom Construction Inc. | 79 Marblehead Drive | Rochester, New York 14615 |
| Manel Paving Corporation | PO Box 26816 | Rochester, NY 14626 | |
| Marcello, Bob Marcello | Marcello Creative Design | 150 Willow Ridge Trail | Rochester NY 14626 |
| Mark Soucy | Kimball Trucking | 1807 Tebor Rd | Webster, NY 14580 |
| Michael Powers, | Office of the U.S. Trustee | 100 State Street, Room 6090 | Rochester, NY 14614 |
| Morse, Bill - | WM. B. Morse Lumber CO-Bill | 340 West Main Street | Rochester, New York 14608 |
| Mr. Michael Arnold as Temp Trustee | 27 Pleasant St. | Fairport, NY 14450 | |
| Mussumeci, Mike - | Mussumeci Electric LFLD | 1451 Harris Road | Webster, NY 14580 |
| Netzmans, Jim - | Netzmans | 185 West Main St | Webster, NY 14580 |
| Nohie, Andy - | Meier Supply | 123 Brown St | Johnson City, NY 13790 |
| P&R Plumbing | 3763 Latta Rd | Rochester, NY 14612 | |
| Pelusio, Tom - | Rochester Linoleum & Carpet | PO Box 105525 | Atlanta, GA 105525 |
| Rita or Joanne Elam Sand and Gravel | PO BOX 65 | West Bloomfield, New York 14585 | |
| Robert Capellazzi | Domine Builders Supply | 100 East Highland Drive | Rochester, NY 14610 |
| Robert Morgan Limited III LLC | PO Box 1197 | Webster, New York 14580 | |
| Sattora, Dave - | Sattora Siding | 267 North Church Rd | Rochester, NY 14612 |
| Tachin, Mark - | MST Construction Inc. | 80 Huffer Rd | Hilton, NY 14468 |
| Tim Terhaar | Felluca OverHead Doors, Inc | 1674 Norton Street | Rochester, New York 14609 |
| Wayside Garden Center | 124 Pittsford-Palmyra Rd. | Macedon, New York 14502 | |
| Will Russeil | Southworth-Milton Cat | P.O. Box 3851 | Boston, MA 02241 |
| Williams, Dave - | Volvo Rents | PO Box 92280 | Rochester, NY 14580 |
| Williamson, Marc - | MIG Building System | 100 Ontario Street | East Rochester, New York 14445 |

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

FILED

2010 MAR 29 PM 2:32

In re:

Lawrence Frumusa,

Debtor

U.S. BANKRUPTCY COURT
W.D.N.Y. - ROCHESTER
Case: 09-21527

Notice of Hearing of

AMENDED MOTION TO REMOVE TRUSTEE MR. WOODARD FOR CAUSE

Lawrence Frumusa, by *pro-se* representation², provides this NOTICE OF Hearing of AMENDED MOTION TO REMOVE TRUSTEE MR. WOODARD FOR CAUSE by the Honorable Judge Ninfo

PLEASE TAKE NOTICE of a Hearing on April 7, 2010 at 9:30 a.m. of that day, or as soon thereafter as moving party and all other motions scheduled can be heard, at the United States Bankruptcy Court for the Western District of New York, 1220 U.S. Courthouse, 100 State Street, Rochester, New York. In which the Motion as described above and filed on March 29, 2010, will be heard.

With supporting Motion filed March 29, 2010,

DATED: March 29, 2010 I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge, information and belief.

Executed



Lawrence Frumusa

² The Debtor is proceeding *pro-se* not by choice but as a result of the Federal Court preventing Debtor from obtaining proper representation (see case 2-09-21527-JCN Doc 508 Filed 01/21/10 Appellants Statement of Issues).

Case # 09-21527 -- Distribution list see Attachment A

**CERTIFICATE OF SERVICE
Debtor: Lawrence Frumusa**

I, Lawrence Frumusa , hereby certify on March 29, 2010 on behalf of the Debtor Lawrence Frumusa, I have caused to be transmitted via CM/ECF electronic filing, facsimile, and/or First Class U.S. Mail, a copy to the creditors listed on Attachment of the foregoing as stated below

Notice of Hearing for

AMENDED MOTION TO REMOVE TRUSTEE MR. WOODARD FOR CAUSE

DATED: March 29, 2010 I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge, information and belief.

Executed



Lawrence Frumusa

Certificate of Service

NOTICE OF AMENDED MOTION TO REMOVE TRUSTEE MR. WOODARD FOR CAUSE

Page 1 of 1

Exhibit Page 27

Exhibit B Frumusa Amended Motion

Attachment A Distribution List

| | | | |
|-------------------------------------|------------------------------------|------------------------------------|--------------------------------|
| Arnold, Michael as Temp Trustee | 27 Pleasant St. | Fairport, NY 14450 | |
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| Chadsey, Mike - | Chadsey Heating & Cooling | 11 West St | Albion, NY 14420 |
| Cheryl Heller Esq National City | Ward Norris Heller & Reidy LLP | 300 State Street | Rochester, NY 14614 |
| David J. Magnarelli | General Electric Co-Renner | 5111 W. Genesee Street | Camillus, New York 13031 |
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Exhibit C Woodard's Objection to Frumusa Motion

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Re:

Case No. 2-09-21527-JCN

Chapter 7

LAWRENCE FRUMUSA,

Debtor.

**OBJECTION TO AMENDED MOTION TO REMOVE TRUSTEE
MR. WOODARD FOR CAUSE**

Lee E. Woodard, the Chapter 7 Trustee ("Trustee"), by and through his undersigned counsel, as and for his opposition to the Debtor's, Lawrence Frumusa ("Frumusa") Motion to Remove Trustee Mr. Woodard for Cause (doc. no. 669) (the "Original Motion"), and Frumusa's Amended Motion to Remove Trustee Mr. Woodard for Cause (doc no. 672) (the "Amended Motion"), respectfully represents to the Court as follows:

Relief Requested

1. Through the Original Motion and the Amended Motion, the Debtor seeks the removal of the Trustee although does not provide the requisite "cause" for such removal in either Motion.
2. Prior to filing the Amended Motion, the Debtor filed the Original Motion. The Original Motion contained assertions that are not included in the Amended Motion. Out of an abundance of caution, and because Frumusa is a *pro se* debtor, the Trustee will address the arguments raised in both Motions.

Background

3. This case was commenced by the filing of a voluntary petition under Chapter 11 of Title 11 of the Bankruptcy Code on or about June 5, 2009.

Exhibit C Woodard's Objection to Frumusa Motion

4. By Order entered August 7, 2009 (the "Conversion Date"), the case was converted to one under Chapter 7.

5. Lee E. Woodard, the Trustee, was appointed the Chapter 7 Trustee in this case on August 7, 2009.

MOTIONS

A. *Original Motion*

6. In the Original Motion, Frumusa claims that the Trustee is in collusion with a creditor, Paul Adams, other unnamed creditors, and an unnamed "State Court Attorney". Frumusa also states that the Trustee has violated his fiduciary duties, but has not provided any facts to support this claim.

7. It is submitted that Frumusa's underlying motivation in filing the Original Motion is to attempt to recover certain of the Debtor's assets, namely two cars that the Trustee believes have considerable value, and an ATV that were seized by the Monroe County Sheriff.¹

8. As can be seen by the Original Motion, the Debtor demanded return of the vehicles which the Trustee flatly denied.

9. Despite the Trustee's email responses that are attached as Exhibit A to the Original Motion wherein it is clear that the Trustee was not involved in the seizure of the vehicles, Frumusa claims that the Trustee somehow conspired with the attorney that initiated the seizure to secure possession of the vehicles.

10. Additionally, paragraph 42 of the Original Motion, lists a variety of actions allegedly taken by the Trustee that constitute "cause" for the Trustee's removal.

¹ The vehicles were seized by the Monroe County Sheriff executing on a judgment obtained by a creditor. The creditor acknowledged that obtaining possession of the vehicles constituted a violation of the automatic stay and has paid \$500 which funds were necessary to pay the towing expenses incurred in securing the vehicles.

Exhibit C Woodard's Objection to Frumusa Motion

11. There is absolutely no truth to any of the allegations contained in the Original Motion.
12. Indeed, taking each of the statements contained in paragraph 42 in order:
 - (a) The Trustee has not conspired with Paul Adams or any creditor for any actions taken in connection with carrying out his fiduciary duties for the estate.
 - (b) The Trustee did not mislead the Court on October 7, 2009, or at any time concerning any aspect of the bankruptcy estate.
 - (c) The Trustee has not concealed any facts in this case, particularly funds on deposit by the Debtor. To the extent the Debtor had funds on hand as of the Conversion Date, those funds are an asset of the bankruptcy estate that should be turned over to the Trustee immediately.
 - (d) The Trustee has not filed any false or misleading pleadings with this Court.
 - (e) The Trustee has not "stolen" or arranged to have "stolen" any property belonging to either Frumusa or the estate.
 - (f) The Trustee did not have any involvement with the property located at 182 North Ave., Webster, NY. Upon information and belief, the secured creditor seized the property which is titled to a non-debtor pursuant to its mortgage documents.
 - (g) The property located at 1069 Gravel Road, Webster, NY was sold to a good-faith purchaser, for value pursuant to this Court's order.
 - (h) The Trustee has not intimidated or threatened Ms. Coir. The Trustee questioned Ms. Coir, who answered voluntarily, as to the facts and circumstances surrounding her filing a proof of claim on behalf of Frumusa Enterprises.
 - (i) The Trustee has attempted to conduct a 2004 Examination of the Debtor as well as 341 Meeting of Creditors on numerous occasions but has not had the complete

Exhibit C Woodard's Objection to Frumusa Motion

cooperation of the Debtor at any point so that, neither the 2004 Examination, nor the 341 Meeting of Creditors can be concluded.

- (j) The Trustee has not made any “side deals” with any creditor, attorney, party in interest or otherwise concerning this case or the related cases pending before this Court. The Trustee’s standing in the legal community is based on his hard work and stellar reputation, not from any misdeeds.
- (k) The Trustee vehemently opposes violations of the stay and, took immediate acts to address the stay violation that occurred in order to make the estate whole.
- (l) The Trustee has not used any force in connection with his administration of this estate. The Trustee is proceeding with this case in accordance with the rights afforded in the Bankruptcy Code and is carrying out his fiduciary duties to the best of his abilities.

13. All of the allegations and assertions contained in the Original Motion must be disregarded. Frumusa has not provided any facts or identified any issues that constitute “cause” to warrant the removal of the Trustee. The Original Motion must be denied.

B. *Amended Motion*

14. As support for Frumusa’s Amended Motion, he claims that the Trustee “has consistently drawn allegations from the debtor Frumusa and Unsecured Creditors that he has violated his fiduciary responsibility to the Estate, Debtor and Creditors.” *See Motion*, ¶9. It is not clear what the Debtor intends by this statement except that he believes the Trustee is not carrying out his fiduciary duties.

15. As set out above, the Trustee is making every effort to fulfill his obligations as Trustee, administering the estate to the best of his abilities and meeting his fiduciary duties, while all

Exhibit C Woodard's Objection to Frumusa Motion

the while being stone-walled by the Debtor at every turn. Indeed, the Debtor continues to be uncooperative, evasive and disregards direct orders of this Court to produce documents and provide testimony under oath. The Trustee is simply taking necessary steps, within the confines of the Bankruptcy Code and Rules, and the Local Rules to carry out his responsibilities.

16. Additionally, Frumusa asserts that Mr. Fedele V. Scutti and Mr. Louis C. Fico are clients of Harris Beach thereby creating a conflict so that the Trustee cannot serve as trustee.

17. First, whether Mr. Scutti and/or Mr. Fico are existing or former clients of Harris Beach is a confidential matter. Second, whether Mr. Scutti and/or Mr. Fico are, or have been clients of Harris Beach, is completely irrelevant as neither individual is listed as a creditor, party in interest, or otherwise named or involved in this case.²

18. These allegations are nothing more than another ruse, used by the Debtor to delay and hinder the Trustee's ability to properly administer this estate.

19. Nevertheless, Frumusa claims that Mr. Fico was granted "special considerations" by the Trustee in that the Trustee did not require Mr. Fico to state his name on the record at a 2004 examination and/or 341 Meeting of Creditors.

20. It is submitted that this does not constitute "special consideration" by the Trustee. Instead, the Trustee regularly asks the individuals that are present for 341 Meetings of Creditors whether they would like to place an appearance on the record. In the event an individual declines, the Trustee does not generally require any person to make an appearance on the record.

21. Frumusa then claims that Mr. Fico had adversely retained an SUV vehicle that would otherwise be recovered and secured by the Trustee.

² To the extent either individual was established to be a party in interest, the Trustee will file a supplemental affidavit disclosing any relationship that may exist.

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22. The fact that Mr. Fico may or may not have possession of a certain vehicle is irrelevant to a determination of whether cause exists to remove the Trustee. Furthermore, the vehicle in question will be returned if it is determined to be property of the estate.

23. Frumusa also states that Mr. Fico and Mr. Scutti either owe or have paid to Frumusa certain sums of money as a result of litigation.

24. However, the Debtor's schedules do not identify any litigation involving Mr. Fico or Mr. Scutti, nor do his schedules list this debt as a receivable, judgment or have any reference to an asset that constitutes any amount due and owing by either of these gentlemen.

25. Frumusa also states that Mr. Fico and Mr. Scutti have a "very close relationship" with Gunther K. Buerman a significant figure and member of the board at Trustee Woodard's Firm Harris Beach PLLC." *See Motion, ¶ 19.*

26. Again, the fact that there was (a) litigation between the individuals that was not otherwise disclosed by the Debtor, did not involve the Trustee or Harris Beach, and, upon information and belief does not involve the Debtor individually, or (b) that there is a personal relationship between an attorney at Harris Beach, and an individual that may have had some connection with Frumusa does not constitute "cause" sufficient to remove the Trustee.

27. Frumusa next claims that because Harris Beach represented a creditor of the Debtor, Premier Cabinet Wholesalers, the Trustee should be removed.

28. Frumusa states that he and Premier Cabinet Wholesalers had an adverse relationship, and, without providing any facts, expects the Trustee to "isolate or protect Frumusa, the Estate or other Creditors from these and other conflicts." *See Motion, ¶ 23.*

29. In fact, the Trustee's application to appoint Harris Beach as his counsel, specifically discloses the prior representation of Premier Cabinet Wholesalers and notes that as creditors, they

Exhibit C Woodard's Objection to Frumusa Motion

are “united in interest” with the Trustee; further, if at some point it becomes necessary, the Trustee will engage conflicts counsel to represent the estate’s interests.

30. Furthermore, Frumusa was aware of Harris Beach’s representation of Premier Cabinet Wholesalers from the date of the initial appointment. In fact, Frumusa sarcastically quipped to undersigned counsel for the Trustee that he was able to “get around” a mechanics lien that was filed by Harris Beach on behalf of Premier and still draw money from a loan, despite the lien.

31. One wonders why Frumusa chooses now to allege this “conflict”.

32. Finally, Frumusa attached a transcript and a letter to the Amended Motion, but did not reference the exhibits in the Amended Motion. It is unclear what value the exhibits serve in support of the Amended Motion but certainly do not assist with establishing the requisite cause for removal of the Trustee.

33. It is submitted that Frumusa’s underlying motivation in filing the Amended Motion to remove the Trustee is that the Trustee is now in possession of certain of the Debtor’s assets, namely two cars that the Trustee believes have considerable value, and an ATV as discussed more thoroughly in the Original Motion.³

34. The Trustee had no knowledge that a judgment creditor was taking any action to execute against property of the estate.

35. As can be seen by the Original Motion, the Debtor demanded return of the vehicles which the Trustee flatly denied.

³ See *supra* footnote 2.

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ARGUMENT

36. Frumusa has not and cannot establish “cause” to remove the Trustee.

37. A trustee has a duty to act only in the best interest of the bankruptcy estate, for the benefit of creditors, and should have no conflicting interests. *In re Allen B. Wrisley Co.*, 133 F. 388, 390 (7th Cir. 1904); *In re Oliveri*, 45 F. Supp. 32, 33 (E.D.N.Y. 1942). Included is a duty to act impartially for the good of the creditor body as a whole. *Oliveri*, 45 F. Supp. at 33. “When [a trustee] . . . seeks to aid the bankrupt at the expense of the creditors, and by concealment or by false representations induces creditors to act contrary to their interest, [the trustee] violates his duty, and should be removed from the trust to which he has been false.” *In re Allen B. Wrisley Co.*, 133 F. 388, 390 (7th Cir. 1904). Further, “where there is a clash of various interests the best interest of the creditors may suffer, and where there is any obstacle to harmony and proper cooperation the Court should remedy the condition even though it means the vacation of the office by the present incumbent” *Oliveri*, 45 F. Supp. at 33 (affirming removal of trustee due to conflict of interest) (citing *In re Savoia Macaroni Mfg. Co.*, 4 F. Supp. 626 (E.D.N.Y. 1933)).

38. A chapter 7 trustee may be removed from a case for “cause” pursuant to section 324(a) of the Code which provides:

- (a) The court, after notice and a hearing, may remove a trustee, other than the United States Trustee, or an examiner, for cause.
- (b) Whenever the court removes a trustee or examiner under subsection (a) in a case under this title, such trustee or examiner shall thereby be removed in all other cases under this title in which such trustee or examiner is then serving unless the court orders otherwise.

11 U.S.C. § 324.

39. The issue then is what constitutes “cause” for removal. Cause is not defined in the Bankruptcy Code, and must be determined on a case-by-case basis. *In re Modanlo*, 413 B.R. 262,

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267 (Bankr. D. Md. 2009) (citing *In re Equimed, Inc.*, 267 B.R. 530, 533 (D. Md. 2001)); *In re Lundborg*, 110 B.R. 106, 108 (Bankr. D. Conn. 1990).

40. It has been recognized that “cause” constitutes “‘reasons for which the law and sound public policy recognize as sufficient warrant for removal’ and the reasons, which ‘relate to and affect the administration of the office and [which] must be restructured [sic] to something of a substantial nature directly affecting the rights and interests of the public.’” *Baker v. Seeber (In re Baker)*, 38 B.R. 705, 707 (D. Md. 1983) (quoted by *Equimed*, 267 B.R. at 533).

41. “In the Second Circuit, removal of a trustee requires a showing of actual injury to the estate or fraud.” *In re Bennett*, 2007 WL 2480524, at *9 (Bankr. N.D.N.Y. Aug. 28, 2007); *see also Equimed*, 267 B.R. at 533; *Baker*, 38 B.R. at 707. Other grounds for removal include (i) non-disclosure of potential conflicts, *Baker*, 38 B.R. at 707; (ii) the trustee is not disinterested, *In re BH&P, Inc.*, 103 B.R. 556, 561 (Bankr. D.N.J. 1989); and (iii) the fails to perform his or her duties, *In re Schoen Enter., Inc.*, 76 B.R. 203, 206 (Bankr. M.D. Fla. 1987); *see also Lundborg*, 110 B.R. at 108 (detailing various factors constituting “cause” under section 324).

42. Additionally, courts will consider what is in the best interests of the estate. Specifically, it has been stated that if “‘the administration of the estate in bankruptcy would suffer more from the discord created by the present trustee than would be suffered from a change of administration,’ necessitated by removal of the trustee.” *Bennett*, 2007 WL 2480524, at * 9; *see also Baker*, 38 B.R. at 708 (quoting *In re Freeport Italian Bakery, Inc.*, 340 F.2d 50, 55 (2nd Cir. 1965)).

43. In *Peoples Banking Co v. Derryberry (In re Hartley)*, 50 B.R. 852 (Bankr. N.D. Ohio 1985), the court stated that forcing accusers to come forward quickly and show actual harm or fraud protects innocent trustees, as well as ensures the orderly administration of the estate, because the progress of the case will not be disrupted by disgruntled creditors. *Id.* at 859.

Exhibit C Woodard's Objection to Frumusa Motion

44. Actual injury and/or fraud was found in *In re Vega*, 102 B.R. 552 (Bankr. N.D. Tex. 1989) where the chapter 7 trustee was removed after notice and a hearing on the motion. The court found that the trustee engaged in gross misconduct such as soliciting funds to be used in the prosecution of a lawsuit that was an estate asset, without complete disclosure to the party that agreed to loan the money. *Id.* at 553. Further, the trustee used the funds without court approval, and disbursed such funds to professionals not approved by the court. *Id.* This conduct was found to constitute conversion, and the unlawful diversion of estate assets in violation of the trustee's fiduciary duty. *Id.* at 553-54. Based on the trustee's actions, the court held that there was sufficient cause to remove the trustee under section 324 of the Code. *Id.* at 554.

45. On the other hand, in *Bennett*, the Court declined to remove the trustee. The Debtor claimed that the trustee intentionally altered and falsified documents and violated his fiduciary duties. *Id.* at *7. In fact, in attempting to file a Stipulation and Final Order of Forfeiture, and at the direction of a clerk at the county clerk's office, the trustee added certain involved individuals' names to the caption. *Id.* The Court held that while it "may question the chapter 7 trustee's judgment in complying as he did with the instructions given him by the [clerk], in an effort to have the Stipulation and Final Order of Forfeiture included in the chains of title of the [p]roperties. However, mistakes in judgment, especially where 'that judgment was discretionary and reasonable under the circumstances', is not a basis for removal of a trustee." *Id.* at 9.

46. Similarly, in *Equimed*, decided in the District of Maryland, the court denied the petitioning creditors' motion for removal of the trustee in the involuntary chapter 7 case. The movants claimed that the trustee (i) had lost the confidence of a majority of the creditors and (ii) was not "willing to fulfill his fiduciary obligations by aggressively undertaking to recover assets for the benefit of creditors of the estate." *Equimed*, 267 B.R. at 532. The court denied the motion finding

Exhibit C Woodard's Objection to Frumusa Motion

that the trustee had not engaged in intentional misconduct or negligence during the administration of the case. *Id.* The court noted that a trustee is granted “complete authority and discretion regarding the prosecution of any litigation involving the debtor’s estate. Even if a trustee were to make a mistake in judgment, he should not for such a reason be removed if the judgment is both reasonable and discretionary. A court should consider the best interests of the bankrupt estate when determining if removal of a trustee is appropriate.” *Id.* at 534 (citations omitted). The court concluded that the trustee had acted in the best interest of the estate in reaching a settlement in pending litigation and that the petitioning creditors had not established “cause” to remove the trustee.

Id.

47. Likewise, in *Baker* the court considered the *pro se* debtor’s request to remove the trustee and found that the trustee had not engaged in negligence or misconduct of a sufficient magnitude to call for removal. *Baker*, 38 B.R. at 708. The court noted that the best interest of the estate analysis does not, standing alone, serve as a sufficient basis to remove a trustee “without culpable conduct by the trustee.” *Id.* at 709. The debtor did not provide any evidence to support his motion. Accordingly, the motion to remove was denied. *Id.*

48. It should be noted that in *Savoia Macaroni Mfg. Co.*, the court granted the motion to remove the trustee. 4 F. Supp. at 627. While the court did not outline the relevant facts in its decision, it appears that allegations were made against the trustee indicating he was not acting in the best interest of the estate. After considering the allegations, the Court held:

when charges are made which have some substance in fact, although the ultimate decision of same might prove them to be groundless or grossly exaggerated, the court should not delay the necessary administration of the estate in order to determine the ultimate truth of such charges, for that is not the real problem before the court. The problem is to have a trustee in charge entirely independent of any faction, well qualified to administer the estate and who will not present this constant friction between interests but, on the contrary,

Exhibit C Woodard's Objection to Frumusa Motion

will satisfy, so far as possible, all the creditors in seeing that the bankrupt estate is well, expeditiously and duly administered.

For this reason, and without deciding the truth or falsity of the various charges made here, and solely in the interest of this harmony and the proper and efficient administration of this estate, this court has granted the motion to remove the present trustee.

Id.; but see *Hartley*, 50 B.R. at 859 (requiring a showing of fraud or actual injury to the estate before removing a trustee); *Baker*, 38 B.R. at 709 (necessitating culpable conduct by trustee to grant removal motion).

49. In *Freeport Italian Bakery*, 340 F.2d 50, the court removed the trustee after allegations of fraudulent conduct and failure to act in the best interest of the estate were lodged by creditors. *Id.* at 54. Specifically, it was found that the trustee was also a disputed creditor of the debtor which caused “unnecessary delay” in the administration of the estate. Accordingly, it was held that where the removal of the trustee would cause less discord than the disruption being caused by the trustee, removal is the better solution. *Id.* at 55.

APPLICATION OF THE CASE LAW TO THE FACTS

50. Based on an examination of the case law, and the fact that an analysis under section 324 is done on a case-by-case basis, it is clear that the facts of this case do not constitute “cause” under section 324 sufficient to remove the Trustee.

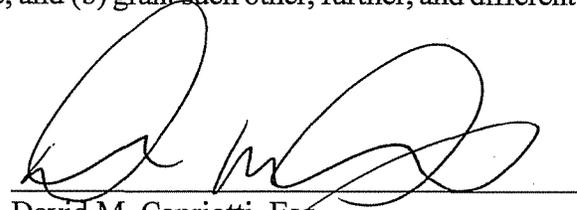
51. As set out above, the removal of a Trustee under section 324 of the Bankruptcy Code is an extreme measure granted only in certain circumstances that do not exist in this case. The Debtor cannot establish either an actual injury or fraud, or a delay in the administration of the estate, or some failure by the Trustee to properly manage the estate.

52. Accordingly, the Original Motion and Amended Motion must be denied.

Exhibit C Woodard's Objection to Frumusa Motion

WHEREFORE, for the reasons set forth above, the Trustee requests that the Court (a) deny Frumusa's Motion to Remove him as Trustee, and (b) grant such other, further, and different relief as the Court may deem just and proper.

DATED: April 2, 2010



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Exhibit C Woodard's Objection to Frumusa Motion

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE LAWRENCE FRUMUSA,

Case No. 09-21527 - JCN

Debtor.

CERTIFICATION OF SERVICE

I, Erica B. Mallinger, of Harris Beach PLLC, being over the age of 18 years old and residing in Cicero, New York, hereby certify that on the 2nd day of April, 2010, this office caused service of a full and complete copy of the Objection to Amended Motion To Remove Trustee Mr. Woodard For Cause, by first class mail postage prepaid, in compliance with FRBP Rules 9014(b) and 7004(b), to the following parties:

See attached list.

Executed on April 2, 2010.

/s/ Erica B. Mallinger

Erica B. Mallinger

Exhibit C - Woodard's Objection to Frumusa Motion

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Exhibit C Woodard's Objection to Frumusa Motion

Exhibit D Judge Ninfo Order Denying Frumusa Motion

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Re:

Case No. 2-09-21527-JCN
Chapter 7

LAWRENCE FRUMUSA,

Debtor.

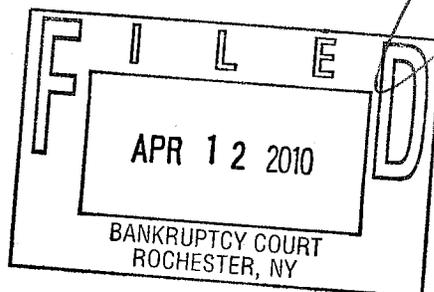
**ORDER DENYING DEBTOR'S MOTION TO
REMOVE TRUSTEE LEE E. WOODARD**

Upon the amended motion of Lawrence Frumusa ("Debtor") to remove Trustee Lee E. Woodard dated March 31, 2010 (the "Motion") and Lee E. Woodard, Chapter 7 Trustee by and through his counsel David M. Capriotti, Esq. of Harris Beach PLLC (the "Trustee") having submitted an objection to the Motion dated April 2, 2010, and the hearing have come to be heard on the 7th day of April, 2010, at 11:00 o'clock in the forenoon of that day, with the Trustee by and through his counsel David M. Capriotti, Esq. of Harris Beach PLLC, having appeared in opposition to the Motion; and the Debtor, having failed to appear on the Motion, and due deliberation having been had thereon; it is hereby

ORDERED, that the Debtor's Motion is denied in its entirety.

Dated: April 12, 2010
Rochester, New York

Honorable John C. Ninfo, II
United States Bankruptcy Judge



HARRIS BEACH
ATTORNEYS AT LAW

242856 1361176.1

Exhibit Page 1

FIFTH JUDICIAL DISTRICT
SYRACUSE

CHIEF COUNSEL
GREGORY J. HUETHER

CHAIRPERSON
EDWARD Z. MENKIN

PRINCIPAL COUNSEL
ANTHONY J. GIGLIOTTI

ASSOCIATE COUNSEL
MARY E. GASPARINI

INVESTIGATOR
SHERYL M. CRANKSHAW



State of New York
Attorney Grievance Committee

May 19, 2010

CONFIDENTIAL

Mr. Larry Frumusa
P.O. Box 418
Webster, NY 14580

Re: Complaint against Lee E. Woodard, Esq.

Dear Mr. Frumusa:

This office has received your complaint regarding the above-named attorney.

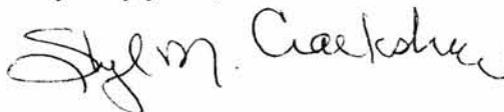
A copy of your complaint will be sent to this attorney for a formal response. Upon receipt of this response, your complaint will be evaluated. In some cases, further investigation may be necessary. Of course, you will be notified of the Committee's determination of this matter.

Please find enclosed a pamphlet which describes the function of this Grievance Committee and the procedures employed to investigate complaints. As noted therein, we do not have the authority to resolve any civil complaints involving the attorney, including obtaining money damages on your behalf, nor are we permitted to give legal advice.

Please be further advised that investigations conducted by this office are confidential and private in nature pursuant to the Judiciary Law of the State of New York.

If you have any questions concerning this matter, please do not hesitate to contact the undersigned.

Very truly yours,



SHERYL M. CRANKSHAW
Investigator

SMC/tlc
Enclosure

PO Box 418
Webster, New York 14580
Phone: (585) 872-9999
Fax: (585) 872-9000

| | | | |
|--------|------------------------------------|--------|----------------------|
| Date: | May 27, 2010 | | |
| TO: | Ms. CRANKSHAW | FROM: | Larry Frumusa |
| FAX #: | Fax (315) 479-0123 ✓ | FAX #: | 585-872-9000 |
| Phone: | | Phone: | 585-872-9999 |
| Re: | <u>Attorney Lee Woodard</u> | | |
| Pages: | <u>5</u> | | |

Please see attached application,

Larry

585-872-9999

Thursday, March 25, 2010

Should read May 27, 2010

Grievance Committee for the Fifth Judicial District
224 Harrison Street, Suite 408
Syracuse, New York 13202-3066
Phone: 315/471-1835
Fax: 315/471-0123

Re: Complaint regarding Professional Misconduct of Lee Woodard:

Complete address:

Lee E. Woodard, Esq.
Co Chair -Financial Restructuring & Bankruptcy Practice Group
Harris Beach PLLC
300 South State Street 4th Floor
Syracuse, New York, 13202
315-423-7100
315-422-9331 (fax)

Ms. Crankshaw,

I have received your correspondence regarding Mr. Woodard, Thank You.

Unfortunately and very unexpectedly Mr. Woodard has become upset as a result of my efforts to advise the correct authorities of his actions. See the attached email yesterday, which I believes demonstrates the true intention of his latest actions. Mr. Woodard has not responded to as of Today. I am very concern regarding his latest actions, and I am afraid he is intentionally causing me harm to silence me.

I would like to understand if there is a way to expedite a hearing in front of the committee or any other options I may have. I will call this afternoon, but I had thought to fax this now for your review.

Regards,



Larry Frumusa

Voice: 585-872-9999
Fax: 585-872-9000

email: lfrumusa@rochester.rr.com

PO Box 418
Webster, New York 14580

Larry Frumusa

From: Larry Frumusa [lfrumusa@rochester.rr.com]
Sent: Wednesday, May 26, 2010 12:57 PM
To: 'jack.coad@usdoj.gov'; 'Lee Woodard'; 'David Capriotti'; 'Kevin Tompsett'
Cc: 'Schmitt, Kathleen D. (USTP)'; 'Mike Arnold'
Subject: RE: Demand to Harris Beach

Importance: High

Lee,

I have responded your statement in the first sentence, by an filing in District Court yesterday a pleading that completely explains your involvement in the Illegal transfer of Debtor's property and then the illegal diversion of Debtor's assets to other clients of Harris Beach, your law firm.

However the more concerning comment to me is in your statement in the second sentence in which you write,

"I am demanding that you cease and desist any further use of the names or any of the assets of either of these 2 entities. That would include the use of the name in your e-mail address on your signature to this e-mail as well as all the equipment held by Frumusa Enterprise."

Your demanding that I remove the name Frumusa Enterprise from menial things such as the signature line on my email, and the overall tone of your email concerns me. Clearly this demonstrates your emotions. Which a person of clear thinking can easily determine as vindictive, angered and indeed somewhat distraught.

These emotions, coupled with the fact that you are a Temporary Trustee and I have extensive evidence that you have been conducting criminal activities. Evidence which I am attempting to disclose to the proper authorities, greatly concerns me for my safety as a victim to a crime.

Most important as your position as a Temporary Trustee you have the ability to take significant retaliatory harm to myself and the estate.

Therefore I have copied Mr. Coad of the US Marshall Service, on this email and I am asking that he discusses this issue with you and provide me a recommendation as to your mental state relative to proper execution of your Trustee appointment and my safety as it relates to the Federal Building as soon as possible.

Based on Mr. Coad's response, I will determine my next steps. Also, this email is a respond to an email, which the signature line is not attached. I have not decided regarding any of your request as of yet.

However, I think it is good that no signature line is attached so as not to provoke you until we have a good understanding of your state of mind.

Regards,
Larry Frumusa

From: Lee Woodard [mailto:lwoodard@HarrisBeach.com]
Sent: Monday, May 24, 2010 3:56 PM
To: lfrumusa@rochester.rr.com; David Capriotti; Kevin Tompsett
Cc: Schmitt, Kathleen D. (USTP); Mike Arnold
Subject: RE: Demand to Harris Beach

Larry: I have read your attachment to this e-mail and cannot figure out what you are talking about. Please let me know what property you believe has been sold and to whom any funds have been diverted. I would at least then be able to respond to any allegations that you care to make no matter how baseless they may be.

Also, as I am sure you are aware, Frumusa Enterprise, LLC and Scenic Village Apartment Homes, LLC have both been filed into Chapter 7 bankruptcies. I am demanding that you cease and desist any further use of the names or any of the assets of either of these 2 entities. That would include the use of the name in your e-mail address on your signature to this e-mail as well as all the equipment held by Frumusa Enterprise.

Thank you for your anticipated prompt response.

Lee E. Woodard, Esq.
Co Chair -Financial Restructuring & Bankruptcy Practice Group
Harris Beach PLLC
300 South State Street 4th Floor
Syracuse, New York, 13202
315-423-7100
315-422-9331 (fax)
99 Garnsey Road
Pittsford, New York 14534
585-419-8716
585-419-8811 (fax)
Lwoodard@harrisbeach.com

From: Larry Frumusa [mailto:lfrumusa@rochester.rr.com]
Sent: Sunday, May 23, 2010 9:57 AM
To: Lee Woodard; David Capriotti; Kevin Tompsett
Subject: Demand to Harris Beach

Gentleman,

See attached, this a formal demand to cease your actions.

Regards,
Larry Frumusa

Larry Frumusa
Frumusa Enterprise LLC.
PO Box 418,
Webster, New York 14580
email: lfrumusa@rochester.rr.com
585-872-9999
585-872-9000 (fax)
585-943-9999 (cell)

p r a c t i c e
GREEN

Save a tree. Read, don't print, emails.

Statement of Confidentiality

This electronic message may contain privileged or confidential information. If you are not the intended recipient of this e-mail, please delete it from your system and advise the sender.

FIFTH JUDICIAL DISTRICT
SYRACUSE

CHIEF COUNSEL
GREGORY J. HUETHER

CHAIRPERSON
EDWARD Z. MENKIN

PRINCIPAL COUNSEL
ANTHONY J. GIGLIOTTI

ASSOCIATE COUNSEL
MARY E. GASPARINI

INVESTIGATOR
SHERYL M. CRANKSHAW

State of New York
Attorney Grievance Committees

May 19, 2010

CONFIDENTIAL

Mr. Larry Frumusa
P.O. Box 418
Webster, NY 14580

Re: Complaint against Lee E. Woodard, Esq.

Dear Mr. Frumusa:

This office has received your complaint regarding the above-named attorney.

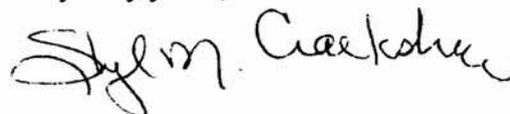
A copy of your complaint will be sent to this attorney for a formal response. Upon receipt of this response, your complaint will be evaluated. In some cases, further investigation may be necessary. Of course, you will be notified of the Committee's determination of this matter.

Please find enclosed a pamphlet which describes the function of this Grievance Committee and the procedures employed to investigate complaints. As noted therein, we do not have the authority to resolve any civil complaints involving the attorney, including obtaining money damages on your behalf, nor are we permitted to give legal advice.

Please be further advised that investigations conducted by this office are confidential and private in nature pursuant to the Judiciary Law of the State of New York.

If you have any questions concerning this matter, please do not hesitate to contact the undersigned.

Very truly yours,



SHERYL M. CRANKSHAW
Investigator

SMC/tlc
Enclosure

Thursday, June 03, 2010

Grievance Committee for the Fifth Judicial District
224 Harrison Street, Suite 408
Syracuse, New York 13202-3066
Phone: 315/471-1835
Fax: 315/471-0123

Re: Complaint regarding Professional Misconduct of Lee Woodard:

Complete address:

Lee E. Woodard, Esq.
Co Chair -Financial Restructuring & Bankruptcy Practice Group
Harris Beach PLLC
300 South State Street 4th Floor
Syracuse, New York, 13202
315-423-7100
315-422-9331 (fax)

Ms. Crankshaw,

I am following up on a phone conversation we had regarding Mr. Woodard's latest actions. I had thought you may have mentioned that actions of the committee may be delayed pending the current litigations conclusion. If this is true, I would be deeply upset and concerned as actions of Mr. Woodard have escalated to direct retaliation against me. In fact if we delay, well we might as not even get started because Mr. Woodard by his unethical actions will crush me.

Therefor could you provide me with a definite schedule in which I can track the progress of this investigation to. Bringing Mr. Woodard under control is essential to mitigating the damages he has caused myself and other supporters of mine. In fact he is now, in an attempt to intimidate myself and others demand that innocent people be dragged in and deposed by him for no reason what so ever.

As example my little sister, having nothing to do with my affairs was a victim of Mr. Woodard's intimidation. Being dragged in and deposed, incurring significant legal fees and expenses for the so benefit of Mr. Woodard's ego. Which I believe is despicable.

Finally on the criminal side, I have absolutely uncovered Mr. Woodard selling estate property in violation of Federal Law solely to funnel money back to significant clients of Harris Beach. I know this seems impossible, however it is absolutely true and I believe happens very often. However concealed by Mr. Woodard's action to cause the victims to capitulate and be silenced.

Voice: 585-872-9999

email: lfrumusa@rochester.rr.com

PO Box 418

Fax: 585-872-9000

1 of 2

Webster, New York 14580

Therefor we must act now and decisively. Please advise on my request above. If there are any efforts to slow this investigation down, Please advise me immediately. I will then request to have a direct discussion with the committee, myself and other victims of Mr. Woodard's.

Regards,

A handwritten signature in black ink, appearing to read 'L. Frumusa', with a long horizontal flourish extending to the right.

Larry Frumusa

FIFTH JUDICIAL DISTRICT
SYRACUSE

CHIEF COUNSEL
GREGORY J. HUETHER

CHAIRPERSON
EDWARD Z. MENKIN

PRINCIPAL COUNSEL
ANTHONY J. GIGLIOTTI

ASSOCIATE COUNSEL
MARY E. GASPARINI

INVESTIGATOR
SHERYL M. CRANKSHAW

State of New York
Attorney Grievance Committees

June 3, 2010

Received by Frumusa 6/5/2010

CONFIDENTIAL

Mr. Larry Frumusa
P.O. Box 418
Webster, NY 14580

Re: Complaint against Lee E. Woodard, Esq.

Dear Mr. Frumusa:

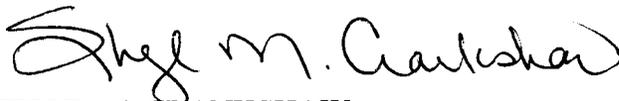
Enclosed for your review and further comment, is a copy of the response submitted to this office by Mr. Woodard regarding the complaint you filed against him.

Please note, we have not provided you with copies of the extensive enclosures that Mr. Woodard references in his response as it appears you may already have them in your possession. Please feel free to contact me and request any of the exhibits referenced in Mr. Woodard's May 27, 2010 response.

Your additional written comments may be submitted by **June 17, 2010**, before this office makes a determination.

Your cooperation in this matter will be appreciated.

Very truly yours,



SHERYL M. CRANKSHAW
Investigator

SMC/tlc
Enclosures

HARRIS BEACH ^{PLLC}

ATTORNEYS AT LAW

ONE PARK PLACE
4TH FLOOR
SYRACUSE, NY 13202

(315) 423-7100

LEE E. WOODARD

FAX: (315) 422-9331
LWOODARD@HARRISBEACH.COM

VIA MESSENGER

May 27, 2010

RECEIVED

MAY 28 2010

GRIEVANCE COMMITTEE

H. D.

State of New York Attorney Grievance Committee
for the Fifth Judicial District
Attention: Sheryl M. Crankshaw
224 Harrison Street, Suite 408
Syracuse, NY 13202-3066

Re: Complaint of Larry Frumusa

Dear Ms. Crankshaw:

Paragraph 1

I am in receipt of your confidential letter dated May 19, 2010. I am a Member of Harris Beach PLLC ("Harris Beach"). In addition, I am an approved Panel Trustee, regularly appointed to Chapter 7 cases by the Office of the United States Trustee ("UST") in both the Northern and Western Districts of New York. I was appointed as Interim Trustee of the Chapter 7 bankruptcy proceeding of Lawrence Frumusa ("Frumusa") on August 7, 2009. On August 11, 2009, I made an Application for the appointment of Harris Beach as counsel to the Trustee in Frumusa's individual bankruptcy proceeding. I have attached a copy of the Application for Appointment of Counsel and my Affidavit in support of the appointment of Harris Beach as counsel as **Exhibits 1 and 2**.

Pursuant to United States Bankruptcy Code § 327, the Trustee, with the court's approval, may employ counsel if it does not "hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the Trustee in carrying out the Trustee's duties under this title." "In a case under Chapter 7... a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States Trustee, in which case the Court shall disapprove such employment if there is an actual conflict of interest." See § 327(c) United States Bankruptcy Code.

A law firm may be disinterested even if it previously represented an interest adverse to the estate. See In Re: Arochem, 176 F3d 610 (2d Cir. 1999). The Trustee is, however, required to comply with Rule 2014 of the Federal Rules of Bankruptcy Procedure. Consequently, upon receipt of the file, it is our regular practice to review the list of creditors filed by the Debtor in

order to determine whether there are any potential conflicts. Frumusa filed a list of creditors with his Petition, and this list is attached hereto as **Exhibit 3**. Upon reviewing the list of creditors, I appropriately included in Paragraph 5 of my Application for Appointment (Exhibit 1) a disclosure that Harris Beach represents, "M&T Bank, Bank of America, HSBC Bank and JP Morgan Chase in various legal matters unrelated to this case. Harris Beach also represented Rochester Countertop, Inc. d/b/a Premier Cabinet Wholesalers and American Rentals LLC d/b/a Volvo Rents in this case who are unsecured creditors by virtue of personal guarantees executed by the Debtor. The Trustee believes this representation does not create a conflict since the Trustee is "united in interest" with these creditors. In the event that a conflict arises, the Trustee shall obtain conflict counsel to represent the estate's interest in that matter." (See Exhibit 1, ¶ 5) Furthermore, I once again disclose in my Affidavit the potential conflicts (See Exhibit 2, ¶ 3) No objection was made by Frumusa, the United States Trustee, any creditors or any other parties in interest. The Court approved the appointment of Harris Beach as counsel to the Trustee.

Frumusa complains of alleged conflicts of interest in relation to Rochester Countertop, Inc. ("Rochester Countertop"), Fedele Scutti ("Scutti") and Louis Fico ("Fico"). Referring to Rochester Countertop, Frumusa avers that, "With extensive confusion created by Mr. Woodard, I had not realized that Woodard himself and another attorney on his team directly represent an adversary creditor in my bankruptcy case! Amazing." (See Frumusa letter dated March 25, 2010.) To demonstrate the disingenuous nature of this statement, I refer you to Exhibit 3, the creditor list filed by Frumusa in his case, which lists Rochester Countertop three different times with Harris Beach PLLC, Kevin Tompsett, Esq. as the contact person. **This is information provided by Frumusa to the Bankruptcy Court at the time he filed the Petition in June of 2009.** Clearly, he was aware of Harris Beach's representation of Rochester Countertop.

Regarding Scutti and Fico, Frumusa alleges, "I discovered in the spring of 2010 that Mr. Woodard and his firm, Harris Beach PLLC, concurrently are representing clients which are significant adversaries of mine and involved in the current bankruptcy case." (See Frumusa letter dated March 25, 2010.) I again refer you to Exhibit 3, the creditor list provided by Frumusa to the Bankruptcy Court, which identifies neither Scutti nor Fico as creditors. Frumusa is obligated to identify all creditors in his petition and schedules. Moreover, there is no listing of any entity I am aware of in which Scutti or Fico have any involvement.

It is important to note that Frumusa does not reference Scutti or Fico as "creditors" but rather discusses them as "adversaries." Consequently, as Trustee I would have no reason to know that Scutti or Fico were creditors in Frumusa's case. No conflict check would even be done as they are not identified as having any involvement with the case. Moreover, based upon the information uncovered in this case, to this day it does not appear that Scutti or Fico are creditors of Frumusa. Simply put, there is no conflict of interest.

It should also be noted that Frumusa incorrectly states, when referring to my appointment as Trustee, "In my view this creates a fiduciary attorney-client relationship for myself and my estate, and it is critical the attorney acts in accordance with the 'Rules of professional conduct client, lawyer relationship.'" There simply is no attorney-client relationship between Frumusa and me or between Frumusa and Harris Beach. It is noteworthy that Frumusa has been advised of this fact dating back to August of 2009 when I was appointed the Trustee in his case. It would be disingenuous for Frumusa to allege that he has not been advised of this fact on countless occasions.

Frumusa provided the Committee with, among other documents, the objection submitted by me as Trustee to Frumusa's amended motion to remove me as Trustee for cause. To the extent that the objection clearly sets forth and amplifies my position set out herein, the objection is attached hereto and made a part hereof as **Exhibit 4**. I respectfully encourage the Committee to review the objection. The objection formed the basis for the decision by the Honorable John C. Ninfo ("Judge Ninfo") to deny Frumusa's motion to remove me as Trustee.

Your May 19, 2010 letter indicated that the Court seemingly denied Frumusa's motion because of his non-appearance. While the Order did reference Frumusa's non-appearance, the motion was denied because of Frumusa's failure to prove any of his allegations. The Court indicated, "Clearly, from all the proceedings that I have seen, there has been no actual injury to the estate in any way, certainly no fraud, clearly no intentional conduct of a detrimental nature by the Trustee for any negligence; also, no delay in the administration -- that I can determine -- of the estate except delay caused by the lack of Mr. Frumusa's cooperation. There is no actual conflict with the creditors that I am aware of other than the disclosed, potential conflict with Premier Cabinet Wholesalers. That was completely disclosed and there was no opposition at the time by the United States Trustee's Office based upon the disclosure. So overall, there is simply no basis for a finding of cause under Section 324(a) for the removal of Mr. Woodard as Trustee." The Court went on to say, "So it is clear that Mr. Frumusa has not met his burden in any way under Section 324(a) to warrant this cause and to find cause and remove Mr. Woodard. I am going to deny the motion." (See a transcript of the hearing attached hereto as **Exhibit 5**.)

The charges Frumusa made are part of a continuing series of actions he has taken that help explain his motivation for making these baseless allegations against Harris Beach and me. They are just another example of Frumusa's charges against professionals involved in any matter which does not get resolved to his satisfaction. As is explained below in more detail, Frumusa has made allegations against members of the judiciary (two bankruptcy judges and two Supreme Court judges), charges against at least three law firms, 10 individual lawyers (apart from the allegations against Harris Beach and me) and the United States Department of Justice.

As this Committee may be aware, there are seven different bankruptcy cases in which Frumusa is presently involved or has an interest in. The cases are: 1.) Frumusa's individual

case; 2.) Rising Tide Enterprise LLC (“Rising Tide”) (Frumusa 100% owner); 3.) Maincliff Properties LLC (“Maincliff”) (Frumusa 100% owner); 4.) Lawrence Frumusa Land Development LLC (“LFLD”) (Frumusa 100% owner); 5.) Frumusa Enterprises LLC (“Enterprise”) (Frumusa 100% owner); 6.) Scenic Village Apartments LLC (“Scenic Village”) (Frumusa 100% owner); 7.) L Frumusa Family Enterprise P1 (“P1”) (Frumusa 100 % owner).

Frumusa voluntarily filed Rising Tide, Maincliff and LFLD in bankruptcy in April 2009. These cases, similar to the individual case, were converted from Chapter 11 proceedings to Chapter 7 proceedings by the court. Michael Arnold, Esq. (“Arnold”) was appointed as the Chapter 7 Trustee in Rising Tide, Maincliff and LFLD. Enterprise and Scenic Village were recently filed in bankruptcy by me as Trustee in the individual case. P1 was very recently filed as an involuntary case by purported creditors.

It is important for the Committee to be cognizant of some of the allegations that have been made by Frumusa against attorneys and judges in the context of the various bankruptcy matters he has filed or has an interest in.* Below is a brief outline of some of the applications, motions, proceedings and allegations filed by or against Frumusa:

1. Affidavit filed in the individual and corporate cases asserting baseless allegations and requesting the immediate disqualification Judge Ninfo for questionable impartiality. (See **Exhibit 6**)¹
2. Affidavit filed in one of the corporate cases defining the top ten reasons why Judge. Ninfo should disqualify himself for questionable impartiality. (See **Exhibit 7**)
3. An Adversary Complaint filed against, amongst others, Vincent Ferarro, Esq., David L. Rasmussen, Esq. and the law firm of Davidson Fink LLP making various allegations of inappropriate conduct against the attorneys and law firm involved in Frumusa’s matrimonial action. (See **Exhibit 8**)
4. An Adversary Complaint filed against, amongst others, the law firm of Boylan, Brown, Code, Vigdor and Wilson, LLP, Mark A. Costello, Esq., the Honorable Kenneth R. Fisher (Supreme Court Justice for the State of New York (“Judge

* Mr. Frumusa has filed or caused to be filed other entities owned in whole or in part by him that have ultimately been dismissed by the court.

¹ Exhibits referenced in the attached Exhibits (Frumusa’s submissions) have not been provided due to the voluminous nature of the documents.

- Fisher”)), Edwin Robert Shulman, Esq. and Leonard Relin, Esq. making various allegations of improprieties and wrongdoing. (See **Exhibit 9**) (See ¶¶ 25 – 29, 31, 32, 35 – 37)
5. A Motion to Mandate that Judge Ninfo recuse himself from various proceedings contained in the individual and corporate cases alleging various meritless and baseless allegations against Judge Ninfo. (See **Exhibit 10**)
 6. An Adversary Complaint filed in a corporate case against Arnold as Trustee, Arnold as attorney for the estate, Arnold personally, Kathleen Schmitt, Esq. (Assistant United States Trustee for the Western District of New York) and the Department of Justice, Office of the United States Trustee-Kathleen Schmitt, making various allegations of wrongdoing and inappropriate behavior. (See **Exhibit 11**) (¶¶ 4, 6, 25, 38 – 43, 45 – 48, 53, 54 and 67)
 7. Motion pursuant to Rule 9011 of the Bankruptcy Rules to impose sanctions on Jeffrey Dove, Esq. (“Dove”) of Menter, Rudin & Trivelpiece and Arnold making various allegations of inappropriate behavior and misconduct. (See **Exhibit 12**) (See ¶¶ 6, 8, 10 and 11 on pg. 3)
 8. Motion for Reconsideration of Judge Kaplan’s decision wherein Frumusa insinuates wrongful actions by the Honorable Michael J. Kaplan (Bankruptcy Judge for the Western District of New York, Buffalo Division) and Honorable Judge Elma A. Bellini (Supreme Court Justice for the State of New York). (See **Exhibit 13**) (See ¶¶ 31 and 41)
 9. Motion pursuant to Rule 9011 of the Bankruptcy Rules to impose sanctions on Joseph Zagraniczny, Esq. of Bond Schoeneck & King and Gregory Mascitti, Esq. of Nixon Peabody making various allegations of inappropriate behavior and misconduct. (See **Exhibit 14**) (See ¶¶ 10 – 12)
 10. Motion pursuant to Rule 9011 of the Bankruptcy Rules to impose sanctions on, amongst others, Dove and Arnold, making various allegations of inappropriate behavior and misconduct. (See **Exhibit 15**) (See ¶¶ 17 and 18)

11. Motion in one of the corporate cases to remove Arnold as Trustee for cause, asserting various improprieties and inappropriate behavior against the trustee. (See **Exhibit 16**) (See ¶ 19)
12. The application of Frumusa's individual attorneys to withdraw as counsel, based in part on disagreements with him, great difficulty communicating with him, difficulty obtaining complete and accurate information critical to representation of Mr. Frumusa and concerns that Frumusa wanted the attorneys to advance legal or factual arguments the validity or veracity of which was in doubt. (See Application attached as **Exhibit 17**). (See ¶¶ 19 and 21.)
13. Application of counsel in the three corporate cases to withdraw as counsel, based in part on the Frumusa's failure to cooperate in the representation rendering representation unreasonably difficult for counsel to carry out. (See **Exhibit 18**) (See ¶¶ 6 and 7.)

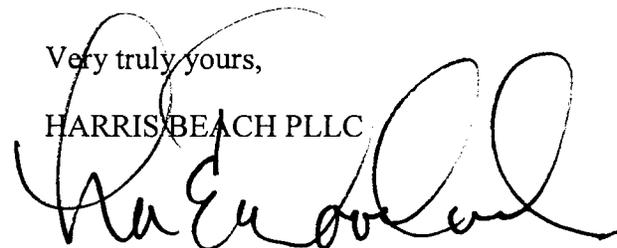
In addition to the above, it should be noted that Frumusa has also been found in contempt of court for failing to comply with directives of the Court. Additionally, since our involvement in the case, Frumusa has been indicted twice by a Monroe County Grand Jury. One of the indictments related to allegations that Frumusa forged a lien release and filed the same with the County Clerk's office.

As previously stated, this information is provided to give the Committee an appropriate context for the allegations levied against Harris Beach and me. Both Harris Beach and I enjoy outstanding reputations in the legal community. We pride ourselves on providing high quality legal services with the highest level of integrity. We believe we have done exactly that here.

If the Committee would like any more information regarding this matter, please do not hesitate to contact the undersigned.

Very truly yours,

HARRIS BEACH PLLC



Lee E. Woodard

Wednesday, June 16, 2010

Ms. Crankshaw and Mr. Gigliotti
Grievance Committee for the Fifth Judicial District
224 Harrison Street, Suite 408
Syracuse, New York 13202-3066
Phone: 315/471-1835
Fax: 315/471-0123

Re: Complaint regarding Professional Misconduct of Lee Woodard Esq.:

Complete address:
Lee E. Woodard, Esq. - Co Chair -Financial Restructuring & Bankruptcy Practice Group
300 South State Street 4th Floor
Syracuse, New York, 13202

Ms. Crankshaw,

I have received Mr. Woodard's response forwarded to me by your office. Upon reviewing the document, I am very concern. I have been so devastated by Mr. Woodard's attacks. Attacks, which are concealed by his skillful wordsmithing of his written correspondence. Carefully done to deceive an un-expecting reader with misrepresentations and evasive twists of the untruth. Unfortunately, I see his attempt to do this again in this response.

I am very aware of Mr. Woodard's skillful wording, in fact the techniques he uses simply jump off the paper in his response. Therefor, I am providing a very detailed answer, as it is critical that I communicate the full ability of Mr. Woodard's skills to deceive and avoid detection. In addition as demonstrated in Section 1, Mr. Woodard has intentionally lied as to his involvement in the Western District, solely in an attempted to deceive this committee.

As determined in the conclusion, Mr. Woodard's response provides no valid explanation or defense to the allegation raised in my complaint filed with the Grievance Committee Mach 25, 2010. That allegation being as quoted "a fundamental violation of the *"Rules of Professional Conduct Client-Lawyer Relationship"*, being Rule 1.7 Conflict Of Interest: Current Clients. This violation explains all of Mr. Woodard detrimental actions".

However Mr. Woodard's attempts to explain away his conflict by narrowing the scope of who he represents. Self proclaiming, he represents an entity created in the bankruptcy process call the "Estate". Interesting the Estate has no voice or life, it is created for the benefit of all Creditors and Debtors in the Bankruptcy process. Further it is critical that a appointed Trustee represents the Estate and in turn all Creditors and Debtors looking to benefit from its proper dissolution.

I would presume that if the Estate could be aware that Mr. Woodard was brought into this district as a operator for significant clients of Harris Beach. Then once being appointed as the Interim Trustee, his sole purpose was, as demonstrated, to plunder the Estate and find or create evidence to silence the

debtor. All, for the sole purpose of advancing the agenda of the influential clients of his law firm. I am staunchly sure that the Estate would cry loud and clear of the ethics violations that are occurring.

This is exactly the reason that Mr. Woodard's cannot narrow his scope of his client, to those unable to speak. As the Federal Bankruptcy Laws have indeed given the Estate a voice, and that voice is that of:

- 1) Debtor looking for the benefit of a surplus in funds,
- 2) Unsecured Creditors looking for 100% payment of their claims,
- 3) The Federal Procedures assuring Chapter 7 debtors are qualified to be debtors(Means Test).
- 4) all others "persons in interest" involved in the adjudication of the case.

Nowhere in any federal law does it identify the significant clients Mr. Woodard is attempting to benefit at the detriment of the actual participants in the process.

Clearly Mr. Woodard's client is the Interest of the Estate which relates directly to the Debtor and Creditors of the Bankruptcy.

Mr. Woodard's has failed to properly:

- 1) Identified conflicts of interest,
- 2) Notified the proper clients / parties and
- 3) Sought to resolve these conflicts in an ethical process.

He has done this in both his appointment as Trustee and also in his efforts to appoint Harris Beach as attorney for the Trustee.

Finally, I believe that a reasonable attorney would conclude that Mr. Woodard's representation and conflicts identified would involve him in representing differing interests, adverse to each other and further, there is a significant risk that the Mr. Woodard's professional judgment on behalf of a Estate, Creditors and Debtors will be adversely affected by Mr. Woodard's and Harris Beach's own financial, business, property or other personal interests¹.

The following table of contents summaries a review of the major areas in Mr. Woodard's response, and the technique used to avoid answering the complaint, with the detail to follow. I have also attached a Marked up version of Mr. Woodard's response to assist in following this review (Exhibit A).

¹ As demonstrated in benefiting the firms high profile clients.

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- So distraught, Ms. Farsace actually brought certain documents in and without representation and under significant duress. Mr. Woodard deposed her
- As conveyed to Frumusa by an Attorney watching in disbelief, Mr. Woodard despicable actions,

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- Finally, I believe that a reasonable attorney would conclude that Mr. Woodard's representation and conflicts identified would involve him in representing differing interests, adverse to each other and further, there is a significant risk that the Mr. Woodard's professional judgment on behalf of a Estate, Creditors and Debtors will be adversely affected by Mr. Woodard's and Harris Beach's own financial, business, property or other personal interests.

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- to immediately remove Mr. Woodard from his position and his ability to continually harm myself and the Creditors.
- apply for protection as a victim of Federal Bankruptcy Fraud under Title 18 U.S.C. § 3771. Crime victims' rights act.

1. Review of Paragraph 1 - Woodard's Response May 27, 2010:

Specific text as defined above is copied here for clarity:

I am in receipt of your confidential letter dated May 19, 2010. I am a Member of Harris Beach PLLC ("Harris Beach"). In addition, I am an approved Panel Trustee, regularly appointed to Chapter 7 cases by the Office of the United States Trustee ("UST") in both the Northern and Western Districts of New York. I was appointed as Interim Trustee of the Chapter 7 bankruptcy proceeding of Lawrence Frumusa ("Frumusa") on August 7, 2009. On August 11, 2009, I made an Application for the appointment of Harris Beach as counsel to the Trustee in Frumusa's individual bankruptcy proceeding. I have attached a copy of the Application for Appointment of Counsel and my Affidavit in support of the appointment of Harris Beach as counsel as Exhibits 1 and 2.

Technique 1. Using a compound sentence to mix fact with misrepresentations, attempting to carry the false statements as the truth.

1. As demonstrated in the second sentence where Mr. Woodard states

".... In addition, I am an approved Panel Trustee, regularly appointed to Chapter 7 cases by the Office of the United States Trustee ("UST") in both the Northern and Western Districts of New York."

Here Mr. Woodard attempts to establish he is regularly appointed in the Northern District, which is true as this is the Syracuse District. However he attempts to drag along the fact that he is also regularly appointed in the Western District, which is where my cases are and the controversy is in play.

The simple fact is that Mr. Woodard has **never been appointed to a case in the Western District**, which is exactly one of the foundations of my concerns. See Exhibit B, in which a search of all Chapter 7 cases in the Western District of New York from June 2000 to June 2010, **absolutely demonstrate the only cases Mr. Woodard has been assigned to are my three. Mr. Woodard is lying and has been caught without question.**

In fact this concern was raised directly in my complaint to the Grievance Committee, March 25, 2010. See paragraph 5 and copied here for clarity:

"The appointment of Mr. Woodard from the start was very concerning to me. Mr. Woodard, first and foremost an attorney licensed to practice in New York State, was in addition registered as a Federal Chapter 7 Trustee in the New York Northern Judicial District. This district includes the Syracuse area where

his office is located. However he was chosen as a Trustee in my case out of his registered Federal Judicial District. In fact chosen over some 45 other properly registered Federal Chapter 7 Trustees of the New York Western Judicial District."

Technique 2. Simply dodging the main question in an attempt to throw off the reader.

1. As demonstrated in the third and fourth sentence.

"I was appointed as Interim Trustee of the Chapter 7 bankruptcy proceeding of Lawrence Frumusa ("Frumusa") on August 7, 2009. On August 11, 2009, I made an Application for the appointment of Harris Beach as counsel to the Trustee in Frumusa's individual bankruptcy proceeding. I have attached a copy of the Application for Appointment of Counsel and my Affidavit in support of the appointment of Harris Beach as counsel as Exhibits 1 and 2."

Once again Mr. Woodard immediately shifts the focus to Mr. Woodard's application to Hire his firm, Harris Beach, as attorneys for the Trustee and conflicts with them.

However, Mr. Woodard, the central issues here is Mr. Woodard's appointment as Trustee and the concerns around his appointment, such as 1) notice of conflicts, 2) reason for being brought in from another district, 3) destructive actions of his, etc.

2. Not until page 3, the seventh paragraph does Mr. Woodard attempt to address his appointment, also copied here for clarity:

"It should also be noted that Frumusa incorrectly states, when referring to my appointment as Trustee, "In my view this creates a fiduciary attorney-client relationship for myself and my estate, and it is critical the attorney acts in accordance with the 'Rules of professional conduct client, lawyer relationship.'" There simply is no attorney-client relationship between Frumusa and me or between Frumusa and Harris Beach. It is noteworthy that Frumusa has been advised of this fact dating back to August of 2009 when I was appointed the Trustee in his case. It would be disingenuous for Frumusa to allege that he has not been advised of this fact on countless occasions."

As demonstrated above and buried in the document Mr. Woodard attempts to address the basic allegation of my complaint, why Mr. Woodard?

True to form Mr. Woodard attempts to deny the allegation and then accuses me that I was told of this and tough luck. Once again Mr. Woodard is misrepresenting the truth as demonstrated in Exhibit C, affidavits filed with the court, in which I demonstrate that my

Estate, handled properly would indeed yield a surplus for my benefit. Thus as demonstrated in the cited case law, I am indeed afforded the same standing as the Estate and other Creditors.

Further Mr. Woodard attempts to justify his actions, by alleging that I have no say and I was told that. Here again, Mr. Woodard is absolutely wrong. Actions such as his are so egregious, they violate all ethical laws.

Finally where is the announcement of his conflicts, the application he submitted for himself to be appointed, or just a simple truthful answer as to why he was brought into this district period!

Mr. Woodard has completely avoided the central issues in my complaint and his actions, by now going off on a purposeful tangent to mislead the reader. However as I address all of Mr. Woodard's techniques, even as they apply to his tangent. The reader will find that his answer is simply void of any facts and demonstrates a concerning boldness.

2. Review of Paragraph 2 - Woodard's Response May 27, 2010

Specific text as defined above is copied here for clarity:

" Pursuant to United States Bankruptcy Code § 327, the Trustee, with the court's approval, may employ counsel if it does not "hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the Trustee in carrying out the Trustee's duties under this title." "In a case under Chapter 7.. .a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States Trustee, in which case the Court shall disapprove such employment if there is an actual conflict of interest." See § 327(c) United States Bankruptcy Code. "

Technique 3. Assuming the reader will not fully read the reference document, or read only relative to the focus he has set.

1. As demonstrated in this paragraph, Woodard directs the reader to section § 327(c) of the US Code Rule 327. However he fails to mention that section § 327(a), which sets out the intent of the rule is clearly as follows: (see Exhibit F complete Rule 327)

§ 327 (a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or

represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

Note last sentence, "that do not hold or represent an interest adverse to the estate,..". Clearly the intent of the law is that the Trustee should in the first instance hire an attorney not adverse to the Estate and section (c) is an exception case and a method to handle it.

3. Review of Para. 2 - 2nd sentence to Paragraph 3 - Woodard's Response 5/27/10.

Specific text as defined above is copied here for clarity:

"In a case under Chapter 7.. .a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States Trustee, in which case the Court shall disapprove such employment if there is an actual conflict of interest." See § 327(c) United States Bankruptcy Code.

A law firm may be disinterested even if it previously represented an interest adverse to the estate. See In Re: Arochem. 176 F3d 610 (2d Cir. 1999). The Trustee is, however, required to comply with Rule 2014 of the Federal Rules of Bankruptcy Procedure. Consequently, upon receipt of the file, it is our regular practice to review the list of creditors filed by the Debtor in order to determine whether there are any potential conflicts. Frumusa filed a list of creditors with his Petition, and this list is attached hereto as Exhibit 3. Upon reviewing the list of creditors, I appropriately included in Paragraph 5 of my Application for Appointment (Exhibit 1) a disclosure that Harris Beach represents, "M&T Bank, Bank of America, HSBC Bank and JP Morgan Chase in various legal matters unrelated to this case. Harris Beach also represented Rochester Countertop, Inc. d/b/a Premier Cabinet Wholesalers and American Rentals LLC d/b/a Volvo Rents in this case who are unsecured creditors by virtue of personal guarantees executed by the Debtor. The Trustee believes this representation does not create a conflict since the Trustee is "united in interest" with these creditors. In the event that a conflict arises, the Trustee shall obtain conflict counsel to represent the estate's interest in that matter." (See Exhibit 1, para. 5) Furthermore, I once again disclose in my Affidavit the potential conflicts (See Exhibit 2, para. 3) No objection was made by Frumusa, the United States Trustee, any creditors or

any other parties in interest. The Court approved the appointment of Harris Beach as counsel to the Trustee.

Technique 4. Using his authority as a "Bankruptcy Expert" to establish facts that support his actions but are simply lies.

1. Here, I am amazed by Mr. Woodard's boldness in putting forth the obvious misrepresentation above. Mr. Woodard asserts that reviewing the Creditors list provided by the Debtor is sufficient to determine any conflicts in his the Trustee's application to employee counsel. This is absolutely untrue! Below is the statement in US Code - Rule 2014 Employment of Professional Persons: (Exhibit G Complete Rule 2014)

"The application shall state and, to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee"

Clearly this means Mr. Woodard must list everyone and anyone that could negatively impact the case, not just those Creditors listed on the Debtors schedules. Which most of the time the list is inaccurate or incomplete.

Further the last sentence Mr. Woodard states The application shall states as to his application that.

"No objection was made by Frumusa, the United States Trustee, any creditors or any other parties in interest."

This statement is appalling, as Mr. Woodard is in full knowledge of the environment that was surrounding these cases in August of 2009. Factor such as the Unsecured Creditors were denied their rights to counsel, I was also denied my right to counsel, I had assets valued millions of dollars just converted to a liquidation. Converted over the objections of myself and Unsecured Creditors. Now some 10 months later, Mr. Woodard attempts to say -- well they did not object, so tough.

Mr. Woodard a licensed attorney in New York who specializes in Bankruptcy, had an obligation to assure all interested persons were 1) notified, 2) understood and 3) aware of the entire set of conflicts. However what he chose to do is capitalizes on the disadvantage and intentional shutting out of Unsecured Creditors and the Debtors from these proceeding by not allowing representation.

2. Now for the final appalling discovery of Frumusa, see Exhibit D Ninfo's orders approving the Application of Mr. Woodard. The first paragraph.

An Application having been made for the appointment of an attorney for the Interim Trustee herein, and it appearing that the services of an attorney are or will be required, and that the appointment hereinafter made is acceptable to such Interim Trustee, and no adverse interest being represented, and no notice to creditors need be given.

Mr. Woodard did not provide notice to the Creditors of his application for which now in 2010, 10 months later, Mr. Woodard smartly says --- Well no one objected so tough luck ---.

Mr. Woodard intentionally conspired with the Court and never told anyone about this application. In fact I never realized this application existed, until Mr. Woodard referenced it in his response of May 27, 2010.

In fact in Paragraph 2 (Item 2 above) Mr. Woodard quotes Rule 327(c) that a person is only "disqualified if a objection by another Creditor or the US Trustee". Clearly in Judge Ninfo's order they never told anyone! Just like stacking the deck and obviously taking advantage of myself and the unsecured creditors by ramming his firms appointment through.

4. Review of paragraph 4 - Woodard's response May 27, 2010

Specific text as defined above is copied here for clarity:

*"Frumusa complains of alleged conflicts of interest in relation to Rochester Countertop, Inc. ("Rochester Countertop"), Fedele Scutti ("Scutti") and Louis Fico ("Fico"). Referring to Rochester Countertop, Frumusa avers that, "With extensive confusion created by Mr. Woodard, I had not realized that Woodard himself and another attorney on his team directly represent an adversary creditor in my bankruptcy case! Amazing." (See Frumusa letter dated March 25, 2010.) To demonstrate the disingenuous nature of this statement, I refer you to Exhibit 3, the creditor list filed by Frumusa in his case, which lists Rochester Countertop three different times with Harris Beach PLLC, Kevin Tompsett, Esq. as the contact person. This is information provided by Frumusa to the Bankruptcy Court at the time he filed the Petition in June of 2009. **Clearly, he was aware of Harris Beach's representation of Rochester Countertop.***

Technique 5. Mr. Woodard, attempts to discredit me by accusing me of lying and then say see - see I found this shred of "evidence" or remote statement by Frumusa and it demonstrates Frumusa is lying and his intentions are disingenuous.

1. Mr. Woodard, is fully aware that his "Exhibit 3, the creditor list filed by Frumusa in his case, which lists Rochester Countertop three different times with Harris Beach PLLC, Kevin

Tompsett, Esq. as the contact person." were submitted by my personal attorney at that time, who retrieved the information from the submissions of Creditor and their attorneys in my prior case. I was not aware of this minute detail - period. I would think Mr. Woodard should produce a signed waiver of conflict instead of grasping for ridiculous reasoning's such as this.

5. Review of paragraph 5 and 6 - Woodard's response May 27, 2010:

Specific text as defined above is copied here for clarity:

"Regarding Scutti and Fico, Frumusa alleges, "I discovered in the spring of 2010 that Mr. Woodard and his firm, Harris Beach PLLC, concurrently are representing clients which are significant adversaries of mine and involved in the current bankruptcy case." (See Frumusa letter dated March 25, 2010.) I again refer you to Exhibit 3, the creditor list provided by Frumusa to the Bankruptcy Court, which identifies neither Scutti nor Fico as creditors. Frumusa is obligated to identify all creditors in his petition and schedules.

Moreover, there is no listing of any entity I am aware of in which Scutti or Fico have any involvement. It is important to note that Frumusa does not reference Scutti or Fico as "creditors" but rather discusses them as "adversaries." Consequently, as Trustee I would have no reason to know that Scutti or Fico were creditors in Frumusa's case. No conflict check would even be done as they are not identified as having any involvement with the case. Moreover, based upon the information uncovered in this case, to this day it does not appear that Scutti or Fico are creditors of Frumusa. Simply put, there is no conflict of interest."

Technique 6. Mr. Woodard, builds on false facts that he establishes in the beginning to further justify his actions.

1. In this case he is attempting to build on his earlier invalid statement that a conflicted person must be a Creditor and in addition must be submitted by debtor (Frumusa) on his schedules. Then Mr. Woodard goes on to say that he knows nothing about the Scutti Fico controversy. I must say this is laughable. Refer back to Exhibit B of my complaint line item #14, copied here for clarity:

"14 Examples of conflict concerns are:

- a) *Trustee Woodard has consistently allowed Mr. Fico to appear in Frumusa 341 meeting and 2004 meetings without acknowledging Mr. Fico and requiring him to state his name on the record. Even over the objection of*

Frumusa, Trustee Woodard still provides Mr. Fico special considerations to attend without being on the record. (see Exhibit A item 4).

b) Trustee Woodard was made aware in August 2009, that Mr. Fico was adversely retaining an SUV automobile of the Frumusa Estate and the property should be recovered and secured by the Trustee. Frumusa has asked repeatedly if the automobile has been picked up from Mr. Fico, with no response or simple evasive response from Trustee Woodard. As of to date the automobile is still in the possession of Mr. Fico.

c) Trustee Woodard intentionally disrupted an adversary action, in which Mr. Fico was a defendant, were Frumusa was attempting to recover significant assets of the Estate. Trustee Woodard acting in the capacity as a Trustee, submitted affidavits causing this action to be dismissed. Such disruption was once again at the detriment of the Estate, however benefited Mr. Fico.

15. As well known Frumusa, was recently involved in a partnership dispute with these gentlemen, in which as alleged by Frumusa, Mr. Fedele V. Scutti and Mr. Louis C. Fico attempted to cause significant financial damage to Frumusa (docket # 5043-05).

16. However, Mr. Fedele V. Scutti and Mr. Louis C. Fico at the conclusion of the dispute, were required to pay Frumusa a sum of \$1,000,000.

17. Further Frumusa in defense of unsecured creditors, who were also targeted by Mr. Fedele V. Scutti and Mr. Louis C. Fico, supported a Federal Court bankruptcy action which resulted in Mr. Fedele V. Scutti and Mr. Louis C. Fico order to pay all unsecured creditors in full and with 9% interest from the invoice due date. An amount of approximately \$550,000 (Federal Case # 06- 20031).

18. As generally known these gentleman have a significant dissatisfaction with Frumusa."

Mr. Woodard saying he knows nothing is absurd, and is nothing more than a lie to protect his associates.

These person are significant conflicts as demonstrated by Mr. Woodard actions above and the latest scheme in which I uncovered a plot in which Trustee Woodard and others illegally transferred property of the Debtor's Estate and diverted Estate money to Mr. Fico and Mr. Scutti.

No Mr. Woodard, I do not believe you when you alleged you have no knowledge of any conflicts with the above.

6. Review of paragraph 7 and 8 - Woodard's response May 27, 2010:

Specific text as defined above is copied here for clarity:

"Frumusa provided the Committee with, among other documents, the objection submitted by me as Trustee to Frumusa's amended motion to remove me as Trustee for cause. To the extent that the objection clearly sets forth and amplifies my position set out herein, the objection is attached hereto and made a part hereof as Exhibit 4. I respectfully encourage the Committee to review the objection. The objection formed the basis for the decision by the Honorable John C. Ninfo ("Judge Ninfo") to deny Frumusa's motion to remove me as Trustee.

Your May 19, 2010 letter indicated that the Court seemingly denied Frumusa's motion because of his non-appearance. While the Order did reference Frumusa's non-appearance, the motion was denied because of Frumusa's failure to prove any of his allegations. The Court indicated, "Clearly, from all the proceedings that I have seen, there has been no actual injury to the estate in any way, certainly no fraud, clearly no intentional conduct of a detrimental nature by the Trustee for any negligence; also, no delay in the administration - that I can determine ~ of the estate except delay caused by the lack of Mr. Frumusa's cooperation. There is no actual conflict with the creditors that I am aware of other than the disclosed, potential conflict with Premier Cabinet Wholesalers. That was completely disclosed and there was no opposition at the time by the United States Trustee's Office based upon the disclosure. So overall, there is simply no basis for a finding of cause under Section 324(a) for the removal of Mr. Woodard as Trustee." The Court went on to say, "So it is clear that Mr. Frumusa has not met his burden in any way under Section 324(a) to warrant this cause and to find cause and remove Mr. Woodard. I am going to deny the motion." (See a transcript of the hearing attached hereto as Exhibit 5.)

Technique 7. Mr. Woodard, hiding behind Judge Ninfo and vice-versa.

1. This volley between Mr. Woodard and Judge Ninfo is very evident in all these actions and in fact I have raised this issue several times. Here again the actual memorializing of the decision and order relative to the Motion to Remove Mr. Woodard is contained solely in the order Issued by Judge Ninfo and attached as Exhibit H, additionally copied here for clarity.

*ORDER DENYING DEBTOR'S MOTION TO
REMOVE TRUSTEE LEE E. WOODARD*

Upon the amended motion of Lawrence Frumusa ("Debtor") to remove Trustee Lee E. Woodard dated March 31, 2010 (the "Motion") and Lee E. Woodard, Chapter 7 Trustee by and through his counsel David M. Capriotti, Esq. of Harris Beach PLLC (the "Trustee") having submitted an objection to the Motion dated April 2, 2010, and the hearing have come to be heard on the 7th day of April, 2010, at 11 :00 o'clock in the forenoon of that day, with the Trustee by and through his counsel David M. Capriotti, Esq. of Harris Beach PLLC, having appeared in opposition to the Motion; and the Debtor, having failed to appear on the Motion, and due deliberation having been had thereon; it is hereby

ORDERED, that the Debtor's Motion is denied in its entirety"

2. Clearly Judge Ninfo issued no findings of facts, no determination as to the merits of my pleading, nothing in his order issued and shown above. Simply that I failed to appear.

In fact Judge Ninfo, is fully aware of the conflict with Scutti and Fico. As it was in Judge Ninfo's Court that I, Frumusa in defense of unsecured creditors, who were also targeted by Mr. Fedele V. Scutti and Mr. Louis C. Fico, supported a Federal Court bankruptcy action which resulted in Mr. Fedele V. Scutti and Mr. Louis C. Fico order to pay all unsecured creditors in full and with 9% interest from the invoice due date. An amount of approximately \$550,000 (Federal Case # 06- 20031).

In fact we succeeded in spite of Judge Ninfo's attempts to derail us. As demonstrated then as now the truth and justice will prevailed.

Judge Ninfo, surely could not provide a finding of fact that no conflict existed, as that would be an action by Judge Ninfo's rising to the level of impeachment.

However Judge Ninfo carries on in the Transcripts, with really no affirmative conclusion, however provides a convenient hook for Mr. Woodard to hang his hat on. The details in the transcripts are irrelevant in light of the Order entered and the fact they proceeded without Frumusa being present.

However in essence this is yet another example of Judge Ninfo and Trustee Woodard protecting each other, that is the only conclusion that could be draw here.

3. However this protection is not the question before us in this form. The question is relative to the action of Mr. Woodard and if the hearing held on April 7, 2010 holds any credibility in support of Mr. Woodard.

I will refer you back to my original complaint in which I stated as follows:

"As in this case, a hearing was scheduled in the Federal Bankruptcy court to hear arguments and decide my Motion to Remove Mr. Woodard. On April 7, 2010 the hearing was conducted, I was unable to attend as I was researching Fraudulent Claims of another Trustee in a related issue, emailed Mr. Woodard and informed him that I was not able to attend, and please reschedule the hearing.

However Mr. Woodard attended the hearing making no mention of my status and Judge Ninfo with Mr. Woodard unilaterally decided, without my presents, to deny my motion. See Exhibit D, Judge Ninfo Order denying Frumusa motion.

This action alone, regardless if I contacted Mr. Woodard or not, deciding a Motion such as mine without my presents and on the first hearing, concluded the Court's and Mr. Woodard's desire to silence my objections.

Any reasonable proceedings would have automatically inquired as to my where about and if nothing more simply allow me the courtesy of a delay to provide me adequate opportunity to be heard. However neither Judge Ninfo or Mr. Woodard allowed that."

Clearly any reasonable person seeing that a Federal Bankruptcy Judge and a Trustee in a personal case, took the action to adversely order against a pro-se debtor without his attendance, without allowing for inquire into his situation, or the courtesy of a simple delay. Demonstrates irrefutably the definite and plan intent to abuse this debtor, Frumusa.

One only has to know about good Human Nature and Bad Human Nature to see the incredible destructive and evil intentions these two individuals have towards Frumusa. Then the conclusion that Judge Ninfo's order is meaningless is valid.

7. Concern of Retaliatory Attacks:

As I mentioned in my correspondences of June 3, 2010 and May 25, 2010, Mr. Woodard's has demonstrated his anger over my attempting to expose his actions by filing this complaint with the Grievance Committee for the Fifth Judicial District. Woodard's actions continue to escalate, as it seems I am in a foot race with Mr. Woodard, were he is using all efforts to silence me.

As an example of the latest incident occurring June 9, 2010, Mr. Woodard provided a notice of Motion by US Mail to Paula Farsace. In such motion Mr. Woodard was going to request permission from the Court by an order allowing him to depose Ms. Farsace.

Ms. Farsace, owner of Pebble Beach Inc. with assets that were an operating car wash business, was the victim of Mr. Woodard actions in 2009. Ms. Farsace, as a result of her association and support of

Frumusa, received the full force of Mr. Woodard's raft. In which Mr. Woodard confiscated her Business, leaving her with significant debt and no assets (Detailed in Exhibit E), for the sole purposes of "sweetening the deal" in a sale of property and business to a buyer arranged by a Mr. Malta, who is of course the real estate agent for Fico and Scutti.

However when Ms. Farsace received the latest action she called Harris Beach to ask what was going on? In the call she was threatened that if she did not bring certain documents in to court for the hearing they would make it rough for her. They demanded that if she wanted to end it now to bring in these documents and testify at the Hearing for the Motion requesting an order.

So distraught, Ms. Farsace actually brought certain documents in and without representation and under significant duress. Mr. Woodard deposed her and grilled her seeking to have her incriminate me so he could move forward in manufacturing evidence to silence me.

These actions are amazing as to the significant violations of attorney ethics that occurred here, by discussing the case directly to a individual, without requesting them to have representation, then threatening her to produce evidence, even before a Court Order was issued allowing the deposition.

Finally without representation and under duress deposing her under oath. Which as conveyed to me by an attorney present and waiting for his case to be called, watching in disbelief Mr. Woodard despicable actions, of which I am obtaining the transcripts.

As ridiculous as the above incident, this is exactly how Mr. Woodard has conducted himself. However currently he is not concern at all regarding consequences. As typical, in which a person having been exposed and realizes that the only way to save himself is to retaliate.

8. Conclusions

Frankly continuing this document is upsetting me greatly, in the fact that these individuals can be so evil that even in light of the absolute truth being exposed they continue to foolishly attempt to spin there evil lies.

Also the balance of the document is just continual attempts to discredit me as I seek justice, they have no bearing on these issues and only discredit Mr. Woodard further.

What I have conveyed in this complaint is just a small fraction of the atrocities Mr. Woodard and these people have casted on me. Action by Mr. Woodard acting as a Trustee empowered by the Federal Laws of Bankruptcy, which specifically provide untold control of a person's life. Laws designed solely for the purposes of assisting a debtor to a path of recovery, and a second chance.

However Mr. Woodard has abused this power and more importantly the control provided to devastate me for the sole purposes of advancing the criminal agenda of a few. Words cannot explain the effect on my

life these types of actions have had. I can only now in a much greater and solid sense of understand the trauma the Jewish people in Nazi Germany felt.

These actions by Mr. Woodard a Licensed Attorney in the State of New York, who as his title indicates (is an expert in the Bankruptcy Practice of law, are not just simple errors. The actions and then his attempt to deceive the Committee by this response, demonstrate a willful, intentional and decisive plot to damage Frumusa, the Estate and the Creditors. For the sole purposes of satisfying and promoting the agenda of significant clients of Harris Beach.

As demonstrated above by the valid and truthful allegations I have made. Irrefutably demonstrate Mr. Woodard conflicts and the fact that Mr. Woodard is interfering and abusing the Federal Bankruptcy process.

However, if a person with considerable knowledge of the Bankruptcy Laws and Procedures were to review all events of Mr. Woodard during these case. They would absolutely and irrefutably see that Mr. Woodard as a Licensed Attorney and the Appointed Interim Trustee, has played a significant part in the criminal agenda of an enterprise operating to commit bankruptcy fraud.

Clearly Mr. Woodard's proper client's are the Interest of the Estate which relates directly to the Debtor and Creditors of the Bankruptcy.

Mr. Woodard's has failed to properly:

- 1) Identified conflicts of interest as related to himself and his firm.
- 2) Notified the proper clients / parties of these clients.
- 3) Sought to resolve these conflicts in an ethical process.

He has done this in both his appointment as Trustee and also his efforts to appoint Harris Beach as attorney for the Trustee.

Finally, I believe that a reasonable attorney would conclude that Mr. Woodard's representation and conflicts identified, would indeed involve him in representing differing interests, adverse to each other. Further, there is a significant risk that the Mr. Woodard's professional judgment on behalf of a Estate, Creditors and Debtors will be adversely affected by Mr. Woodard's and Harris Beach's own financial, business, property or other personal interests².

So the one question I had at the onset is still unanswered --- Why Mr. Woodard? I will let your imagination run a bit, however I absolutely know why Mr. Woodard? and it has been confirmed by Mr. Woodard's response or lack of response herein.

² As demonstrated in benefiting the firms high profile Client.

9. Next Steps

As demonstrated Mr. Woodard is a dangerous person, and wrongfully empowered by the Federal Bankruptcy Laws with significant control over my Life and the Creditors of my Estate, therefor:

- 1) I would request that the Committee act swiftly and decisively to immediately remove Mr. Woodard from his position and his ability to continually harm myself and the Creditors.
- 2) Additional, I would request the support of the Committee as I refer these issues to the US Attorney Office of Northern District of New York and apply for protection as a victim of Federal Bankruptcy Fraud under Title 18 U.S.C. § 3771. Crime victims' rights act.

I will awaited your reply.

Regards,



Larry Frumusa

cc: Mr. Gigliotti

Exhibit A Response of Mr. Woodard

HARRIS BEACH PLLC
ATTORNEYS AT LAW

ONE PARK PLACE
4TH FLOOR
SYRACUSE, NY 13202

(315) 423-7100

LEE E. WOODARD

FAX: (315) 422-9331
LWOODARD@HARRISBEACH.COM

VIA MESSENGER

May 27, 2010

RECEIVED

MAY 28 2010

GRIEVANCE COMMITTEE

H. D.

State of New York Attorney Grievance Committee
for the Fifth Judicial District
Attention: Sheryl M. Crankshaw
224 Harrison Street, Suite 408
Syracuse, NY 13202-3066

Re: Complaint of Larry Frumusa

Dear Ms. Crankshaw:

Paragraph 1

I am in receipt of your confidential letter dated May 19, 2010. I am a Member of Harris Beach PLLC ("Harris Beach"). In addition, I am an approved Panel Trustee, regularly appointed to Chapter 7 cases by the Office of the United States Trustee ("UST") in both the Northern and Western Districts of New York. I was appointed as Interim Trustee of the Chapter 7 bankruptcy proceeding of Lawrence Frumusa ("Frumusa") on August 7, 2009. On August 11, 2009, I made an Application for the appointment of Harris Beach as counsel to the Trustee in Frumusa's individual bankruptcy proceeding. I have attached a copy of the Application for Appointment of Counsel and my Affidavit in support of the appointment of Harris Beach as counsel as **Exhibits 1 and 2**.

Paragraph 2

Pursuant to United States Bankruptcy Code § 327, the Trustee, with the court's approval, may employ counsel if it does not "hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the Trustee in carrying out the Trustee's duties under this title." "In a case under Chapter 7... a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States Trustee, in which case the Court shall disapprove such employment if there is an actual conflict of interest." See § 327(c) United States Bankruptcy Code.

Paragraph 3

A law firm may be disinterested even if it previously represented an interest adverse to the estate. See In Re: Arochem, 176 F3d 610 (2d Cir. 1999). The Trustee is, however, required to comply with Rule 2014 of the Federal Rules of Bankruptcy Procedure. Consequently, upon receipt of the file, it is our regular practice to review the list of creditors filed by the Debtor in

Paragraph 3 cont.

order to determine whether there are any potential conflicts. Frumusa filed a list of creditors with his Petition, and this list is attached hereto as **Exhibit 3**. Upon reviewing the list of creditors, I appropriately included in Paragraph 5 of my Application for Appointment (Exhibit 1) a disclosure that Harris Beach represents, “M&T Bank, Bank of America, HSBC Bank and JP Morgan Chase in various legal matters unrelated to this case. Harris Beach also represented Rochester Countertop, Inc. d/b/a Premier Cabinet Wholesalers and American Rentals LLC d/b/a Volvo Rents in this case who are unsecured creditors by virtue of personal guarantees executed by the Debtor. The Trustee believes this representation does not create a conflict since the Trustee is “united in interest” with these creditors. In the event that a conflict arises, the Trustee shall obtain conflict counsel to represent the estate’s interest in that matter.” (See Exhibit 1, ¶ 5) Furthermore, I once again disclose in my Affidavit the potential conflicts (See Exhibit 2, ¶ 3) No objection was made by Frumusa, the United States Trustee, any creditors or any other parties in interest. The Court approved the appointment of Harris Beach as counsel to the Trustee.

Paragraph 4

Frumusa complains of alleged conflicts of interest in relation to Rochester Countertop, Inc. (“Rochester Countertop”), Fedele Scutti (“Scutti”) and Louis Fico (“Fico”). Referring to Rochester Countertop, Frumusa avers that, “With extensive confusion created by Mr. Woodard, I had not realized that Woodard himself and another attorney on his team directly represent an adversary creditor in my bankruptcy case! Amazing.” (See Frumusa letter dated March 25, 2010.) To demonstrate the disingenuous nature of this statement, I refer you to Exhibit 3, the creditor list filed by Frumusa in his case, which lists Rochester Countertop three different times with Harris Beach PLLC, Kevin Tompsett, Esq. as the contact person. **This is information provided by Frumusa to the Bankruptcy Court at the time he filed the Petition in June of 2009.** Clearly, he was aware of Harris Beach’s representation of Rochester Countertop.

Paragraph 5

Regarding Scutti and Fico, Frumusa alleges, “I discovered in the spring of 2010 that Mr. Woodard and his firm, Harris Beach PLLC, concurrently are representing clients which are significant adversaries of mine and involved in the current bankruptcy case.” (See Frumusa letter dated March 25, 2010.) I again refer you to Exhibit 3, the creditor list provided by Frumusa to the Bankruptcy Court, which identifies neither Scutti nor Fico as creditors. Frumusa is obligated to identify all creditors in his petition and schedules. Moreover, there is no listing of any entity I am aware of in which Scutti or Fico have any involvement.

Paragraph 6

It is important to note that Frumusa does not reference Scutti or Fico as “creditors” but rather discusses them as “adversaries.” Consequently, as Trustee I would have no reason to know that Scutti or Fico were creditors in Frumusa’s case. No conflict check would even be done as they are not identified as having any involvement with the case. Moreover, based upon the information uncovered in this case, to this day it does not appear that Scutti or Fico are creditors of Frumusa. Simply put, there is no conflict of interest.

It should also be noted that Frumusa incorrectly states, when referring to my appointment as Trustee, "In my view this creates a fiduciary attorney-client relationship for myself and my estate, and it is critical the attorney acts in accordance with the 'Rules of professional conduct client, lawyer relationship.'" There simply is no attorney-client relationship between Frumusa and me or between Frumusa and Harris Beach. It is noteworthy that Frumusa has been advised of this fact dating back to August of 2009 when I was appointed the Trustee in his case. It would be disingenuous for Frumusa to allege that he has not been advised of this fact on countless occasions.

Paragraph 7

Frumusa provided the Committee with, among other documents, the objection submitted by me as Trustee to Frumusa's amended motion to remove me as Trustee for cause. To the extent that the objection clearly sets forth and amplifies my position set out herein, the objection is attached hereto and made a part hereof as **Exhibit 4**. I respectfully encourage the Committee to review the objection. The objection formed the basis for the decision by the Honorable John C. Ninfo ("Judge Ninfo") to deny Frumusa's motion to remove me as Trustee.

Paragraph 8

Your May 19, 2010 letter indicated that the Court seemingly denied Frumusa's motion because of his non-appearance. While the Order did reference Frumusa's non-appearance, the motion was denied because of Frumusa's failure to prove any of his allegations. The Court indicated, "Clearly, from all the proceedings that I have seen, there has been no actual injury to the estate in any way, certainly no fraud, clearly no intentional conduct of a detrimental nature by the Trustee for any negligence; also, no delay in the administration -- that I can determine -- of the estate except delay caused by the lack of Mr. Frumusa's cooperation. There is no actual conflict with the creditors that I am aware of other than the disclosed, potential conflict with Premier Cabinet Wholesalers. That was completely disclosed and there was no opposition at the time by the United States Trustee's Office based upon the disclosure. So overall, there is simply no basis for a finding of cause under Section 324(a) for the removal of Mr. Woodard as Trustee." The Court went on to say, "So it is clear that Mr. Frumusa has not met his burden in any way under Section 324(a) to warrant this cause and to find cause and remove Mr. Woodard. I am going to deny the motion." (See a transcript of the hearing attached hereto as **Exhibit 5**.)

Following are all irrelevant attempts to discredit Frumusa

The charges Frumusa made are part of a continuing series of actions he has taken that help explain his motivation for making these baseless allegations against Harris Beach and me. They are just another example of Frumusa's charges against professionals involved in any matter which does not get resolved to his satisfaction. As is explained below in more detail, Frumusa has made allegations against members of the judiciary (two bankruptcy judges and two Supreme Court judges), charges against at least three law firms, 10 individual lawyers (apart from the allegations against Harris Beach and me) and the United States Department of Justice.

As this Committee may be aware, there are seven different bankruptcy cases in which Frumusa is presently involved or has an interest in. The cases are: 1.) Frumusa's individual

case; 2.) Rising Tide Enterprise LLC (“Rising Tide”) (Frumusa 100% owner); 3.) Maincliff Properties LLC (“Maincliff”) (Frumusa 100% owner); 4.) Lawrence Frumusa Land Development LLC (“LFLD”) (Frumusa 100% owner); 5.) Frumusa Enterprises LLC (“Enterprise”) (Frumusa 100% owner); 6.) Scenic Village Apartments LLC (“Scenic Village”) (Frumusa 100% owner); 7.) L Frumusa Family Enterprise P1 (“P1”) (Frumusa 100 % owner).

Frumusa voluntarily filed Rising Tide, Maincliff and LFLD in bankruptcy in April 2009. These cases, similar to the individual case, were converted from Chapter 11 proceedings to Chapter 7 proceedings by the court. Michael Arnold, Esq. (“Arnold”) was appointed as the Chapter 7 Trustee in Rising Tide, Maincliff and LFLD. Enterprise and Scenic Village were recently filed in bankruptcy by me as Trustee in the individual case. P1 was very recently filed as an involuntary case by purported creditors.

It is important for the Committee to be cognizant of some of the allegations that have been made by Frumusa against attorneys and judges in the context of the various bankruptcy matters he has filed or has an interest in.* Below is a brief outline of some of the applications, motions, proceedings and allegations filed by or against Frumusa:

1. Affidavit filed in the individual and corporate cases asserting baseless allegations and requesting the immediate disqualification Judge Ninfo for questionable impartiality. (See **Exhibit 6**)¹
2. Affidavit filed in one of the corporate cases defining the top ten reasons why Judge. Ninfo should disqualify himself for questionable impartiality. (See **Exhibit 7**)
3. An Adversary Complaint filed against, amongst others, Vincent Ferarro, Esq., David L. Rasmussen, Esq. and the law firm of Davidson Fink LLP making various allegations of inappropriate conduct against the attorneys and law firm involved in Frumusa’s matrimonial action. (See **Exhibit 8**)
4. An Adversary Complaint filed against, amongst others, the law firm of Boylan, Brown, Code, Vigdor and Wilson, LLP, Mark A. Costello, Esq., the Honorable Kenneth R. Fisher (Supreme Court Justice for the State of New York (“Judge

* Mr. Frumusa has filed or caused to be filed other entities owned in whole or in part by him that have ultimately been dismissed by the court.

¹ Exhibits referenced in the attached Exhibits (Frumusa’s submissions) have not been provided due to the voluminous nature of the documents.

- Fisher”)), Edwin Robert Shulman, Esq. and Leonard Relin, Esq. making various allegations of improprieties and wrongdoing. (See **Exhibit 9**) (See ¶¶ 25 – 29, 31, 32, 35 – 37)
5. A Motion to Mandate that Judge Ninfo recuse himself from various proceedings contained in the individual and corporate cases alleging various meritless and baseless allegations against Judge Ninfo. (See **Exhibit 10**)
 6. An Adversary Complaint filed in a corporate case against Arnold as Trustee, Arnold as attorney for the estate, Arnold personally, Kathleen Schmitt, Esq. (Assistant United States Trustee for the Western District of New York) and the Department of Justice, Office of the United States Trustee-Kathleen Schmitt, making various allegations of wrongdoing and inappropriate behavior. (See **Exhibit 11**) (¶¶ 4, 6, 25, 38 – 43, 45 – 48, 53, 54 and 67)
 7. Motion pursuant to Rule 9011 of the Bankruptcy Rules to impose sanctions on Jeffrey Dove, Esq. (“Dove”) of Menter, Rudin & Trivelpiece and Arnold making various allegations of inappropriate behavior and misconduct. (See **Exhibit 12**) (See ¶¶ 6, 8, 10 and 11 on pg. 3)
 8. Motion for Reconsideration of Judge Kaplan’s decision wherein Frumusa insinuates wrongful actions by the Honorable Michael J. Kaplan (Bankruptcy Judge for the Western District of New York, Buffalo Division) and Honorable Judge Elma A. Bellini (Supreme Court Justice for the State of New York). (See **Exhibit 13**) (See ¶¶ 31 and 41)
 9. Motion pursuant to Rule 9011 of the Bankruptcy Rules to impose sanctions on Joseph Zagraniczny, Esq. of Bond Schoeneck & King and Gregory Mascitti, Esq. of Nixon Peabody making various allegations of inappropriate behavior and misconduct. (See **Exhibit 14**) (See ¶¶ 10 – 12)
 10. Motion pursuant to Rule 9011 of the Bankruptcy Rules to impose sanctions on, amongst others, Dove and Arnold, making various allegations of inappropriate behavior and misconduct. (See **Exhibit 15**) (See ¶¶ 17 and 18)

11. Motion in one of the corporate cases to remove Arnold as Trustee for cause, asserting various improprieties and inappropriate behavior against the trustee. (See **Exhibit 16**) (See ¶ 19)
12. The application of Frumusa's individual attorneys to withdraw as counsel, based in part on disagreements with him, great difficulty communicating with him, difficulty obtaining complete and accurate information critical to representation of Mr. Frumusa and concerns that Frumusa wanted the attorneys to advance legal or factual arguments the validity or veracity of which was in doubt. (See Application attached as **Exhibit 17**). (See ¶¶ 19 and 21.)
13. Application of counsel in the three corporate cases to withdraw as counsel, based in part on the Frumusa's failure to cooperate in the representation rendering representation unreasonably difficult for counsel to carry out. (See **Exhibit 18**) (See ¶¶ 6 and 7.)

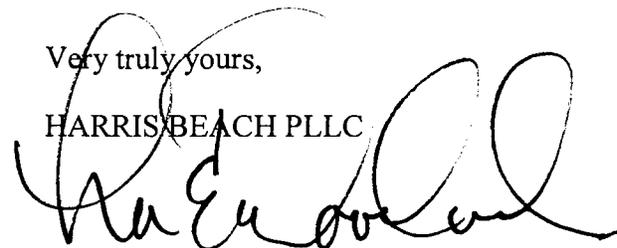
In addition to the above, it should be noted that Frumusa has also been found in contempt of court for failing to comply with directives of the Court. Additionally, since our involvement in the case, Frumusa has been indicted twice by a Monroe County Grand Jury. One of the indictments related to allegations that Frumusa forged a lien release and filed the same with the County Clerk's office.

As previously stated, this information is provided to give the Committee an appropriate context for the allegations levied against Harris Beach and me. Both Harris Beach and I enjoy outstanding reputations in the legal community. We pride ourselves on providing high quality legal services with the highest level of integrity. We believe we have done exactly that here.

If the Committee would like any more information regarding this matter, please do not hesitate to contact the undersigned.

Very truly yours,

HARRIS BEACH PLLC



Lee E. Woodard

LEW:dac

Exhibit A Response of Mr. Woodard

State of New York
Attorney Grievance Committee

June 3, 2010

CONFIDENTIAL

Mr. Larry Frumusa
P.O. Box 418
Webster, NY 14580

Re: Complaint against Lee E. Woodard, Esq.

Dear Mr. Frumusa:

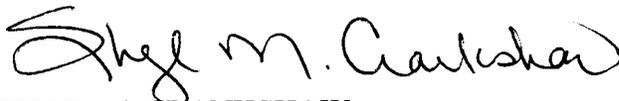
Enclosed for your review and further comment, is a copy of the response submitted to this office by Mr. Woodard regarding the complaint you filed against him.

Please note, we have not provided you with copies of the extensive enclosures that Mr. Woodard references in his response as it appears you may already have them in your possession. Please feel free to contact me and request any of the exhibits referenced in Mr. Woodard's May 27, 2010 response.

Your additional written comments may be submitted by **June 17, 2010**, before this office makes a determination.

Your cooperation in this matter will be appreciated.

Very truly yours,



SHERYL M. CRANKSHAW
Investigator

SMC/tlc
Enclosures

Exhibit B Search of Cases In Western District - which Woodard was assigned - None other than Frumusa's
Cases Report for 6/16/2010

U.S. Bankruptcy Court

Western District of New York

| Case No. Related Case Info | TP | Ch | Party Info | Judge Trustee | Dates | Other Info |
|-------------------------------|----|----|---|------------------|--|--|
| 2-10-21226-JCN | bk | 7 | Frumusa Enterprise, LLC c/o Harris Beach PLLC Attn: Lee E. Woodard, Trustee 300 S. State St., 4th Floor Syracuse, NY 13202 Tax ID / EIN: 20-3712763 Role: Debtor Kathleen Dunivin Schmitt, 11 Office of the United States Trustee 100 State Street, Room 6090 Rochester, NY 14614 Tax ID / EIN: ust2 Role: U.S. Trustee Robert Morgan Limited Partnership III Attn: Jeffrey A. Dove, Esq. c/o Menter, Rudin & Trivelpiece, P.C. 308 Maltbie Street, Suite 200 Syracuse, NY 13204-1498 315-474-7541 Role: Creditor | Ninfo Woodard | Filed: 05/20/2010 Entered: 05/20/2010 | Office: Rochester Assets: No Fee: Paid County: 2-Monroe |
| 2-10-21228-JCN | bk | 7 | Scenic Village Apartment Homes, LLC c/o Harris Beach PLLC Attn: Lee E. Woodard, Trustee 300 S. State St., 4th Floor Syracuse, NY 13202 Tax ID / EIN: 20-3712763 Role: Debtor Kathleen Dunivin Schmitt, 11 Office of the United States Trustee 100 State Street, Room 6090 Rochester, NY 14614 Tax ID / EIN: ust2 Role: U.S. Trustee | Ninfo Woodard | Filed: 05/20/2010 Entered: 05/20/2010 | Office: Rochester Assets: No Fee: Paid County: 2-Monroe |

Total number of cases: 2
 Number of open cases: 2

Both open and closed cases

| | |
|-----------------------------|--------|
| PACER Service Center | |
| Transaction Receipt | |
| 06/16/2010 11:15:48 | |
| PACER | Client |

Exhibit B Search of Cases In Western District - which Woodard was assigned - None other than Frumusa's

| | | | |
|----------------------------|-----------------------|-----------------------------|--|
| Login: | fe0886 | Code: | |
| Description: | Cases Filed Rpt | Search Criteria: | Ch: 7 Trustee: 911660:Woodard, Lee File Fr: 6/16/2000 File To: 6/16/2010 Open Cases: included Closed Cases: included Party Info:included Format: formatted |
| Billable Pages: | 1 | Cost: | 0.08 |

Exhibit B Search of Cases In Western District - which Woodard was assigned - None other than Frumusa's
Cases Report for 6/16/2010

U.S. Bankruptcy Court

Western District of New York

| Case No. Related Case Info | TP | Ch | Party Info | Judge Trustee | Dates | Other Info |
|-------------------------------|----|----|---|------------------|---|---|
| 2-09-21527-JCN | bk | 7 | <p>Lawrence Frumusa PO Box 418 Webster, NY 14580 SSN / ITIN: xxx-xx-9634 Role: Debtor</p> <p>Kathleen Dunivin Schmitt Office of the United States Trustee 100 State Street, Room 6090 Rochester, NY 14614 Role: U.S. Trustee</p> <p>Monroe Capital, Inc. c/o Menter, Rudin & Trivelpiece, P.C. Attn: Jeffrey A. Dove, Esq. 308 Maltbie Street, Suite 200 Syracuse, NY 13204-1498 U.S.A. 315-474-7541 Role: Notice of Appearance Creditor</p> <p>Marianela Hernandez 2000 Ponce de Leon Blvd. Suite 625 Coral Gables, FL 33134 United States Role: Notice of Appearance Creditor</p> <p>Kathleen Dunivin Schmitt, 11 Office of the United States Trustee 100 State Street, Room 6090 Rochester, NY 14614 Tax ID / EIN: ust2 Role: U.S. Trustee</p> <p>Rochester Countertop, Inc. c/o Harris Beach PLLC Kevin Tompsett, Esq. 99 Garnsey Road Pittsford, NY 14534 Role: Notice of Appearance Creditor</p> <p>Valoree A Frumusa Role: Creditor</p> <p>Wesley Belmore 267 Berg Road Ontario, NY 14519 Role: Notice of Appearance Creditor</p> <p>American Rentals LLC c/o Harris Beach PLLC</p> | Ninfo Woodard | Filed: 06/05/2009 Entered: 06/05/2009 Converted: 08/07/2009 | Office: Rochester Assets: Yes Fee: Paid County: 2-Monroe |

Total number of cases: 1

Number of open cases: 1

Both open and closed cases

| PACER Service Center | | | |
|-----------------------------|-----------------|-------------------------|--|
| Transaction Receipt | | | |
| 06/16/2010 11:14:39 | | | |
| PACER Login: | fe0886 | Client Code: | |
| Description: | Cases Filed Rpt | Search Criteria: | Ch: 7 Trustee: 910077:Woodard, Lee File Fr: 6/16/2000 File To: 6/16/2010 Open Cases: included Closed Cases: included Party Info:included Format: formatted |
| Billable Pages: | 3 | Cost: | 0.24 |

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

FILED

2009 OCT 27 PM 4: 23

In re:

U.S. BANKRUPTCY COURT
W.D.N.Y. - ROCHESTER

Lawrence Frumusa,

Case : 09-21527

Debtor

Chapter 11

Affidavit Establishing Surplus in Estate and Debtor Standings in All Actions

Lawrence Frumusa Land Development, LLC (Case:09-21126), Rising Tide Enterprise LLC (Case:09-21123), L Frumusa Family Enterprise P1 LLC (Case: 09-22698) (the "Corporate Debtors") and Lawrence Frumusa (Case: 09-21527) all related in this affidavit, respectfully submits this affidavit to establish surplus in the Debtors estates as stated above, with supporting facts as follows:

1. See Attachment A, demonstrating under proper liquidation of estates the Debtors as define will maintain a surplus in the Estate.
2. See Attachment B, Email to the Trustees of October 7, 2009 attaching the case history and stating:

"Very clear and makes sense as indeed if handled properly the estates involved would indeed provide a surplus.

Therefore, I would like not to bring up the no standing issues again. As I stated in court today it only looks like you are suppressing the Truth, which is not a benefit to the Federal Judicial system"

3. See Attachment C, Case 333 B.R 191 one mostly cited cases for this issue establishing:

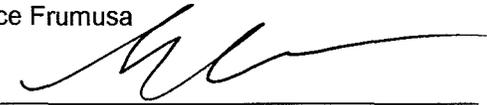
"(a Chapter 7 debtor is a „party in interest" and has standing to object to a sale of the assets, or otherwise participate in litigation surrounding the assets of the estate, only if there could be a surplus after all creditors' claims are paid.)"

4. There for in the interest of Justice let us move on from the Issue of Standing.
5. Additionally case law is also very strong of personal liability of Trustee's breaching fiduciary responsibility to Debtor and squandering the Estate.

Signature page to follow:

DATED: October 27, 2009 Respectfully submitted and sworn to by Lawrence Frumusa, as *Pro-Se representation*.

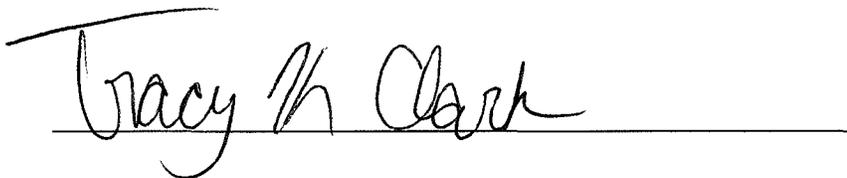
Lawrence Frumusa



By: Lawrence Frumusa for Debtor Pro-se

STATE OF NEW YORK
COUNTY OF MONROE) SS:

On October 27, 2009, before me, the undersigned, personally appeared Lawrence Frumusa, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his / her/their capacity(ies), in his(her/their) capacity and that by his(her/their) sign on the instrument, the individual(s), or the person / entity upon behalf of which the individual acted, the instrument.



Notary

TRACY K. CLARK
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN MONROE COUNTY
NO. 01CL6171090
MY COMMISSION EXPIRES JULY 23, 2011

Definition of Debtor Surplus

Debtor

Lawrence Frumusa - Personal

| Assets | With LLC | Without LLC |
|--|------------------------|----------------------|
| Webster Hospitality Development | \$2,155,491 | |
| Lawrence Frumusa Land Development | \$4,382,000 | |
| Scenic Village Town Homes LLC | \$200,000 | |
| Rising Tide Enterprise LLC | \$140,000 | |
| Scenic Village Apartment Homes LLC | \$0 | |
| Frumusa Enterprise LLC | \$0 | |
| Maincliff Properties LLC | \$50,000 | |
| Personal Real Property Net Value | \$386,083 | \$386,083 |
| Total Assets | \$7,313,574 | \$386,083 |
| Debts | | |
| Unsecured Debt Consumer Credit Card Used for Business | \$296,280 | \$0 |
| Total Debt | \$296,280 | \$0 |
| Surplus available | \$7,017,294 | \$386,083 |
| Adversary Proceedings | | |
| Payment of cram down judgement WHD | \$128,000 | |
| NYS Sales Tax Hotel | \$270,000 | |
| IRS | \$50,000 | |
| Belmore Judgement | \$125,000 | |
| Total Benefit | \$573,000 | \$386,083 |

Definition of Debtor Surplus

Debtor

Lawrence Frumusa Land Development LLC

Assets

| | |
|--|-------------|
| Property 64 Unit Apartment Complex - Phase 2 of Scenic Village, 70 % completed - Source of Value Independent Appraisal | \$9,500,000 |
| Property 48 Unit Apartment Complex - Phase 3 of Scenic Village, Site work 90% completed. - Source of Value actual cost for improvements | \$1,200,000 |
| Cash on hand | \$156,000 |
| L Frumusa Family Enterprise P1 LLC | \$1,975,000 |

Escrow Account

| | |
|--------------|---------------------|
| Total Assets | <u>\$12,831,000</u> |
|--------------|---------------------|

Debts

| | |
|--|-------------|
| Mortgage - National City Bank Phase 2 | \$6,200,000 |
| Mortgage - Robert Morgan Limited III LLC Phase 3 | \$908,000 |
| Unsecured Debt | \$1,341,000 |

| | |
|------------|--------------------|
| Total Debt | <u>\$8,449,000</u> |
|------------|--------------------|

| | |
|-------------------|-------------|
| Surplus available | \$4,382,000 |
|-------------------|-------------|

Definition of Debtor Surplus

Debtor

L Frumusa Family Enterprise LLC

Assets

| | |
|---|--------------------|
| Property 60 Unit Apartment Complex - Phase 1 of Scenic Village - Source of Value Independent Appraisal | \$8,800,000 |
| Cash on hand | \$174,000 |
| Reserves for finish coat streets | \$60,000 |
| Escrow Account | \$35,000 |
| Total Assets | <u>\$9,069,000</u> |

Debts

| | |
|---|--------------------|
| Mortgage - FEDERAL NATIONAL MORTGAGE ASSOCIATION Default cure for first mortgage | \$6,700,000 |
| Unsecured Debt | \$144,000 |
| | \$250,000 |
| Total Debt | <u>\$7,094,000</u> |

Surplus available \$1,975,000

Definition of Debtor Surplus

Debtor

Rising Tide Enterprises LLC

| Assets | Value |
|---|------------------|
| 182 North Ave Webster, NY 14580 | \$490,000 |
| 200 Barker Road Rossi, New York | \$120,000 |
| 47 Kittelberger Park Webster, New York 14580 | \$90,000 |
| 47 Kittelberger Park Webster, New York 14580 | \$90,000 |
| 30 Kittelberger Park Webster NY 14580 | \$20,000 |
| 888 Hard Road LLC 50% Interest | \$225,000 |
| Total Assets | \$1,035,000 |
| Debts | |
| Robert Morgan Limited III, LLC 182 North Ave | \$410,000 |
| Robert Morgan Limited III, LLC 200 Barker Road | \$80,000 |
| Robert Morgan Limited III, LLC 47 Kittleberger | \$50,000 |
| Robert Morgan Limited III, LLC 47 Kittleberger | \$60,000 |
| Jean Dykes | \$80,000 |
| Unsecured Creditors | \$75,000 |
| Total Debt | \$755,000 |
| Surplus available | \$280,000 |
| Adversary Claims | |
| Preferential Sale of 300 acres Watertown | \$625,000 |
| Total Potential Surplus available | \$905,000 |

From: [Larry Frumusa](#)
To: "[Lee Woodard](#)"; "[David Capriotti](#)"; "[Mike Arnold](#)"
Cc: "Committee@UCreditors.com"

Subject: Debtors Rights
Date: Wednesday, October 07, 2009 6:23:00 PM
Attachments: [Case Law on Debtor Being a Party In Interest -- 333 B R 191 10-7-09 1704.pdf](#)

Lee and Dave and Mike,

See attached case, this is one of the many cases that defines Debtors rights relative to standing. I thought you would like this one because it deals with Trustee compensation. In any case as stated on page 6 is as follows:

"(a **Chapter 7 debtor** is a „party in interest" and has **standing** to object to a sale of the assets, or otherwise participate in litigation surrounding the assets of the estate, only if there could be a surplus after all creditors' claims are paid.)"

Very clear and makes sense as indeed if handled properly the estates involved would indeed provide a surplus.

Therefore, I would like not to bring up the no standing issues again. As I stated in court today it only looks like you are suppressing the Truth, which is not a benefit to the Federal Judicial system.

Finally, given the above and purposely excluding me from the meeting after court with the unsecured creditors can be considered an ex-parte session and is a serious violation of a Trustee duties. I would like to have one of you call me to discuss what transpired behind the closed doors.

Larry

Larry Frumusa
Frumusa Enterprise LLC.
1660 Lake Road,
Webster, New York 14580
email: lfrumusa@rochester.rr.com
585-872-9000
585-872-7687 (fax)
585-943-9999 (cell)

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Westlaw

Page 1

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(Cite as: 333 B.R. 191)

C

United States Bankruptcy Court,
E.D. New York.
In re Enrico VONA, Debtor.
No. 03-86782-288.

Nov. 9, 2005.

Background: Chapter 7 trustee requested maximum commission of \$7,001.79 in connection with his final report. The United States Trustee (UST) filed pro forma objection, seeking to exclude from base of distributions for calculating trustee's statutory commission proposed commission payment to trustee and proposed payments to trustee's professionals as final compensation.

Holdings: The Bankruptcy Court, Stan Bernstein, J., held that:

- (1) persons or entities with allowed administrative expenses should be classified as parties in interest for limited purpose of computing the base for Chapter 7 trustee's commissions, and
- (2) trustee's requested commission was reasonable.

Ordered accordingly.

West Headnotes

[1] Bankruptcy 51 ↪ 3152

51 Bankruptcy
51IX Administration
51IX(E) Compensation of Officers and Others
51IX(E)1 In General
51k3152 k. Trustees. Most Cited Cases
Bankruptcy Code's exclusion of distributions to Chapter 7 debtors from base of distributions that can be counted in computing trustee's statutory commission incorporates public policy that Chapter 7 debtors who receive a surplus of proceeds of bankruptcy estate after all claims and administrative expenses have been satisfied should not be further surcharged by having their distributions reduced by another layer of compensation to trustee. 11 U.S.C.A. § 326(a).

[2] Bankruptcy 51 ↪ 3152

51 Bankruptcy
51IX Administration
51IX(E) Compensation of Officers and Others
51IX(E)1 In General
51k3152 k. Trustees. Most Cited Cases
Bankruptcy court has duty to determine, in the sound exercise of its discretion, how much should be paid as a reasonable commission to Chapter 7 trustee.

[3] Bankruptcy 51 ↪ 3152

51 Bankruptcy
51IX Administration
51IX(E) Compensation of Officers and Others
51IX(E)1 In General
51k3152 k. Trustees. Most Cited Cases
Persons or entities with allowed administrative expenses should be classified as "parties in interest" for limited purpose of computing the base for Chapter 7 trustee's statutory commission. 11 U.S.C.A. §§ 326(a), 726.

[4] Bankruptcy 51 ↪ 3152

51 Bankruptcy
51IX Administration
51IX(E) Compensation of Officers and Others
51IX(E)1 In General
51k3152 k. Trustees. Most Cited Cases
Chapter 7 trustee's requested commission, calculated on base of distributions that included proposed payments to trustee as his commission and to professionals retained by trustee as their final compensation, was reasonable, warranting award in such amount, given that trustee and his counsel created entire bankruptcy estate through fraudulent transfer claim, and that trustee's commission was equal to pay for 20 hours of work at local hourly rate of \$350.00. 11 U.S.C.A. § 326(a).
***192** Richard J. McCord, East Meadow, NY, for Debtor.

EMENDED MEMORANDUM OF DECISION

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AND ORDER OVERRULING THE UNITED STATES TRUSTEE'S PRO FORMA OBJECTION TO THE REQUEST FOR THE TRUSTEE'S COMMISSION AND PROFESSIONAL FEES AND EXPENSES.

STAN BERNSTEIN, Bankruptcy Judge.

Background and Findings:

In this case, the chapter 7 trustee, Kenneth P. Silverman, Esq., made a request in connection with his final report for a maximum commission of \$7,001.79. The United States trustee filed its *pro forma* "limited Testaverde objection." The objection, if sustained, would exclude from the base of distributions for calculating the trustee's statutory commission under section 326(a) all proposed payments to the trustee as his commission and to his professionals as final compensation. As applied, the objection would reduce the commission by \$721.79. Frankly, the extra pro-rata distribution that would flow to the class of general unsecured creditors from sustaining this objection would be a fraction of one percent. This contested amount can only be described as *de minimis*.

The Court has reviewed the docket entries, the case file, the pleadings, the trustee's final report and its attachments, the trustee's narrative of his services, the trustee's detailed description of administrative services, the number of hours he personally logged, the efficiency of the trustee's administration of the case, the allocation between trustee's administrative services and the trustee's professionals' services, and then considered the due proportionality between the trustee's commission and the professionals' services and the proposed absolute and percentage distribution to the unsecured creditors in this estate. In this case, the trustee and his counsel-his own firm-created this entire estate by bringing a fraudulent transfer complaint against an insider, and induced a settlement of \$75,000 which was approved by the Court after notice and hearing. This reflects an aggressive, but efficient administration of this estate by the trustee. Moreover, the trustee's firm was successful in recovering this substantial amount, which, indeed, compared to other trustee's fraudulent transfer actions, was performed at a relatively low cost of \$6,905.85 plus *193 reimbursable costs of \$302.11. The trustee is to be commended for insuring that his firm kept its hours tightly

in check. The trustee himself logged about 20 hours, to which this Court has imputed a local hourly rate of \$350, which when extended totals \$7,000, which is exactly equal to the maximum commission that he has requested of \$7,001.79. This is consistent with the holding of the Third Circuit in Staino v. Cain (In re Lan Assocs. XI, L.P.), 192 F.3d 109 (3d Cir.1999). Of the proceeds for distribution, assuming that the trustee's maximum commission is allowed and his firm's final compensation is allowed, then the secured creditor will receive its full claim of a rounded \$25,500, and the general unsecured creditors, totaling a rounded \$82,400, will receive a significant pro-rata distribution of 42.47% from the net dollars for distribution to that class of \$35,000. All in all, this should be viewed as a good result in a case that began with no dollars for distribution to anybody.

Discussion:

The United States trustee in this administrative division files a *pro forma* "limited Testaverde objection" in virtually every final report filed by a member of the chapter 7 trustee panel in an asset case-that is, cases in which there is money arising from the proceeds of liquidation of property of the estate. The United States trustee takes the formal position that, based on the opinions of two district judges in the Central Islip Courthouse-the published decision in In re Testaverde, 317 B.R. 51 (E.D.N.Y.2004) and the unpublished one in In re Stein, No. 04-CV-3196, slip op. (E.D.N.Y. March 25, 2005)-trustees are not entitled as a matter of a *per se* rule of law to include payments of allowed compensation to the trustee's professionals ^{FNI} in calculating the trustee's commission in a chapter 7 case under the statutory formula set forth in section 326(a) of the Bankruptcy Code.

^{FNI}. The trustee's professionals is an abbreviated reference to the class of professional persons whom the trustee employs under section 327 to assist him in the orderly administration of the estate. These professionals may include in a particular case both special and general counsel, an appraiser, a real estate broker, an auctioneer, and an accountant. As a condition for employment, the bankruptcy court has to find that each professional neither holds nor represents an interest adverse to the estate. This condition

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must continue to remain satisfied throughout the entire period of employment. It is in this formal and technical respect that one may infer that a professional cannot be a party in interest for that would mean that the professional would have a disqualifying claim or interest against the estate. But upon a more complete or holistic reading of the Bankruptcy Code, that inference is inconsistent with other provisions of the Code, and the discussion of why that inference is inconsistent goes to the heart of this matter.

The original *Testaverde* decision, which was made by this Court in *In re Testaverde*, No. 02-88997, 2004 Bankr.LEXIS 1964 (E.D.N.Y.), held that by definition a professional person is not a "party in interest" for purposes of computing the base of distributions by the trustee. In its original analysis, this Court implicitly focused solely on what it perceived was the "plain language" of section 326(a). Section 326(a) authorizes a commission to be based on distributions to "parties in interest, including secured creditors, but excluding debtors." In construing the words "party in interest" as excluding professional persons, the premise was that the very employment of these professional persons depended upon their having no adverse interest to the estate under section 327(a) of the Bankruptcy Code ^{FN2}, that *194 is, that they not be or become persons with an adverse interest to the estate. It seemed inconsistent with the basic tenor of the Bankruptcy Code to require that professional persons, on the one hand, not hold any adverse interest to the estate—a condition which has to remain the fact throughout their employment, and then, on the other hand, to turn around and define them as parties in interest for purposes of calculating the trustee's commission. Moreover, on policy grounds, this Court held that it was inappropriate to permit the trustee to put himself in a position of conflict for the last dollars of the estate when on a dollar for dollar basis, each dollar paid to the trustee was one less dollar paid to the unsecured creditors of the estate. It was even more unseemly, as originally noted in *In re Guido*, 237 B.R. 562 (Bankr.E.D.N.Y.1999), when the trustee's request to be allowed to pay himself a commission on fees paid to personal injury counsel out of the proceeds reduced on a dollar for dollar basis the net proceeds of settlement of the debtor's prepetition personal injury claim. In cases in which there are large settlements like *Guido*, this reflects the sad fact that the debtor is

permanently injured or disabled, and the debtor is dependent on the amount of settlement proceeds he is paid to meet his on-going long term expenses.

FN2. Section 327(a) requires that "the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties ..." The term "disinterested person" is itself defined in section 101(14)(A) as a person that "is not a creditor, an equity security holder, or an insider"; and, further along, in section 101(14)(E), expanding the standard in section 327(a), as a person that "does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor ..., or for any other reason."

In affirming this Court's ruling in *Testaverde*, the District Court analyzed the plain meaning of the term "parties in interest" by resorting to Black's Law Dictionary for a definition of this term because it was not defined in the Bankruptcy Code. 317 B.R. at 54. The only definition that Black's offers is of the main word "party," which it defines as a substantive noun, "a person concerned or having or taking part in any affair, matter, transaction, or proceeding, considered individually." Then Black's Law Dictionary goes on to cite precedents in which variations of the word "party" is used. One of these, under the reference to "party in interest," is "primary meaning ascribed the term 'party in interest' in bankruptcy cases is one whose pecuniary interest is directly affected by the bankruptcy proceeding," citing only *In re Kutner*, 3 B.R. 422, 425 (Bkrcty.N.D.Tex.1980). The further difficulty in treating this as a definition of "party in interest" in a bankruptcy case is that it begs the question. Professional persons are compensated by the estate under section 330, and the dollars paid to them from proceeds of the liquidation of property of the estate are dollars that could otherwise be paid to the priority and general unsecured creditors of the estate; that inherent conflict about who gets paid surely suggests that the professional persons are those with a pecuniary in-

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terest that is directly affected by the bankruptcy proceeding, and as such may be properly characterized as parties in interest, absent all other considerations. This is the point later made in *In re Nardelli*, 327 B.R. 488 (Bankr.M.D.Fla.2005).^{FN3} What the *195 *Nardelli* court seems to skip over is that professional persons are those who perform post-petition services and who may qualify for the allowance of their compensation as persons with unpaid administrative expenses, but who, nevertheless, are supposed to remain disinterested, that is, they cannot become persons or parties in interest with interests adverse to any class of creditors or equity security holders. In this respect, even though persons with allowed administrative expenses may be directly affected by the distribution of proceeds of the estate, and to that extent may loosely be referred to as "parties in interest," they are surely a paradoxical type of "party in interest" on their face, namely, parties in interest who cannot hold an interest adverse to the estate. It is difficult to escape the strictly logical conclusion that it is inconsistent, or worse, rather incoherent, to say that those with administrative expenses cannot be parties in interest under section 327(a), and at the same time, to define them as parties in interest for purposes of section 326(a).

FN3. The District Court also noted that the term "parties in interest" had been modified from a parallel provision under the 1898 Act, as amended, in which the prior referent was to a "person." 317 B.R. at 55. It is not subject to any reasonable dispute that a "person" is a defined term under the Bankruptcy Reform Act of 1978, as amended, but this particular definition makes no internal reference to a "party in interest" in those exact words.

There turns out to be several difficulties with the "plain language" analysis in both *the Testaverde* and *Stein* decisions. The plain language analysis is incomplete by virtue of its failure to define each of the distinctive terms expressed in the noun phrase in section 326(a), and as a result of that incomplete analysis, it failed to pay any attention to a key word—"including." Both decisions of the District Court adopted a dictionary construction of the substantive noun—"parties in interest"—which is unintentionally too restrictive and inconsistent with the meaning of the entire phrase. Indeed, it was this Court's initial failure to take full measure of the preposition "including" that led it to define the referents in this phrase as limited exclu-

sively to "parties in interest" that this Court had interpreted as excluding the payment of allowed final compensation to professional persons from the basis of distributions in calculating the amount of the trustee's statutory commission.

For ease of reference, here is the measuring standard in section 326(a), in relevant part:

In a case under chapter 7 ..., the court may allow reasonable compensation ... of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed [a sliding scale of percentages as a function of various ranges of dollar amount] **upon all moneys disbursed** or turned over in the case **by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.** (Emphasis added)

Although the substantive noun, "parties in interest," is not defined under the Bankruptcy Code, the preposition "including" is. Section 102(3) of the Bankruptcy Code states that " 'includes' or 'including' are not limiting." Conventionally, bankruptcy lawyers restate the term "including" to reflect this non-limited definition by writing "including but not limited to ..." So the noun phrase should be initially restated as extending to "parties in interest, excluding the debtor, but including but not limited to holders of secured claims."

[1] This noun phrase has to be further unpacked to appreciate the full extension of its meaning. First, the reason for excluding distributions to debtors from the basis of distributions that can be counted in computing the applicable percentages of the trustee's compensation—it should more narrowly say, the percentage of the trustee's statutory commission—is to incorporate the public policy that chapter 7 debtors who receive a surplus of the proceeds*196 of the estate after all claims and administrative expenses have been satisfied should not be further surcharged by having their distributions reduced by another layer of compensation to the trustee. Second, the preposition "including" means that at the very least "parties in interest" should be interpreted as including at least "unsecured creditors." The whole point of a chapter 7 case is to effect a distribution to unsecured creditors.

But upon further reflection, it finally struck this Court

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that the interpretative issue raised by the vague and undefined term “parties in interest” can be easily resolved by asking the elementary question: who are the intended beneficiaries of the trustee's distribution of the proceeds of property of the estate? There is a missing cross-reference to another statutory provision, which, once supplied, provides most of the solution. And that **missing reference is clearly section 726** (emphasis added) which directs the trustee to make distributions to a universe of persons in a detailed order of priority. After paying secured creditors their allowed claims from the proceeds of their collateral, the highest sub-class of intended beneficiaries is that comprised of those who supplied goods or services to the trustee on behalf of the estate. In any chapter 7 asset case, this sub-class is comprised of (a) the trustee's professionals who supplied their professional services to the trustee, on the one hand, and (b) in a chapter 7 in which the trustee operates the debtor's business for a limited period of time under section 721 of the Bankruptcy Code, the “vendors” who supplied their goods and services to continue what used to be the debtor's business until the trustee is in a position to sell it as an operating entity. By parity of reasoning, when there is an operating chapter 11 case, the operating trustee or the debtor in possession, which is defined as a trustee for these purposes, incurs administrative expenses to be paid to all professional persons whose employment has been approved by the court and to the vendors of other goods and services used in the operating business.

Technically, the Code draws a distinction in several other provisions of the Code between those who are creditors because they hold claims, beginning with sections 501 and 502, and those persons or entities who provided goods and services to the estate during the period of case administration, but there is no one word for this large class. The closest one comes is to draw a distinction between claims and administrative expenses, and then follow the inference to creditors as persons who hold claims and to the second unnamed class of “persons who request the allowance of administrative expenses.” Section 503 describes the process for the allowance of administrative expenses, and persons or entities with standing to request the allowance of these expenses may be said to be “persons-requesting-allowance-of administrative-expenses.” At the level of the rules of bankruptcy procedure, a creditor files a proof of claim under Fed. R. Bankr.P. 3001, and the creditor is directed to use an

Official Form for this purpose, but those with unsatisfied administrative expenses have to file “a request for the allowance of administrative expenses, for which there is no Official Form for this purpose.

Assuming this revised analysis presents a fair, comprehensive and correct construction of each word in the noun phrase, then it follows that distributions of payments of the proceeds of property of the estate to “parties in interest” (however awkward or cumbersome to define) should be read to include payments to persons or entities holding allowed administrative expenses, with a priority of payment over the class of creditors holding allowed prepetition*197 unsecured claims. Further assuming this intermediate premise to be true, then it follows that distributions to persons or entities holding allowed administrative expenses should be counted as part of the distributions to parties in interest in calculating the amount of the trustee's compensation-more correctly-the trustee's commission under section 326(a). If this argument is valid, then it turns *Testaverde* on its head because the District Court opinion adopted a *per se* rule that excludes holders of administrative expenses-in that case, the trustee's professional persons-from the definition of the term “parties in interest.” That, by no means, is the end of the analysis that the Court has ultimately to make in determining in its discretion a reasonable amount of the trustee's commission, but a restrictive definition of “party in interest” found in Black's Legal Dictionary will not suffice. And a good part of the reason that recourse to Black's does not work effectively is that the dictionary is not “statute-specific,” and when attempting to define undefined words or phrases in a comprehensive federal legislative code, one has to consider all other relevant sections of the code which may supply the implicit missing terms of reference.

Moreover, there are other contexts in which the term “party in interest” is used in bankruptcy parlance. In general, bankruptcy lawyers and judges pose the operational question for determining standing by asking whether a person or entity is “in the money.” This commonly used prepositional phrase is used to identify whether a person or entity will receive any distributions from the estate. Thus, when a **chapter 7** debtor seeks to object to a proof of claim, the creditor whose claim is subject to this objection may allege that the debtor has no standing to object to the claim because even if the objection were sustained, it would

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still not provide any distribution of any surplus to the debtor. See *In re Manshul Construction Corp.*, 223 B.R. 428, 429-30 (Bankr.S.D.N.Y.1998) (“A debtor lacks standing to object to a claim against the estate because he has no interest in the distribution to creditors of assets of the estate.” (quoting *In re Kressner*, 159 B.R. 428, 432 (Bankr.S.D.N.Y.1993))). An analogous but slightly broader use of the term “in the money” is raised when a person or entity either seeks to intervene in a contested matter or files an appeal of an order of the bankruptcy court. If the determination of this proposed intervention or the appeal will have no effect on the claims or interests of this person or entity, the courts hold that this person or entity does not have the standing of a party in interest to raise these issues. See *In re 60 East 80th Street Equities, Inc.*, 218 F.3d 109, 115-16 (2d Cir.2000) (a Chapter 7 debtor is a “party in interest” and has standing to object to a sale of the assets, or otherwise participate in litigation surrounding the assets of the estate, only if there could be a surplus after all creditors’ claims are paid.); *In re Blumenberg*, 263 B.R. 704, 719 (Bankr.E.D.N.Y.2001) (debtor lacks standing as a “party in interest” to bring an equitable subordination claim on behalf of the estate); *In re Galsci*, 126 F.3d 380, 388 (2d Cir.1997) (“To have standing to appeal from a bankruptcy court ruling in this Circuit, an appellant must be an ‘aggrieved person,’ a person ‘directly and adversely affected pecuniarily’ by the challenged order of the bankruptcy court.” (citing *In re Colony Hill Assocs.*, 111 F.3d 269, 273 (2d Cir.1997))). These other uses help us interpret “party in interest” in section 326(a) because it is section 726 which instructs who may be in the money by order of priority. If there are not enough proceeds to reach each sub-class in the priority schedule, then those who are not entitled to distribution *198 are commonly said to be “out of the money” and, if we need a name for these folks, we may say that they are not “parties in interest.”

[2] When all of this is said and done in supplying a working definition for purposes of interpreting “parties in interest,” it still remains the duty of the bankruptcy court to determine in the sound exercise of its discretion how much should be paid as a reasonable commission to the trustee. In each of this Court’s decisions in *Guido*, *Testaverde*, *Lisburger*, and *Stein*, it discussed the independent and relevant policy reasons for not counting the distributions to the trustee’s professionals in calculating the trustee’s commission, and

the whole tenor of these decisions and all of those decisions that are unpublished which made use of this same basic approach was that a sound exercise of discretion requires the Court to take into consideration the totality of the facts and circumstances of each estate and justify the amount of the commission on independent and relevant policy grounds. Regrettably, in the last sentence of its memoranda of decisions in *Testaverde* and *Stein*, this Court lapsed into short-hand by concluding that the trustee’s professional persons should not be considered as parties in interest. This reasoning was not only too short-handed, but it undercut the full policy analysis that the Court did in each opinion. By ending the opinion in this manner, this Court suggested that it was adopting a *per se* rule. Thus, it is not surprising that the District Court in *Testaverde* and *Stein* began with that as its premise.

[3] What this Court originally had in mind was the idea that the reference to distributions to parties in interest was intended by Congress to be largely limited to distributions to *prepetition secured and unsecured creditors* of the estate in those cases in which there were sufficient proceeds of sale to make a pro-rata distribution to creditors in the statutory order of priority under section 726. And creditors were understood to be limited largely to those whose claims arose before the bankruptcy petition commencing the case was filed.^{FN4} Clearly, professional persons who are first retained only after the petition date cannot logically be included in the class of prepetition creditors. Their entitlement to compensation to the extent allowed by the Court after notice and hearing is subsumed under the general category of administrative expenses. In hindsight, this Court is now forced to conclude that although the Code does seem to point in that direction, the proper analysis has to consider the implicit cross-reference to section 726(a), which points in the other direction in identifying those persons or entities who are entitled to receive a distribution from the trustee. Thus, for this limited purpose, one has to say that persons or entities with allowed administrative expenses are entitled to be classified as parties in interest for purposes of computing the base for the trustee’s commissions.

FN4. The Court uses the phrase “to be largely limited” to recognize that there are other provisions in the Code that statutorily deem a discreet sub-class of “claims” which arise after the petition date to have arisen as of the

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day before the date the petition was filed. The most notable of relation-back type of claim is the one under section 502(g) for rejection damages under an executory contract or unexpired lease which was entered into by the debtor before the petition date, but which was rejected during the period of administration of a chapter 7 or chapter 13 case.

In re Vona
333 B.R. 191

END OF DOCUMENT

The thrust of all this is to suggest that "parties in interest" remains something of a malapropism, and section 326(a) should be rewritten something like this:

***199** In counting distributions to be made by the chapter 7 trustee for purposes of determining the trustee's commission, the trustee must exclude distributions made to the debtor to pay exemptions and the surplus, but may include distributions to persons or entities who are owed administrative expenses as defined under sections 503 as well as to persons or entities who hold allowed secured, priority, and general unsecured claims.

This restatement merely brings to the surface the missing cross-reference in section 326(a), which once supplied, resolves any issue of ambiguity in the terms of reference for identifying parties in interest, and, derivatively, a more accurate guide for determining the proper application of section 326(a).

Disposition:

[4] Based upon this totality of the facts and circumstances of this case, the Court has determined that the commission requested is reasonable. To the extent that the United States has objected to any amount above the limited Testaverde ceiling, that objection is overruled, and the trustee is directed and authorized to make an immediate distribution of the proceeds of the estate as proposed, subject to any adjustment this decision requires.

In addition, the trustee's firm's application for final compensation, to which the United States trustee made no objection, is granted in the amount requested.

So Ordered.

Bkrtey.E.D.N.Y.,2005.

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Case # 09-21527 -- Distribution list see Attachment A

**CERTIFICATE OF SERVICE
Debtor: Lawrence Frumusa**

I, Lawrence Frumusa , hereby certify on this October 22, 2009 on behalf of the Debtor Lawrence Frumusa, I have caused to be transmitted via CM/ECF electronic filing, facsimile, and/or First Class U.S. Mail, a copy to the creditors listed on page 2 of the foregoing as stated below

Affidavit Establishing Surplus in Estate and Debtor Standings in All Actions

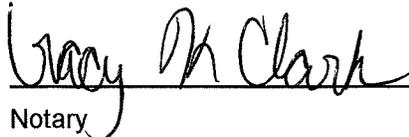


Lawrence Frumusa

FILED
2009 OCT 27 PM 4: 23
U.S. BANKRUPTCY COURT
W.D.N.Y. - ROCHESTER

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

On October 27, 2009 , before me, the above signed, personally appeared Lawrence Frumusa, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, in his capacity and that by his sign on the instrument, the individual, or the person upon behalf of which the individual acted, the instrument.


Notary

TRACY K. CLARK
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN MONROE COUNTY
NO. 01CL6171090
MY COMMISSION EXPIRES JULY 23, 2011

Attachment A

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Robert Morgan Limited III LLC
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Webster, New York 14580

Equity Trust Company Custodian
P.O. Box 1529
Elyria, OH 44036-1529

Robert C. Morgan
Personal
Suite 100
1170 Pittsford-Victor Road
Pittsford, NY 14534

JTM Custom Construction Inc.
JTM Custom Construction Inc.
340 Walker Rd.
Hilton, NY 14468

Larry Frumusa
PO Box 418
Webster, New York 14580

U.S. Bankruptcy Court
Western District of New York
1220 U.S. Courthouse
100 State Street
Rochester, NY 14614

Morse, Bill -
WM. B. Morse Lumber CO-Bill
340 West Main Street
Rochester, New York 14608
By Email

Morse, Bill -
WM. B. Morse Lumber CO-Bill
340 West Main Street
Rochester, New York 14608
By Email

Bunce, Gary Bunce
SBM Interiors Co., Inc
380 Cedar Creek Trl
Rochester, NY 14626
By Email

Iassic, Henry Iassic
Henry Issac Remodeling and
Repairs
28 West Buffalo Street
Churchville, New York 14428
By Email

, Mike -
MJ Pipe & Supply Corp-Mike
609 Buffalo Road
Rochester, New York 14611
By Email

Williamson, Marc Williamson
MIG Building System
100 Ontario Street
East Roahester, New York 14445
By Email

Mussumeci, Mike Mussumeci
Mussumeci Electric LFLD
1451 Harris Road
Webster, NY 14580
By Email

Malette, Jason Malette
JTM Custom Construction Inc.-
Jason
79 Marblehead Drive
Rochester, New York 14615
By Email

Hassett, Greg Hassett
Residential Steel Services LLC
500 Lee Road
Rochester, New York 14606
By Email

Geer, Dan Geer
Pride Fire Protection LLC
Atten: Dan T. Geer
1248 Commercial Dr, BLDG A-
By Email

Pelusio, Tom Pelusio
Rochester Linoleum & Carpet
PO Box 105525
Atlanta, GA 105525
By Email

Nohle, Andy Nohle
Meier Supply
123 Brown St
Johnson City, NY 13790
By Email

David J. Magnarelli
General Electric Co-Renner
5111 W. Genesee Street
Camillus, New York 13031

Chadsey, Mike Chadsey
Chadsey Heating & Cooling
11 West St
Albion, NY 14420

Lockwood, Gary Lockwood
John Lockwood Plumbing
341 County Line Road
Ontario, New York 14519

Will Russell
Southworth-Milton Cat
P.O. Box 3851
Boston, MA 02241
By Email

Tachin, Mark -
MST Construction Inc.
80 Huffer Rd
Hilton, NY 14468

Robert Capellazzi
Domine Builders Supply
dba Domine Builders Supply
PO Box 415350
By Email

, Bob Gfeller
Marcello Creative Design
150 Willow Ridge Trail
Rochester NY 14626
By Email

Sattora, Dave -
Sattora Siding
267 North Church Rd
Rochester, NY 14612

--
Buchanan Ingersoll
One Oxford Centre
301 Grant Street - 20th Floor

Electric, Crown Electric
Crown Electric Supply Co. Inc.
PO Box 86 Route 104
Union Hill, NY 14563

Williams, Dave Williams
Volvo Rents
PO Box 92280
Rochester, NY 14580
By Email

Tim Terhaar
Felluca OverHead Doors, Inc
1674 Norton Street
Rochester, New York 14609
By Email

ECF CHAMBERS COPY

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE:

CASE NO. 09-21527-JCN

LAWRENCE FRUMUSA,

ORDER APPOINTING
COUNSEL TO INTERIM
TRUSTEE AND TO TRUSTEE,
UPON QUALIFICATION

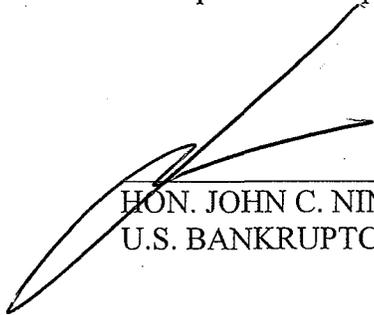
Debtor

At Rochester, New York in said District, this ___ day of August, 2009.

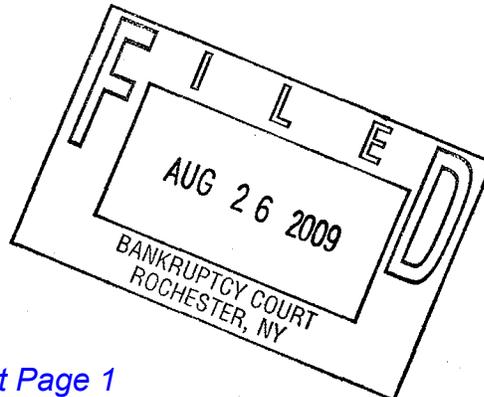
An Application having been made for the appointment of an attorney for the Interim Trustee herein, and it appearing that the services of an attorney are or will be required, and that the appointment hereinafter made is acceptable to such Interim Trustee, and no adverse interest being represented, and no notice to creditors need be given, it is hereby,

ORDERED, that HARRIS BEACH PLLC, Suite 400, One Park Place, Syracuse, New York, in said District, be and they are hereby appointed to act as counsel for the Interim Trustee, effective August 7, 2009 and in the event that LEE E. WOODARD shall qualify as Trustee, said employment of HARRIS BEACH PLLC, as attorneys for said Trustee, shall continue without further Order, their compensation to be fixed and paid as an expense of administration upon further application to the Court.

8/26/09



HON. JOHN C. NINFO, II
U.S. BANKRUPTCY JUDGE



HARRIS BEACH
ATTORNEYS AT LAW

303820 1233591.1

Exhibit Page 1

Exhibit E Objection to Woodard abusing his powers

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

Lawrence Frumusa,

Debtor

Case: 09-21527

Chapter 11

Affidavit Objecting to Sale Of 1069 Gravel Road

and

Actions of Trustee to Reject the Lease

FILED
2009 DEC - 8 PM 2: 50
U.S. BANKRUPTCY COURT
W.D.N.Y. - ROCHESTER

Lawrence Frumusa (Case: 09-21527) respectfully submits this affidavit in Objection to Trustee sale of 1069 Gravel Road, and several underling actions to support such sale with supporting facts as follows:

1. Trustee has breached the fiduciary responsibility to Debtor and Creditors.
2. Trustee has adversely acquired approximately \$100,000 in equity from Pebble Beach Inc, the car wash owner.
3. Debtor is not in support of the backdoor arm twisting tactics used by the Trustee to cohere Pebble Beach to sell its interest extremely below market value and leaving Pebble Beach and its Creditors insolvent.
4. If Trustee insists and elects to conduct business in this way, the benefits obtained should be that of the Debtor and not passed directly to the Purchaser.
5. Debtor was negotiating a sale of this property for \$345,000, in fact one of the same buyers Trustee took over. (See Attachment A)
6. Trustee sells the property for under \$280,000 with the addition of including \$100,000 operating business.
7. Trustee sale is not in the best interest of the Debtor and Creditors.

Page 1 of 3

\\LARRY-PC\aa-Legal\Bankruptcy Cases - All out War\AA Motions Filings Chapter 7 rebuttal\Affidavit Objecting to Sale 1069 Gravel Road\2009-12-07 Second Affidavite Objecting to Sale of 1069 Gravel road LF.docx

Exhibit Page 1

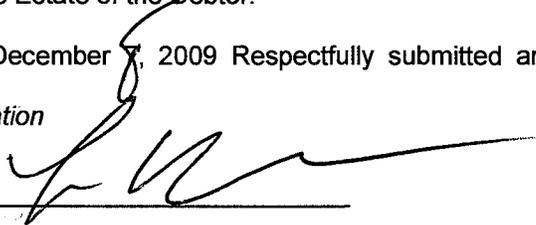
Exhibit E Objection to Woodard abusing his powers

8. Trustee sale is not an arm's length sale, and Trustee is using its power as a Federal Trustee to enhance the value to the Buyer.
9. The trustee's written actions in threatening the incarceration of Debtor if he should attend the hearing on December 2, 2009, only demonstrates intentional malice by the Trustee.
10. Therefore, debtor was prevented from attending a meeting.
11. Debtor has identified a surplus if Estate is properly handled.
12. Trustee is intentionally selling assets of Debtor at significantly reduced value that intentionally harms the Debtor.

Wherefore the Debtor prays and requests this Court to:

13. In the interest of Justice, deny the Sale in full and in any and all aspects.
14. Instruct the Trustee to properly liquidate the assets for the best interest of the Estate not the Potential buyers.
15. Hold the Trustee personally liable for breaching fiduciary responsibility to Debtor and squandering the Estate of the Debtor.

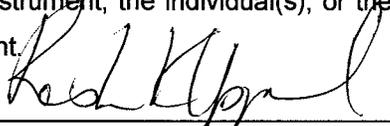
DATED: December 7, 2009 Respectfully submitted and sworn to by Lawrence Frumusa, as *Pro-Se representation*



By: Lawrence Frumusa for Debtor Pro-se

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

On December 7, 2009, before me, the undersigned, personally appeared Lawrence Frumusa, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his / her/their capacity(ies), in his(her/their) capacity and that by his(her/their) sign on the instrument, the individual(s), or the person / entity upon behalf of which the individual acted, the instrument.



Notary Seal

KASHMIR K. UPPAL
No. 01UP6144651
Notary Public, State of New York
Qualified in Wayne County
My Commission Expires 04/24/2010

Page 2 of 3

\\LARRY-PC\aa-Legal\Bankruptcy Cases - All out War\AA Motions Filings Chapter 7 rebuttal\Affidavit Objecting to Sale 1069 Gravel Road\2009-12-07 Second Affidavite Objecting to Sale of 1069 Gravel road LF.docx

Exhibit Page 2

Attachment A

Exhibit E Objection to Woodard abusing his powers

From: [nickglamack](#)
To: [Bill Dixon](#)
Cc: [Larry Frumusa](#)
Subject: Re: PO for Gravel Rd.
Date: Monday, August 03, 2009 4:47:22 PM

Hi Bill

I just got off the phone with Larry Frumusa and here is his response.

1. Please put the offer on the Real Estate Board form, even though it says residential at the top. He had a problem on another deal that was not on the standard form so that is why.
2. \$345,000 Price
3. \$10,000 deposit with Glamack Realtors held at Cndga Nat
4. Seller will do a Phase 1 after buyer has mortgage commitment.
5. Offer is subject to a Chapter 11 restructuring plan
6. Offer is subject to approval by Paula Fersace within 10 days of acceptance (She still has some rights with the car wash)

Let me know if you have any questions about this.

Thanks

Nick Glamack, Real Estate Broker

585-721-3577

----- Original Message -----

From: [Bill Dixon](#)
To: nick.glamack@realtor.com
Sent: Saturday, August 01, 2009 2:32 PM
Subject: PO for Gravel Rd.

Hi Nick- Attached is the offer for Gravel Rd. The buyer was supposed to send his pre-qual letter, but I haven't seen it yet. He is resending it to me Sunday, or Monday morning at the latest.

Let me know if you have any questions.

Thanks!

William R. Dixon

Associate Broker
585-766-0438

Dixon & Carr Realty

4085 Main St., PO Box 935
Williamson, NY 14589

> From: bill_dixon10@hotmail.com
> Subject:

Exhibit E Objection to Woodard abusing his powers

Case # 09-21527 -- Distribution list see Attachment A

**CERTIFICATE OF SERVICE
Debtor: Lawrence Frumusa**

I, Lawrence Frumusa, hereby certify on this ^{Dec 8 09} October 22, 2009 on behalf of the Debtor Lawrence Frumusa, I have caused to be transmitted via CM/ECF electronic filing, facsimile, and/or First Class U.S. Mail, a copy to the creditors listed on page 2 of the foregoing as stated below

Affidavit Objecting to Sale Of 1069 Gravel Road and Actions of Trustee to Reject the Lease



Lawrence Frumusa

FILED
2009 DEC -8 PM 2:50
U.S. BANKRUPTCY COURT
W. N. Y. - ROCHESTER

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

On December 8, 2009, before me, the above signed, personally appeared Lawrence Frumusa, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, in his capacity and that by his sign on the instrument, the individual, or the person upon behalf of which the individual acted, the instrument.



Notary

KASHMIR K. UPPAL
No. 01UP6144651
Notary Public, State of New York
Qualified in Wayne County
My Commission Expires 04/24/2010

Exhibit F Rule 327

Title 11 Chapter 3 Rule § 327. Employment of professional persons

(a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

(b) If the trustee is authorized to operate the business of the debtor under section 721, 1202, or 1108 of this title, and if the debtor has regularly employed attorneys, accountants, or other professional persons on salary, the trustee may retain or replace such professional persons if necessary in the operation of such business.

(c) In a case under chapter 7, 12, or 11 of this title, a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest.

"In a case under Chapter 7.. .a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States Trustee, in which case the Court shall disapprove such employment if there is an actual conflict of interest." See § 327(c) United States Bankruptcy Code.

(d) The court may authorize the trustee to act as attorney or accountant for the estate if such authorization is in the best interest of the estate.

(e) The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

(f) The trustee may not employ a person that has served as an examiner in the case.

Rule 2014. Employment of Professional Persons

(a) Application for an order of employment.

An order approving the employment of attorneys, accountants, appraisers, auctioneers, agents, or other professionals pursuant to § 327, § 1103, or § 1114 of the [Code](#) shall be made only on application of the trustee or committee.

The application shall be filed and, unless the case is a chapter 9 municipality case, a copy of the application shall be transmitted by the applicant to the United States trustee.

The application shall state the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge,

all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

The application shall be accompanied by a verified statement of the person to be employed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the [United States trustee](#), or any person employed in the office of the United States trustee.

(b) Services rendered by member or associate of firm of attorneys or accountants.

If, under the [Code](#) and this rule, a law partnership or corporation is employed as an attorney, or an accounting partnership or corporation is employed as an accountant, or if a named attorney or accountant is employed, any partner, member, or [regular associate](#) of the partnership, corporation or individual may act as attorney or accountant so employed, without further order of the court.

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Re:

Case No. 2-09-21527-JCN
Chapter 7

LAWRENCE FRUMUSA,

Debtor.

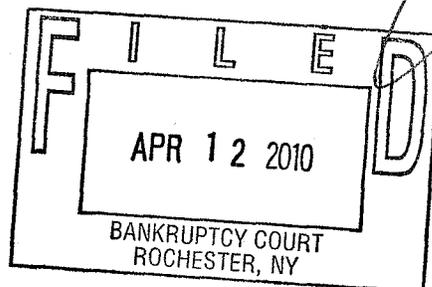
**ORDER DENYING DEBTOR'S MOTION TO
REMOVE TRUSTEE LEE E. WOODARD**

Upon the amended motion of Lawrence Frumusa ("Debtor") to remove Trustee Lee E. Woodard dated March 31, 2010 (the "Motion") and Lee E. Woodard, Chapter 7 Trustee by and through his counsel David M. Capriotti, Esq. of Harris Beach PLLC (the "Trustee") having submitted an objection to the Motion dated April 2, 2010, and the hearing have come to be heard on the 7th day of April, 2010, at 11:00 o'clock in the forenoon of that day, with the Trustee by and through his counsel David M. Capriotti, Esq. of Harris Beach PLLC, having appeared in opposition to the Motion; and the Debtor, having failed to appear on the Motion, and due deliberation having been had thereon; it is hereby

ORDERED, that the Debtor's Motion is denied in its entirety.

Dated: April 12, 2010
Rochester, New York

Honorable John C. Ninfo, II
United States Bankruptcy Judge



Wednesday, June 16, 2010

Ms. Crankshaw and Mr. Gigliotti
Grievance Committee for the Fifth Judicial District
224 Harrison Street, Suite 408
Syracuse, New York 13202-3066

Re: Complaint regarding Professional Misconduct of Lee Woodard Esq.:

Ms. Crankshaw,

After our conversation this afternoon, I went to my PO Box and the letter of Mr. Gigliotti had arrived informing me that in reviewing the case he found no basis for the complaint and closed the case.

For the benefit of Mr. Gigliotti, I would just like to recap our conversation on the phone today. As we discussed today I called you informing you that I had completed an extensive response to Mr. Woodard's answer exposing significant miss-representations. Therefore I wanted to be sure you received it by the deadline to respond June 17, 2009. You then informed me that based on my correspondents last week, the Counsel had review the case earlier than expected, unfortunately without my response and had mailed the results to me -- **oops a disconnect**.

Thank you for expeditiously moving this complaint through the process, however unfortunately Mr. Gigliotti did not have the benefit of my response to Mr. Woodard's answer in reviewing the case.

However looking on the positive side, Mr. Gigliotti conclusion is exactly what I would have predicted. As the primary focus of my answer was the skillful techniques and wordsmithing Mr. Woodard's uses in his written communications, carefully done to deceive an un-expecting reader with misrepresentations and evasive twists of the untruth. Ultimately, concealing his actions from detection.

Therefor Mr. Gigliotti you are in some ways a victim also. However please review my response to Mr. Woodard's letter, were I detail and expose all his techniques to uncover the Truth in this situation. You will see that Mr. Woodard provides no valid information to support his defense to my allegations.

I would request that you expeditiously rehear this case in light of the significant information I have presented in my response. Which response was intended to be submitted by the June 17, 2010 deadline and reviewed with the balance of information.

Please contact me with any questions, as you can see this is a very serious issue and requires your diligence in this review. To that end, I will offer my help in any way.

I am positive you will find this interesting.

Regards,

Larry Frumusa

cc Mr. Gigliotti

Wednesday, June 16, 2010

Ms. Crankshaw and Mr. Gigliotti
Grievance Committee for the Fifth Judicial District
224 Harrison Street, Suite 408
Syracuse, New York 13202-3066
Phone: 315/471-1835
Fax: 315/471-0123

Re: Complaint regarding Professional Misconduct of Lee Woodard Esq.:

Complete address:

Lee E. Woodard, Esq. - Co Chair -Financial Restructuring & Bankruptcy Practice Group
300 South State Street 4th Floor
Syracuse, New York, 13202

Ms. Crankshaw,

I have received Mr. Woodard's response forwarded to me by your office. Upon reviewing the document, I am very concern. I have been so devastated by Mr. Woodard's attacks. Attacks, which are concealed by his skillful wordsmithing of his written correspondence. Carefully done to deceive an un-expecting reader with misrepresentations and evasive twists of the untruth. Unfortunately, I see his attempt to do this again in this response.

I am very aware of Mr. Woodard's skillful wording, in fact the techniques he uses simply jump off the paper in his response. Therefor, I am providing a very detailed answer, as it is critical that I communicate the full ability of Mr. Woodard's skills to deceive and avoid detection. In addition as demonstrated in Section 1, Mr. Woodard has intentionally lied as to his involvement in the Western District, solely in an attempted to deceive this committee.

As determined in the conclusion, Mr. Woodard's response provides no valid explanation or defense to the allegation raised in my complaint filed with the Grievance Committee Mach 25, 2010. That allegation being as quoted "a fundamental violation of the *"Rules of Professional Conduct Client-Lawyer Relationship"*, being Rule 1.7 Conflict Of Interest: Current Clients. This violation explains all of Mr. Woodard detrimental actions".

However Mr. Woodard's attempts to explain away his conflict by narrowing the scope of who he represents. Self proclaiming, he represents an entity created in the bankruptcy process call the "Estate". Interesting the Estate has no voice or life, it is created for the benefit of all Creditors and Debtors in the Bankruptcy process. Further it is critical that a appointed Trustee represents the Estate and in turn all Creditors and Debtors looking to benefit from its proper dissolution.

I would presume that if the Estate could be aware that Mr. Woodard was brought into this district as a operator for significant clients of Harris Beach. Then once being appointed as the Interim Trustee, his sole purpose was, as demonstrated, to plunder the Estate and find or create evidence to silence the

debtor. All, for the sole purpose of advancing the agenda of the influential clients of his law firm. I am staunchly sure that the Estate would cry loud and clear of the ethics violations that are occurring.

This is exactly the reason that Mr. Woodard's cannot narrow his scope of his client, to those unable to speak. As the Federal Bankruptcy Laws have indeed given the Estate a voice, and that voice is that of:

- 1) Debtor looking for the benefit of a surplus in funds,
- 2) Unsecured Creditors looking for 100% payment of their claims,
- 3) The Federal Procedures assuring Chapter 7 debtors are qualified to be debtors(Means Test).
- 4) all others "persons in interest" involved in the adjudication of the case.

Nowhere in any federal law does it identify the significant clients Mr. Woodard is attempting to benefit at the detriment of the actual participants in the process.

Clearly Mr. Woodard's client is the Interest of the Estate which relates directly to the Debtor and Creditors of the Bankruptcy.

Mr. Woodard's has failed to properly:

- 1) Identified conflicts of interest,
- 2) Notified the proper clients / parties and
- 3) Sought to resolve these conflicts in an ethical process.

He has done this in both his appointment as Trustee and also in his efforts to appoint Harris Beach as attorney for the Trustee.

Finally, I believe that a reasonable attorney would conclude that Mr. Woodard's representation and conflicts identified would involve him in representing differing interests, adverse to each other and further, there is a significant risk that the Mr. Woodard's professional judgment on behalf of a Estate, Creditors and Debtors will be adversely affected by Mr. Woodard's and Harris Beach's own financial, business, property or other personal interests¹.

The following table of contents summaries a review of the major areas in Mr. Woodard's response, and the technique used to avoid answering the complaint, with the detail to follow. I have also attached a Marked up version of Mr. Woodard's response to assist in following this review (Exhibit A).

¹ As demonstrated in benefiting the firms high profile clients.

Table of Contents Regarding Mr. Woodard's Response

| | |
|---|----|
| 1. Review of Paragraph 1 - Woodard's Response May 27, 2010: | 5 |
| • Technique 1: Using a compound sentence to mix fact with lies, attempting to carry the lie as the truth. | |
| • The simple fact is that Mr. Woodard has never been appointed to a case in the Western District , which is exactly one of the foundations of my concerns. See Exhibit B, in which a search of all Chapter 7 cases in the Western District of New York from June 2000 to 6-2010, absolutely demonstrate the only cases Mr. Woodard has been assigned to are my three . Mr. Woodard is lying and has been caught without question. | |
| • Technique 2: Simply dodging the main question in an attempt to throw off the reader. | |
| 2. Review of Paragraph 2 - Woodard's Response May 27, 2010 | 7 |
| • Technique 3: Assuming the reader will not fully read the reference document, or read only relative to the focus he has set. | |
| 3. Review of Para. 2 - 2 nd sentence to Paragraph 3 - Woodard's Response 5/27/10. .. | 8 |
| • Technique 4: Using his authority as a "Bankruptcy Expert" to establish facts that support his actions but are simply lies. | |
| 4. Review of paragraph 4 - Woodard's response May 27, 2010 | 10 |
| • Technique 5: Mr. Woodard, attempts to discredit me by accusing me of lying and then say | |
| 5. Review of paragraph 5 and 6 - Woodard's response May 27, 2010: | 11 |
| • Technique 6: Mr. Woodard, build on false facts that he establishes in the beginning to further establish his actions. | |
| 6. Review of paragraph 7 and 8 - Woodard's response May 27, 2010: | 13 |
| • Technique 7: Mr. Woodard, hiding behind Judge Ninfo. | |
| • Clearly Judge Ninfo issued no findings of facts, no determination as to the merits of my pleading, nothing in his order issued and shown above. Simply that I failed to appear. | |
| • However in essence this is yet another example of Judge Ninfo and Trustee Woodard protecting each other, that is the only conclusion that could be draw here. | |
| 7. Concern of Retaliatory Attacks: | 15 |
| • Woodard's actions continue to escalate, as it seems, I am in a foot race with Mr. Woodard, were he is using all efforts to silence me | |
| • sole purposes of "sweetening the deal" in a sale of property and business to a buyer arranged by a Mr. Malta, who is of course the real estate agent for Fico and Scutti. | |

- So distraught, Ms. Farsace actually brought certain documents in and without representation and under significant duress. Mr. Woodard deposed her
- As conveyed to Frumusa by an Attorney watching in disbelief, Mr. Woodard despicable actions,

8. Conclusions 16

- Finally, I believe that a reasonable attorney would conclude that Mr. Woodard's representation and conflicts identified would involve him in representing differing interests, adverse to each other and further, there is a significant risk that the Mr. Woodard's professional judgment on behalf of a Estate, Creditors and Debtors will be adversely affected by Mr. Woodard's and Harris Beach's own financial, business, property or other personal interests.

9. Next Steps 18

- to immediately remove Mr. Woodard from his position and his ability to continually harm myself and the Creditors.
- apply for protection as a victim of Federal Bankruptcy Fraud under Title 18 U.S.C. § 3771. Crime victims' rights act.

1. **Review of Paragraph 1 - Woodard's Response May 27, 2010:**

Specific text as defined above is copied here for clarity:

I am in receipt of your confidential letter dated May 19, 2010. I am a Member of Harris Beach PLLC ("Harris Beach"). [REDACTED]

[REDACTED] *I was appointed as Interim Trustee of the Chapter 7 bankruptcy proceeding of Lawrence Frumusa ("Frumusa") on August 7, 2009. On August 11, 2009, I made an Application for the appointment of Harris Beach as counsel to the Trustee in Frumusa's individual bankruptcy proceeding. I have attached a copy of the Application for Appointment of Counsel and my Affidavit in support of the appointment of Harris Beach as counsel as Exhibits 1 and 2.*

Technique 1. Using a compound sentence to mix fact with misrepresentations, attempting to carry the false statements as the truth.

1. As demonstrated in the second sentence where Mr. Woodard states

".... In addition, I am an approved Panel Trustee, regularly appointed to Chapter 7 cases by the Office of the United States Trustee ("UST") in both the Northern and Western Districts of New York."

Here Mr. Woodard attempts to establish he is regularly appointed in the Northern District, which is true as this is the Syracuse District. However he attempts to drag along the fact that he is also regularly appointed in the Western District, which is where my cases are and the controversy is in play.

The simple fact is that Mr. Woodard has **never been appointed to a case in the Western District**, which is exactly one of the foundations of my concerns. See Exhibit B, in which a search of all Chapter 7 cases in the Western District of New York from June 2000 to June 2010, **absolutely demonstrate the only cases Mr. Woodard has been assigned to are my three. Mr. Woodard is lying and has been caught without question.**

In fact this concern was raised directly in my complaint to the Grievance Committee, March 25, 2010. See paragraph 5 and copied here for clarity:

"The appointment of Mr. Woodard from the start was very concerning to me. Mr. Woodard, first and foremost an attorney licensed to practice in New York State, was in addition registered as a Federal Chapter 7 Trustee in the New York Northern Judicial District. This district includes the Syracuse area where

his office is located. However he was chosen as a Trustee in my case out of his registered Federal Judicial District. In fact chosen over some 45 other properly registered Federal Chapter 7 Trustees of the New York Western Judicial District."

Technique 2. Simply dodging the main question in an attempt to throw off the reader.

1. As demonstrated in the third and fourth sentence.

"I was appointed as Interim Trustee of the Chapter 7 bankruptcy proceeding of Lawrence Frumusa ("Frumusa") on August 7, 2009. On August 11, 2009, I made an Application for the appointment of Harris Beach as counsel to the Trustee in Frumusa's individual bankruptcy proceeding. I have attached a copy of the Application for Appointment of Counsel and my Affidavit in support of the appointment of Harris Beach as counsel as Exhibits 1 and 2."

Once again Mr. Woodard immediately shifts the focus to Mr. Woodard's application to Hire his firm, Harris Beach, as attorneys for the Trustee and conflicts with them.

However, Mr. Woodard, the central issues here is Mr. Woodard's appointment as Trustee and the concerns around his appointment, such as 1) notice of conflicts, 2) reason for being brought in from another district, 3) destructive actions of his, etc.

2. Not until page 3, the seventh paragraph does Mr. Woodard attempt to address his appointment, also copied here for clarity:

"It should also be noted that Frumusa incorrectly states, when referring to my appointment as Trustee, "In my view this creates a fiduciary attorney-client relationship for myself and my estate, and it is critical the attorney acts in accordance with the 'Rules of professional conduct client, lawyer relationship.'" There simply is no attorney-client relationship between Frumusa and me or between Frumusa and Harris Beach. It is noteworthy that Frumusa has been advised of this fact dating back to August of 2009 when I was appointed the Trustee in his case. It would be disingenuous for Frumusa to allege that he has not been advised of this fact on countless occasions."

As demonstrated above and buried in the document Mr. Woodard attempts to address the basic allegation of my complaint, why Mr. Woodard?

True to form Mr. Woodard attempts to deny the allegation and then accuses me that I was told of this and tough luck. Once again Mr. Woodard is misrepresenting the truth as demonstrated in Exhibit C, affidavits filed with the court, in which I demonstrate that my

Estate, handled properly would indeed yield a surplus for my benefit. Thus as demonstrated in the cited case law, I am indeed afforded the same standing as the Estate and other Creditors.

Further Mr. Woodard attempts to justify his actions, by alleging that I have no say and I was told that. Here again, Mr. Woodard is absolutely wrong. Actions such as his are so egregious, they violate all ethical laws.

Finally where is the announcement of his conflicts, the application he submitted for himself to be appointed, or just a simple truthful answer as to why he was brought into this district period!

Mr. Woodard has completely avoided the central issues in my complaint and his actions, by now going off on a purposeful tangent to mislead the reader. However as I address all of Mr. Woodard's techniques, even as they apply to his tangent. The reader will find that his answer is simply void of any facts and demonstrates a concerning boldness.

2. Review of Paragraph 2 - Woodard's Response May 27, 2010

Specific text as defined above is copied here for clarity:

" Pursuant to United States Bankruptcy Code § 327, the Trustee, with the court's approval, may employ counsel if it does not "hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the Trustee in carrying out the Trustee's duties under this title." "In a case under Chapter 7.. .a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States Trustee, in which case the Court shall disapprove such employment if there is an actual conflict of interest." See § 327(c) United States Bankruptcy Code. "

Technique 3. Assuming the reader will not fully read the reference document, or read only relative to the focus he has set.

1. As demonstrated in this paragraph, Woodard directs the reader to section § 327(c) of the US Code Rule 327. However he fails to mention that section § 327(a), which sets out the intent of the rule is clearly as follows: (see Exhibit F complete Rule 327)

§ 327 (a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or

represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

Note last sentence, "that do not hold or represent an interest adverse to the estate,..". Clearly the intent of the law is that the Trustee should in the first instance hire an attorney not adverse to the Estate and section (c) is an exception case and a method to handle it.

3. Review of Para. 2 - 2nd sentence to Paragraph 3 - Woodard's Response 5/27/10.

Specific text as defined above is copied here for clarity:

"In a case under Chapter 7.. .a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States Trustee, in which case the Court shall disapprove such employment if there is an actual conflict of interest." See § 327(c) United States Bankruptcy Code.

A law firm may be disinterested even if it previously represented an interest adverse to the estate. See In Re: Arochem. 176 F3d 610 (2d Cir. 1999). The Trustee is, however, required to comply with Rule 2014 of the Federal Rules of Bankruptcy Procedure. [REDACTED]

[REDACTED] in order to determine whether there are any potential conflicts. Frumusa filed a list of creditors with his Petition, and this list is attached hereto as Exhibit 3. Upon reviewing the list of creditors, I appropriately included in Paragraph 5 of my Application for Appointment (Exhibit 1) a disclosure that Harris Beach represents, "M&T Bank, Bank of America, HSBC Bank and JP Morgan Chase in various legal matters unrelated to this case. Harris Beach also represented Rochester Countertop, Inc. d/b/a Premier Cabinet Wholesalers and American Rentals LLC d/b/a Volvo Rents in this case who are unsecured creditors by virtue of personal guarantees executed by the Debtor. The Trustee believes this representation does not create a conflict since the Trustee is "united in interest" with these creditors. In the event that a conflict arises, the Trustee shall obtain conflict counsel to represent the estate's interest in that matter." (See Exhibit 1, para. 5) Furthermore, I once again disclose in my Affidavit the potential conflicts (See Exhibit 2, para. 3 [REDACTED])

[REDACTED] *The Court approved the appointment of Harris Beach as counsel to the Trustee.*

Technique 4. Using his authority as a "Bankruptcy Expert" to establish facts that support his actions but are simply lies.

1. Here, I am amazed by Mr. Woodard's boldness in putting forth the obvious misrepresentation above. Mr. Woodard asserts that reviewing the Creditors list provided by the Debtor is sufficient to determine any conflicts in his the Trustee's application to employee counsel. This is absolutely untrue! Below is the statement in US Code - Rule 2014 Employment of Professional Persons: (Exhibit G Complete Rule 2014)

"The application shall state and, to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee"

Clearly this means Mr. Woodard must list everyone and anyone that could negatively impact the case, not just those Creditors listed on the Debtors schedules. Which most of the time the list is inaccurate or incomplete.

Further the last sentence Mr. Woodard states The application shall states as to his application that.

"No objection was made by Frumusa, the United States Trustee, any creditors or any other parties in interest."

This statement is appalling, as Mr. Woodard is in full knowledge of the environment that was surrounding these cases in August of 2009. Factor such as the Unsecured Creditors were denied their rights to counsel, I was also denied my right to counsel, I had assets valued millions of dollars just converted to a liquidation. Converted over the objections of myself and Unsecured Creditors. Now some 10 months later, Mr. Woodard attempts to say -- well they did not object, so tough.

Mr. Woodard a licensed attorney in New York who specializes in Bankruptcy, had an obligation to assure all interested persons were 1) notified, 2) understood and 3) aware of the entire set of conflicts. However what he chose to do is capitalizes on the disadvantage and intentional shutting out of Unsecured Creditors and the Debtors from these proceeding by not allowing representation.

2. Now for the final appalling discovery of Frumusa, see Exhibit D Ninfo's orders approving the Application of Mr. Woodard. The first paragraph.

An Application having been made for the appointment of an attorney for the Interim Trustee herein, and it appearing that the services of an attorney are or will be required, and that the appointment hereinafter made is acceptable to such Interim Trustee, and no adverse interest being represented, and no notice to creditors need be given.

Mr. Woodard did not provide notice to the Creditors of his application for which now in 2010, 10 months later, Mr. Woodard smartly says --- Well no one objected so tough luck ---.

Mr. Woodard intentionally conspired with the Court and never told anyone about this application. In fact I never realized this application existed, until Mr. Woodard referenced it in his response of May 27, 2010.

In fact in Paragraph 2 (Item 2 above) Mr. Woodard quotes Rule 327(c) that a person is only "disqualified if a objection by another Creditor or the US Trustee". Clearly in Judge Ninfo's order they never told anyone! Just like stacking the deck and obviously taking advantage of myself and the unsecured creditors by ramming his firms appointment through.

4. Review of paragraph 4 - Woodard's response May 27, 2010

Specific text as defined above is copied here for clarity:

"Frumusa complains of alleged conflicts of interest in relation to Rochester Countertop, Inc. ("Rochester Countertop"), Fedele Scutti ("Scutti") and Louis Fico ("Fico"). Referring to Rochester Countertop, Frumusa avers that, "With extensive confusion created by Mr. Woodard, I had not realized that Woodard himself and another attorney on his team directly represent an adversary creditor in my bankruptcy case! Amazing." (See Frumusa letter dated March 25, 2010.) To demonstrate the disingenuous nature of this statement, I refer you to Exhibit 3, the creditor list filed by Frumusa in his case, which lists Rochester Countertop three different times with Harris Beach PLLC, Kevin Tompsett, Esq. as the contact person. This is information provided by Frumusa to the Bankruptcy Court at the time he filed the Petition in June of 2009. [REDACTED]

Technique 5. Mr. Woodard, attempts to discredit me by accusing me of lying and then say see - see I found this shred of "evidence" or remote statement by Frumusa and it demonstrates Frumusa is lying and his intentions are disingenuous.

1. Mr. Woodard, is fully aware that his "Exhibit 3, the creditor list filed by Frumusa in his case, which lists Rochester Countertop three different times with Harris Beach PLLC, Kevin

Tompsett, Esq. as the contact person." were submitted by my personal attorney at that time, who retrieved the information from the submissions of Creditor and their attorneys in my prior case. I was not aware of this minute detail - period. I would think Mr. Woodard should produce a signed waiver of conflict instead of grasping for ridiculous reasoning's such as this.

5. Review of paragraph 5 and 6 - Woodard's response May 27, 2010:

Specific text as defined above is copied here for clarity:

"Regarding Scutti and Fico, Frumusa alleges, "I discovered in the spring of 2010 that Mr. Woodard and his firm, Harris Beach PLLC, concurrently are representing clients which are significant adversaries of mine and involved in the current bankruptcy case." (See Frumusa letter dated March 25, 2010.) I again refer you to Exhibit 3, the creditor list provided by Frumusa to the Bankruptcy Court, which [REDACTED] Frumusa is obligated to identify all creditors in his petition and schedules.

Moreover, there is no listing of any entity I am aware of in which Scutti or Fico have any involvement. It is important to note that Frumusa does not reference [REDACTED] but rather discusses them as "adversaries." Consequently, as Trustee I would have no reason to know that Scutti or Fico were creditors in Frumusa's case. [REDACTED]

[REDACTED] Moreover, based upon the information uncovered in this case, to this day it does not appear that [REDACTED]

[REDACTED]"

Technique 6. Mr. Woodard, builds on false facts that he establishes in the beginning to further justify his actions.

1. In this case he is attempting to build on his earlier invalid statement that a conflicted person must be a Creditor and in addition must be submitted by debtor (Frumusa) on his schedules. Then Mr. Woodard goes on to say that he knows nothing about the Scutti Fico controversy. I must say this is laughable. Refer back to Exhibit B of my complaint line item #14, copied here for clarity:

"14 Examples of conflict concerns are:

a) Trustee Woodard has consistently allowed Mr. Fico to appear in Frumusa 341 meeting and 2004 meetings without acknowledging Mr. Fico and requiring him to state his name on the record. Even over the objection of

Frumusa, Trustee Woodard still provides Mr. Fico special considerations to attend without being on the record. (see Exhibit A item 4).

b) Trustee Woodard was made aware in August 2009, that Mr. Fico was adversely retaining an SUV automobile of the Frumusa Estate and the property should be recovered and secured by the Trustee. Frumusa has asked repeatedly if the automobile has been picked up from Mr. Fico, with no response or simple evasive response from Trustee Woodard. As of to date the automobile is still in the possession of Mr. Fico.

c) Trustee Woodard intentionally disrupted an adversary action, in which Mr. Fico was a defendant, were Frumusa was attempting to recover significant assets of the Estate. Trustee Woodard acting in the capacity as a Trustee, submitted affidavits causing this action to be dismissed. Such disruption was once again at the detriment of the Estate, however benefited Mr. Fico.

15. As well known Frumusa, was recently involved in a partnership dispute with these gentlemen, in which as alleged by Frumusa, Mr. Fedele V. Scutti and Mr. Louis C. Fico attempted to cause significant financial damage to Frumusa (docket # 5043-05).

16. However, Mr. Fedele V. Scutti and Mr. Louis C. Fico at the conclusion of the dispute, were required to pay Frumusa a sum of \$1,000,000.

17. Further Frumusa in defense of unsecured creditors, who were also targeted by Mr. Fedele V. Scutti and Mr. Louis C. Fico, supported a Federal Court bankruptcy action which resulted in Mr. Fedele V. Scutti and Mr. Louis C. Fico order to pay all unsecured creditors in full and with 9% interest from the invoice due date. An amount of approximately \$550,000 (Federal Case # 06- 20031).

18. As generally known these gentleman have a significant dissatisfaction with Frumusa."

Mr. Woodard saying he knows nothing is absurd, and is nothing more than a lie to protect his associates.

These person are significant conflicts as demonstrated by Mr. Woodard actions above and the latest scheme in which I uncovered a plot in which Trustee Woodard and others illegally transferred property of the Debtor's Estate and diverted Estate money to Mr. Fico and Mr. Scutti.

No Mr. Woodard, I do not believe you when you alleged you have no knowledge of any conflicts with the above.

6. Review of paragraph 7 and 8 - Woodard's response May 27, 2010:

Specific text as defined above is copied here for clarity:

"Frumusa provided the Committee with, among other documents, the objection submitted by me as Trustee to Frumusa's amended motion to remove me as Trustee for cause. To the extent that the objection clearly sets forth and amplifies my position set out herein, the objection is attached hereto and made a part hereof as Exhibit 4. I respectfully encourage the Committee to review the objection. The objection formed the basis for the decision by the Honorable John C. Ninfo ("Judge Ninfo") to deny Frumusa's motion to remove me as Trustee.

Your May 19, 2010 letter indicated that the Court seemingly denied Frumusa's motion because of his non-appearance. While the Order did reference Frumusa's non-appearance, the motion was denied because of Frumusa's failure to prove any of his allegations. The Court indicated, "Clearly, from all the proceedings that I have seen, there has been no actual injury to the estate in any way, certainly no fraud, clearly no intentional conduct of a detrimental nature by the Trustee for any negligence; also, no delay in the administration - that I can determine ~ of the estate except delay caused by the lack of Mr. Frumusa's cooperation. There is no actual conflict with the creditors that I am aware of other than the disclosed, potential conflict with Premier Cabinet Wholesalers. That was completely disclosed and there was no opposition at the time by the United States Trustee's Office based upon the disclosure. So overall, there is simply no basis for a finding of cause under Section 324(a) for the removal of Mr. Woodard as Trustee." The Court went on to say, "So it is clear that Mr. Frumusa has not met his burden in any way under Section 324(a) to warrant this cause and to find cause and remove Mr. Woodard. I am going to deny the motion." (See a transcript of the hearing attached hereto as Exhibit 5.)

Technique 7. Mr. Woodard, hiding behind Judge Ninfo and vice-versa.

1. This volley between Mr. Woodard and Judge Ninfo is very evident in all these actions and in fact I have raised this issue several times. Here again the actual memorializing of the decision and order relative to the Motion to Remove Mr. Woodard is contained solely in the order Issued by Judge Ninfo and attached as Exhibit H, additionally copied here for clarity.

**ORDER DENYING DEBTOR'S MOTION TO
REMOVE TRUSTEE LEE E. WOODARD**

Upon the amended motion of Lawrence Frumusa ("Debtor") to remove Trustee Lee E. Woodard dated March 31, 2010 (the "Motion") and Lee E. Woodard, Chapter 7 Trustee by and through his counsel David M. Capriotti, Esq. of Harris Beach PLLC (the "Trustee") having submitted an objection to the Motion dated April 2, 2010, and the hearing have come to be heard on the 7th day of April, 2010, at 11 :00 o'clock in the forenoon of that day, with the Trustee by and through his counsel David M. Capriotti, Esq. of Harris Beach PLLC, having appeared in opposition to the Motion; and the Debtor, having failed to appear on the Motion, and due deliberation having been had thereon; it is hereby

ORDERED, that the Debtor's Motion is denied in its entirety"

2. Clearly Judge Ninfo issued no findings of facts, no determination as to the merits of my pleading, nothing in his order issued and shown above. Simply that I failed to appear.

In fact Judge Ninfo, is fully aware of the conflict with Scutti and Fico. As it was in Judge Ninfo's Court that I, Frumusa in defense of unsecured creditors, who were also targeted by Mr. Fedele V. Scutti and Mr. Louis C. Fico, supported a Federal Court bankruptcy action which resulted in Mr. Fedele V. Scutti and Mr. Louis C. Fico order to pay all unsecured creditors in full and with 9% interest from the invoice due date. An amount of approximately \$550,000 (Federal Case # 06- 20031).

In fact we succeeded in spite of Judge Ninfo's attempts to derail us. As demonstrated then as now the truth and justice will prevailed.

Judge Ninfo, surely could not provide a finding of fact that no conflict existed, as that would be an action by Judge Ninfo's rising to the level of impeachment.

However Judge Ninfo carries on in the Transcripts, with really no affirmative conclusion, however provides a convenient hook for Mr. Woodard to hang his hat on. The details in the transcripts are irrelevant in light of the Order entered and the fact they proceeded without Frumusa being present.

However in essence this is yet another example of Judge Ninfo and Trustee Woodard protecting each other, that is the only conclusion that could be draw here.

3. However this protection is not the question before us in this form. The question is relative to the action of Mr. Woodard and if the hearing held on April 7, 2010 holds any credibility in support of Mr. Woodard.

I will refer you back to my original complaint in which I stated as follows:

"As in this case, a hearing was scheduled in the Federal Bankruptcy court to hear arguments and decide my Motion to Remove Mr. Woodard. On April 7, 2010 the hearing was conducted, I was unable to attend as I was researching Fraudulent Claims of another Trustee in a related issue, emailed Mr. Woodard and informed him that I was not able to attend, and please reschedule the hearing.

However Mr. Woodard attended the hearing making no mention of my status and Judge Ninfo with Mr. Woodard unilaterally decided, without my presents, to deny my motion. See Exhibit D, Judge Ninfo Order denying Frumusa motion.

This action alone, regardless if I contacted Mr. Woodard or not, deciding a Motion such as mine without my presents and on the first hearing, concluded the Court's and Mr. Woodard's desire to silence my objections.

Any reasonable proceedings would have automatically inquired as to my where about and if nothing more simply allow me the courtesy of a delay to provide me adequate opportunity to be heard. However neither Judge Ninfo or Mr. Woodard allowed that."

Clearly any reasonable person seeing that a Federal Bankruptcy Judge and a Trustee in a personal case, took the action to adversely order against a pro-se debtor without his attendance, without allowing for inquire into his situation, or the courtesy of a simple delay. Demonstrates irrefutably the definite and plan intent to abuse this debtor, Frumusa.

One only has to know about good Human Nature and Bad Human Nature to see the incredible destructive and evil intentions these two individuals have towards Frumusa. Then the conclusion that Judge Ninfo's order is meaningless is valid.

7. Concern of Retaliatory Attacks:

As I mentioned in my correspondences of June 3, 2010 and May 25, 2010, Mr. Woodard's has demonstrated his anger over my attempting to expose his actions by filing this complaint with the Grievance Committee for the Fifth Judicial District. Woodard's actions continue to escalate, as it seems I am in a foot race with Mr. Woodard, were he is using all efforts to silence me.

As an example of the latest incident occurring June 9, 2010, Mr. Woodard provided a notice of Motion by US Mail to Paula Farsace. In such motion Mr. Woodard was going to request permission from the Court by an order allowing him to depose Ms. Farsace.

Ms. Farsace, owner of Pebble Beach Inc. with assets that were an operating car wash business, was the victim of Mr. Woodard actions in 2009. Ms. Farsace, as a result of her association and support of

Frumusa, received the full force of Mr. Woodard's raft. In which Mr. Woodard confiscated her Business, leaving her with significant debt and no assets (Detailed in Exhibit E), for the sole purposes of "sweetening the deal" in a sale of property and business to a buyer arranged by a Mr. Malta, who is of course the real estate agent for Fico and Scutti.

However when Ms. Farsace received the latest action she called Harris Beach to ask what was going on? In the call she was threatened that if she did not bring certain documents in to court for the hearing they would make it rough for her. They demanded that if she wanted to end it now to bring in these documents and testify at the Hearing for the Motion requesting an order.

So distraught, Ms. Farsace actually brought certain documents in and without representation and under significant duress. Mr. Woodard deposed her and grilled her seeking to have her incriminate me so he could move forward in manufacturing evidence to silence me.

These actions are amazing as to the significant violations of attorney ethics that occurred here, by discussing the case directly to a individual, without requesting them to have representation, then threatening her to produce evidence, even before a Court Order was issued allowing the deposition.

Finally without representation and under duress deposing her under oath. Which as conveyed to me by an attorney present and waiting for his case to be called, watching in disbelief Mr. Woodard despicable actions, of which I am obtaining the transcripts.

As ridiculous as the above incident, this is exactly how Mr. Woodard has conducted himself. However currently he is not concern at all regarding consequences. As typical, in which a person having been exposed and realizes that the only way to save himself is to retaliate.

8. Conclusions

Frankly continuing this document is upsetting me greatly, in the fact that these individuals can be so evil that even in light of the absolute truth being exposed they continue to foolishly attempt to spin there evil lies.

Also the balance of the document is just continual attempts to discredit me as I seek justice, they have no bearing on these issues and only discredit Mr. Woodard further.

What I have conveyed in this complaint is just a small fraction of the atrocities Mr. Woodard and these people have casted on me. Action by Mr. Woodard acting as a Trustee empowered by the Federal Laws of Bankruptcy, which specifically provide untold control of a person's life. Laws designed solely for the purposes of assisting a debtor to a path of recovery, and a second chance.

However Mr. Woodard has abused this power and more importantly the control provided to devastate me for the sole purposes of advancing the criminal agenda of a few. Words cannot explain the effect on my

life these types of actions have had. I can only now in a much greater and solid sense of understand the trauma the Jewish people in Nazi Germany felt.

These actions by Mr. Woodard a Licensed Attorney in the State of New York, who as his title indicates (is an expert in the Bankruptcy Practice of law, are not just simple errors. The actions and then his attempt to deceive the Committee by this response, demonstrate a willful, intentional and decisive plot to damage Frumusa, the Estate and the Creditors. For the sole purposes of satisfying and promoting the agenda of significant clients of Harris Beach.

As demonstrated above by the valid and truthful allegations I have made. Irrefutably demonstrate Mr. Woodard conflicts and the fact that Mr. Woodard is interfering and abusing the Federal Bankruptcy process.

However, if a person with considerable knowledge of the Bankruptcy Laws and Procedures were to review all events of Mr. Woodard during these case. They would absolutely and irrefutably see that Mr. Woodard as a Licensed Attorney and the Appointed Interim Trustee, has played a significant part in the criminal agenda of an enterprise operating to commit bankruptcy fraud.

Clearly Mr. Woodard's proper client's are the Interest of the Estate which relates directly to the Debtor and Creditors of the Bankruptcy.

Mr. Woodard's has failed to properly:

- 1) Identified conflicts of interest as related to himself and his firm.
- 2) Notified the proper clients / parties of these clients.
- 3) Sought to resolve these conflicts in an ethical process.

He has done this in both his appointment as Trustee and also his efforts to appoint Harris Beach as attorney for the Trustee.

Finally, I believe that a reasonable attorney would conclude that Mr. Woodard's representation and conflicts identified, would indeed involve him in representing differing interests, adverse to each other. Further, there is a significant risk that the Mr. Woodard's professional judgment on behalf of a Estate, Creditors and Debtors will be adversely affected by Mr. Woodard's and Harris Beach's own financial, business, property or other personal interests².

So the one question I had at the onset is still unanswered --- Why Mr. Woodard? I will let your imagination run a bit, however I absolutely know why Mr. Woodard? and it has been confirmed by Mr. Woodard's response or lack of response herein.

² As demonstrated in benefiting the firms high profile Client.

9. Next Steps

As demonstrated Mr. Woodard is a dangerous person, and wrongfully empowered by the Federal Bankruptcy Laws with significant control over my Life and the Creditors of my Estate, therefor:

- 1) I would request that the Committee act swiftly and decisively to immediately remove Mr. Woodard from his position and his ability to continually harm myself and the Creditors.
- 2) Additional, I would request the support of the Committee as I refer these issues to the US Attorney Office of Northern District of New York and apply for protection as a victim of Federal Bankruptcy Fraud under Title 18 U.S.C. § 3771. Crime victims' rights act.

I will awaited your reply.

Regards,



Larry Frumusa

cc: Mr. Gigliotti

VIA MESSENGER

May 27, 2010

RECEIVED

MAY 28 2010

GRIEVANCE COMMITTEE

H.D.

State of New York Attorney Grievance Committee
for the Fifth Judicial District
Attention: Sheryl M. Crankshaw
224 Harrison Street, Suite 408
Syracuse, NY 13202-3066

Re: Complaint of Larry Frumusa

Dear Ms. Crankshaw:

Paragraph 1

I am in receipt of your confidential letter dated May 19, 2010. I am a Member of Harris Beach PLLC ("Harris Beach"). In addition, I am an approved Panel Trustee, regularly appointed to Chapter 7 cases by the Office of the United States Trustee ("UST") in both the Northern and Western Districts of New York. I was appointed as Interim Trustee of the Chapter 7 bankruptcy proceeding of Lawrence Frumusa ("Frumusa") on August 7, 2009. On August 11, 2009, I made an Application for the appointment of Harris Beach as counsel to the Trustee in Frumusa's individual bankruptcy proceeding. I have attached a copy of the Application for Appointment of Counsel and my Affidavit in support of the appointment of Harris Beach as counsel as **Exhibits 1 and 2**.

Paragraph 2

Pursuant to United States Bankruptcy Code § 327, the Trustee, with the court's approval, may employ counsel if it does not "hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the Trustee in carrying out the Trustee's duties under this title." "In a case under Chapter 7...a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States Trustee, in which case the Court shall disapprove such employment if there is an actual conflict of interest." See § 327(c) United States Bankruptcy Code.

Paragraph 3

A law firm may be disinterested even if it previously represented an interest adverse to the estate. See In Re: Arochem, 176 F3d 610 (2d Cir. 1999). The Trustee is, however, required to comply with Rule 2014 of the Federal Rules of Bankruptcy Procedure. Consequently, upon receipt of the file, it is our regular practice to review the list of creditors filed by the Debtor in

Paragraph 3 cont.

order to determine whether there are any potential conflicts. Frumusa filed a list of creditors with his Petition, and this list is attached hereto as **Exhibit 3**. Upon reviewing the list of creditors, I appropriately included in Paragraph 5 of my Application for Appointment (Exhibit 1) a disclosure that Harris Beach represents, "M&T Bank, Bank of America, HSBC Bank and JP Morgan Chase in various legal matters unrelated to this case. Harris Beach also represented Rochester Countertop, Inc. d/b/a Premier Cabinet Wholesalers and American Rentals LLC d/b/a Volvo Rents in this case who are unsecured creditors by virtue of personal guarantees executed by the Debtor. The Trustee believes this representation does not create a conflict since the Trustee is "united in interest" with these creditors. In the event that a conflict arises, the Trustee shall obtain conflict counsel to represent the estate's interest in that matter." (See Exhibit 1, ¶ 5) Furthermore, I once again disclose in my Affidavit the potential conflicts (See Exhibit 2, ¶ 3) No objection was made by Frumusa, the United States Trustee, any creditors or any other parties in interest. The Court approved the appointment of Harris Beach as counsel to the Trustee.

Paragraph 4

Frumusa complains of alleged conflicts of interest in relation to Rochester Countertop, Inc. ("Rochester Countertop"), Fedele Scutti ("Scutti") and Louis Fico ("Fico"). Referring to Rochester Countertop, Frumusa avers that, "With extensive confusion created by Mr. Woodard, I had not realized that Woodard himself and another attorney on his team directly represent an adversary creditor in my bankruptcy case! Amazing." (See Frumusa letter dated March 25, 2010.) To demonstrate the disingenuous nature of this statement, I refer you to Exhibit 3, the creditor list filed by Frumusa in his case, which lists Rochester Countertop three different times with Harris Beach PLLC, Kevin Tompsett, Esq. as the contact person. **This is information provided by Frumusa to the Bankruptcy Court at the time he filed the Petition in June of 2009.** Clearly, he was aware of Harris Beach's representation of Rochester Countertop.

Paragraph 5

Regarding Scutti and Fico, Frumusa alleges, "~~I~~ discovered in the spring of 2010 that Mr. Woodard and his firm, Harris Beach PLLC, concurrently are representing clients which are significant adversaries of mine and involved in the current bankruptcy case." (See Frumusa letter dated March 25, 2010.) I again refer you to Exhibit 3, the creditor list provided by Frumusa to the Bankruptcy Court, which identifies neither Scutti nor Fico as creditors. Frumusa is obligated to identify all creditors in his petition and schedules. Moreover, there is no listing of any entity I am aware of in which Scutti or Fico have any involvement.

Paragraph 6

It is important to note that Frumusa does not reference Scutti or Fico as "creditors" but rather discusses them as "adversaries." Consequently, as Trustee I would have no reason to know that Scutti or Fico were creditors in Frumusa's case. No conflict check would even be done as they are not identified as having any involvement with the case. Moreover, based upon the information uncovered in this case, to this day it does not appear that Scutti or Fico are creditors of Frumusa. Simply put, there is no conflict of interest.

It should also be noted that Frumusa incorrectly states, when referring to my appointment as Trustee, "In my view this creates a fiduciary attorney-client relationship for myself and my estate, and it is critical the attorney acts in accordance with the 'Rules of professional conduct client, lawyer relationship.'" There simply is no attorney-client relationship between Frumusa and me or between Frumusa and Harris Beach. It is noteworthy that Frumusa has been advised of this fact dating back to August of 2009 when I was appointed the Trustee in his case. It would be disingenuous for Frumusa to allege that he has not been advised of this fact on countless occasions.

Paragraph 7

Frumusa provided the Committee with, among other documents, the objection submitted by me as Trustee to Frumusa's amended motion to remove me as Trustee for cause. To the extent that the objection clearly sets forth and amplifies my position set out herein, the objection is attached hereto and made a part hereof as **Exhibit 4**. I respectfully encourage the Committee to review the objection. The objection formed the basis for the decision by the Honorable John C. Ninfo ("Judge Ninfo") to deny Frumusa's motion to remove me as Trustee.

Paragraph 8

Your May 19, 2010 letter indicated that the Court seemingly denied Frumusa's motion because of his non-appearance. While the Order did reference Frumusa's non-appearance, the motion was denied because of Frumusa's failure to prove any of his allegations. The Court indicated, "Clearly, from all the proceedings that I have seen, there has been no actual injury to the estate in any way, certainly no fraud, clearly no intentional conduct of a detrimental nature by the Trustee for any negligence; also, no delay in the administration -- that I can determine -- of the estate except delay caused by the lack of Mr. Frumusa's cooperation. There is no actual conflict with the creditors that I am aware of other than the disclosed, potential conflict with Premier Cabinet Wholesalers. That was completely disclosed and there was no opposition at the time by the United States Trustee's Office based upon the disclosure. So overall, there is simply no basis for a finding of cause under Section 324(a) for the removal of Mr. Woodard as Trustee." The Court went on to say, "So it is clear that Mr. Frumusa has not met his burden in any way under Section 324(a) to warrant this cause and to find cause and remove Mr. Woodard. I am going to deny the motion." (See a transcript of the hearing attached hereto as **Exhibit 5**.)

Following are all irrelevant attempts to discredit Frumusa

The charges Frumusa made are part of a continuing series of actions he has taken that help explain his motivation for making these baseless allegations against Harris Beach and me. They are just another example of Frumusa's charges against professionals involved in any matter which does not get resolved to his satisfaction. As is explained below in more detail, Frumusa has made allegations against members of the judiciary (two bankruptcy judges and two Supreme Court judges), charges against at least three law firms, 10 individual lawyers (apart from the allegations against Harris Beach and me) and the United States Department of Justice.

As this Committee may be aware, there are seven different bankruptcy cases in which Frumusa is presently involved or has an interest in. The cases are: 1.) Frumusa's individual

case; 2.) Rising Tide Enterprise LLC ("Rising Tide") (Frumusa 100% owner); 3.) Maincliff Properties LLC ("Maincliff") (Frumusa 100% owner); 4.) Lawrence Frumusa Land Development LLC ("LFLD") (Frumusa 100% owner); 5.) Frumusa Enterprises LLC ("Enterprise") (Frumusa 100% owner); 6.) Scenic Village Apartments LLC ("Scenic Village") (Frumusa 100% owner); 7.) L Frumusa Family Enterprise P1 ("P1") (Frumusa 100% owner).

Frumusa voluntarily filed Rising Tide, Maincliff and LFLD in bankruptcy in April 2009. These cases, similar to the individual case, were converted from Chapter 11 proceedings to Chapter 7 proceedings by the court. Michael Arnold, Esq. ("Arnold") was appointed as the Chapter 7 Trustee in Rising Tide, Maincliff and LFLD. Enterprise and Scenic Village were recently filed in bankruptcy by me as Trustee in the individual case. P1 was very recently filed as an involuntary case by purported creditors.

It is important for the Committee to be cognizant of some of the allegations that have been made by Frumusa against attorneys and judges in the context of the various bankruptcy matters he has filed or has an interest in.* Below is a brief outline of some of the applications, motions, proceedings and allegations filed by or against Frumusa:

1. Affidavit filed in the individual and corporate cases asserting baseless allegations and requesting the immediate disqualification Judge Ninfo for questionable impartiality. (See **Exhibit 6**)¹
2. Affidavit filed in one of the corporate cases defining the top ten reasons why Judge. Ninfo should disqualify himself for questionable impartiality. (See **Exhibit 7**)
3. An Adversary Complaint filed against, amongst others, Vincent Ferarro, Esq., David L. Rasmussen, Esq. and the law firm of Davidson Fink LLP making various allegations of inappropriate conduct against the attorneys and law firm involved in Frumusa's matrimonial action. (See **Exhibit 8**)
4. An Adversary Complaint filed against, amongst others, the law firm of Boylan, Brown, Code, Vigdor and Wilson, LLP, Mark A. Costello, Esq., the Honorable Kenneth R. Fisher (Supreme Court Justice for the State of New York ("Judge

* Mr. Frumusa has filed or caused to be filed other entities owned in whole or in part by him that have ultimately been dismissed by the court.

¹ Exhibits referenced in the attached Exhibits (Frumusa's submissions) have not been provided due to the voluminous nature of the documents.

Fisher”)), Edwin Robert Shulman, Esq. and Leonard Relin, Esq. making various allegations of improprieties and wrongdoing. (See **Exhibit 9**) (See ¶¶ 25 – 29, 31, 32, 35 – 37)

5. A Motion to Mandate that Judge Ninfo recuse himself from various proceedings contained in the individual and corporate cases alleging various meritless and baseless allegations against Judge Ninfo. (See **Exhibit 10**)
6. An Adversary Complaint filed in a corporate case against Arnold as Trustee, Arnold as attorney for the estate, Arnold personally, Kathleen Schmitt, Esq. (Assistant United States Trustee for the Western District of New York) and the Department of Justice, Office of the United States Trustee-Kathleen Schmitt, making various allegations of wrongdoing and inappropriate behavior. (See **Exhibit 11**) (¶¶ 4, 6, 25, 38 – 43, 45 – 48, 53, 54 and 67)
7. Motion pursuant to Rule 9011 of the Bankruptcy Rules to impose sanctions on Jeffrey Dove, Esq. (“Dove”) of Menter, Rudin & Trivelpiece and Arnold making various allegations of inappropriate behavior and misconduct. (See **Exhibit 12**) (See ¶¶ 6, 8, 10 and 11 on pg. 3)
8. Motion for Reconsideration of Judge Kaplan’s decision wherein Frumusa insinuates wrongful actions by the Honorable Michael J. Kaplan (Bankruptcy Judge for the Western District of New York, Buffalo Division) and Honorable Judge Elma A. Bellini (Supreme Court Justice for the State of New York). (See **Exhibit 13**) (See ¶¶ 31 and 41)
9. Motion pursuant to Rule 9011 of the Bankruptcy Rules to impose sanctions on Joseph Zagraniczny, Esq. of Bond Schoeneck & King and Gregory Mascitti, Esq. of Nixon Peabody making various allegations of inappropriate behavior and misconduct. (See **Exhibit 14**) (See ¶¶ 10 – 12)
10. Motion pursuant to Rule 9011 of the Bankruptcy Rules to impose sanctions on, amongst others, Dove and Arnold, making various allegations of inappropriate behavior and misconduct. (See **Exhibit 15**) (See ¶¶ 17 and 18)

11. Motion in one of the corporate cases to remove Arnold as Trustee for cause, asserting various improprieties and inappropriate behavior against the trustee. (See **Exhibit 16**) (See ¶ 19)
12. The application of Frumusa's individual attorneys to withdraw as counsel, based in part on disagreements with him, great difficulty communicating with him, difficulty obtaining complete and accurate information critical to representation of Mr. Frumusa and concerns that Frumusa wanted the attorneys to advance legal or factual arguments the validity or veracity of which was in doubt. (See Application attached as **Exhibit 17**). (See ¶¶ 19 and 21.)
13. Application of counsel in the three corporate cases to withdraw as counsel, based in part on the Frumusa's failure to cooperate in the representation rendering representation unreasonably difficult for counsel to carry out. (See **Exhibit 18**) (See ¶¶ 6 and 7.)

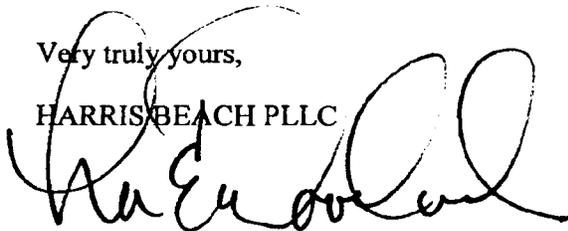
In addition to the above, it should be noted that. Frumusa has also been found in contempt of court for failing to comply with directives of the Court. Additionally, since our involvement in the case, Frumusa has been indicted twice by a Monroe County Grand Jury. One of the indictments related to allegations that Frumusa forged a lien release and filed the same with the County Clerk's office.

As previously stated, this information is provided to give the Committee an appropriate context for the allegations levied against Harris Beach and me. Both Harris Beach and I enjoy outstanding reputations in the legal community. We pride ourselves on providing high quality legal services with the highest level of integrity. We believe we have done exactly that here.

If the Committee would like any more information regarding this matter, please do not hesitate to contact the undersigned.

Very truly yours,

HARRIS BEACH PLLC



Lee E. Woodard

LEW:dac

FIFTH JUDICIAL DISTRICT
SYRACUSE

CHIEF COUNSEL
GREGORY J. HUETHER

CHAIRPERSON
EDWARD Z. MENKIN

Exhibit A Response of Mr. Woodard

PRINCIPAL COUNSEL
ANTHONY J. GIGLIOTTI

ASSOCIATE COUNSEL
MARY E. GASPARINI

INVESTIGATOR
SHERYL M. CRANKSHAW

State of New York
Attorney Grievance Committee

June 3, 2010

CONFIDENTIAL

Mr. Larry Frumusa
P.O. Box 418
Webster, NY 14580

Re: Complaint against Lee E. Woodard, Esq.

Dear Mr. Frumusa:

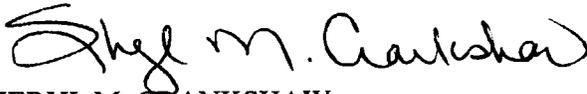
Enclosed for your review and further comment, is a copy of the response submitted to this office by Mr. Woodard regarding the complaint you filed against him.

Please note, we have not provided you with copies of the extensive enclosures that Mr. Woodard references in his response as it appears you may already have them in your possession. Please feel free to contact me and request any of the exhibits referenced in Mr. Woodard's May 27, 2010 response.

Your additional written comments may be submitted by **June 17, 2010**, before this office makes a determination.

Your cooperation in this matter will be appreciated.

Very truly yours,



SHERYL M. CRANKSHAW
Investigator

SMC/tlc
Enclosures

Exhibit B Search of Cases In Western District - which Woodard was assigned - None other than Frumusa's
Cases Report for 6/16/2010

U.S. Bankruptcy Court

Western District of New York

| Case No. Related Case Info | Tp | Ch | Party Info | Judge Trustee | Dates | Other Info |
|-------------------------------|----|----|--|------------------|--|--|
| 2-10-21226-JCN | bk | 7 | Frumusa Enterprise, LLC c/o Harris Beach PLLC Attn: Lee E. Woodard, Trustee 300 S. State St., 4th Floor Syracuse, NY 13202 Tax ID / EIN: 20-3712763 Role: Debtor Kathleen Dunivin Schmitt, 11 Office of the United States Trustee 100 State Street, Room 6090 Rochester, NY 14614 Tax ID / EIN: ust2 Role: U.S. Trustee Robert Morgan Limited Partnership III Attn: Jeffrey A. Dove, Esq. c/o Menter, Rudin & Trivelpiece, P.C. 308 Maltbie Street, Suite 200 Syracuse, NY 13204-1498 315-474-7541 Role: Creditor | Ninfo Woodard | Filed: 05/20/2010 Entered: 05/20/2010 | Office: Rochester Assets: No Fee: Paid County: 2-Monroe |
| 2-10-21228-JCN | bk | 7 | Scenic Village Apartment Homes, LLC c/o Harris Beach PLLC Attn: Lee E. Woodard, Trustee 300 S. State St., 4th Floor Syracuse, NY 13202 Tax ID / EIN: 20-3712763 Role: Debtor Kathleen Dunivin Schmitt, 11 Office of the United States Trustee 100 State Street, Room 6090 Rochester, NY 14614 Tax ID / EIN: ust2 Role: U.S. Trustee | Ninfo Woodard | Filed: 05/20/2010 Entered: 05/20/2010 | Office: Rochester Assets: No Fee: Paid County: 2-Monroe |

Total number of cases: 2
 Number of open cases: 2

Both open and closed cases

| | |
|-----------------------------|--------|
| PACER Service Center | |
| Transaction Receipt | |
| 06/16/2010 11:15:48 | |
| PACER | Client |

Exhibit B Search of Cases In Western District - which Woodard was assigned - None other than Frumusa's

| | | | |
|----------------------------|-----------------------|-----------------------------|---|
| Login: | fe0886 | Code: | |
| Description: | Cases Filed Rpt | Search Criteria: | Ch: 7 Trustee: 911660:Woodard,Lee File Fr: 6/16/2000 File To: 6/16/2010 Open Cases: included Closed Cases: included Party Info:included Format: formatted |
| Billable Pages: | 1 | Cost: | 0.08 |

Exhibit B Search of Cases In Western District - which Woodard was assigned - None other than Frumusa's
Cases Report for 6/16/2010

U.S. Bankruptcy Court

Western District of New York

| Case No. Related Case Info | Tp | Ch | Party Info | Judge Trustee | Dates | Other Info |
|-------------------------------|----|---------------------|---|------------------|---|---|
| 2-09-21527-JCN | bk | 7 <i>Prev:11</i> | <p>Lawrence Frumusa PO Box 418 Webster, NY 14580 SSN / ITIN: xxx-xx-9634 Role: Debtor</p> <p>Kathleen Dunivin Schmitt Office of the United States Trustee 100 State Street, Room 6090 Rochester, NY 14614 Role: U.S. Trustee</p> <p>Monroe Capital, Inc. c/o Menter, Rudin & Trivelpiece, P.C. Attn: Jeffrey A. Dove, Esq. 308 Maltbie Street, Suite 200 Syracuse, NY 13204-1498 U.S.A. 315-474-7541 Role: Notice of Appearance Creditor</p> <p>Marianela Hernandez 2000 Ponce de Leon Blvd. Suite 625 Coral Gables, FL 33134 United States Role: Notice of Appearance Creditor</p> <p>Kathleen Dunivin Schmitt, 11 Office of the United States Trustee 100 State Street, Room 6090 Rochester, NY 14614 Tax ID / EIN: ust2 Role: U.S. Trustee</p> <p>Rochester Countertop, Inc. c/o Harris Beach PLLC Kevin Tompsett, Esq. 99 Garnsey Road Pittsford, NY 14534 Role: Notice of Appearance Creditor</p> <p>Valoree A Frumusa Role: Creditor</p> <p>Wesley Belmore 267 Berg Road Ontario, NY 14519 Role: Notice of Appearance Creditor</p> <p>American Rentals LLC c/o Harris Beach PLLC</p> | Ninfo Woodard | Filed: 06/05/2009 Entered: 06/05/2009 Converted: 08/07/2009 | Office: Rochester Assets: Yes Fee: Paid County: 2-Monroe |

Total number of cases: 1
Number of open cases: 1

Both open and closed cases

| PACER Service Center | | | |
|-----------------------------|-----------------|-------------------------|--|
| Transaction Receipt | | | |
| 06/16/2010 11:14:39 | | | |
| PACER Login: | fe0886 | Client Code: | |
| Description: | Cases Filed Rpt | Search Criteria: | Ch: 7 Trustee: 910077:Woodard, Lee File Fr: 6/16/2000 File To: 6/16/2010 Open Cases: included Closed Cases: included Party Info:included Format: formatted |
| Billable Pages: | 3 | Cost: | 0.24 |

Attachment C Establishing Surplus in Debtor's - Estate

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

FILED

2009 OCT 27 PM 4: 23

In re:

U.S. BANKRUPTCY COURT
W.D.N.Y. - ROCHESTER

Lawrence Frumusa,

Case : 09-21527

Debtor

Chapter 11

Affidavit Establishing Surplus in Estate and Debtor Standings in All Actions

Lawrence Frumusa Land Development, LLC (Case:09-21126), Rising Tide Enterprise LLC (Case:09-21123), L Frumusa Family Enterprise P1 LLC (Case: 09-22698) (the "Corporate Debtors") and Lawrence Frumusa (Case: 09-21527) all related in this affidavit, respectfully submits this affidavit to establish surplus in the Debtors estates as stated above, with supporting facts as follows:

1. See Attachment A, demonstrating under proper liquidation of estates the Debtors as define will maintain a surplus in the Estate.
2. See Attachment B, Email to the Trustees of October 7, 2009 attaching the case history and stating:

"Very clear and makes sense as indeed if handled properly the estates involved would indeed provide a surplus.

Therefore, I would like not to bring up the no standing issues again. As I stated in court today it only looks like you are suppressing the Truth, which is not a benefit to the Federal Judicial system"

3. See Attachment C, Case 333 B.R 191 one mostly cited cases for this issue establishing:

"(a Chapter 7 debtor is a „party in interest" and has standing to object to a sale of the assets, or otherwise participate in litigation surrounding the assets of the estate, only if there could be a surplus after all creditors' claims are paid.)"

4. There for in the interest of Justice let us move on from the Issue of Standing.
5. Additionally case law is also very strong of personal liability of Trustee's breaching fiduciary responsibility to Debtor and squandering the Estate.

Signature page to follow:

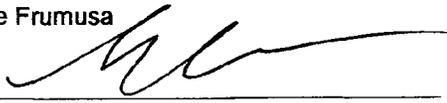
Attachment Page 1

Page 1 of 2

Attachment C Establishing Surplus in Debtor's - Estate

DATED: October 27, 2009 Respectfully submitted and sworn to by Lawrence Frumusa, as *Pro-Se* representation.

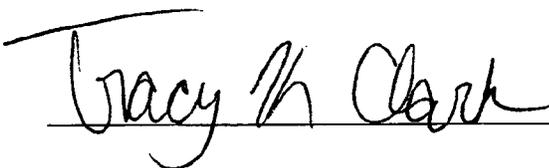
Lawrence Frumusa



By: Lawrence Frumusa for Debtor Pro-se

STATE OF NEW YORK
COUNTY OF MONROE) SS:

On October 27, 2009, before me, the undersigned, personally appeared Lawrence Frumusa, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his / her/their capacity(ies), in his(her/their) capacity and that by his(her/their) sign on the instrument, the individual(s), or the person / entity upon behalf of which the individual acted, the instrument.



Notary

TRACY K. CLARK
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN MONROE COUNTY
NO. 01CL6171090
MY COMMISSION EXPIRES JULY 23, 2011

Page 2 of 2

Attachment Page 2

Definition of Debtor Surplus

Debtor

Lawrence Frumusa - Personal

| Assets | With LLC | Without LLC |
|--|--------------------|------------------|
| Webster Hospitality Development | \$2,155,491 | |
| Lawrence Frumusa Land Development | \$4,382,000 | |
| Scenic Village Town Homes LLC | \$200,000 | |
| Rising Tide Enterprise LLC | \$140,000 | |
| Scenic Village Apartment Homes LLC | \$0 | |
| Frumusa Enterprise LLC | \$0 | |
| Maincliff Properties LLC | \$50,000 | |
| Personal Real Property Net Value | \$386,083 | \$386,083 |
| Total Assets | \$7,313,574 | \$386,083 |
| Debts | | |
| Unsecured Debt Consumer Credit Card Used for Business | \$296,280 | \$0 |
| Total Debt | \$296,280 | \$0 |
| Surplus available | \$7,017,294 | \$386,083 |
| Adversary Proceedings | | |
| Payment of cram down judgement WHD | \$128,000 | |
| NYS Sales Tax Hotel | \$270,000 | |
| IRS | \$50,000 | |
| Belmore Judgement | \$125,000 | |
| Total Benefit | \$573,000 | \$386,083 |

Definition of Debtor Surplus

Debtor

Lawrence Frumusa Land Development LLC

Assets

| | |
|--|-------------|
| Property 64 Unit Apartment Complex - Phase 2 of Scenic Village, 70 % completed - Source of Value Independent Appraisal | \$9,500,000 |
| Property 48 Unit Apartment Complex - Phase 3 of Scenic Village, Site work 90% completed. - Source of Value actual cost for improvements | \$1,200,000 |
| Cash on hand | \$156,000 |
| L Frumusa Family Enterprise P1 LLC | \$1,975,000 |
| Escrow Account | |

| | |
|--------------|---------------------|
| Total Assets | <u>\$12,831,000</u> |
|--------------|---------------------|

Debts

| | |
|--|-------------|
| Mortgage - National City Bank Phase 2 | \$6,200,000 |
| Mortgage - Robert Morgan Limited III LLC Phase 3 | \$908,000 |
| Unsecured Debt | \$1,341,000 |

| | |
|------------|--------------------|
| Total Debt | <u>\$8,449,000</u> |
|------------|--------------------|

| | |
|-------------------|-------------|
| Surplus available | \$4,382,000 |
|-------------------|-------------|

Definition of Debtor Surplus

Debtor

L Frumusa Family Enterprise LLC

Assets

| | |
|---|--------------------|
| Property 60 Unit Apartment Complex - Phase 1 of Scenic Village - Source of Value Independent Appraisal | \$8,800,000 |
| Cash on hand | \$174,000 |
| Reserves for finish coat streets | \$60,000 |
| Escrow Account | \$35,000 |
| Total Assets | <u>\$9,069,000</u> |

Debts

| | |
|---|--------------------|
| Mortgage - FEDERAL NATIONAL MORTGAGE ASSOCIATION Default cure for first mortgage | \$6,700,000 |
| Unsecured Debt | \$250,000 |
| Total Debt | <u>\$7,094,000</u> |

Surplus available \$1,975,000

Definition of Debtor Surplus

Debtor

Rising Tide Enterprises LLC

| Assets | Value |
|--|--------------------|
| 182 North Ave Webster, NY 14580 | \$490,000 |
| 200 Barker Road Rossi, New York | \$120,000 |
| 47 Kittelberger Park Webster, New York 14580 | \$90,000 |
| 47 Kittelberger Park Webster, New York 14580 | \$90,000 |
| 30 Kittelberger Park Webster NY 14580 | \$20,000 |
| 888 Hard Road LLC 50% Interest | \$225,000 |
| Total Assets | \$1,035,000 |
| | |
| Debts | |
| Robert Morgan Limited III, LLC | \$410,000 |
| 182 North Ave | |
| Robert Morgan Limited III, LLC | \$80,000 |
| 200 Barker Road | |
| Robert Morgan Limited III, LLC | \$50,000 |
| 47 Kittleberger | |
| Robert Morgan Limited III, LLC | \$60,000 |
| 47 Kittleberger | |
| Jean Dykes | \$80,000 |
| Unsecured Creditors | \$75,000 |
| Total Debt | \$755,000 |
| | |
| Surplus available | \$280,000 |
| | |
| Adversary Claims | |
| Preferential Sale of 300 acres Watertown | \$625,000 |
| Total Potential Surplus available | \$905,000 |

Attachment C Establishing Surplus in Debtor's - Estate

From: Larry Frumusa
To: "Lee Woodard"; "David Capriotti"; "Mike Arnold"
Cc: "Committee@UCreditors.com"

Subject: Debtors Rights
Date: Wednesday, October 07, 2009 6:23:00 PM
Attachments: Case Law on Debtor Being a Party In Interest -- 333 B R 191 10-7-09 1704.pdf

Lee and Dave and Mike,

See attached case, this is one of the many cases that defines Debtors rights relative to standing. I thought you would like this one because it deals with Trustee compensation. In any case as stated on page 6 is as follows:

"(a **Chapter 7 debtor** is a „party in interest“ and has **standing** to object to a sale of the assets, or otherwise participate in litigation surrounding the assets of the estate, only if there could be a surplus after all creditors' claims are paid.)"

Very clear and makes sense as indeed if handled properly the estates involved would indeed provide a surplus.

Therefore, I would like not to bring up the no standing issues again. As I stated in court today it only looks like you are suppressing the Truth, which is not a benefit to the Federal Judicial system.

Finally, given the above and purposely excluding me from the meeting after court with the unsecured creditors can be considered an ex-parte session and is a serious violation of a Trustee duties. I would like to have one of you call me to discuss what transpired behind the closed doors.

Larry

Larry Frumusa
Frumusa Enterprise LLC.
1660 Lake Road,
Webster, New York 14580
email: lfrumusa@rochester.rr.com
585-872-9000
585-872-7687 (fax)
585-943-9999 (cell)

Attachment Page 1

Attachment Page 7

Westlaw.

Page 1

333 B.R. 191
(Cite as: 333 B.R. 191)

C

United States Bankruptcy Court,
E.D. New York.
In re Enrico VONA, Debtor.
No. 03-86782-288.

Nov. 9, 2005.

Background: Chapter 7 trustee requested maximum commission of \$7,001.79 in connection with his final report. The United States Trustee (UST) filed pro forma objection, seeking to exclude from base of distributions for calculating trustee's statutory commission proposed commission payment to trustee and proposed payments to trustee's professionals as final compensation.

Holdings: The Bankruptcy Court, Stan Bernstein, J., held that:

- (1) persons or entities with allowed administrative expenses should be classified as parties in interest for limited purpose of computing the base for Chapter 7 trustee's commissions, and
- (2) trustee's requested commission was reasonable.

Ordered accordingly.

West Headnotes

[1] Bankruptcy 51 ↪ 3152

51 Bankruptcy
51IX Administration
51IX(E) Compensation of Officers and Others
51IX(E)1 In General
51k3152 k. Trustees. Most Cited Cases
Bankruptcy Code's exclusion of distributions to Chapter 7 debtors from base of distributions that can be counted in computing trustee's statutory commission incorporates public policy that Chapter 7 debtors who receive a surplus of proceeds of bankruptcy estate after all claims and administrative expenses have been satisfied should not be further surcharged by having their distributions reduced by another layer of compensation to trustee. 11 U.S.C.A. § 326(a).

[2] Bankruptcy 51 ↪ 3152

51 Bankruptcy
51IX Administration
51IX(E) Compensation of Officers and Others
51IX(E)1 In General
51k3152 k. Trustees. Most Cited Cases
Bankruptcy court has duty to determine, in the sound exercise of its discretion, how much should be paid as a reasonable commission to Chapter 7 trustee.

[3] Bankruptcy 51 ↪ 3152

51 Bankruptcy
51IX Administration
51IX(E) Compensation of Officers and Others
51IX(E)1 In General
51k3152 k. Trustees. Most Cited Cases
Persons or entities with allowed administrative expenses should be classified as "parties in interest" for limited purpose of computing the base for Chapter 7 trustee's statutory commission. 11 U.S.C.A. §§ 326(a), 726.

[4] Bankruptcy 51 ↪ 3152

51 Bankruptcy
51IX Administration
51IX(E) Compensation of Officers and Others
51IX(E)1 In General
51k3152 k. Trustees. Most Cited Cases
Chapter 7 trustee's requested commission, calculated on base of distributions that included proposed payments to trustee as his commission and to professionals retained by trustee as their final compensation, was reasonable, warranting award in such amount, given that trustee and his counsel created entire bankruptcy estate through fraudulent transfer claim, and that trustee's commission was equal to pay for 20 hours of work at local hourly rate of \$350.00. 11 U.S.C.A. § 326(a).
*192 Richard J. McCord, East Meadow, NY, for Debtor.

EMENDED MEMORANDUM OF DECISION

Attachment Page 1

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Attachment Page 8

333 B.R. 191
(Cite as: 333 B.R. 191)

AND ORDER OVERRULING THE UNITED STATES TRUSTEE'S PRO FORMA OBJECTION TO THE REQUEST FOR THE TRUSTEE'S COMMISSION AND PROFESSIONAL FEES AND EXPENSES.

STAN BERNSTEIN, Bankruptcy Judge.

Background and Findings:

In this case, the chapter 7 trustee, Kenneth P. Silverman, Esq., made a request in connection with his final report for a maximum commission of \$7,001.79. The United States trustee filed its *pro forma* "limited Testaverde objection." The objection, if sustained, would exclude from the base of distributions for calculating the trustee's statutory commission under section 326(a) all proposed payments to the trustee as his commission and to his professionals as final compensation. As applied, the objection would reduce the commission by \$721.79. Frankly, the extra pro-rata distribution that would flow to the class of general unsecured creditors from sustaining this objection would be a fraction of one percent. This contested amount can only be described as *de minimis*.

The Court has reviewed the docket entries, the case file, the pleadings, the trustee's final report and its attachments, the trustee's narrative of his services, the trustee's detailed description of administrative services, the number of hours he personally logged, the efficiency of the trustee's administration of the case, the allocation between trustee's administrative services and the trustee's professionals' services, and then considered the due proportionality between the trustee's commission and the professionals' services and the proposed absolute and percentage distribution to the unsecured creditors in this estate. In this case, the trustee and his counsel-his own firm-created this entire estate by bringing a fraudulent transfer complaint against an insider, and induced a settlement of \$75,000 which was approved by the Court after notice and hearing. This reflects an aggressive, but efficient administration of this estate by the trustee. Moreover, the trustee's firm was successful in recovering this substantial amount, which, indeed, compared to other trustee's fraudulent transfer actions, was performed at a relatively low cost of \$6,905.85 plus *193 reimbursable costs of \$302.11. The trustee is to be commended for insuring that his firm kept its hours tightly

in check. The trustee himself logged about 20 hours, to which this Court has imputed a local hourly rate of \$350, which when extended totals \$7,000, which is exactly equal to the maximum commission that he has requested of \$7,001.79. This is consistent with the holding of the Third Circuit in Staino v. Cain (In re Lan Assocs. XI, L.P.), 192 F.3d 109 (3d Cir.1999). Of the proceeds for distribution, assuming that the trustee's maximum commission is allowed and his firm's final compensation is allowed, then the secured creditor will receive its full claim of a rounded \$25,500, and the general unsecured creditors, totaling a rounded \$82,400, will receive a significant pro-rata distribution of 42.47% from the net dollars for distribution to that class of \$35,000. All in all, this should be viewed as a good result in a case that began with no dollars for distribution to anybody.

Discussion:

The United States trustee in this administrative division files a *pro forma* "limited Testaverde objection" in virtually every final report filed by a member of the chapter 7 trustee panel in an asset case-that is, cases in which there is money arising from the proceeds of liquidation of property of the estate. The United States trustee takes the formal position that, based on the opinions of two district judges in the Central Islip Courthouse-the published decision in In re Testaverde, 317 B.R. 51 (E.D.N.Y.2004) and the unpublished one in In re Stein, No. 04-CV-3196, slip op. (E.D.N.Y. March 25, 2005)-trustees are not entitled as a matter of a *per se* rule of law to include payments of allowed compensation to the trustee's professionals^{FN1} in calculating the trustee's commission in a chapter 7 case under the statutory formula set forth in section 326(a) of the Bankruptcy Code.

^{FN1}. The trustee's professionals is an abbreviated reference to the class of professional persons whom the trustee employs under section 327 to assist him in the orderly administration of the estate. These professionals may include in a particular case both special and general counsel, an appraiser, a real estate broker, an auctioneer, and an accountant. As a condition for employment, the bankruptcy court has to find that each professional neither holds nor represents an interest adverse to the estate. This condition

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must continue to remain satisfied throughout the entire period of employment. It is in this formal and technical respect that one may infer that a professional cannot be a party in interest for that would mean that the professional would have a disqualifying claim or interest against the estate. But upon a more complete or holistic reading of the Bankruptcy Code, that inference is inconsistent with other provisions of the Code, and the discussion of why that inference is inconsistent goes to the heart of this matter.

The original *Testaverde* decision, which was made by this Court in *In re Testaverde*, No. 02-88997, 2004 Bankr.LEXIS 1964 (E.D.N.Y.), held that by definition a professional person is not a "party in interest" for purposes of computing the base of distributions by the trustee. In its original analysis, this Court implicitly focused solely on what it perceived was the "plain language" of section 326(a). Section 326(a) authorizes a commission to be based on distributions to "parties in interest, including secured creditors, but excluding debtors." In construing the words "party in interest" as excluding professional persons, the premise was that the very employment of these professional persons depended upon their having no adverse interest to the estate under section 327(a) of the Bankruptcy Code ^{FN2}, that *194 is, that they not be or become persons with an adverse interest to the estate. It seemed inconsistent with the basic tenor of the Bankruptcy Code to require that professional persons, on the one hand, not hold any adverse interest to the estate—a condition which has to remain the fact throughout their employment, and then, on the other hand, to turn around and define them as parties in interest for purposes of calculating the trustee's commission. Moreover, on policy grounds, this Court held that it was inappropriate to permit the trustee to put himself in a position of conflict for the last dollars of the estate when on a dollar for dollar basis, each dollar paid to the trustee was one less dollar paid to the unsecured creditors of the estate. It was even more unseemly, as originally noted in *In re Guido*, 237 B.R. 562 (Bankr.E.D.N.Y.1999), when the trustee's request to be allowed to pay himself a commission on fees paid to personal injury counsel out of the proceeds reduced on a dollar for dollar basis the net proceeds of settlement of the debtor's prepetition personal injury claim. In cases in which there are large settlements like *Guido*, this reflects the sad fact that the debtor is

permanently injured or disabled, and the debtor is dependent on the amount of settlement proceeds he is paid to meet his on-going long term expenses.

FN2. Section 327(a) requires that "the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties ..." The term "disinterested person" is itself defined in section 101(14)(A) as a person that "is not a creditor, an equity security holder, or an insider"; and, further along, in section 101(14)(E), expanding the standard in section 327(a), as a person that "does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor ..., or for any other reason."

In affirming this Court's ruling in *Testaverde*, the District Court analyzed the plain meaning of the term "parties in interest" by resorting to Black's Law Dictionary for a definition of this term because it was not defined in the Bankruptcy Code. 317 B.R. at 54. The only definition that Black's offers is of the main word "party," which it defines as a substantive noun, "a person concerned or having or taking part in any affair, matter, transaction, or proceeding, considered individually." Then Black's Law Dictionary goes on to cite precedents in which variations of the word "party" is used. One of these, under the reference to "party in interest," is "primary meaning ascribed the term, party in interest" in bankruptcy cases is one whose pecuniary interest is directly affected by the bankruptcy proceeding," citing only *In re Kutner*, 3 B.R. 422, 425 (Bkrcty.N.D.Tex.1980). The further difficulty in treating this as a definition of "party in interest" in a bankruptcy case is that it begs the question. Professional persons are compensated by the estate under section 330, and the dollars paid to them from proceeds of the liquidation of property of the estate are dollars that could otherwise be paid to the priority and general unsecured creditors of the estate; that inherent conflict about who gets paid surely suggests that the professional persons are those with a pecuniary in-

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terest that is directly affected by the bankruptcy proceeding, and as such may be properly characterized as parties in interest, absent all other considerations. This is the point later made in *In re Nardelli*, 327 B.R. 488 (Bankr.M.D.Fla. 2005).^{FN3} What the *195 *Nardelli* court seems to skip over is that professional persons are those who perform post-petition services and who may qualify for the allowance of their compensation as persons with unpaid administrative expenses, but who, nevertheless, are supposed to remain disinterested, that is, they cannot become persons or parties in interest with interests adverse to any class of creditors or equity security holders. In this respect, even though persons with allowed administrative expenses may be directly affected by the distribution of proceeds of the estate, and to that extent may loosely be referred to as "parties in interest," they are surely a paradoxical type of "party in interest" on their face, namely, parties in interest who cannot hold an interest adverse to the estate. It is difficult to escape the strictly logical conclusion that it is inconsistent, or worse, rather incoherent, to say that those with administrative expenses cannot be parties in interest under section 327(a), and at the same time, to define them as parties in interest for purposes of section 326(a).

FN3. The District Court also noted that the term "parties in interest" had been modified from a parallel provision under the 1898 Act, as amended, in which the prior referent was to a "person." 317 B.R. at 55. It is not subject to any reasonable dispute that a "person" is a defined term under the Bankruptcy Reform Act of 1978, as amended, but this particular definition makes no internal reference to a "party in interest" in those exact words.

There turns out to be several difficulties with the "plain language" analysis in both *the Testaverde* and *Stein* decisions. The plain language analysis is incomplete by virtue of its failure to define each of the distinctive terms expressed in the noun phrase in section 326(a), and as a result of that incomplete analysis, it failed to pay any attention to a key word—"including." Both decisions of the District Court adopted a dictionary construction of the substantive noun—"parties in interest"—which is unintentionally too restrictive and inconsistent with the meaning of the entire phrase. Indeed, it was this Court's initial failure to take full measure of the preposition "including" that lead it to define the referents in this phrase as limited exclu-

sively to "parties in interest" that this Court had interpreted as excluding the payment of allowed final compensation to professional persons from the basis of distributions in calculating the amount of the trustee's statutory commission.

For ease of reference, here is the measuring standard in section 326(a), in relevant part:

In a case under chapter 7 ..., the court may allow reasonable compensation ... of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed [a sliding scale of percentages as a function of various ranges of dollar amount] **upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.** (Emphasis added)

Although the substantive noun, "parties in interest," is not defined under the Bankruptcy Code, the preposition "including" is. Section 102(3) of the Bankruptcy Code states that " 'includes' or 'including' are not limiting." Conventionally, bankruptcy lawyers restate the term "including" to reflect this non-limited definition by writing "including but not limited to ..." So the noun phrase should be initially restated as extending to "parties in interest, excluding the debtor, but including but not limited to holders of secured claims."

[1] This noun phrase has to be further unpacked to appreciate the full extension of its meaning. First, the reason for excluding distributions to debtors from the basis of distributions that can be counted in computing the applicable percentages of the trustee's compensation—it should more narrowly say, the percentage of the trustee's statutory commission—is to incorporate the public policy that chapter 7 debtors who receive a surplus of the proceeds*196 of the estate after all claims and administrative expenses have been satisfied should not be further surcharged by having their distributions reduced by another layer of compensation to the trustee. Second, the preposition "including" means that at the very least "parties in interest" should be interpreted as including at least "unsecured creditors." The whole point of a chapter 7 case is to effect a distribution to unsecured creditors.

But upon further reflection, it finally struck this Court

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that the interpretative issue raised by the vague and undefined term "parties in interest" can be easily resolved by asking the elementary question: who are the intended beneficiaries of the trustee's distribution of the proceeds of property of the estate? There is a missing cross-reference to another statutory provision, which, once supplied, provides most of the solution. And that **missing reference is clearly section 726** (emphasis added) which directs the trustee to make distributions to a universe of persons in a detailed order of priority. After paying secured creditors their allowed claims from the proceeds of their collateral, the highest sub-class of intended beneficiaries is that comprised of those who supplied goods or services to the trustee on behalf of the estate. In any chapter 7 asset case, this sub-class is comprised of (a) the trustee's professionals who supplied their professional services to the trustee, on the one hand, and (b) in a chapter 7 in which the trustee operates the debtor's business for a limited period of time under section 721 of the Bankruptcy Code, the "vendors" who supplied their goods and services to continue what used to be the debtor's business until the trustee is in a position to sell it as an operating entity. By parity of reasoning, when there is an operating chapter 11 case, the operating trustee or the debtor in possession, which is defined as a trustee for these purposes, incurs administrative expenses to be paid to all professional persons whose employment has been approved by the court and to the vendors of other goods and services used in the operating business.

Technically, the Code draws a distinction in several other provisions of the Code between those who are creditors because they hold claims, beginning with sections 501 and 502, and those persons or entities who provided goods and services to the estate during the period of case administration, but there is no one word for this large class. The closest one comes is to draw a distinction between claims and administrative expenses, and then follow the inference to creditors as persons who hold claims and to the second unnamed class of "persons who request the allowance of administrative expenses." Section 503 describes the process for the allowance of administrative expenses, and persons or entities with standing to request the allowance of these expenses may be said to be "persons-requesting-allowance-of administrative-expenses." At the level of the rules of bankruptcy procedure, a creditor files a proof of claim under Fed. R. Bankr.P. 3001, and the creditor is directed to use an

Official Form for this purpose, but those with unsatisfied administrative expenses have to file "a request for the allowance of administrative expenses, for which there is no Official Form for this purpose.

Assuming this revised analysis presents a fair, comprehensive and correct construction of each word in the noun phrase, then it follows that distributions of payments of the proceeds of property of the estate to "parties in interest" (however awkward or cumbersome to define) should be read to include payments to persons or entities holding allowed administrative expenses, with a priority of payment over the class of creditors holding allowed prepetition¹⁹⁷ unsecured claims. Further assuming this intermediate premise to be true, then it follows that distributions to persons or entities holding allowed administrative expenses should be counted as part of the distributions to parties in interest in calculating the amount of the trustee's compensation—more correctly—the trustee's commission under section 326(a). If this argument is valid, then it turns *Testaverde* on its head because the District Court opinion adopted a *per se* rule that excludes holders of administrative expenses—in that case, the trustee's professional persons—from the definition of the term "parties in interest." That, by no means, is the end of the analysis that the Court has ultimately to make in determining in its discretion a reasonable amount of the trustee's commission, but a restrictive definition of "party in interest" found in Black's Legal Dictionary will not suffice. And a good part of the reason that recourse to Black's does not work effectively is that the dictionary is not "statute-specific," and when attempting to define undefined words or phrases in a comprehensive federal legislative code, one has to consider all other relevant sections of the code which may supply the implicit missing terms of reference.

Moreover, there are other contexts in which the term "party in interest" is used in bankruptcy parlance. In general, bankruptcy lawyers and judges pose the operational question for determining standing by asking whether a person or entity is "in the money." This commonly used prepositional phrase is used to identify whether a person or entity will receive any distributions from the estate. Thus, when a chapter 7 debtor seeks to object to a proof of claim, the creditor whose claim is subject to this objection may allege that the debtor has no standing to object to the claim because even if the objection were sustained, it would

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still not provide any distribution of any surplus to the debtor. See *In re Manshul Construction Corp.*, 223 B.R. 428, 429-30 (Bankr.S.D.N.Y.1998) ("A debtor lacks standing to object to a claim against the estate because he has no interest in the distribution to creditors of assets of the estate." (quoting *In re Kressner*, 159 B.R. 428, 432 (Bankr.S.D.N.Y.1993))). An analogous but slightly broader use of the term "in the money" is raised when a person or entity either seeks to intervene in a contested matter or files an appeal of an order of the bankruptcy court. If the determination of this proposed intervention or the appeal will have no effect on the claims or interests of this person or entity, the courts hold that this person or entity does not have the standing of a party in interest to raise these issues. See *In re 60 East 80th Street Equities, Inc.*, 218 F.3d 109, 115-16 (2d Cir.2000) (a Chapter 7 debtor is a "party in interest" and has standing to object to a sale of the assets, or otherwise participate in litigation surrounding the assets of the estate, only if there could be a surplus after all creditors' claims are paid.); *In re Blumenberg*, 263 B.R. 704, 719 (Bankr.E.D.N.Y.2001) (debtor lacks standing as a "party in interest" to bring an equitable subordination claim on behalf of the estate); *In re Guido*, 126 F.3d 380, 388 (2d Cir.1997) ("To have standing to appeal from a bankruptcy court ruling in this Circuit, an appellant must be an 'aggrieved person,' a person 'directly and adversely affected pecuniarily' by the challenged order of the bankruptcy court." (citing *In re Colony Hill Assocs.*, 111 F.3d 269, 273 (2d Cir.1997))). These other uses help us interpret "party in interest" in section 326(a) because it is section 726 which instructs who may be in the money by order of priority. If there are not enough proceeds to reach each sub-class in the priority schedule, then those who are not entitled to distribution *198 are commonly said to be "out of the money" and, if we need a name for these folks, we may say that they are not "parties in interest."

[2] When all of this is said and done in supplying a working definition for purposes of interpreting "parties in interest," it still remains the duty of the bankruptcy court to determine in the sound exercise of its discretion how much should be paid as a reasonable commission to the trustee. In each of this Court's decisions in *Guido*, *Testaverde*, *Lisburger*, and *Stein*, it discussed the independent and relevant policy reasons for not counting the distributions to the trustee's professionals in calculating the trustee's commission, and

the whole tenor of these decisions and all of those decisions that are unpublished which made use of this same basic approach was that a sound exercise of discretion requires the Court to take into consideration the totality of the facts and circumstances of each estate and justify the amount of the commission on independent and relevant policy grounds. Regrettably, in the last sentence of its memoranda of decisions in *Testaverde* and *Stein*, this Court lapsed into short-hand by concluding that the trustee's professional persons should not be considered as parties in interest. This reasoning was not only too short-handed, but it undercut the full policy analysis that the Court did in each opinion. By ending the opinion in this manner, this Court suggested that it was adopting a *per se* rule. Thus, it is not surprising that the District Court in *Testaverde* and *Stein* began with that as its premise.

[3] What this Court originally had in mind was the idea that the reference to distributions to parties in interest was intended by Congress to be largely limited to distributions to *prepetition secured and unsecured creditors* of the estate in those cases in which there were sufficient proceeds of sale to make a pro-rata distribution to creditors in the statutory order of priority under section 726. And creditors were understood to be limited largely to those whose claims arose before the bankruptcy petition commencing the case was filed.^{FN4} Clearly, professional persons who are first retained only after the petition date cannot logically be included in the class of prepetition creditors. Their entitlement to compensation to the extent allowed by the Court after notice and hearing is subsumed under the general category of administrative expenses. In hindsight, this Court is now forced to conclude that although the Code does seem to point in that direction, the proper analysis has to consider the implicit cross-reference to section 726(a), which points in the other direction in identifying those persons or entities who are entitled to receive a distribution from the trustee. Thus, for this limited purpose, one has to say that persons or entities with allowed administrative expenses are entitled to be classified as parties in interest for purposes of computing the base for the trustee's commissions.

FN4. The Court uses the phrase "to be largely limited" to recognize that there are other provisions in the Code that statutorily deem a discreet sub-class of "claims" which arise after the petition date to have arisen as of the

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day before the date the petition was filed. The most notable of relation-back type of claim is the one under section 502(g) for rejection damages under an executory contract or unexpired lease which was entered into by the debtor before the petition date, but which was rejected during the period of administration of a chapter 7 or chapter 13 case.

In re Vona
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END OF DOCUMENT

The thrust of all this is to suggest that "parties in interest" remains something of a malapropism, and section 326(a) should be rewritten something like this:

*199 In counting distributions to be made by the chapter 7 trustee for purposes of determining the trustee's commission, the trustee must exclude distributions made to the debtor to pay exemptions and the surplus, but may include distributions to persons or entities who are owed administrative expenses as defined under sections 503 as well as to persons or entities who hold allowed secured, priority, and general unsecured claims.

This restatement merely brings to the surface the missing cross-reference in section 326(a), which once supplied, resolves any issue of ambiguity in the terms of reference for identifying parties in interest, and, derivatively, a more accurate guide for determining the proper application of section 326(a).

Disposition:

[4] Based upon this totality of the facts and circumstances of this case, the Court has determined that the commission requested is reasonable. To the extent that the United States has objected to any amount above the limited Testaverdc ceiling, that objection is overruled, and the trustee is directed and authorized to make an immediate distribution of the proceeds of the estate as proposed, subject to any adjustment this decision requires.

In addition, the trustee's firm's application for final compensation, to which the United States trustee made no objection, is granted in the amount requested.

So Ordered.

Bkrcty.E.D.N.Y.,2005.

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Case # 09-21527 -- Distribution list see Attachment A

**CERTIFICATE OF SERVICE
Debtor: Lawrence Frumusa**

I, Lawrence Frumusa , hereby certify on this October 22, 2009 on behalf of the Debtor Lawrence Frumusa, I have caused to be transmitted via CM/ECF electronic filing, facsimile, and/or First Class U.S. Mail, a copy to the creditors listed on page 2 of the foregoing as stated below

Affidavit Establishing Surplus in Estate and Debtor Standings in All Actions

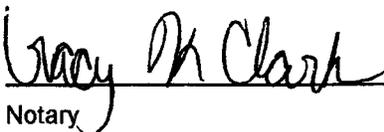


Lawrence Frumusa

FILED
2009 OCT 27 PM 4: 23
U.S. DISTRICT COURT
W.D.N.Y. - ROCHESTER

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

On October 27, 2009 , before me, the above signed, personally appeared Lawrence Frumusa, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, in his capacity and that by his sign on the instrument, the individual, or the person upon behalf of which the individual acted, the instrument.


Notary

TRACY K. CLARK
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN MONROE COUNTY
NO. 01CL6171090
MY COMMISSION EXPIRES JULY 23, 2011

Attachment C Establishing Surplus in Debtors' Estate
Attachment A

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Page 1 of 3

ECF CHAMBERS COPY

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE:

CASE NO. 09-21527-JCN

LAWRENCE FRUMUSA,

ORDER APPOINTING
COUNSEL TO INTERIM
TRUSTEE AND TO TRUSTEE,
UPON QUALIFICATION

Debtor

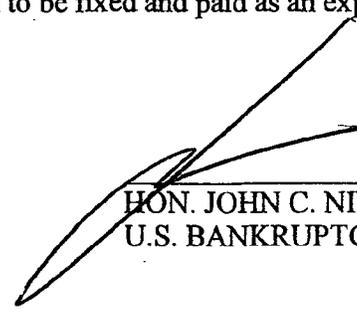
At Rochester, New York in said District, this ___ day of August, 2009.

An Application having been made for the appointment of an attorney for the Interim Trustee herein, and it appearing that the services of an attorney are or will be required, and that

[REDACTED]

ORDERED, that HARRIS BEACH PLLC, Suite 400, One Park Place, Syracuse, New York, in said District, be and they are hereby appointed to act as counsel for the Interim Trustee, effective August 7, 2009 and in the event that LEE E. WOODARD shall qualify as Trustee, said employment of HARRIS BEACH PLLC, as attorneys for said Trustee, shall continue without further Order, their compensation to be fixed and paid as an expense of administration upon further application to the Court.

8/26/09


HON. JOHN C. NINFO, II
U.S. BANKRUPTCY JUDGE

FILED
AUG 26 2009
BANKRUPTCY COURT
ROCHESTER, NY

HARRIS BEACH &
ATTORNEYS AT LAW

303820 1233591.1

Exhibit Page 1

Exhibit E Objection to Woodard abusing his powers

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

Lawrence Frumusa,

Debtor

Case: 09-21527

Chapter 11

Affidavit Objecting to Sale of 1069 Gravel Road

and

Actions of Trustee to Reject the Lease

FILED
2009 DEC - 8 PM 2:50
U.S. BANKRUPTCY COURT
W.D.N.Y. - ROCHESTER

Lawrence Frumusa (Case: 09-21527) respectfully submits this affidavit in Objection to Trustee sale of 1069 Gravel Road, and several underling actions to support such sale with supporting facts as follows:

1. Trustee has breached the fiduciary responsibility to Debtor and Creditors.
2. Trustee has adversely acquired approximately \$100,000 in equity from Pebble Beach Inc, the car wash owner.
3. Debtor is not in support of the backdoor arm twisting tactics used by the Trustee to cohere Pebble Beach to sell its interest extremely below market value and leaving Pebble Beach and its Creditors insolvent.
4. If Trustee insists and elects to conduct business in this way, the benefits obtained should be that of the Debtor and not passed directly to the Purchaser.
5. Debtor was negotiating a sale of this property for \$345,000, in fact one of the same buyers Trustee took over. (See Attachment A)
6. Trustee sells the property for under \$280,000 with the addition of including \$100,000 operating business.
7. Trustee sale is not in the best interest of the Debtor and Creditors.

Page 1 of 3

\\LARRY-PC\aa-Legal\Bankruptcy Cases - All out War\AA Motions Filings Chapter 7 rebuttal\Affidavit Objecting to Sale 1069 Gravel Road\2009-12-07 Second Affidavite Objecting to Sale of 1069 Gravel road LF.docx

Exhibit Page 1

Case 2-09-21527-JCN Doc 392 Filed 12/08/09 Entered 12/08/09 16:11:38 Desc
Main Document Page 1 of 2

Exhibit E Objection to Woodard abusing his powers

8. Trustee sale is not an arm's length sale, and Trustee is using its power as a Federal Trustee to enhance the value to the Buyer.
9. The trustee's written actions in threatening the incarceration of Debtor if he should attend the hearing on December 2, 2009, only demonstrates intentional malice by the Trustee.
10. Therefore, debtor was prevented from attending a meeting.
11. Debtor has identified a surplus if Estate is properly handled.
12. Trustee is intentionally selling assets of Debtor at significantly reduced value that intentionally harms the Debtor.

Wherefore the Debtor prays and requests this Court to:

13. In the interest of Justice, deny the Sale in full and in any and all aspects.
14. Instruct the Trustee to properly liquidate the assets for the best interest of the Estate not the Potential buyers.
15. Hold the Trustee personally liable for breaching fiduciary responsibility to Debtor and squandering the Estate of the Debtor.

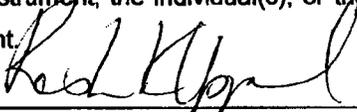
DATED: December 7, 2009 Respectfully submitted and sworn to by Lawrence Frumusa, as *Pro-Se representation*



By: Lawrence Frumusa for Debtor Pro-se

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

On December 7, 2009, before me, the undersigned, personally appeared Lawrence Frumusa, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his / her/their capacity(ies), in his(her/their) capacity and that by his(her/their) sign on the instrument, the individual(s), or the person / entity upon behalf of which the individual acted, the instrument.



Notary Seal

KASHMIR K. UPPAL
No. 01UP6144651
Notary Public, State of New York
Qualified in Wayne County
My Commission Expires 04/24/2010

Page 2 of 3

\\LARRY-PC\aa-Legal\Bankruptcy Cases - All out War\AA Motions Filings Chapter 7 rebuttal\Affidavit Objecting to Sale 1069 Gravel Road\2009-12-07 Second Affidavite Objecting to Sale of 1069 Gravel road LF.docx

Exhibit Page 2

Attachment A

Exhibit E Objection to Woodard abusing his powers

From: [nickglamack](#)
To: [Bill Dixon](#)
Cc: [Larry Frumusa](#)
Subject: Re: PO for Gravel Rd.
Date: Monday, August 03, 2009 4:47:22 PM

Hi Bill

I just got off the phone with Larry Frumusa and here is his response.

1. Please put the offer on the Real Estate Board form, even though it says residential at the top. He had a problem on another deal that was not on the standard form so that is why.
2. \$345,000 Price
3. \$10,000 deposit with Glamack Realtors held at Cndga Nat
4. Seller will do a Phase 1 after buyer has mortgage commitment.
5. Offer is subject to a Chapter 11 restructuring plan
6. Offer is subject to approval by Paula Fersace within 10 days of acceptance (She still has some rights with the car wash)

Let me know if you have any questions about this.

Thanks

Nick Glamack, Real Estate Broker
585-721-3577

----- Original Message -----

From: [Bill Dixon](#)
To: nick.glamack@realtor.com
Sent: Saturday, August 01, 2009 2:32 PM
Subject: PO for Gravel Rd.

Hi Nick- Attached is the offer for Gravel Rd. The buyer was supposed to send his pre-qual letter, but I haven't seen it yet. He is resending it to me Sunday, or Monday morning at the latest.

Let me know if you have any questions.

Thanks!

William R. Dixon
Associate Broker
585-766-0438

Dixon & Carr Realty
4085 Main St., PO Box 935
Williamson, NY 14589

> From: bill_dixon10@hotmail.com
> Subject:

Exhibit Page 3

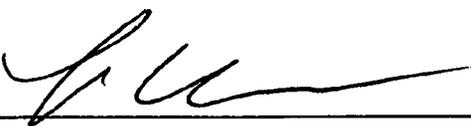
Exhibit E Objection to Woodard abusing his powers

Case # 09-21527 -- Distribution list see Attachment A

CERTIFICATE OF SERVICE
Debtor: Lawrence Frumusa

I, Lawrence Frumusa, hereby certify on this ^{Dec 8 09} October 22, 2009 on behalf of the Debtor Lawrence Frumusa, I have caused to be transmitted via CM/ECF electronic filing, facsimile, and/or First Class U.S. Mail, a copy to the creditors listed on page 2 of the foregoing as stated below

Affidavit Objecting to Sale Of 1069 Gravel Road and Actions of Trustee to Reject the Lease



Lawrence Frumusa

FILED
2009 DEC -8 PM 2:50
U.S. DISTRICT COURT
W.N.M.Y. - ROCHESTER

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

On December 5, 2009, before me, the above signed, personally appeared Lawrence Frumusa, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, in his capacity and that by his sign on the instrument, the individual, or the person upon behalf of which the individual acted, the instrument.



Notary

KASHMIR K. UPPAL
No. 01UP6144651
Notary Public, State of New York
Qualified in Wayne County
My Commission Expires 04/24/2010

Title 11 Chapter 3 Rule § 327. Employment of professional persons

[REDACTED]

(b) If the trustee is authorized to operate the business of the debtor under section 721, 1202, or 1108 of this title, and if the debtor has regularly employed attorneys, accountants, or other professional persons on salary, the trustee may retain or replace such professional persons if necessary in the operation of such business.

(c) In a case under chapter 7, 12, or 11 of this title, a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest.

"In a case under Chapter 7... a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States Trustee, in which case the Court shall disapprove such employment if there is an actual conflict of interest." See § 327(c) United States Bankruptcy Code.

(d) The court may authorize the trustee to act as attorney or accountant for the estate if such authorization is in the best interest of the estate.

(e) The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

(f) The trustee may not employ a person that has served as an examiner in the case.

Rule 2014. Employment of Professional Persons

(a) Application for an order of employment.

An order approving the employment of attorneys, accountants, appraisers, auctioneers, agents, or other professionals pursuant to § 327, § 1103, or § 1114 of the Code shall be made only on application of the trustee or committee.

The application shall be filed and, unless the case is a chapter 9 municipality case, a copy of the application shall be transmitted by the applicant to the United States trustee.

The application shall state the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge,

all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

The application shall be accompanied by a verified statement of the person to be employed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

(b) Services rendered by member or associate of firm of attorneys or accountants.

If, under the Code and this rule, a law partnership or corporation is employed as an attorney, or an accounting partnership or corporation is employed as an accountant, or if a named attorney or accountant is employed, any partner, member, or regular associate of the partnership, corporation or individual may act as attorney or accountant so employed, without further order of the court.

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Re:

Case No. 2-09-21527-JCN
Chapter 7

LAWRENCE FRUMUSA,

Debtor.

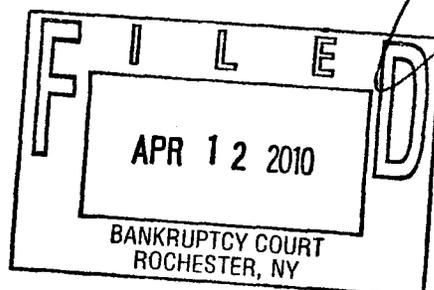
**ORDER DENYING DEBTOR'S MOTION TO
REMOVE TRUSTEE LEE E. WOODARD**

Upon the amended motion of Lawrence Frumusa ("Debtor") to remove Trustee Lee E. Woodard dated March 31, 2010 (the "Motion") and Lee E. Woodard, Chapter 7 Trustee by and through his counsel David M. Capriotti, Esq. of Harris Beach PLLC (the "Trustee") having submitted an objection to the Motion dated April 2, 2010, and the hearing have come to be heard on the 7th day of April, 2010, at 11:00 o'clock in the forenoon of that day, with the Trustee by and through his counsel David M. Capriotti, Esq. of Harris Beach PLLC, having appeared in opposition to the Motion; and the Debtor, having failed to appear on the Motion, and due deliberation having been had thereon; it is hereby

ORDERED, that the Debtor's Motion is denied in its entirety.

Dated: April 12, 2010
Rochester, New York

Honorable John C. Ninfo, II
United States Bankruptcy Judge



FIFTH JUDICIAL DISTRICT
SYRACUSE

CHIEF COUNSEL
GREGORY J. HUETHER

CHAIRPERSON
EDWARD Z. MENKIN

PRINCIPAL COUNSEL
ANTHONY J. GIGLIOTTI

ASSOCIATE COUNSEL
MARY E. GASPARINI

INVESTIGATOR
SHERYL M. CRANKSHAW

State of New York
Attorney Grievance Committees

June 15, 2010
CONFIDENTIAL

Mr. Larry Frumusa
P.O. Box 418
Webster, NY 14580

Re: Complaint against Lee E. Woodard, Esq.

Dear Mr. Frumusa:

We have reviewed your complaint against the above-named attorney.

This is to advise you that, after investigating this matter, it does not appear that your complaint against Mr. Woodard is warranted. The matters you allege as being the basis of your complaint do not indicate professional impropriety on the part of this attorney or conduct in violation of the Lawyer's Code of Professional Responsibility.

The focus of this investigation was your allegation that Mr. Woodard accepted appointment as Trustee for your bankruptcy case when he and his law firm had a conflict of interest, the basis for which you set forth in your complaint. You also set forth the basis for your allegation of a conflict in a motion to the Bankruptcy Court. On or about April 4, 2010, Bankruptcy Court Judge, John C. Ninfo, denied your motion, citing a lack of merit and a finding of no conflict of interests.

After fully considering the documentation provided in your complaint, and that which was provided by Mr. Woodard, we find no basis to reach a conclusion different from that of Judge Ninfo.

Based on the foregoing, we are closing our file.

Very truly yours,



ANTHONY J. GIGLIOTTI
Principal Counsel

AJG/tlc

cc: Lee E. Woodard, Esq.

June 18, 2010

Christopher D. Jagel (via Email)
Harris Beach PLLP
99 Garnsey Road
Pittsford, NY 14534

Lee E. Woodard, Esq.
Co Chair -Financial Restructuring & Bankruptcy Practice Group
Harris Beach PLLC
300 South State Street 4th Floor
Syracuse, New York, 13202

Re: Notice of Attorney concealment of a conflict of interest and request to remove such attorney.

Mr. Jagel and Mr. Woodard,

Myself and the Creditors of my personal estate and various other effected Estates, have indisputability determined that you have intentionally withheld from disclosing and concealed significant conflicts of interest you and your firm Harris Beach LLP have relative to your involvement in the affairs of our Bankruptcy cases.

These conflicts as described below are significant and as a result the Creditors and Debtor for themselves and on behalf of the Estate object to your further involvement.

With this letter we are demanding you immediately stop all activity and seal all information in any form as it relates to any litigation in which we are involved in.

Additionally, Mr. Jagel as representative of Harris Beach PLLP we are requesting that you immediately confiscate and seal, treating such as evidence, Mr. Woodard's and his associates identified below personal computers, electronic storage devices, files and any other such information containing devices. Further, we request you immediately inform the technology support personnel at Harris Beach PLLP to retain and seal, backups, email caches and any infrastructure related storage of information connected to the indicated individuals.

These latest discoveries of Mr. Woodard and Harris Beach action are indeed appalling, however they are the final pieces in a puzzle we have been constructing as it relates to Mr. Woodard activities and intentions over the past ten months.

As shown in the attached application Mr. Woodard purportedly submitted to the court August 11, 2009 docket # 154 "Application for appointment of Counsel for the Trustee". This application was submitted with **no notice to Creditors, no notice for hearing**, completely invalid submission by Mr. Woodard. In which he attempts to disclose the conflicts of interest, buried in paragraph 5, copied here for clarity:

*"5. That your applicant believes that the proposed attorney has no connection with the Debtor, creditors, with the U.S. Trustee or any person employed in the U.S. Trustee's office, or any other party of interest other than your affiant, except as follows: Harris Beach represents M&T Bank, Bank of America, HSBC Bank and JPMorgan Chase in various legal matters unrelated to this case. Harris Beach also represented **Rochester Countertop, Inc. d/b/a Premier Cabinet Wholesales** and American Rentals LLC d/b/a Volvo Rents in this case who are unsecured creditors by virtue of personal guarantees executed by the Debtor. The Trustee believes this representation does not create a conflict since the Trustee is "united in interest" with these creditors. In the event that a conflict arises, the Trustee shall obtain conflict counsel to represent the estate's interests in that matter. Harris Beach acknowledges and agrees that any retention of conflict counsel is subject to prior application and approval of the Court."*

However as a demonstration of his intent, reviewing proposed order attached to the application by Mr. Woodard, more specifically last sentence of first paragraph, copied here for clarity.

"the appointment hereinafter made is acceptable to such Interim Trustee, and no adverse interest being represented, and no notice to creditors need be given, it is hereby,"

It is obvious that Mr. Woodard never intended to follow the United States Code which requires notice and hearing to be provided.

It is also obvious that Mr. Woodard feels he is not bound by the New York State Code of Ethics in which it is mandatory to disclose all conflicts.

In fact a review of the docket, one will note the following events on August 7, 2009, copied here for clarity.

| | | | |
|------------|-----|------------------|---|
| 08/07/2009 | 136 | 58.93 9 KB | Order Granting Motion For Relief From Stay as to Rochester Countertop, Inc. (Related Doc # 64), (Related Doc # 68) Signed on 8/7/2009. (Capogreco, C.) (Entered: 08/07/2009) |
| 08/07/2009 | 135 | | Notice to the Court of 341 assignment. Trustee: Lee E. Woodard; September 4, 2009 at 1:00 p.m. at Rochester. (TEXT ONLY EVENT). Filed by UST (Schmitt3, Kathleen) (Entered: 08/07/2009) |
| 08/07/2009 | 135 | 62.50 | Order Granting Motion to Convert Case to Chapter 7 (Related Doc # 72). Signed on 8/7/2009. (Capogreco, C.) (Entered: |

The very same day Mr. Woodard is appointed Trustee in the Case, the conflicted client of Harris Beach is awarded an order lifting the stay for " Rochester Countertop, Inc." claim and allowing them preference over all other unsecured creditor. Tell me this is not a deal made behind closed doors.

Finally, Mr. Woodard refuses to acknowledge the conflict with the significant client of Harris Beach, Fedele Scutti and Louis Fico, a clear attempt to protect these persons.

However the Creditors involved here are fully aware of the anger and ill feelings Fedele Scutti and Louis Fico have towards Mr. Frumusa. In fact many Creditors of these cases benefited from Mr. Frumusa's efforts to compel Fedele Scutti and Louis Fico to pay the unsecured debt in the Bay Pines Project, thereby making the Creditors whole in that project. Had it not been for Mr. Frumusa efforts, these contractors would have incurred significant damages.

Now even though Mr. Woodard attempts to protect these person, his action speak loudly and precisely that his intentions are now indeed to settle the score.

Therefor for the above and numerous other documented reason, we restate our demand here.

With this letter we are demanding you immediately stop all activity and seal all information in any form as it relates to any litigation in which we are involved in.

Additionally, Mr. Jagel as representative of Harris Beach PLLP we are requesting that you immediately confiscate and seal, treating such as evidence in a criminal investigation, Mr. Woodard's and his associates identified below personal computers, electronic storage devices, files and any other such information containing devices. Further, we request you immediately inform the technology support personnel at Harris

Beach PLLP to retain and seal, backups, email caches and any infrastructure related storage of information connected to the indicated individuals.

Additional Involved Employees of Harris Beach PLLP

Erica Mallinger
Harris Beach PLLC
One Park Place, 4th Floor
300 South State Street
Syracuse, New York 13202

Cathie Appleman
Harris Beach PLLC
One Park Place, 4th Floor
300 South State Street
Syracuse, NY 13202

Gunther Buerman
Harris Beach PLLC
99 Garnsey Road
Pittsford, NY

Kelly Collins
Harris Beach PLLC
One Park Place, 4th Floor
300 South State Street
Syracuse, NY 13202

David M. Capriotti,
Harris Beach PLLC-Capriotti
One Park Place
300 S. State Street
Syracuse, New York 13202

Kevin Tompsett
Harris Beach PLLC-Tompsett
Attorneys for Rochester
Countertop, Inc.
99 Garnsey Road
Pittsford, NY 14534

We expect your immediate compliance and reserve all rights.

Regards

Larry Frumusa

CC: Unsecured Creditors as follows;

Administrative:

*US Department of Justice
Office of the Inspector General
Investigation Division
1425 New York Avenue, NW
Washington, DC 20530*

*Diana G. Adams
US Department of Justice
Office of the United States Trustee
33 Whitehall Street 21st Floor
New York, New York 10004*

*US Department of Justice
Executive Office for US Trustees
20 Massachusetts Avenue, NW
Washington, DC 20530*

*Office of the U.S. Trustee
Kathleen Schmitt, Assistant US Trustee
100 State Street Room 6009
Rochester, New York 14614*

*Executive Office for US Attorneys
United States Department of Justice
950 Pennsylvania Ave, NW, Room 2242
Washington, DC 20530-0001*

*US Department of Justice
Office of the Inspector General
Investigations Field Office
One Battery Park Plaza, 29th Floor
New York, NY 10004*

Unsecured Creditors

Steven Wowkowych
Choice One Disposal
24 East Main Street
Webster, New York 14580

Robert Capellazzi (Bob)
Domine Builders Supply
dba Domine Builders Supply
PO Box 415350, NY

Rita Sand And Gravel Elam Joanne -
Elam Sand and Gravel
PO BOX 65
West Bloomfield, New York 14585

Tovar Florentino
Florentino Tovar
22 Henrietta St
Rochester, NY 14620

Larry Frumusa
Frumusa Enterprise-Larry
PO Box 418
Webster, New York 14580

CAROL RENNER
General Electric Co-Renner
GE Appliance Contract
Camillus, New York 13031

Hometown Energy
Hometown Energy Co.-34009
768 Brooks Ave
Rochester, NY 14619

Mark Soucy at Kimbell
Kimball Trucking
1807 Tebor Rd
Webster, NY 14580

Manel Paving Corporation
PO Box 26816
Rochester, NY 14626

Tom Mendon
Mendon Enterprises, Inc.
2260 Olmstead Rd
P.O. Box 9

Crown Electric
Crown Electric Supply Co. Inc.
PO Box 86 Route 104
Union Hill, NY 14563

EVC (Eric)
E.V.C. Enterprise
410 South Lincoln Rd
East Rochester, NY 14445

Tim Felluca
Felluca OverHead Doors, Inc
1674 Norton Street
Rochester, New York 14609, New York

Franke's Nursey LLC
4682 Eddy Ridge Rd
Marion, NY 14505

Nick Frumusa
Frumusa Enterprise-Nick
PO Box 418
Webster, New York 14580

John Giordano
GRP Painting
15 Sargenti Circle
Webster New York 14580,

Fred Johnson
Johnson Brothers Masonry
9310 Asbury Rd
Leroy, NY 14482

Sharon Kimbell
Kimball Trucking
1807 Tebor Rd
Webster, NY 14580

Bob Marcello
Marcello Creative Design
150 Willow Ridge Trail
Rochester NY 14626

Marc Williamson
MIG Building System
100 Ontario Street
Webster, NY 14580

Darko Vlatkovic
Darko's heating and cooling - Chasity
11 West St
Albion, NY 14420, New York

Robert Morgan Limited III LLC
PO Box 1197 Catano,
PR 00963-1197

Nate Carr
Ferrellgas
PO Box 173940
Denver, CO 80217-3940, New York

Brian Thompson
Frumusa Enterprise-Brian
31 Sotheby Drive
Rochester, New York 14626

Henry Iassic
Henry Issac Remodeling and Repairs
28 West Buffalo Street
Churchville, New York 14428, New York

Robert Mallette
JTM Custom Construction Inc.-Robert
79 Marblehead Drive
Rochester, New York 14615

Liftech Equipment Companies, Inc
6847 Ellicott Drive
E Syracuse, NY 13057

Andy Nohle
Meier Supply
123 Brown St
Johnson City, NY 13790

Sue Cicione
Miller Brick Company
734 Ridgeway Ave
Rochester, NY 14615

Unsecured Creditors

*Mike Dooley
MJ Pipe & Supply Corp-Mike
609 Buffalo Road
Rochester, New York 14611*

*Mike Mussumeci
Mussumeci Electric LFLD
1451 Harris Road
Webster, NY 14580, New York*

*Northern Nurseries
7532 Pittsford-Palmyra Rd
Fairport, NY 14450*

*P&R Plumbing
3763 Latta Rd
Rochester, NY 14612*

*Tom Pelusio
Rochester Linoleum & Carpet
360 Jefferson Road
Rochester, New York 14623*

*Dave Marang
Sherwin Williams
191 W Main St
Webster, NY 14580*

*Dave Williams
Volvo Rents
PO Box 92280
Rochester, NY 14580*

*Bill Morse
WM. B. Morse Lumber CO-Bill
340 West Main Street
Rochester, New York 14608*

*MR Gutter
66 Fishers Road
Pittsford, New York 14534*

*Jim Netzmans
Netzmans
185 West Main St
Webster, NY 14580*

*Noemi Williams
Nothnagle
1081 Long Pond Rd Suite 100
Rochester, New York 14580*

*Dan Geer
Pride Fire Protection LLC
1248 Commercial Dr, BLDG A-
Farmington, NY 14425, New York*

*Dave Sattora
Sattora Siding
267 North Church Rd
Rochester, NY 14612*

*Will Ruseell
Southworth-Milton Cat
294 Ainsely Drive
Syracuse, New York 13205, New York*

*Wayside Garden Center
Wayside Garden Center
124 Pittsford-Palmyra Rd.
Macedon, New York 14502*

*Mike or Peggy John
Wrap-N-Drain Waterproofing
199 Belmore Way
Rochester, NY 14612*

*Mark Tachin
MST Construction Inc.
80 Huffer Rd
Hilton, NY 14468*

*Devin Hollands
New England Consulting Partners
300 International Drive
Williamsville, New York*

*Chris Partilla
NS Fastners
3019 East Henrietta Road
Henrietta, New York 14467*

*Greg Hassett
Residential Steel Services LLC
500 Lee Road
Rochester, New York 14606*

*Gary Bunce
SBM Interiors Co., Inc
380 Cedar Creek Trl
Rochester, NY 14626, New York*

*Dave Hovey
Truax & Hovey LTD
PO Box 2700
Liverpool, NY 13089-2700*

*Dave Topian
Westminster Real Estate Advisors
Westminster Real Estate Advisors
6818 Citation Way*

*Tom Keeana
Edge Wood Nursey
3740 Stalker Rd
Macedon, NY 14502-9325, New York*

Saturday, June 19, 2010

Ms. Crankshaw and Mr. Gigliotti
Grievance Committee for the Fifth Judicial District
224 Harrison Street, Suite 408
Syracuse, New York 13202-3066
Phone: 315/471-1835
Fax: 315/471-0123

Re: Complaint regarding Professional Misconduct of Lee Woodard Esq.:

Complete address:

Lee E. Woodard, Esq. - Co Chair -Financial Restructuring & Bankruptcy Practice Group
300 South State Street 4th Floor
Syracuse, New York, 13202

Ms. Crankshaw,

I am sorry, however I over looked two important items in my response of June 17, 2010, as follows.

1. Response to paragraph 7 of Mr. Woodard response, copied here for clarity:

With Frumusa provided the Committee with, among other documents, the objection submitted by me as Trustee to Frumusa's amended motion to remove me as Trustee for cause. To the extent that the objection clearly sets forth and amplifies my position set out herein, the objection is attached hereto and made a part hereof as Exhibit 4. I respectfully encourage the Committee to review the objection. The objection formed the basis for the decision by the Honorable John C. Ninfo ("Judge Ninfo") to deny Frumusa's motion to remove me as Trustee.

Here Mr. Woodard attempts to establish his objection (Exhibit 4) as the truth and factual. Unfortunately, nothing could be farther than the truth. Three people who Mr. Woodard referenced in his objection have reviewed the document and would like the opportunity to comment.

However they are concern, based on Mr. Woodard's prior actions, that Mr. Woodard would retaliate. They are asking if there is away to allow them to submit their comments and remain anonymous? Please advise me of any such process.

I have also attached their contact information below, in the event someone from the committee would like to contact them informally. Their recall of the events Mr. Woodard's quotes a far different, and demonstrate another attempt of Mr. Woodard, to conceal his actions.

| | | |
|--|--|--|
| | <p>out his fiduciary duties for the estate.</p> <p>12(b) The Trustee did not mislead the Court on October 7, 2009, or at any time concerning any aspect of the bankruptcy estate.</p> <p>12(c) The Trustee has not concealed any facts in this case, particularly funds on deposit by the Debtor. To the extent the Debtor had funds on hand as of the Conversion Date, those funds are an asset of the bankruptcy estate that should be turned over to the Trustee immediately.</p> | <p>He also attended the October 7, 2009 meeting, and will attest that Mr. Woodard accounting is very inaccurate.</p> |
|--|--|--|

2. Response to item 7 of the objection filed by Woodard (Exhibit 4), copied below: copied here for clarity:

7. It is submitted that Frumusa's underlying motivation in filing the Original Motion is to attempt to recover certain of the Debtor's assets, namely two cars that the Trustee believes have considerable value, and an ATV that were seized by the Monroe County Sheriff.

8. As can be seen by the Original Motion, the Debtor demanded return of the vehicles which the Trustee flatly denied.

However more importantly the footnote reference and located at the bottom of Page 2 in Woodard's objection.

1 The vehicles were seized by the Monroe County Sheriff executing on a judgment obtained by a creditor. The creditor acknowledged that obtaining possession of the vehicles constituted a violation of the automatic stay and has paid \$500 which funds were necessary to pay the towing expenses incurred in securing the vehicles.

Here again Mr. Woodard attempts to blame me for this action. The facts are that an attorney operating under New York State Jurisdiction, entered my property (a secluded 8 ac. home site) with Police Officers and personnel from a tow truck company. Then removed two Automobiles and a ATV. Certainly an extensive operation done in complete view of my family.

All done in complete violation of my rights as a Citizen of the United States. This attorney had absolutely no authorization to embarrass me and my family in this way.

Further Mr. Woodard in his sloppy pleadings had improperly applied to the Federal Court to remove certain items from my property at a future date. However in order to validate his Federal action he was required to redo his pleadings.

As soon as I returned home from my Sons frantic call that something ridiculous was happening, the circus had left. However within minutes I realized what was happening, and told my son the next steps Mr. Woodard and this attorney were going to take.

Sure enough they did just exactly as I forecasted, In fact my son still finds it remarkable that I so actually forecasted Woodard's actions.

These actions demonstrated beyond a doubt that rather than redoing his pleadings, Woodard devised this scenario to confiscate these item. Items which I never withheld from him and in plain view. Item being properly stored and maintain, which are now sitting in some tow yard.

Leaving aside Mr. Woodard's true intention for the moment, his action clearly identify the root problem here.

What occurred that day was a complete and utter violation of a Citizens rights in the country. However Mr. Woodard was happy to intervene and essentially, having no right authorize these action. Clearly this demonstrate Mr. Woodard complete disregard for another person rights under the law.

I submit that having this attitude is fundamental to the reason Mr. Woodard should not be allowed to practice law in this State.

I believe this sums up my response in full, Thank You for providing me this opportunity.

Regards,

A handwritten signature in black ink, appearing to read 'Larry Frumusa', written over a horizontal line.

Larry Frumusa

cc: Mr. Gigliotti

Monday, June 21, 2010

Ms. Crankshaw and Mr. Gigliotti
Grievance Committee for the Fifth Judicial District
224 Harrison Street, Suite 408
Syracuse, New York 13202-3066
Phone: 315/471-1835
Fax: 315/471-0123

Re: Critical Additional Information regarding Professional Misconduct of Lee Woodard Esq.:

Lee E. Woodard, Esq. - Co Chair -Financial Restructuring & Bankruptcy Practice Group
300 South State Street 4th Floor
Syracuse, New York, 13202

Ms. Crankshaw,

I understand now why Mr. Woodard quickly changed the focus of the Conflict discussion from his appointment as a Trustee, to the appointment of Harris Beach as attorney to the Trustee.

In discussing this situation with the Executive Office of the United States Trustee in Washington. They directed me to the **United States Trustee Manual - Chapter 7 Case Administration**, more specifically section **2-1.6.6 Conflicts of Interest.(see Attached)**.

Reviewing the attached, it is clear the Trustee manual follows the New York State Code of Ethic in addressing the question of a conflict. As stated in the Manual, a Trustee must decline or resign an appointment in which the Trustee knowing has a conflict, allowing no exceptions.

By Mr. Woodard own admissions on August 11, 2009 (application to appoint Harris Beach) in which he acknowledged a conflict of his firm and hence himself. Clearly he was not qualified to except the appointment nor continue now that it is fully disclosed.

His attempts to shift focus away from him is unacceptable actions and to redefine what is a conflict is clearly appalling.

With this final peace of the puzzle, Mr. Woodard has demonstrated that his response was nothing more than desperate attempt to cover himself, Such attempt just did not work.

I now firmly believe that Mr. Woodard is abusing is licensed to practice law in the State of New York for the sole benefit of himself and those conspiring with him. As sated before this person has no place in our New York Judicial system.

Regards,



Larry Frumusa

cc: Mr. Gigliotti

FIFTH JUDICIAL DISTRICT
SYRACUSE

CHIEF COUNSEL
GREGORY J. HUETHER

CHAIRPERSON
EDWARD Z. MENKIN

PRINCIPAL COUNSEL
ANTHONY J. GIGLIOTTI

ASSOCIATE COUNSEL
MARY E. GASPARINI

INVESTIGATOR
SHERYL M. CRANKSHAW

State of New York
Attorney Grievance Committees

June 28, 2010

CONFIDENTIAL

Mr. Larry Frumusa
P.O. Box 418
Webster, NY 14580

Re: Complaint against Lee E. Woodard, Esq.

Dear Mr. Frumusa:

I have carefully considered your letters objecting to the determination of this office as conveyed by my letter dated June 15, 2010. As noted in that letter, a determination was made on April 7, 2010, by a United States Bankruptcy Judge denying your motion to remove Mr. Woodard, finding no conflict which was not otherwise disclosed, and finding no basis for removal. I have enclosed pages 3 and 4 of the transcript of Judge Ninfo's ruling, which determined this issue.

Unless and until the Bankruptcy Court makes some other finding supporting your allegations, there is no basis to reconsider your complaint.

Very truly yours,



ANTHONY J. GIGLIOTTI
Principal Counsel

AJG/tlc
Enclosures

Exhibit Letter to Committee Staff requesting further investigation in Woodard Complaint

Friday, July 09, 2010

Mr. Gigliotti and Ms. Crankshaw
Grievance Committee for the Fifth Judicial District
224 Harrison Street, Suite 408
Syracuse, New York 13202-3066
Phone: 315/471-1835
Fax: 315/471-0123

Re: Critical Additional Information regarding Professional Misconduct of Lee Woodard Esq.:

Lee E. Woodard, Esq. - Co Chair -Financial Restructuring & Bankruptcy Practice Group
300 South State Street 4th Floor
Syracuse, New York, 13202

Mr. Gigliotti,

I have received your latest response indicating that you have completed your review and are considering the complaint against Mr. Woodard closed with no further action. I understand the reasoning you have used to come to this conclusion. However based on the total body of creditable information available, the witnesses willing to come forward and the extensive misrepresentations in Mr. Woodard answer of May 27, 2010. I do not feel that you have met the burden of properly investigating the actions of Mr. Woodard as they relate to Professional Misconduct.

These are very serious issues and accusations raised in my complaint and under review. As provided by 22 NYCRR, and to enable the Attorney Grievance Committee's mandate to investigate, review, and prosecute complaints of attorney misconduct within the Fourth Judicial Department. The staff attorneys are authorized to:

- (i) Request from the subject of a complaint that a written response be filed within 14 days; a copy of the response may be provided to the complainant;
- (ii) Interview witnesses and obtain any records and reports necessary to determine the validity of a complaint;
- (iii) Direct the subject of the complaint to appear before the chief attorney or a staff attorney for a formal interview or examination under oath;
- (iv) When necessary, issue subpoena to compel the attendance of persons as a witness or the production of relevant books and papers.

As demonstrated by the above, the Attorney Grievance Committee is empowered to fully investigate charges independently of any other process. These investigation powers are critical in determining the facts of this complaint.

You have focused on my motion to have Mr. Woodard Removed For Cause, as Pursuant to 11 U.S.C. § 324, which was heard on April 7, 2010. Additionally you cited discussions during the hearing which have

Exhibit Letter to Committee Staff requesting further investigation in Woodard Complaint

been captured in the Transcripts provided by Mr. Woodard. As I have stated before and summarized as follows the reasons why these discussions must be discounted:

1. First and foremost the hearing of April 7, 2010 was conducted without my presents, and over my request to Mr. Woodard to postpone the hearing.
2. The order issued from the hearing and drafted by Mr. Woodard's attorney reflects no finding of fact as related to the discussion relayed by the Transcripts.
3. Conducting the hearing without providing me the opportunity to attend was intentionally done, taking advantage of my *pro-se* litigation status.
4. This hearing was conducted as a motion pursuant to US Code 11 § 324, a completely different set of standards than my complaint submitted to the Attorney Grievance Committee for Professional Misconduct.
5. In spite of Judge Ninfo's assertions that "I cannot prove the allegations", I have offered three witness that will indeed demonstrate my pleadings are absolutely correct.

Given the above, I believe that the reliance on the words spoken during the hearing of April 7, 2010 are a misrepresentation intentionally put forth to mislead the Grievance Committee. Especially in the light of significant creditable evidence available.

In my letter of June 19, 2010, I provided names of three people willing to testify. People involved with my proceedings and directly affected by actions of Mr. Woodard. I would request that these three people be provided the necessary protection from retaliation, and they be interview by yourself for the Grievance Committee. In addition, I would request that you also interview myself to assure your complete understanding of my extensive responses I have provided.

Finally, once this additional information is obtained you will see the significant mitigation of the comments made during the April 7, 2010 hearing, at that point I am sure that you will reconsider you're decision and move this complaint forward in an expedient manner.

As I mentioned before, these are serious issues and accusations raised in my complaint, it is critical that the process of the Attorney Grievance Committee concludes with a clear and just decision based on truthful and accurate evidence. This is not only necessary for the proper resolutions of the issues discussed here. It is as important in maintaining the integrity of the Attorney Grievance Committee in New York State.

I will await your reply.

Regards,



Larry Frumusa

cc: Ms. Crankshaw

FIFTH JUDICIAL DISTRICT
SYRACUSE

CHIEF COUNSEL
GREGORY J. HUETHER

CHAIRPERSON
EDWARD Z. MENKIN



PRINCIPAL COUNSEL
ANTHONY J. GIGLIOTTI

ASSOCIATE COUNSEL
MARY E. GASPARINI

INVESTIGATOR
SHERYL M. CRANKSHAW

July 30, 2010

CONFIDENTIAL

Mr. Larry Frumusa
P.O. Box 418
Webster, NY 14580

Re: Complaint against Lee E. Woodard, Esq.

Dear Mr. Frumusa:

In response to your letter dated July 9, 2010, I can assure you that the investigative staff in this office is fully aware of the authority we have been granted by the Court Rules and that we have exercised that investigative authority to the extent necessary to reach the determination to close this investigation.

Very truly yours,

A handwritten signature in cursive script, reading "Anthony J. Gigliotti", is written over the typed name.

ANTHONY J. GIGLIOTTI
Principal Counsel

AJG/tlc

Sunday, August 15, 2010

Edward Z. Menkin
Chair Person Fourth Judicial Department Grievance Committee - Fifth District, Syracuse
555 East Genesee Street
Syracuse, New York 13202

Thomas N. Trevett
Chair Person Fourth Judicial Department Grievance Committee - Seventh District, Rochester
Trevett Cristo Salzer & Andolina P.C.
2 State Street,
Rochester, NY 14614

Deanne M. Tripi
Chair Person Fourth Judicial Department Grievance Committee - Eighth District, Buffalo
Palmer, Warren, Murphy & Tripi
415 Franklin Street
Buffalo, NY 14202

Re: Issues regarding the Fourth Judicial Department Grievance Committees,

Chairpersons of the Fourth Judicial Department Grievance Committees,

I am a lifelong resident of Webster, New York and writing to first share with you my experiences this areas has provided me. Then enlist your help in correcting a significant problem hampering our community and the Judicial system of this area. The problem involves the Grievance Committees of New York State Fourth Judicial Department fulfilling the mandate to "protect the public against the small minority of lawyers who do not act in an ethical manner"¹.

First, a brief list of experiences this areas has brought to me.

1. I have enjoyed the benefits of our educational systems, attending Webster High School, then Rochester Institute of Technology, obtaining with Honors a Bachelor of Science in Electric Engineering,
2. I have enjoyed the benefits of our family oriented community, raising my own family in this area, growing up as I did.
3. I have enjoyed the benefits of our stable employment, being employed by Xerox Corporation for Twenty Six years.

¹ As quoted from the web site <http://www.courts.state.ny.us/ad4/>

4. I have enjoyed the benefits of our many entrepreneurship opportunities, when in 2003 I made a career change to full Time Real Estate development.
5. I have enjoyed the solid financial demographics of this community, allowing me to attract \$43 million dollars in National funding to this area. Funding enabling the development of multimillion dollar projects.
6. I have enjoyed the benefits of our solid hard working work force, supporting me in constructing these project in record times and excellent quality.
7. I have enjoyed the benefits of our solid economy and citizens who made these projects successful and allowed me to give back to this wonderful community.

These have certainly been wonderful experiences, allowing me to achieve great success in developing valuable projects in my home town of Webster. Projects that benefited the community in many ways.

Unfortunately, I was not aware of certain elements in our community that view such projects as opportunities to disrupt and adversely acquire them for their sole benefit. These individuals have caused me to experience the full extent of our Judicial system in this community.

Over the last two years, and as a result of these individuals. I have had extensive experience with the Judicial systems in our community. I am sorry to say that our Judicial system is an absolute insult to wonderful people of our community who provide the many positive elements mentioned above. Simply disgraceful!

During this time, I have experience numerous corrupt, unethical individuals that are entrenched in our Judicial system. Individuals who are sophisticated and skillful in working the system to their sole benefit, stealing from their targets as one victim, but worst yet from the community in which they steal the opportunity for the community to receive back from a grateful recipient of the community benefits.

Fortunately, in the last few months I have realized that the problem is not as dire as initially one would think. In fact our Legislators and Senior Justices have provided mechanisms in our Judicial system to oversee and eradicate these individuals. In addition they have also provided powerful tools to used in the detection of these individuals. Demonstrating the staunch intent to protect citizens from these elements.

What we really have now is an significant issue with the implementation of these mechanisms and tools provided. Certainly, a much better situation than having no mechanisms in place.

As an example of the problem, I would like to use the actions of the staff for the Fifth District, Syracuse Grievance Committee as related to my complaint of filed against attorney Lee Woodard. This complaint was filed March 25, 2010 and I spent considerable time attempting to communicate the significant issues to the staff. However, the handling of this complaint is in my view a perfect example of a failed implementation of the New York Judiciary Law Section 90 and the Appellate Division Fourth Department Rules Relating to Attorneys (22 NYCRR 1022.19), in which mandate to the Attorney Grievance

Committees to **investigate, review, and prosecute** complaints of attorney misconduct within the Fourth Judicial Department.

The key in the above statement is **investigate** and the use of the full set of tools provided. In the Woodard example, I believe a reasonable person would agree that I fully rebutted Mr. Woodard's answer to the staff. In addition I raised basic questions of his truthfulness in his answer. Also, I identified egregious actions of Mr. Woodard, abusing the role of Trustee in a Bankruptcy proceeding for the benefit of his conflicted clients. Actions clearly establishing the severity and seriousness of my complaint.

I further provided significant information and scenarios that reasonably could exist. Finally I provided names of three individuals who were direct recipients of Mr. Woodard's actions, aware of his conflicts and willing to talk to the Grievance Committee Staff.

However Mr. Gigliotti chose to conclude the investigation and complaint using what I believe is inadequate evidence. Especially when considering the significant mandate given to the committee, the substantial tools provided to the committee to fully investigate, the seriousness of the accusation and the readily available first person witnesses willing to discuss this with the staff.

Instead, Mr. Gigliotti decides to rely on discussions given at a Federal hearing in which a motion submitted by myself - acting pro-se, requesting Mr. Woodard be dismissed as Trustee per the Bankruptcy Code. Which motion was heard without my presents and discussion not having the benefit of my opposing point of view. Finally discussions not enter as finding of facts in a judicial order, however provided by Mr. Woodard in the form of transcripts.

Mr. Gigliotti having many options available to fully investigate and understand the situation. Unfortunately, decided to use the discussions of the hearing as the deciding factor. I have attached my letter to Mr. Gigliotti detailing the above, and requesting Mr. Gigliotti to use all available means to fully investigate.

Clearly in my view, Mr. Gigliotti's decision is not consistent with the mandate of New York Judiciary Law. However not to fault Mr. Gigliotti totally, as I believe his reasoning and decisions are typical across the Fourth Department's Grievance Committees. This culture is precisely why I have experienced so many entrenched corrupt, unethical individuals in our Judicial system. Causing our Judicial system to be the thorn of the wonderful rose peddles that represent the many benefits of our community.

I would like to challenge the Grievance Committees to accept my message as constructive criticism and help me to change the current culture of this system.

As a first step, I would suggest using the Woodard complaint I submitted. I would ask Mr. Gigliotti to use all methods available to him in investigating this complaint fully. Using the information I provided and other information to make a character determination of Mr. Woodard based on Mr. Woodard's answer submitted to the committee. Then using this determination proceed with the investigation accordingly. In addition, I would ask Mr. Gigliotti interview the three people I identified, who are willing to discuss this with

him. Once completed, I am positive that Mr. Gigliotti will come to a very different conclusion. A conclusion that will indeed fulfill the mandate.

Then, I would suggest we use the Woodard complaint as a catalyst to bring about real systemic change to the Grievance Committee's process and implementation of the mandate given to them.

If successful in bringing about real change, I will predict that within three years we will see lower case loads, less complaints to the Grievance Committees, and a opportunity to bring the Judicial System in line with the many other positive benefits of our community.

Please advise me of your thoughts on the ideas presented above.

Regards,

A handwritten signature in black ink, appearing to read 'Larry Frumusa', with a long horizontal flourish extending to the right.

Larry Frumusa

cc:

Presiding Judge Henry J. Scudder
M. Dolores Denman Courthouse
50 East Avenue
Rochester, New York 14604

Patricia L. Morgan
Clerk of the Court
M. Dolores Denman Courthouse
50 East Avenue
Rochester, New York 14604

Exhibit Letter to Committee Staff requesting further investigation in Woodard Complaint

Friday, July 09, 2010

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I will await your reply.

Regards,



Larry Frumusa

cc: Ms. Crankshaw