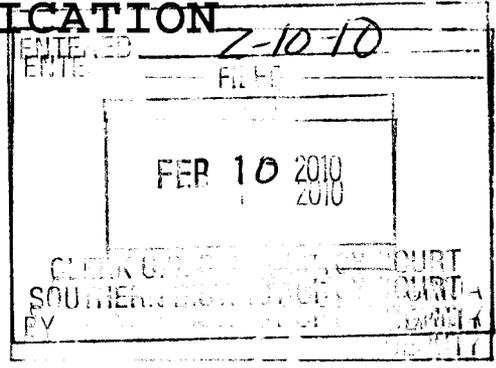


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOT FOR PUBLICATION



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re

PRIZE PROPERTIES, LLC.,

Debtor.

Bankruptcy No. 09-09817-JM7

ORDER TO THOMAS C. NELSON TO
RESPOND AND SHOW CAUSE WHY HE
SHOULD NOT BE ORDERED TO
DISGORGE RETAINER OF \$7,039.00
AND BE OTHERWISE SANCTIONED

Attorney Thomas C. Nelson ("Mr. Nelson") filed a Chapter 11 petition to initiate this case on July 9, 2009. The Debtor, Prize Properties, LLC, is prohibited from appearing in court without an attorney pursuant to CivLR¹ 83.3(k).

On July 27, 2009, Mr. Nelson submitted an application to be employed as general counsel for the Debtor-in-possession. The Declaration² submitted with the application reveals that Mr. Nelson

¹Local Rules of Practice for the United State District Court for the Southern District of California.

² A copy of the Declaration is attached hereto as Exhibit A.

1 received a pre-petition retainer of \$7,039.00 from the Debtor. On
2 August 21, 2009, the Court issued an order denying the application.³
3 A review of the docket in this case indicates that the case remained
4 dormant for the next four months.

5 The U.S. Trustee filed a motion to convert or dismiss the case
6 on December 10, 2009 ("Motion"). The cause cited in the Motion
7 included the facts that after five months in Chapter 11, the Debtor
8 had not filed a plan and disclosure statement or any operating
9 reports, and never obtained an order appointing counsel. Despite the
10 denial of his application for appointment, Mr. Nelson filed a Limited
11 Opposition to the U.S. Trustee motion, on behalf of the Debtor, asking
12 that the case be dismissed rather than converted to Chapter 7.

13 The Motion was heard on January 21, 2010. Mr. Nelson did not
14 appear at the hearing. Attorney Ajay Gupta appeared, and stated he
15 was the to represent the Debtor at the request of Mr. Nelson. The
16 case was converted to Chapter 7 by order entered January 29, 2010.

17 With the facts recited above, there is no basis to award Mr.
18 Nelson any fee or expense application for representing the Debtor.
19 The Court issues this Order to provide Mr. Nelson an opportunity to
20 show cause why the Court should not order Mr. Nelson to disgorge the
21 retainer he received in this case, and turnover the amount of
22 \$7,039.00 to the Chapter 7 Trustee.

23 In addition to the details cited from this case, the Court has
24 observed problems with other recent cases⁴ in which Mr. Nelson
25

26 ³ A copy of this Order is attached hereto as Exhibit B.

27 ⁴ These cases include: In re Simplon Ballpark, LLC, 08-01803-JM11; In re Jules Elliot Briskin,
28 Case No. 08-10018-JM11; In re Ahmad Hajjiousfi and Shalah Salah-Isfanhani, Case No. 09-04303-
JM11; In re Marshall Shields, Case No. 09-14224-JM11; and In re Marshall Shields, Case No. 09-
17085-JM7.

1 appeared on behalf of Chapter 11 debtors before the undersigned. As
2 a result, the Court may impose additional sanctions against Mr.
3 Nelson. This Order is issued pursuant to the Court's inherent
4 authority under 11 U.S.C. § 105, as well as authority specifically
5 granted under CivLR 83.1 and 83.5, 11 U.S.C. §§ 327, 328 and 329, and
6 B.R. 2014, 2016 and 2017.

7 The Court has the authority to impose a broad range of sanctions
8 for attorney misconduct. See, CivLR 83.1 and 83.5, In re Brooks-
9 Hamilton, 400 B.R. 238(9th Cir. BAP 2009); Hale v. U.S. Trustee, 509
10 F.3d 1139 (9th Cir. 2007); In re Lehtinen, 332 B.R. 404 (9th Cir. BAP
11 2005); and In re Crayton 192 B.R. 970(9th Cir. BAP 1996). After the
12 deadline to file a response expires, the Court will set a hearing, if
13 necessary, to consider additional appropriate sanctions, which may
14 include a finding of contempt, imposition of monetary sanctions, or
15 referral of the matter to the Standing Committee on Discipline or any
16 other disciplinary body.

17 Therefore, IT IS ORDERED THAT:

18 On or before February 25, 2010, Thomas C. Nelson shall file a
19 Response to show cause why the Court should not:

20 1) Order Mr. Nelson to disgorge the \$7,039.00 received in
21 connection with this case and turnover that amount to the Chapter 7
22 Trustee, and

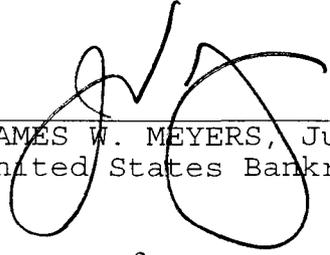
23 2) Impose other appropriate sanctions.

24 A copy of the Response shall be served on the Chapter 7 Trustee
25 and the U. S. Trustee.

26 Dated: FEB 10 2010

27
28

JAMES W. MEYERS, Judge
United States Bankruptcy Court



1 THOMAS C. NELSON (Cal. Bar No.82506)
2 550 West C Street, Ste. 1850
3 San Diego, CA 92101
4 (619) 236-1245 phone
5 (619) 236-0230 fax
6 tom@tcnlaw.com

2009 JUL 24 PM 3:51
CLERK
U.S. BANKRUPTCY CT.
SO. DIST. OF CALIF.

6 Attorney for Debtor

8 UNITED STATES BANKRUPTCY COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

11 In Re:) Case No. 09-09817-JM11
12)
13 PRIZE PROPERTIES, LLC) Chapter 11
14 A California limited liability company)
15) DECLARATION OF
16) THOMAS C. NELSON
17) IN SUPPORT OF
18) APPLICATION TO EMPLOY
19) THOMAS C. NELSON AS GENERAL
20) COUNSEL TO DEBTOR

19 I, Thomas C. Nelson, declare as follows:

- 20 1. I am an attorney admitted to practice in the State of California and before this
21 Court. My office is located at 550 West C Street, Suite 1850, San Diego, California
22 92101.
- 23 2. I am well qualified to represent the Debtor generally in this matter, and am
24 willing to accept the employment as Debtor's counsel on the terms set forth in the
25 application filed herewith.
- 26 3. I do not hold any interests adverse to the above-entitled estate and I am a
27 disinterested person as that term is defined in 11 USC §101(140).
28

In re Prize Properties, LLC.
Case No. 09-09817-JM11
Application to Employ General Counsel

Exhibit A-1

1 4. I received a pre-petition retainer of \$7,039.00 from the Debtor. Of that amount,
2 \$1,039.00 was applied to payment of the filing fee for this proceeding and \$2,000.00 was
3 applied to pre-petition counseling and preparation of the Voluntary Petition and related
4 documents for the filing. The remaining \$4,000.00 is being held in trust to pay for post-
5 petition services subject to this Court's approval. I have not received any other funds
6 from the Debtor.

7 5. Attached hereto as Exhibit A and incorporated herein by reference is a copy of
8 the fee agreement signed by the Debtor and myself which contains the terms upon which
9 the Debtor has retained me as its counsel in this matter.

10 The above is of my personal knowledge, and I could and would competently
11 testify thereto if called as a witness.

12 Signed on July 22, 2009, at San Diego, California.

13 I declare under penalty of perjury under the laws of the United States of America
14 that the foregoing is true and correct.

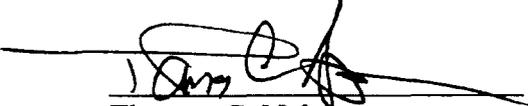
15 
16 Thomas C. Nelson
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

A-3

THOMAS C. NELSON

Attorney at Law

9089 Clairemont Mesa Blvd, Suite 100, San Diego, California 92123

Direct: 858.503.1230 Fax: 858.503.1231

tom@tcnlaw.com

July 8, 2009

Mr. Maurice Maio
Prize Properties, LLC
3780 Hancock Street, Suite G
San Diego, CA 92110

Re: Engagement Letter

Dear Mr. Maio:

The purpose of this letter ("Agreement") is to confirm and set for the terms for the engagement by Prize Properties, LLC., a California limited liability company ("Client") of Thomas C. Nelson ("Attorney") to represent Client in all aspects of Client's proposed Chapter 11 proceeding (the "Bankruptcy").

If you agree to the following terms, please sign where indicated and return one original of this letter to me.

1. Scope of Representation

Attorney's scope of representation will consist of preparing and filing a voluntary Chapter 11 proceeding (the "Bankruptcy") as to Client. Attorney's services thereafter will consist of appearing as Client's counsel of record in the Bankruptcy, and providing all legal services necessary and appropriate in that Bankruptcy including, but not limited to, assisting Client in preparing Schedules and Statements of Affairs, attending the 341a hearing, opposing motions (including motions for relief from stay) that may be brought, attending Court hearings, preparing and disseminating a proposed Plan of Reorganization, Disclosure Statement and any other matters related to the Bankruptcy..

Attorney's representation of Client under this Agreement is limited to the Scope of Representation set forth above. Any other representation by Attorney of Client will be by a separate written agreement between them.

A-4

Mr. Maurice Maio
Prize Properties, LLC
Retainer Agreement
July 8, 2008
Page Two

2. Duties of Client.

Client agrees to be truthful with Attorney, to cooperate and keep Attorney informed of any information or developments which affect Attorney's representation of Client in the Scope of Representation, and to provide documents and information on a timely basis as required for Attorney to represent Client in all aspects of the Scope of Representation set forth above. The initial documents required of Client include completed drafts of the Voluntary Petition, Schedules and Statement of Affairs for Client, and the documentation that will be required by the United States Trustee.

3. Compensation

Client agrees to pay Attorney a retainer of Seven Thousand (\$7,039.00) which will be applied as follows: \$1,039.00 for the Bankruptcy filing fee; \$2,000.00 for pre-petition counseling, and the preparing of the Voluntary Petition and other documents required for a "bare bones" filing. The remainder will be applied as Attorney's compensation in the Bankruptcy subject to the Court's approval. Client will not be liable for any additional fees in the Bankruptcy.

The Attorney's fees set forth in this Agreement are not regulated by law, but are negotiable between the Attorney and Client.

4. Costs

Attorney may incur costs and expenses in performing legal services for Client under this Agreement. Client agrees to pay all costs, disbursements and expenses in addition to the hourly fees authorized in this Agreement. Except for the items listed below, all costs and expenses will be charged at Attorney's cost:

In-Office Black/White photocopying:	\$0.25 per page
In-Office Color photocopying	\$0.50 per page
Mileage:	\$0.52 per mile
Faxes:	\$0.25 per page

Attorney shall not incur costs exceeding Five Hundred Dollars (\$500.00) per item or in the aggregate in any month without Client's prior consent. Attorney may request a deposit for any such approved costs, or may request that Client pay such costs directly to outside providers.

Mr. Maurice Maio
Prize Properties, LLC
Retainer Agreement
July 8, 2008
Page Three

5. Disclaimer of Guarantee.

Attorney has made no promises or guarantees to Client about any specific outcome in the Bankruptcy. Nothing in this Agreement shall be construed as such a promise or guarantee. Attorney's comments about the potential outcome of any aspect of the Bankruptcy are expressions of opinion only.

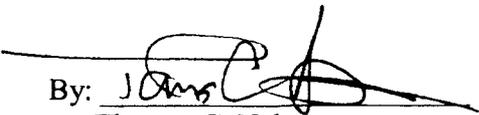
6. Document Retention

Attorney's policy is to return all of Client's original documents prior to or no later than the completion of the work described in section 1, above and to destroy Attorney's notes. Attorney shall also provide Client copies of all correspondence and other documents developed or received by Attorney. Attorney will maintain any other documents consistent with the Rules of Professional Conduct and other applicable laws as they may change from time to time.

7. Discharge and Withdrawal

Client may discharge Attorney at any time. Subject to Court approval, Attorney may withdraw with Client's consent or for good cause. Good cause includes Client's breach of this Agreement, refusal to cooperate or to follow Attorney's advice on a material matters, or any fact or circumstance that would render Attorney's continuing representation unlawful or unethical. Upon conclusion of his services, Attorney will, at Client's request, deliver Client's files and personal property in Attorney's possession as directed by Client regardless of whether Client has paid for all services and costs.

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. This Agreement shall be effective retroactively to the date Attorney first performed services for the Client within the Scope of Representation set forth above.

By: 
Thomas C. Nelson

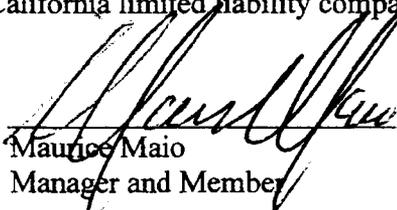
Mr. Maurice Maio
Prize Properties, LLC
Retainer Agreement
July 8, 2008
Page Four

I have read and understand the terms set forth above and agree to them effective as of the date of this letter set forth above.

Dated: July 8, 2009

Prize Properties, LLC
A California limited liability company

By:


Maurice Maio
Manager and Member

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOT FOR PUBLICATION

ENTERED <u>8-24-09</u> FILED <div style="border: 1px solid black; padding: 5px; text-align: center;"> AUG 21 2009 </div> CLERK, US BANKRUPTCY COURT SOUTHERN DISTRICT OF CALIFORNIA DEPUTY
--

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re PRIZE PROPERTIES, LLC., Debtor.	Bankruptcy No. 09-09817-JM11 ORDER DENYING APPLICATION TO EMPLOY THOMAS C. NELSON AS GENERAL COUNSEL TO DEBTOR
---	---

The court has reviewed the Application to Employ Thomas C. Nelson as General Counsel to Debtor ("Application") and the remaining docket entries in this case. In addition, this Court is preparing a decision and order relating the Court's concerns about the professional practices of Mr. Nelson in another Chapter 11 case, In re Simplon Ballpark LLC., Case No. 08-01803-JM11, ("Simplon Case"), which will be issued forthwith.

The Application in the present case is inadequate. First, Mr. Nelson has not filed form CSD 1009, the required disclosure statement of attorneys fees. Second, the declaration he filed in support of the Application is incomplete. It fails to include information, to the best of his knowledge, of all of Mr. Nelson's connections with the

Exhibit B-1

1 debtor, creditors, any other party in interest, their respective
2 attorneys and accountants, the United States trustee, or any person
3 employed in the office of the United States trustee, information
4 specifically required by Bankruptcy Rule 2014(a). If he has no
5 connections with anyone in the scope of those categories, he must
6 include such a statement in his declaration under penalty of perjury.

7 Finally, the Court has serious concerns about the professionalism
8 exhibited by Mr. Nelson, and his ability to competently represent a
9 Debtor-in-Possession. The litany of tardy filings and lack of candor
10 displayed by Mr. Nelson in the Simplon Case will be enumerated in the
11 forthcoming decision, but it appears that Mr. Nelson is continuing the
12 pattern here.

13 The petition in this case was filed July 9, 2009, as a "bare
14 bones" filing. The § 341(a) meeting of creditors was scheduled for
15 August 4, 2009, at 3:00 p.m. The balance of schedules were due by
16 July 24, 2009. At 3:54 p.m. on July 24, Mr. Nelson filed an Ex Parte
17 Application, "out of an abundance of caution", for an extension of
18 time to file the schedules and statement of affairs to July 31, 2009.
19 The Ex Parte Application contained an express condition requiring the
20 Debtor to personally deliver the copies of the schedules to the Office
21 of the United States trustee no later than 12:00 p.m. on July 31,
22 2009. With that express condition, the United States trustee filed
23 a Statement of No Opposition to the Ex Parte Application.

24 The Court is not aware of the timing of the delivery of the
25 copies to the United States trustee, but notes that the Balance of
26 Schedules and Statement of Affairs were not tendered to the Court
27 until 12:13 p.m. on August 5, 2009. This delay violated the terms of
28 the proposed order extending the time. And, unless the schedules were

1 received by all creditors and interested parties by July 31, had the
2 effect of denying them any opportunity to review the schedules before
3 the § 341(a) meeting.

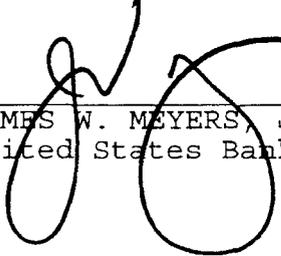
4 Therefore, given the procedural inadequacies associated with the
5 Application, and the unresolved concerns about the professional
6 ability of Mr. Nelson to fulfill his obligations as an officer of the
7 court or counsel for a Debtor-in-Possession,

8 IT IS ORDERED that:

9 1) The Application is denied.

10 2) This Order is without prejudice to an amended Application
11 upon cure of the procedural deficiencies in this case and a
12 satisfactory showing of cause for the lack of candor and competence
13 displayed in the Simplon Case.

14 Dated: **AUG 21 2009**

15 
16 _____
17 JAMES W. MEYERS, Judge
18 United States Bankruptcy Court
19
20
21
22
23
24
25
26
27
28