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ENTERED 2-10-10
FILED
FEB 10 2010
CLERK, U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re

MARSHALL SHIELDS,

Debtor.

Bankruptcy No. 09-17085-JM7

ORDER TO THOMAS C. NELSON TO
RESPOND AND SHOW CAUSE WHY HE
SHOULD NOT BE ORDERED TO
DISGORGE AND TURNOVER RETAINER
OF \$15,000.00 AND BE OTHERWISE
SANCTIONED

Attorney Thomas C. Nelson ("Mr. Nelson") filed a Chapter 11 petition to initiate this case on November 5, 2009. On February 3, 2010, the U.S. Trustee filed an *Ex Parte* Application to dismiss the case on the grounds that the Debtor failed to appear at the continued § 341(a) meeting of creditors which was scheduled for February 2, 2010. After a review of the file, the Court issued a written Decision¹ and an Order converting the case one under Chapter 7.

This is the Debtor's second Chapter 11 case. The earlier case, Case No. 09-14224-JM11 ("First Case") was dismissed on October 28,

¹ A copy of the Decision is attached hereto as Exhibit A.

1 2009, when the Debtor failed to appear at the § 341(a) meeting of
2 creditors. There was no application to appoint counsel or any other
3 motions filed on behalf of the Debtor in the First Case. On November
4 3, 2009, a creditor filed a notice of security interest in rents and
5 profits.

6 This case was filed on November 5, 2009. Both petitions were
7 filed by Mr. Nelson, and he submitted a statement disclosing that he
8 had received \$15,000 to represent the Debtor. The Statement in this
9 case contained the case number from the First Case, but was dated
10 November 2, 2009. As in the First Case, there was no application
11 filed to appoint Mr. Nelson as counsel. The schedules reveal that the
12 Debtor owns various parcels of real property and receives gross rental
13 income of over \$12,000 each month. Despite these disclosures, no B.R.
14 2015 Monthly Operating reports were filed, no motion to use cash
15 collateral filed, and no request made for authorization for the Debtor
16 to use any of the estate income for his personal expenses.

17 Based on a review of the First Case and the file in this case,
18 the Court sees no basis to award any fee to Mr. Nelson for services
19 as counsel to the Debtor-in-Possession in either case. The Court
20 issues this Order to provide Mr. Nelson an opportunity to show cause
21 why the Court should not order Mr. Nelson to disgorge the retainer he
22 received in this case, and turnover the amount of \$15,000.00 to the
23 Chapter 7 Trustee.

24 The Court has observed problems with other recent cases² in which
25 Mr. Nelson appeared on behalf of Chapter 11 debtors before the
26

27 ² 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 Hajjvousfi and Shalah Salah-Isfanhani, Case No. 09-04303-
JM11; and In re Prize Properties, LLC, 09-09817-JM7.

1 undersigned. As a result of these repeated issues, the Court is
2 considering imposing additional sanctions against Mr. Nelson pursuant
3 to the Court's inherent authority under 11 U.S.C. § 105, and as well
4 as that specifically granted under CivLR³ 83.1 and 83.5, 11 U.S.C. §§
5 327, 328 and 329, and B.R. 2014, 2016 and 2017.

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

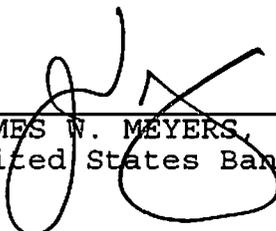
16 IT IS ORDERED that:

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

- 19 1) Order disgorgement of the \$15,000.00 received to represent the
20 Debtor, and turnover that amount to the Chapter 7 Trustee, and
21 2) Impose other appropriate sanctions.

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

24 Dated: **FEB 10 2010**

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26 _____
27 JAMES W. MEYERS, Judge
28 United States Bankruptcy Court

28 ³ Local Rules of Practice for the United State District Court for the Southern District of California.

ENTERED 2/8/2010
FILED
FEB 5th 2 2010
CLERK, U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re

MARSHALL SHIELDS,

Debtor.

Bankruptcy No. 09-17085-M11

DECISION ON ORDER CONVERTING
CASE TO CHAPTER 7

The U.S. Trustee filed an Ex Parte Application to dismiss this case on the grounds that the Debtor failed to appear at the continued § 341(a) meeting of creditors which was scheduled for February 2, 2010. After a review of the file, it appears to the Court that the appropriate remedy is to convert the case to one under Chapter 7.

This is the second Chapter 11 case filed by this Debtor in 2009. On September 22, 2009, the Debtor's first Chapter 11 petition was filed and assigned Case No. 09-14224-JM11 ("First Case"). The petition was filed by attorney Thomas C. Nelson, and the disclosure filed with the schedules revealed that Mr. Nelson had received \$15,000 to represent the Debtor in that case. The § 341(a) meeting of creditors was scheduled for October 27, 2009. The Debtor did not appear on that date, so the U.S. Trustee filed an ex parte motion to

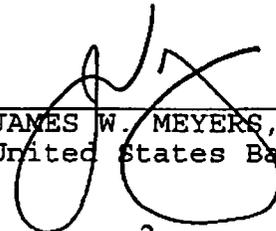
1 dismiss the case without prejudice. That motion was granted and the
2 First Case was dismissed on October 28, 2009. There was no
3 application to appoint counsel or any other motions filed on behalf
4 of the Debtor in the First Case. On November 3, 2009, a creditor
5 filed a notice of security interest in rents and profits.

6 This case was filed on November 5, 2009. The petition was again
7 filed by Thomas C. Nelson, and he submitted another statement
8 disclosing that he had received \$15,000 to represent the Debtor in
9 this case. The schedules reveal that the Debtor owns various parcels
10 of real property and receives gross rental income of over \$12,000 each
11 month.

12 This case has now been pending for three months. As in the First
13 Case, there has been no application filed to appoint Mr. Nelson as
14 counsel. Creditor OMSJ, LLC filed a motion for relief from the
15 automatic stay on January 20, 2010. Despite disclosures in the
16 schedules that the Debtor receives a significant amount of rental
17 income each month, there have been no B.R. 2015 operating reports
18 filed, no motion to use cash collateral, and no request for
19 authorization for the Debtor to use any of the estate income for his
20 personal expenses.

21 Based on U.S. Trustee's motion and the information recited above,
22 the Court finds cause to grant the motion under § 1112(e). Rather
23 than dismissal of the case, the Court finds that conversion of the
24 case to Chapter 7 is in the best interest of creditors. A separate
25 order converting the case will be entered this same date.

26 Dated: FEB 05 2010

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JAMES W. MEYERS, Judge
United States Bankruptcy Court