

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.
IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FEB 15 2012

Oklahoma Department of Securities,)
ex rel. Irving L. Faught, Administrator,)
)
Plaintiff,)
)
v.)
)
Accelerated Benefits Corporation, a Florida)
corporation, et al.,)
)
Defendants.)

PATRICIA PRESLEY, COURT CLERK

By: PERMY

Case No. CJ-99-2500
Judge Daniel L. Owens

SET FOR HEARING
DATE 3/9/12
TIME 9:00 AM
JUDGE Daniel Owens

**CONSERVATOR'S MOTION FOR FINAL APPROVAL
OF CERTAIN PROVISIONS OF PURCHASE AND SERVICING AGREEMENTS**

COMES NOW Tom Moran, Conservator of Certain Assets of Accelerated Benefits Corporation ("Conservator"), and hereby respectfully moves the Court for final approval of certain provisions of the Option Purchase Agreement and Service and Escrow Agreement which were previously the subject of the Conservator's Motion filed herein on May 17, 2006 (the "Motion") and Order approving same, dated June 7, 2006. In support of this Motion for Final Approval of Certain Provisions of Purchase and Servicing Agreements, the Conservator would show the Court as follows:

1. On May 17, 2006, the Conservator filed a Motion for Approval of New Purchase and Servicing Agreements, requesting that the Court approve a new Option Purchase Agreement and a new Service and Escrow Agreement (collectively referred to therein as the "Tonti Purchase Contracts"). *See* Conservator's May 17, 2006 Motion attached hereto as Exhibit "A."

2. As outlined in the Motion, the Conservator, after two previous defaults involving similar purchase contracts, requested that the Court approve the Option Purchase Agreement and Service and Escrow Agreement with Lorenzo Tonti, Ltd., (the "Buyer") which contained

substantially similar terms to the previous contracts under which the buyers had defaulted.

3. Under the Tonti Purchase Contracts, the Buyer tendered at closing a non-refundable and fully earned Option Payment of \$800,000.00 and the sum of \$50,000.00 in earnest money. The Buyer also tendered at closing the amount of \$772,927.23 in premiums and servicing fees for the period of January 1, 2006 through May 31, 2006, less the Buyer's share of policy maturities from December 27, 2005 through the date of the Motion in the amount of \$273,840.78. As a result, the total amount due at closing from the Buyer was \$1,349,086.50. In addition to the other amounts due from Buyer under the Tonti Purchase Contracts, the Service and Escrow Agreement provided for both a Termination Fee and an Annual Incentive Fee as part of the "Buyer's Servicer Fees" payable to HTM Conservator, LLC as the Buyer's Servicer ("HTM Conservator").

4. The Buyer's Servicers Fees were provided as part of the compensation to HTM Conservator for maintenance and administration of the viatical life insurance policies sold to Buyer under the Tonti Purchase Contracts. The Buyer's Servicer Fees do not, in any way, affect the monies to be received by the investors of Accelerated Benefits Corporation under the terms and conditions of the Option Purchase Agreement. The Service and Escrow Agreement explicitly provides that the Buyer's Servicer Fees will only be paid from or charged to the payments and proceeds payable to the Buyer and in no way paid from or charged to the payments and proceeds payable to the Conservator or the investors of Accelerated Benefits Corporation. For example, the Annual Incentive Fee to HTM Conservator ranges from six percent (6%) to eight percent (8%) of the Buyer's net profits, *i.e.*, the maturity proceeds actually received by the Buyer less premiums and other related expenses. The Termination Fee equals eight percent (8%) of the rights, payments and proceeds with respect to all policies that have not

yet matured as of the Conveyance Date, which does not occur until the investors of Accelerated Benefits Corporation have received the entire purchase price due to the investors under the Option Purchase Agreement.

5. No written objections to the Motion were ever filed.

6. At the hearing on the Motion, which took place June 2, 2006, counsel for Accelerated Benefits Corporation and Keith Lamonda raised an objection¹ concerning the Buyer's Servicer Fees. The Court approved the Tonti Purchase Contracts but granted Accelerated Benefits Corporation's request to reserve its rights to object to HTM Conservator receiving the Buyer Servicer Fees. *See* June 7, 2006 Order Approving Tonti Purchase Contracts, attached hereto as Exhibit "B."

7. In the nearly six years since the Order Approving the Tonti Purchase Contracts was entered, no party-in-interest has presented any further objection, written or otherwise, or made any other attempt to demonstrate why the Court should not enter a final order approving the Buyer's Servicer Fees as set forth in the Service and Escrow Agreement. Moreover, for the last six years and likely for the next ten years or more, HTM Conservator has provided, and will continue to provide, the policy maintenance and administration services for which it is to be compensated, in part, by the Buyer's Servicer Fees. Finally, entry of an order completely and finally approving all provisions of the Service and Escrow Agreement included with the Tonti Purchase Contracts removes any unnecessary uncertainty and provides further finality for the affairs of this conservatorship.

¹ Accelerated Benefits Corporation did not file an Objection or Response to Conservator's Motion for Approval of New Purchase and Servicing Agreements. However, to the extent that any objections or concerns relate to a perception that the Buyer's Servicer Fees reduce or negatively impact what might otherwise be paid to the investors of Accelerated Benefits Corporation, such objections and concerns are unfounded. Approval or denial of the Buyer's Servicer Fees only determines what, if any, amount of compensation HTM Conservator receives for policy maintenance and administration services out of the payments or proceeds received by the Buyer for the policies sold pursuant the Tonti Purchase Contracts after all payments due to the investors under the Option Purchase Agreement have been made.

WHEREFORE, the Conservator respectfully requests that the Court enter an Order providing final approval of all provisions of the Service and Escrow Agreement, including, but not limited to, the Buyer's Servicer Fees provided therein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mel McVay", written over a horizontal line.

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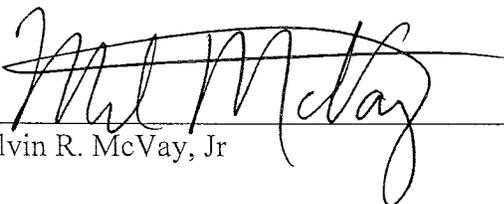
Attorneys for Conservator, Tom Moran

CERTIFICATE OF SERVICE

The undersigned certifies that on the 15th day of February, 2012, a true and correct copy of the foregoing was served via hand-delivery to the following:

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