

Hearing Date and Time: October 24, 2013 at 11:00 a.m. (prevailing U.S. Eastern Time)

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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| In re: | : | Chapter 11 |
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| ARCAPITA BANK B.S.C.(C), <u>et al.</u> , | : | Case No. 12-11076 (SHL) |
| | : | |
| Reorganized Debtors. ¹ | : | Confirmed |
| | : | |
| ----- | X | Re: ECF Docket no. 1639 |

**RESPONSE TO OBJECTION OF CAPTAIN ALSOHAIBI
TO FINAL APPROVAL OF PROFESSIONAL COMPENSATION**

The Official Committee of Unsecured Creditors (the “Committee”) of Arcapita Bank B.S.C.(c) (“Arcapita Bank”) and its affiliated debtors in possession (collectively, the “Debtors”) hereby submits this response to the Objection of Captain Hani Alsohaibi to Approval of Professional Compensation and Request that the Hearing Scheduled for October 24, 2013 Concerning Approval of Proposed Compensation Be Adjourned [Docket No. 1639] (the “Objection”).

RESPONSE

1. Although Captain Hani Alsohaibi’s pleading is styled as an “objection” to the final fee applications filed in these chapter 11 cases by certain retained professionals (the

¹ The chapter 11 case captioned In re Falcon Gas Storage Company, Inc., No. 12-11790 (Bankr. S.D.N.Y.), is being administered jointly with the other above-captioned cases, but no plan has been confirmed in that case.

“Final Fee Applications”),² the relief he seeks is solely procedural; an adjournment of the hearing at which the Final Fee Applications will be considered by the Court and the associated objection deadline. Captain Alsohaibi’s request for these adjournments is based exclusively on his assumption that the Office of the United States Trustee (the “US Trustee”) was closed due to the government shutdown and, accordingly, unable to review the Final Fee Applications.

Objection ¶ 8.

2. In addition, without objecting to any specific fees or expenses for which the retained professionals seek compensation (the “Professional Compensation Claims”), Captain Alsohaibi asserts that the Debtors’ estates are “on the brink of administrative insolvency” and, if the requested fees are approved on a final basis, “the professionals will be able to walk away from the case whole whereas stakeholders will be left with insufficient funds for case administration.” Objection ¶¶ 3, 11. The Objection is neither accurate nor persuasive.

I. The US Trustee Has Had Sufficient Opportunity to Review the Final Fee Applications

3. First, Captain Alsohaibi’s assertion that the US Trustee did not review the Final Fee Applications during the government shutdown is simply not true. In fact, a number of the applicants were asked to provide additional and/or reformatted information with respect to the Final Fee Applications during the pendency of the shutdown and the US Trustee timely filed a response to the Final Fee Applications on October 17, 2013.³ With the factual premise for the

² Each of the Final Fee Applications was properly served and noticed pursuant to the applicable rules and procedures, including those established by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Court’s order approving procedures for professional compensation, [Docket No. 159], and the Local Rules for the United States Bankruptcy Court of the Southern District of New York.

³ See Omnibus Objection of the United States Trustee Regarding Interim and Final Fee Applications for Compensation and Reimbursement of Expenses [Docket No. 1642] (the “UST Objection”). The UST Objection is not addressed in this Response, which is submitted without

requested adjournment having been shown to be inaccurate, the October 24 hearing on Final Fee Applications should proceed as scheduled and noticed on parties in interest.

II. The Reorganized Debtors and New Holding Companies Have Sufficient Resources to Satisfy the Professional Compensation Claims

4. Furthermore, even though the Objection does not contain any legally cognizable objections to the payment of the Professional Compensation Claims, the Committee addresses briefly Captain Alsohaibi's assertion that granting the Final Fee Applications will cause the "Arcapita estate" to become "administratively insolvent." See Objection ¶¶ 3, 11. Putting aside the fact that the Effective Date⁴ has occurred and, accordingly, the Debtors' estates no longer exist for purposes of being "administered" by the Court, by confirming the Plan, the Court has already made the necessary finding, based on the evidence presented in connection with the confirmation hearing, that the Plan is feasible and its confirmation is "not likely to be followed by the liquidation or the need for further financial reorganization" of the Debtors or any successors of the Debtors, except as provided under the Plan itself. 11 U.S.C. § 1129(a)(11). Such a finding necessarily presupposes a finding that the Reorganized Debtors will be in the position to honor all of their obligations under the Plan. See, e.g., In re Young Broadcasting Inc., 430 B.R. 99, 129 (Bankr. S.D.N.Y. 2010) (determination of feasibility requires inquiry into whether "provisions specified in the proposed plan of reorganization can be done post confirmation"). Captain Alsohaibi has presented no evidence to undermine this finding of the Court.

prejudice to the rights of the Committee or any of its professionals to file a response to the UST Objection or to address the UST Objection orally at the October 24 hearing.

⁴ Capitalized terms not defined herein have the meanings given to such terms in the *Confirmed Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and Related Debtors Under Chapter 11 of the Bankruptcy Code (with First Technical Modifications)* [Docket No. 1265] (the "Plan").

5. In any event, pursuant to section 2.2 of the Plan, on the Effective Date, a dedicated escrow account was created for the satisfaction of the Professional Compensation Claims and funded with \$40,310,871.77.⁵ The Committee believes that this escrowed amount is sufficient to pay all allowed Professional Compensation Claims incurred prior to the Effective Date, based on the estimates provided by the estate professionals. As of October 18, 2013, \$35,924,346.56 remained in this Professional Compensation Claims Escrow Account.⁶

6. Pursuant to section 2.2 of the Plan, estate professionals were required to file their respective final fee applications no later than thirty days after the Effective Date, *i.e.*, October 17, 2013. The aggregate amount of Professional Compensation Claims asserted in the timely filed final fee applications (including those scheduled for a subsequent hearing date) and to be paid from the Professional Compensation Claims Escrow Account, to the extent they are allowed, is approximately \$35 million.⁷ Therefore, even if all Final Fee Applications are approved without reduction, the Professional Compensation Claims Escrow Account was funded with an excess of approximately \$5 million. Pursuant to section 2.2 of the Plan, after payment of the allowed Professional Compensation Claims, this excess amount will be released to the Reorganized Debtors.

7. Furthermore, the Reorganized Debtors and the New Holding Companies have sufficient cash on hand to satisfy all other administrative claims asserted against the Debtors. According to GCG, Inc., the claims and noticing agent appointed in these cases, as of

⁵ See *Declaration of Samuel E. Star in Support of Response to Objection of Captain Alsohaibi to Final Approval of Professional Compensation*, attached hereto as Exhibit A (the “Star Declaration”) ¶ 5.

⁶ Id.

⁷ GCG, Inc., in its capacity as claims and noticing agent, is not required to file fee statements or fee applications and is the only professional entitled to seek payment from the Professional Compensation Claims Escrow Account that did not file a final fee application.

October 17, 2013 (the Administrative Expense Claims Bar Date), the aggregate amount asserted (and not withdrawn) on account of claims alleging administrative priority status is \$1,962,577.27.⁸ RA Holdco 2 LLC, just one of the New Holding Companies obligated pursuant to the Plan to pay allowed administrative claims, currently has more than \$50 million in cash in its main US currency operating account, in addition to amounts held in other accounts, including those maintained in compliance with the Exit Facility. Thus, even if all filed administrative expense claims are allowed in full, the New Holding Companies and the Reorganized Debtors have more than enough cash to pay such claims, even before factoring in the excess funds in the Professional Compensation Claims Escrow Account.

CONCLUSION

8. For the foregoing reasons, the Committee respectfully requests that the Court (i) overrule the Objection, (ii) conduct the hearing on the Final Fee Applications on October 24, 2013, and (iii) grant any other relief appropriate under the circumstances.

Dated: New York, New York
October 21, 2013

MILBANK, TWEED, HADLEY & M^cCLOY LLP

By: /s/ Evan R. Fleck
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⁸ Star Declaration ¶ 6.

Exhibit A
Star Declaration

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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**DECLARATION OF SAMUEL E. STAR IN SUPPORT OF RESPONSE
TO OBJECTION OF CAPTAIN ALSOHAIBI TO FINAL APPROVAL
OF PROFESSIONAL COMPENSATION**

SAMUEL E. STAR, under penalty of perjury, says:

1. I am a senior managing director with FTI Consulting, Inc., together with its wholly owned subsidiaries, agents, independent contractors and employees (“FTI”), an international consulting firm. I submit this declaration (the “Declaration”) in support of the Response to Objection of Captain Alsohaibi to Final Approval of Professional Compensation (the “Response”) filed by the Official Committee of Unsecured Creditors in the above-captioned chapter 11 cases (the “Committee”).

2. On April 12, 2012, FTI was retained by the Committee to advise the Committee in connection with these chapter 11 cases. Immediately following the Effective Date,² FTI was retained by the Reorganized Debtors to perform post-emergence financial advisory and consulting services.

¹ The chapter 11 case captioned In re Falcon Gas Storage Company, Inc., No. 12-11790 (Bankr. S.D.N.Y.), is being administered jointly with the other above-captioned cases, but no plan has been confirmed in that case.

² Capitalized terms not defined in this Declaration shall have the meaning ascribed to them in the *Confirmed Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and Related Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 1265] (the “Plan”).

3. I am familiar with the businesses and financial affairs of the Reorganized Debtors, the financial and restructuring transactions contemplated by the Plan, and other matters that concern the Reorganized Debtors' consummation of the Plan and their emergence from chapter 11.

4. All matters set forth in this Declaration are based on: (a) my personal knowledge; (b) my review of the relevant documents; (c) my experience with and knowledge of the Reorganized Debtors' businesses and financial affairs and the chapter 11 cases; (d) diligence performed by other members of the FTI team at my direction in support of this Declaration; or (e) information supplied to me by other professionals in these chapter 11 cases. If called upon to testify, I could and would testify to the facts set forth herein.

5. As stated in the Response, on the Effective Date, a dedicated escrow account was created for the satisfaction of the Professional Compensation Claims and funded with \$40,310,871.77. My knowledge of this fact is based on information provided by Alvarez & Marsal North America LLC, the Debtors' financial advisor. As of October 18, 2013, \$35,924,346.56 remained in this Professional Compensation Claims Escrow Account. My knowledge of this fact is based on information provided by JPMorgan Chase Bank, N.A., the escrow agent with respect to the Professional Compensation Claims Escrow Account.

6. As also stated in the Response, as of October 17, 2013 (the Administrative Expense Claims Bar Date), the aggregate amount asserted (and not withdrawn) on account of claims alleging administrative priority status is \$1,962,577.27. My knowledge of this fact is based on information provided to the Reorganized Debtors' advisors by GCG, Inc., the claims and noticing agent appointed in these cases.

7. As further stated in the Response, even if all filed administrative expense claims are allowed in full, the New Holding Companies and the Reorganized Debtors have

sufficient cash on hand to satisfy such claims. As of the filing of this Declaration, RA Holdco 2 LLC, just one of the New Holding Companies obligated pursuant to the Plan to pay allowed administrative claims, has more than \$50 million in its main US currency operating account, in addition to amounts held in other accounts, including accounts maintained in compliance with the Exit Facility.

[remainder of page intentionally left blank]

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 21, 2013

A handwritten signature in black ink, appearing to read "S. E. Star", written above a horizontal line.

Samuel E. Star