



ORDERED in the Southern District of Florida on June 15, 2017.

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

Robert A. Mark, Judge
United States Bankruptcy Court

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
www.flsb.uscourts.gov**

In re:

AQUA LIFE CORP. d/b/a PINCH-A-
PENNY #43,

Debtor. _____ /

Case No.: 17-15918-BKC-RAM

Chapter 11

**FINAL ORDER AUTHORIZING THE DEBTOR
TO USE CASH COLLATERAL AND FINDING SECURED
CREDITORS ADEQUATELY PROTECTED IN CONNECTION THEREWITH**

THIS MATTER came before the Court for hearing on Monday, May 15, 2017 at 2:30 p.m. and again for final hearing on Wednesday, June 7, 2017 at 11:00 a.m. (when referred to together, the "Hearing") upon the *Emergency Motion By Debtor-in-Possession Pursuant to 11 U.S.C. §§ 105, 361, 362, and 363, Bankruptcy Rules 4001(B) and 6003, and Local Rules 4001-2 and 9013-1 for Interim Order (A) Authorizing Use of Cash Collateral; (B) Finding That Secured Creditors are Adequately Protected; and (C) Scheduling Final Hearing* (the

“Motion”)¹ [ECF #9], filed by Aqua Life, Corp. d/b/a Pinch-A-Penny #43. (the “Debtor”) and upon the Order granting the Motion (the “Interim Order”) [ECF #34]. The Court having considered the representations made by counsel at the Hearing, as well as the proffered testimony of the Debtor’s principal, Raymond Ibarra, which was admitted without objection, and finding that it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); that the relief requested in the Motion is in the best of interests of the Debtor, its estate, and its creditors; that the Secured Creditors’ interests in the Cash Collateral are adequately protected; that proper and adequate notice of the Motion and the hearing thereon has been given and that no other or further notice is necessary to order interim relief; and upon the record herein after due deliberation thereon, and noting the agreement of Wells Fargo Commercial Distribution Finance, LLC (“Wells Fargo”), Ocean Bank, and Pinch A Penny, Inc. (“Pinch A Penny”)², finds that good and sufficient cause exists for the granting of the relief as set forth herein. Accordingly, it is **ORDERED** that:

1. The Motion is **GRANTED** on a final basis on the relief requested in the Motion and the Debtor’s request for final relief on the use of Cash Collateral as set forth therein.
2. The Debtor is authorized to use Cash Collateral, as defined in 11 U.S.C. § 363(a) and in the Motion, to continue its business operations and to pay its regular operating expenses in accordance with the Budget attached hereto as **Exhibit “1”** (the “Budget”). The Debtor’s expenditures shall be limited to those expenditures authorized in the Budget for the term thereof, except as provided herein, and where amounts are provided on a line-by-line basis. In addition,

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

² Hereinafter, when referred to collectively, Pinch-A-Penny, Ocean Bank, and Wells Fargo may be referred to as the “Secured Creditors”.

the Debtor shall not pay any prepetition debt except as may be specifically authorized by this Court, upon proper notice, motion and hearing.

3. The Debtor is authorized to exceed the amounts set forth in the Budget by the sum of fifteen (15%) percent of the disbursements projected on a line item basis as may be required to operate the Debtor's business without necessity of further Order. The Budget amounts may also be exceeded without further Court order, upon written consent of Wells Fargo, Ocean Bank, and Pinch A Penny.³ Payment of fees to the Office of the United States Trustee under 28 U.S.C. § 1930 ("UST Fees") may exceed the line item for UST Fees in the Budget without the need for further order of Court and shall not be considered an unauthorized variance under the Budget. Notwithstanding the foregoing, the proposed and approved Budget is not intended to be a limitation on any approved expenditure that may be approved by separate Court Order, including, without limitation, professional fee awards.

4. The Debtor, in consultation with the Secured Creditors and the U.S. Trustee, may file another Budget two weeks prior to expiration of current 180-day Budget and submit an agreed Order extending the term of the Budget.

5. As adequate protection for the Debtor's use of Cash Collateral pursuant hereto, the Secured Creditors shall each have *nunc pro tunc* as of the Petition Date a replacement lien pursuant to 11 U.S.C. § 361(2) on and in all property acquired or generated post petition by the Debtor to the same extent and priority and of the same kind and nature as each of the Secured Creditors' respective pre-petition liens and security interests in the Cash Collateral (the "Adequate Protection Liens"). The Adequate Protection Liens shall be subject and junior to the fees of the Office of the United States Trustee pursuant to 28 U.S.C. § 1930. Notwithstanding

³ Inclusion of any line item or amount is not a final legal determination of any substantive issue that may be raised by a party in interest, regarding that line item and is not binding on the Court as law of the case.

anything to the contrary, the Collateral explicitly excludes any and all causes of action arising under Chapter 5 of the Bankruptcy Code and proceeds thereof.

6. In addition to the Adequate Protection Liens:

a. **As to Pinch A Penny:** The Debtor shall continue to abide by all franchise requirements and protocols in the ordinary course of business until such time as the franchise agreement is assumed by the Debtor.

b. **As to Wells Fargo:** Upon the sale of any collateral financed by Wells Fargo, the Debtor shall pay Wells Fargo from the proceeds of such sale the amount advanced by Wells Fargo for the Debtor's purchase of such collateral. Upon this Order becoming final and non-appealable, the Debtor will remit such payments directly to Wells Fargo, including any payments on account of collateral sold after the Petition Date but prior to entry of this Order, to:

Overnight payments:

Wells Fargo Commercial Distribution Finance, LLC
2975 Regent Blvd
Lockbox Services 206740
Irving, TX 75063

Regular payments:

Wells Fargo Commercial Distribution Finance, LLC
PO Box 206740
Dallas, TX 75320-6740

The Debtor shall make all payments due as reflected in the Inventory Finance Agreement ("IFA"), and the IFA shall remain in full force and effect, except as otherwise stated below.

Wells Fargo is authorized to conduct periodic inventories and audits of its collateral in the ordinary course of business and pursuant to the *Inventory Finance Agreement* (and may contact the Debtor directly to arrange such inspections). Wells Fargo is authorized to issue monthly invoices to the Debtor on account of post-petition accrued interest at the non-default rate.

Notwithstanding anything to the contrary in the Budget, the Debtor is authorized to remit, and shall remit, to Wells Fargo its monthly payment of accrued post-petition interest in the ordinary course of business. The Debtor shall maintain insurance coverage for the collateral with Wells Fargo named as loss payee and as otherwise required under the *Inventory Finance Agreement*. The security interest and liens of Wells Fargo in Debtor's accounts, inventory, equipment, chattel paper, deposit accounts, general intangibles (as well as all other personal property of the debtor, as more thoroughly reflected in UCC's 201104878567), are valid perfected liens on all such assets owned by the Debtor pre- or post-petition in the same dignity and priority that existed on the petition date. In the event the Debtor defaults or violates this Order, the Secured Creditors herein are entitled to request an expedited hearing on stay relief. Debtor has represented that two (2) pieces of inventory (spas) were sold pre-petition (*to wit*: Unit serial #TEM2T1155 sold on 5/5/2017; and Unit serial #FLR2v1104 sold on 5/5/2017), and although interest shall accrue and be paid on these two advancements as reflected above (as part of the accrued interest), the Debtor shall pay Wells Fargo the principal amount of these obligations on the effective date of a confirmed Chapter 11 Plan, and any remaining interest due thereon.

c. **As to Ocean Bank:** The Debtor shall continue to make monthly payments to Ocean Bank in the ordinary course of business in an amount equal to interest-only at the non-default rate and Ocean Bank may issue monthly statements to the Debtor directly in the ordinary course of business.

7. The Adequate Protection Liens are, and for all purposes shall be deemed to be, valid, enforceable and duly perfected, and no filing or recordation or other act in accordance with any applicable local, state, federal or common law, rule or regulation shall be necessary to create or perfect such liens and security interests.

8. This Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable immediately upon execution thereof.

9. In the event any or all of the provisions of this Order are hereafter reversed, stayed, modified, amended, or vacated by a subsequent order of the Court or any other court, such reversal, stay, modification, amendment, or vacation shall not affect the validity of any right or obligation arising under this Order prior to the effective date of such modification, amendment or vacation, and such right or obligation shall be governed in all respects by the provisions of this Order.

10. This Final Order shall constitute findings of fact and conclusions of law, and shall take effect and be fully enforceable immediately upon execution thereof.

11. The Court retains jurisdiction to enforce the terms of this Order and resolve any issues arising thereunder.

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SUBMITTED BY:

Jacqueline Calderin, Attorney at Law

jc@ecclegal.com

EHRENSTEIN CHARBONNEAU CALDERIN

Counsel for the Debtor in Possession

501 Brickell Key Drive, Suite 300

Miami, Florida 33131

T. 305.722.2002

Copy to: Attorney Calderin, who shall serve a copy of the signed order on all required parties and file with the court a certificate of service conforming to Local Rule 2002-1(F).

Exhibit “1”

Pinch A Penny XXX
Actual Cash Flow for the 6 months ending November 30, 2017

Beginning Cash Balance 200,000

	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Total
Cash/Check Revenue Deposits	140,000	130,000	136,000	120,000	92,000	90,000	708,000
CC Revenue Deposits	315,000	300,000	246,000	245,000	224,000	200,000	1,530,000
Total Sales	455,000	430,000	382,000	365,000	316,000	290,000	2,238,000
Cost of Sales retail/construction*	254,800	240,800	213,920	204,400	176,960	162,400	1,253,280
Gross Profit	200,200	189,200	168,080	160,600	139,040	127,600	984,720
Operating Expenses							
FF & ADV Expenses	36,400	34,400	30,560	29,200	25,280	23,200	179,040
Owner's Salaries	26,000	26,000	26,000	26,000	26,000	26,000	156,000
Associate's Salaries	50,000	50,000	50,000	50,000	50,000	50,000	300,000
IRS USA Tax Payment (Withholding)							-
Total Payroll (not incl Taxes)	76,000	76,000	76,000	76,000	76,000	76,000	456,000
Payroll Taxes	5,814	5,814	5,814	5,814	5,814	5,814	34,884
Total Payroll Expenses	81,814	81,814	81,814	81,814	81,814	81,814	490,884
Rent Expense	24,000	24,000	24,000	24,000	24,000	24,000	144,000
Credit Card Fees - Amex/BOA	5,513	5,250	4,305	4,288	3,920	3,500	26,775
Insurance - Health	3,000	3,000	3,000	3,000	3,000	3,000	18,000
Insurance - Automobile	2,400	2,400	2,400	2,400	2,400	2,400	14,400
Insurance - Business Liability	3,500	3,500	3,500	3,500	3,500	3,500	21,000
Professional Fees - CPA	450	450	450	450	450	450	2,700
Utilities - Cell Phone	583	583	583	583	583	583	3,498
Utilities - Internet/Cable	420	420	420	420	420	420	2,520
Utilities - Security System	200	200	200	200	200	200	1,200
Utilities - Electric	1,600	1,700	1,800	2,100	2,200	2,200	11,600
Repairs & Maintenance	1,200	1,200	1,200	1,200	1,200	1,200	7,200
auto repairs and gas	4,000	4,000	4,000	4,000	4,000	4,000	24,000
Bank service fee	50	50	50	50	50	50	300
Chapter 11 legal fees**		10,000		10,000		10,000	30,000
Special counsel appellate fees**		10,000		10,000		10,000	30,000
UST Quarterly Fees		4,875			4,875		9,750
Ocean Bank Adequate Protection Payments***	1,120	1,120	1,120	1,120	1,120	1,120	6,720
Wells Fargo post-petition interest (estimated)	1,200	1,200	1,200	1,200	1,200	1,200	7,200
Total G&A Expenses	46,916	71,628	45,908	66,191	50,798	65,503	346,943
Total Expenses	165,130	187,842	158,282	177,205	157,892	170,517	1,016,867
Owner Contributions							
Loan Paydowns							
Bank Transfers							
Expense Cash Flow	35,071	1,358	9,798	(16,605)	(18,852)	(42,917)	(32,147)
Rolling	235,071	236,429	246,227	229,622	210,770	167,853	
Starting Bank Balance		200,000					167,853

retail gp
8 pt
179,040.00

*includes estimated payment on sale of Wells Fargo's collateral and accrued interest; and payment of short term DIP financing from Principals [ECF# 3

** estimated and payable only upon Court approva

*** projected payment based on estimated variable interest at non-default rate