

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION**

_____)	
In re:)	Chapter 11
)	
HKD TREATMENT OPTIONS, P.C.)	Case No. 17-41895-EDK
)	
DEBTOR)	
_____)	

**DEBTOR'S EMERGENCY MOTION FOR INTERIM AND FINAL ORDERS
AUTHORIZING USE OF CASH COLLATERAL AND ADEQUATE PROTECTION**

HKD Treatment Options, P.C., the debtor and debtor-in-possession in the above-captioned case (the "Debtor"), respectfully moves this Court for entry of interim and final orders pursuant to 11 U.S.C. §363(c)(2)(B) and (c)(3), 4001(b)(2) of the Federal Rules of Bankruptcy Procedures, and MBLR Rule 4001-2(i) authorizing the Debtor's interim and final use of cash collateral of the secured party, Wells Fargo Bank, N.A. ("Wells Fargo"), (the "Cash Collateral Claimant"); ii) granting replacement liens as described herein to the holder of an interest in cash collateral as adequate protection for any diminution in value which may result from the Debtor's use of cash collateral; and iii) setting a final hearing on final authorization for use thereof. The Debtor intends to use the cash collateral to operate and maintain, in the normal course of business and in accordance with the proposed budget attached hereto as Exhibit "A" (the "Proposed Budget"), the Debtor's business and would further extend, as set forth herein, an offer of adequate protection to said secured lender. As grounds therefore, the Debtor states as follows:

I Introduction

The Debtor filed a petition under Chapter 11 of the United States Bankruptcy Code , 11 U.S.C §§ 101 et. sec. as amended (the "Bankruptcy Code") in the United States Bankruptcy Court, for the District of Massachusetts, Central Division (the "Bankruptcy Court") on October 20, 2017 (the "Petition Date"). The Debtor continues to manage its business and financial affairs as a debtor-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

II Description of the Debtor

A. Business of the Debtor

The Debtor is a Massachusetts Professional Corporation organized on April 20, 2012 and whose principal place of business is 21 George Street, 1st Floor, Lowell, Massachusetts 01852. The Debtor owns and operates as an outpatient medical office treating patients with addictions to opiates and alcohol. The only principal of the Debtor is Hung K. Do, M.D. The Debtor owns no real estate.

B. General History of the Debtor

The Debtor's financial condition relates directly to the inability to maintain an adequate revenue stream from the expansion of its business operation and the failure to maintain its in house billing and collection operations. The practice generates its revenue through health insurance billing to Medicaid, Medicare and commercial health insurance providers.

In 2012, the Debtor opened its first clinic in Lowell, Massachusetts. Thereafter, the Debtor expanded its operation by opening additional offices in Boston and Quincy, Massachusetts in 2013 and Salem, Massachusetts in September 2015. The cost of operating the additional offices far exceeded their revenues. Physicians on staff at these locations could not maintain a full panel of patients sufficient to cover the related expenses.

Patients of the Debtor come to the offices on a weekly basis, being referred from detox programs, hospitals, clinics, the judicial system and/or other addicts. The patients come to the office for either an examination, for a urine toxicology screen or to see a physician to receive a script for Suboxone or Vivitrol, substances which inhibit use of opiates and alcohol by blocking the respective receptors in the brain. Vivitrol is an opioid antagonist that can be used to treat both opioid dependence and alcohol dependence. Suboxone is an opiate replacement therapy. A psychotherapist is also on site and may see patients. In addition, patients can choose to be treated with a once-a-month injection of Vivitrol or weekly dose of Suboxone.

Providing individual psychotherapy also proved to be very expensive. The counselors were overpaid for the low number of patients they were treating. The low number of patients was attributed to the high rate of no shows in the individual therapy sessions. As a result of the high no show rate, the health insurance reimbursement for these individual counseling sessions was insufficient to cover the salary and benefits of the counselors. The Debtor was obligated to pay the counselors whether the patients showed up for the individual therapy session or not.

In addition, over the years, health insurance companies have reduced the number of urine toxicology labs for which they will reimburse the Debtor. Most health insurance companies will only pay for twenty (20) urine toxicology labs per patient, per 365 days. Since the Debtor's patients come in on a weekly basis, the Debtor was losing money on each urine toxicology tests above the allowable twenty (20). As a result of only being able to bill for the twenty (20) urine toxicology labs, the Debtor was forced to absorb approximately one million dollars (\$1,000,000.00) for unreimbursed urine toxicology labs that were needed by its patients. The facility was doing a 12 panel urine toxicology test at a cost of \$25.00 per test. To rectify the problem, the Debtor now only performs a one panel toxicology test at a cost of \$3.00 per test.

In an attempt to cover the costs of the physicians, counselors, and laboratory, in 2016 a Vivitrol buy and bill program was initiated by the Debtor, wherein the Debtor would purchase the injections and bill the insurance providers. The Debtor purchased approximately \$1,000,000.00 of Vivitrol from a drug distributor called Besse Medical ("Besse"). After patients were injected with Vivitrol, health insurance medical providers were billed for the injections. Reimbursement for the medication proved to be extremely difficult due to the need for required prior authorizations from the insurance providers, as well as, existing exclusivity contracts insurance providers had with specialty pharmacies wherein those specialty pharmacies were the only ones to be reimbursed. Even when there were reimbursements, it was less than the cost of \$1,100.00 per injection due to limitations on amounts insurance providers would pay. The Debtor had a line of credit with Besse which grew to approximately \$1,000,000.00. Failed attempts to generate sufficient receivables to pay Besse led Besse to file a lawsuit against the Debtor in the state of Ohio. Besse won a judgment in the approximate amount of \$1,142,233.00.

Prior to August 2017, the Debtor used in-house individuals to do all of its billings and collection services. Beginning in January 2017, the Debtor discovered that invoices for services were not going out, collections were not being made, and claims denials were not being reconciled. By August 2017, the Debtor's financial position was so weakened by the lack of collection efforts and claims reconciliation, that it was unable to pay their debt and/or taxes. The nonpayment of the state and federal taxes lead these agencies to levy the Debtor's bank accounts as well as the payments from Blue Cross, MassHealth, and Medicare.

In an effort to rectify their billing and collection problems, in August 2017, the Debtor outsourced all of its collection and billing operations. Finally, in an effort to begin reorganizing, the Debtor closed the additional offices in Boston, Quincy, and Salem.

As of the Petition Date, the Debtor maintained bank accounts, one each for payroll and operating expenses, at Enterprise Bank, TD Bank, and Bank of America in which it deposited all proceeds from operation of its business, and from which it paid the expenses of operating the business and payroll. As a result of default in payment of its unemployment taxes, the Massachusetts Department of Unemployment Assistance sent a garnishment order in the amount of \$19,616.73 to Enterprise Bank, which has frozen \$10,526.80 of funds belonging to the Debtor.¹ Other bank accounts were also frozen by creditors.

The Debtor filed for Chapter 11 to stop and remove certain levies and attachments of its bank accounts and receivables which caused a stoppage or significant reduction in its cash flow required to maintain operations. The Debtor intends to utilize this Chapter 11 case to provide it with time to reorganize its business and to restructure and repay certain of the Debtor's obligations, including tax arrears.

The Debtor has closed (or will close) its prepetition bank accounts, and open(ed) (or will open) a debtor-in-possession bank account (the "DIP Account"). The Debtor will transfer all funds in its pre-petition accounts and deposit all post-petition revenues from operation of the business into the DIP Account, and will account for all funds so deposited. All disbursements made to pay the costs of maintaining and operating the business in accordance with the Budget, including payments that may be made to taxing authorities, will be made from the DIP Account. In this manner all revenues and expenses can be accurately tracked for variance against the Budget.

C. The Debtor's Secured Assets and Liabilities upon Commencement of the Chapter 11 Case

At the time of filing this case, the Debtor had interests in the following property:

¹ The Debtor will seek release of those funds to deposit in the DIP account.

- Tangible personal property consisting of exam tables, urinalysis machine, refrigerators, office furniture and fixtures, filing cabinets, book cases, computers, printers, and office supplies with an estimated value of \$53,482.00.
- 2009 Toyota Corolla with 70,000 miles estimated value of \$5,000.00.
- 2009 Toyota Camry with 130,000 miles estimated value of \$4,000.00.

In addition to the above, the Debtor has an undetermined amount of accounts receivable.²

The above assets are encumbered by an all asset security agreement filed by Wells Fargo on May 15, 2012 and continued on November 17, 2016.³

III Use of the Cash Collateral and Payment of Adequate Protection

1. The Debtor's use of cash collateral is necessary to maintain the viability of the Debtor's business. Pursuant to this Motion, the Debtor seeks this Court's approval for the use of Cash Collateral on the terms proposed below, in order to avoid irreparable harm to the operation of the Debtors business. Section 362(c)(2) of the Bankruptcy Code provides, in pertinent part, that a debtor-in-possession "may not use, sell or lease cash collateral under paragraph (1) of the subsection unless...(A) each entity that has an interest in such cash collateral consents; or (B) the Court, after notice and a hearing, authorizes such use, sale or lease in accordance with the provisions of this section." 11 U.S.C. § 363(c)(2)(A) and (B). A hearing on the debtor's motion for use of cash collateral "may be a preliminary hearing or may be consolidated with a hearing

² As the Debtor collects these accounts receivable, the Debtor will increase the value of their assets accordingly. As soon as possible, counsel for the Debtor will begin a review of the accounts receivable to determine collectability.

³ The IRS, MDOR, and MDUA are all claiming a security interest in the assets of the Debtor. However, based on the value of the Debtor's assets, all three governmental agencies will be considered Priority Claimants in this Chapter 11 case, and thus not entitled to adequate protection at this time.

under subsection (e) of the section, but shall be scheduled in accordance with the needs of the debtor." 11 U.S.C § 363(c)(3) and Fed.R.Bankr.P 4001(c)(2).

2. The Debtor needs this Courts immediate authority to use the Cash Collateral in order to continue the operation of its business and paying the costs of maintaining and preserving its business. These costs include, but are not limited to, the purchase of medications, lab testing and outsourcing, wages, taxes, utilities, insurance, legal and accounting fees, and other costs of operating the treatment facility. In order to meet these obligations and avoid disruption of the business, the Debtor will need to utilize the proceeds generated through the operation of its business. Unless the Debtor is authorized to use cash collateral, the Debtor will be unable to continue business operations and perform its obligations to its patients, the secured creditor, the taxing authorities, the Debtor's employees, and its vendors. This will result in all parties and the estate suffering significant harm and irreparable economic loss.

3. Annexed hereto as Exhibit A is the projected monthly budget for funding the Debtor's business operations over the next three (3) months (the "Budget").⁴ The Proposed Budget also includes the U.S. Trustee's estimated distribution. By this motion, the Debtor seeks authority to use cash collateral generated through ownership and operation of the business to pay the expenses of ownership and operation of the business, up to the amounts set forth in the Budget.

4. The Proposed Budget shows an overall positive cash flow and the Debtor believes that the Proposed Budget will be adequate to pay all administrative expenses due and payable during the period covered by the Proposed Budget.

5. To accommodate the normal vagaries involved with operating a business, other than taxes, the Debtor seeks authority to use cash collateral to meet actual and necessary

⁴ The figures used to prepare the Budget were provided by the Debtor's Chief Operations Officer.

expenses for the business in an amount of up to 110 percent (110%) of the aggregate expenses (and not on a line item basis) set forth in the Budget for such business.

6. As adequate protection for any diminution in the value as of the Petition Date in the interest of the Cash Collateral Claimant in its Cash Collateral that results from the Debtor's use thereof, the Debtor proposes that the Cash Collateral Claimant be granted post-petition replacements liens ("Replacement Liens") on the same types of post-petition property of the estate against which they held liens as of the Petition Date (the "Pre-Petition Collateral"). The Replacement Liens shall maintain the same priority, validity and enforcement as the Cash Collateral Claimant or other creditors holding or asserting Cash Collateral interests. The Replacement Liens shall be recognized, however, only to the extent of any diminution in the value of the Cash Collateral Claimant's or any other creditor's Pre Petition Collateral after the Petition Date resulting from the Debtor's use of Cash Collateral during this Chapter 11 case.

7. As of the petition date the Debtor was indebted to Wells Fargo in the amount of \$122,888.00.⁵ As additional adequate protection, notwithstanding the fact that the Cash Collateral Claimant, which may be under-secured, the Debtor proposes to pay Wells Fargo its current monthly payment of \$2,509.80.

IV Request For Emergency Determination

1. In order to maintain business operations through January 31, 2018, by which time the Debtor estimates that a final hearing on this Motion will have been held, the Debtor requires use of cash collateral on an interim, emergency basis. The Debtor anticipates that it will need authority to use cash collateral by no later than Friday, October 27, 2017, in order to continue to meet his operating expenses in the ordinary course, which are described above and as set forth in

⁵ Depending on the collectability of the Accounts Receivables, the Debtor may attempt to cram down the value of Wells Fargo's claim.

the Budget. Accordingly, the Debtor seeks emergency determination of this motion pursuant to MLBR 9013-1(g) by no later than Friday, October 27, 2017.

2. The Debtor estimates that, pending a final hearing estimated to be held on or before January 31, 2018, the Debtor will need interim authority to use up to \$501,391.20 of cash collateral in accordance with the Budget to pay the costs associated with securing, maintaining, and operating the business, including possible payments to taxing authorities. The Debtor reserves the right to supplement the Budget and this proposal following further review of the Debtor's financial documentation. The Debtor, by this Motion, seeks interim authority to use cash collateral for such purposes, substantially in accordance with the Budget through the date of the final hearing on this motion. The relief sought hereby on an interim basis is limited to an amount necessary to avoid immediate and irreparable harm to the Debtor's business operations.

3. The Debtor anticipates that there will be sufficient funds with which to pay all expenses of administration of this Chapter 11 case generated from continued operation of its business and/or to fund a plan of reorganization.

V Notice

1. In accordance with MLBR 4001-2(b), copies of this motion have either been served by Federal Express overnight delivery, fax and/or United States mail upon the United States Trustee, secured creditors, taxing authorities known to have claims against the Debtor, the holders of the 20 largest unsecured claims against the Debtor as listed in the schedule filed by the Debtor pursuant to Fed. R. Bankr. P. 1007(d) (an official committee of unsecured creditors having not yet been appointed), and any parties that have requested notice and service of pleadings in this case. The Debtor requests that this Court find such notice to be appropriate and sufficient notice of this motion in the particular circumstances.

2. No prior request for relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtor respectfully requests that this Court:

1. Find that good cause has been shown for the immediate entry of an order pursuant to Fed.R.Bankr.P. 4001(c)(2) authorizing interim approval of the proposal for cash collateral usage on the terms set forth above;

2. Entry of an order granting such relief is in the best interest of the Debtor, the Debtor's creditors and the estate to prevent immediate and irreparable harm pending a final hearing on this Motion, the interim use of the Cash Collateral should be authorized by this Court;

3. Schedule a hearing on this motion (or otherwise determine this motion on an interim basis without a hearing) for a time on or before October 27, 2017;

4. Enter an order, in substantially the form submitted herewith, granting the interim relief sought by this motion;

5. Schedule a final hearing on this motion; and

6. Grant such other and further relief as this Court may deem just and proper.

Respectfully submitted,

HKD TREATMENT OPTIONS, P.C.

Dated: October 23, 2017

By its attorneys,

/s/ Richard A. Mestone

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