

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE**

In Re:	*	Chapter 11
	*	Case No. 17-11697-BAH
Monadnock Brewing Company, Inc.,	*	
	*	Hearing Date: January 17, 2018
	*	Hearing Time: 2:00 p.m.
Debtor(s)	*	Objection Deadline: January 10, 2018

**MOTION OF TREVOR BONNETTE FOR APPOINTMENT OF A CHAPTER 11
TRUSTEE PURSUANT TO 11 U.S.C. §1104**

Trevor Bonnette a 50% shareholder and one of the two directors of Monadnock Brewing Company, Inc.¹ (the “Debtor”) moves for a Chapter 11 Trustee for cause because there is a deadlock in the board and the Debtor cannot effectively reorganize without an independent Trustee, as follows:

1. Trevor Bonnette on the one hand and Mary and Jerry L. Henry on the other set up the Debtor pre-petition. The business, which has yet to operate, is a brewing company. The parties are each 50% shareholders, Trevor Bonnette holding 50% of the shares and Mary and Jerry Henry holding collectively 50% of the shares. The parties agreed on two voting board members Trevor Bonnette and Jerry Henry as follows:

Section 7 Manner of Acting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. Jerry L. Henry and Mary A. Henry may serve on the Board of Directors but they will only have one vote, with said vote being made by Jerry L. Henry so long as he is on the Board of Directors.

Section 6. Quorum. A majority of the number of directors fixed by section 2 of this Article 111 [sic] shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, but if less than such majority is present at a meeting a majority of the director’s present may adjourn the meeting from time to time.

By Laws of Debtor, See Exhibit B.

¹ See Letter Agreement, First Resolution and Shares attached as Exhibit A.

2. Notwithstanding these provisions, Henry unilaterally and without a properly noticed hearing, and over the objection of Bonnette, declared that his vote is the only vote that counts and voted unilaterally to put the Debtor into Chapter 11, disenfranchising Bonnette from management of the Debtor. Henry did not have the votes to do so.

3. The By Laws state that “in the event of a deadlock with any voting such that the corporation cannot carry on its affairs, the stockholder and Board of Directors shall first submit the dispute to arbitration...”.

4. The dispute, if any, over Bonnette’s right to vote should have been submitted to arbitration. Henry should not have unilaterally acted as if he had majority voting rights.

5. When counsel asked why Bonnette’s vote did not count, he was only given a vague answer that he was disqualified. Bonnette does have claims against the Debtor for loaning money to the Debtor. Bonnette does not oppose the bankruptcy per se, but opposes it if the Debtor is to be managed by the Henrys.

6. The parties are at odds in this case. Bonnette believes he can prove that the Debtor has been mismanaged by the Henrys who failed to file appropriate reporting forms with the state and the IRS (no 941 filings or payments have been made which was the obligation of Mary Henry); that the Henry’s have taken assets from the estate in the form of “hops”, sold the “hops” and kept the money personally; that without authorization advanced themselves \$8,000.00, which they admitted, after being challenged by Bonnette, was used to pay their personal bills and they have failed to provide a proper accounting of expenditures for the Debtor and repay all sums owed to the Debtor; that notwithstanding the prohibition on owners taking salaries without 100% written approval, that the Henrys took significant salaries in violation of

the agreement of the parties and have refused to provide Bonnette with documentation showing the gross amount of the paychecks written; that in violation of Section 13 of the Bylaws, which required that no family member of a stockholder shall become an employee or independent contractor of the Debtor or receive a salary or compensation without a 100% vote by the shareholders, the Henrys advanced Mary Henry's father (Ken Christie) \$8,560.00 and their son Michael the sum of \$2,185.00 (Ken has done some work for the Debtor but nowhere near what he was paid) and that the Henrys have taken other items from the business premises.

7. The Henrys deny all of this, and the parties are not going to be able to get along and run this company for the benefit of creditors. See tape recording of December 7 Board Meeting (transcribed by Bonnette-tape available), Exhibit C. Bonnette is also concerned that the Henrys will continue to use the company's money and assets as if it was their own money and assets. In fact, Bonnette has a plan (if allowed to submit it to the court) to pay all creditors in full in cash presently, which he can implement if either allowed to control management, or through a chapter 11 trustee, who can certainly reject it if he or she wishes. Bonnette has not shared this Plan with creditors, at least since the Petition Date. The problem is, at present Bonnette has been unilaterally frozen out of management even though he holds 50% of the votes of the Debtor going forward.

8. 11 U.S.C. § 1104 states:

(a) At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee—

(1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; or

(2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor. [emphasis added]

9. It is certainly in the interest of creditors to be paid in full in cash in the near term. This can only be accomplished if Bonnette is put in charge or a trustee is appointed. If Bonnette is put in charge the same issues will occur regarding the lack of a quorum for voting and fighting will continue. In addition, the Henrys have committed fraud and mismanagement, which Bonnette can demonstrate at the hearing. Therefore, it is in the best interests of creditors to have a trustee appointed with sole authority over the affairs of the Debtor. See In re: New Orleans Paddlewheels, Inc., 350 B.R. 667, 681 (Bankr. E.D. La. 2006)(when board is deadlocked or there is malfeasance Chapter 11 trustee is warranted.)

10. Bonnette has only been able to contact the following creditors and the creditors set forth below assent to this motion:

- A. Continental Industries, Inc., the largest creditor at \$200,000.00;
- B. Trevor Bonnette the second largest creditor at \$150,000.00 per the Debtor's filing but closer to \$170,000.00;
- C. James Lawrence Electric at \$60,000.00 per the Debtor's filing; and
- D. Tremac Development, LLC ("Tremac"), the Debtor's landlord with no amount in Debtor's filings but Tremac is owed approximately \$35,000.00;

11. The creditors set forth in items A-C in paragraph 10 above comprise \$410,000.00 of the Debtor's claims, as set forth in the Debtor's filings, of approximately \$501,000.00 of the total claims, which represent 82% of the total claims.

WHEREFORE, Trevor Bonnette respectfully requests this Court:

- A. Appoint an independent Chapter 11 Trustee;
- B. Grant such other and further relief as this Court deems just and equitable.

Respectfully submitted,
Trevor Bonnette,
By his attorneys,

Date: December 12, 2017

/s/ Steven M. Notinger
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CERTIFICATE OF SERVICE

I hereby certify that on this date I served the above Motion on the following parties through the Court's ECF System:

By ECF:

Geraldine Karonis on behalf of the U.S. Trustee
Geraldine.L.Karonis@usdoj.gov

Office of the U.S. Trustee
USTPRegion01.MR.ECF@usdoj.gov

Peter N. Tamposi on behalf of Debtor Monadnock Brewing Company, Inc.
peter@thetamposilawgroup.com, judy@tlgnh.com

Date: December 12, 2017

/s/ Steven M. Notinger
Steven M. Notinger (BNH #03229)