

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:

|                             |   |                           |
|-----------------------------|---|---------------------------|
| RCWE HOLDING COMPANY,       | : | Case No. 17-10597-TPA     |
| Debtor                      | : |                           |
|                             | : | Chapter 11                |
| RCWE HOLDING COMPANY,       | : |                           |
| Movant                      | : | Related to Doc. No. 5, 18 |
|                             | : |                           |
| v.                          | : |                           |
|                             | : |                           |
| FIRST NATIONAL BANK OF      | : |                           |
| PENNSYLVANIA and ENTERPRISE | : |                           |
| DEVELOPMENT FUND OF ERIE    | : |                           |
| COUNTY,                     | : |                           |
| Respondent                  | : |                           |

**FINAL ORDER AUTHORIZING LIMITED USE OF CASH COLLATERAL**

On July 13, 2017, the final hearing on the Debtor’s Motion for Order Authorizing Use of Cash Collateral, Doc. #5, was held. The Respondent, First National Bank of PA (“FNB”) filed its objection to the request, Doc. #41, claiming that, among other things, the Debtor’s sole asset and FNB’s collateral has been unsuccessfully marketed for a number of years and now, under a best case scenario, if sold in bankruptcy any return would be substantially below FNB’s debt. As a result, FNB objected to paying any professional fees to Counsel for the Debtor out of its cash collateral. When pressed at the hearing by the Court, FNB agreed that essentially its objection was a *de facto* motion to dismiss. The Court agreed with the position of FNB. Since FNB objected to underwriting the costs of the bankruptcy, and would be the only creditor benefitting from liquidation of the asset,

under the circumstances there existed absolutely no possibility of the Debtor achieving an effective reorganization. As such, the Court was prepared to grant FNB's motion and dismiss the bankruptcy. At that point Counsel for the Debtor claimed that if the property was effectively marketed in bankruptcy he believed some beneficial return over and above FNB's debt could be realized. While the Court found it difficult to believe such a result could be realized in light of the record before it, if Debtor's Counsel was prepared to go forward in the case with the understanding that no professional fees would be paid from FNB's cash collateral, the Court would deny FNB's *de facto* motion to dismiss, without prejudice, and allow the case to proceed. Debtor's Counsel agreed to such an approach. Therefore,

***AND NOW***, this 14<sup>th</sup> day of ***July, 2017***, after notice and final hearing on the Debtor's ***Motion for Order Authorizing Use of Cash Collateral*** (the "Motion"), it is ORDERED, ADJUDGED and DECREED that,

(1) The Interim Order Authorizing Use of cash Collateral entered on June 15, 2017 at Doc. No. 18 is ***VACATED*** and replaced by this Final Order.

(2) The Debtor shall be, and hereby is, authorized to use cash collateral in the operation of its business and in accordance with the monthly budget attached to the Motion ("Budget"), pending further Order of Court, ***provided, however***, that the Budget notwithstanding, no funds may be set aside, placed in escrow or paid for professional fees unless agreed to in advance in writing by the First National Bank of Pennsylvania ("FNB"), and thereafter as may be specifically authorized by further order of Court. The monies currently set aside for this purpose in the Budget

are to be paid directly to FNB in addition to the adequate protection payment already set forth in the Budget. For a limited time, property management fees may be paid consistent with the pre-petition fee schedule pending further order of Court.

(3) The pre-Petition liens of the Respondents shall be continued post-Petition as to both pre-Petition and post-Petition assets, but the value of the Respondents' liens shall not be greater post-Petition than the value thereof at the time of the filing of the Chapter 11 Petition initiating this case, plus accruals and advances thereafter, and minus payments to the Respondents thereafter. No additional financing statements need be filed to perfect such post-Petition liens or security interests.

(4) For the time being, the Debtor will make the interest-only, adequate protection payments provided for in the *Motion* and Budget. Moreover, the Debtor will maintain the value of the business and collateral as a going concern, pending reorganization or sale, in accordance with the *Motion* and Budget.

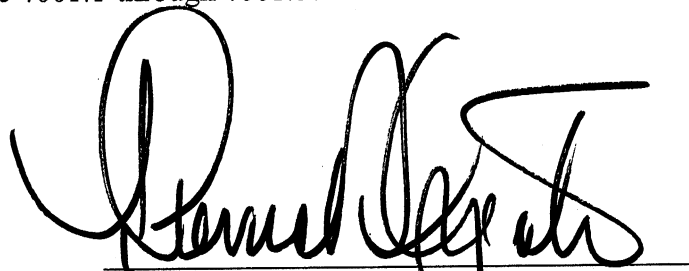
(5) On separate motion of a party in interest, this Final Order may be reconsidered at any time prior to confirmation of a plan of reorganization or distribution under Chapter 7.

(6) Debtor shall provide the Respondents and other secured creditors such access to Debtor's records and financial information as they may reasonably request, including but not limited to the monthly financial reports required by the United States Trustee.

(7) The Court will endeavor to grant an expedited hearing for modification or enforcement of this Order on request of the Debtor, one of the Respondents or any other party in interest.

(8) Debtor shall not incur post-Petition indebtedness which cannot be paid.

(9) Counsel for Debtor shall serve this Order on the Respondents, their counsel, the 20 largest unsecured creditors of the Debtor and such other parties, if any, as may be required by *Bankruptcy Rule 4001* and *Local Rule 4001.1* through *4001.3*.



Thomas P. Agresti, Judge  
United States bankruptcy Court

Case administrator to serve:  
John Kroto, Esq.  
Nicholas Pagliari, Esq.