

Howard Marc Spector
TBA#00785023
Nathan M. Johnson
TBA#00787779
SPECTOR & JOHNSON, PLLC
12770 Coit Road, Suite 1100
Dallas, Texas 75251
(214) 365-5377
FAX: (214) 237-3380
hspector@spectorjohnson.com

ATTORNEY FOR CIENA CAPITAL FUNDING, LLC, AS SERVICER
FOR BANK OF NEW YORK MELLON TRUST COMPANY, N.A.
F/K/A THE BANK OF NEW YORK TRUST COMPANY, N.A.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

IN RE: §
§
JONESBORO HOSPITALITY, LLC § **CASE NO. 17-40311**
§
Debtor §

**CIENA CAPITAL FUNDING, LLC, AS SERVICER FOR BANK
OF NEW YORK MELLON TRUST COMPANY, N.A.’S OBJECTION
TO FINAL APPROVAL OF THE DEBTOR’S FIRST AMENDED
DISCLOSURE STATEMENT DATED DECEMBER 1, 2017**

COMES NOW, Ciena Capital Funding, LLC, as Servicer for Bank of New York Mellon Trust Company, N.A. f/k/a The Bank of New York Trust Company, N.A. (the “Lender”), files this objection to final approval of the First Amended Disclosure Statement Dated December 1, 2017 (the “Disclosure Statement”) [Docket No. 100] of Jonesboro Hospitality, LLC (the “Debtor”), and in support states as follows:

1. The Debtor only owns one asset: real property and improvements located at 3006 S. Caraway Road, Jonesboro, Arkansas 72401 (the “Property”). The Property is subject to the following secured claims (amounts listed are approximate, as of the Petition Date):

Senior Tax Claims (Craighead County, AK)	\$245,000
Lender	\$2,231,972
Arkansas Dept. of Finance	\$445,000
IRS	\$73,706
TOTAL	\$2,995,678.00

After confirming a plan in the Debtor's first bankruptcy case,¹ the Debtor immediately defaulted and filed the instant case.

2. Despite having had more than a year to refinance or sell its property, the best the Debtor has come up with is a sale within six (6) months to an unknown buyer for an unknown price. Even assuming the Debtor's imaginary \$3.5 million price were realized, the Property would appear to realize no return for unsecured creditors after closing costs and post-petition accrued interest is paid on secured claims. Even worse, the Debtor wants to solicit its facially-unconfirmable Plan without disclosing any basis for its claims calculations, its valuation of the Property, its failed marketing efforts, the dubious prospects for a return to unsecured creditors, or why it believes that six (6) months of additional time will accomplish a sale when nine (9) months have never generated even one offer.

3. Between its previously-failed bankruptcy case and the present case, the Debtor has been in bankruptcy for approximately two-thirds of the last four (4) years. In that time, the Debtor has failed to come forth with a viable plan to repay its secured creditors, let alone its unsecured creditors.

4. The Disclosure Statement does not contain adequate information and the Plan is unconfirmable on its face. Proceeding to confirmation is futile. The Court should refuse to approve the Disclosure Statement.

¹ *In re Jonesboro Hospitality, LLC*; Case No. 13-34324-hdh-11.

A. The Disclosure Statement Does Not Contain Adequate Information as Required by Section 1125

5. To be approved, a disclosure statement must contain “adequate information.” 11 U.S.C. § 1125(c). “Adequate information” is “information of a kind, and in sufficient detail. . . that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan.” 11 U.S.C. § 1125(a)(1). The determination of whether the Disclosure Statement contains “adequate information” is left to the Court’s discretion. *In re Cajun Elec. Power Co-op., Inc.*, 150 F.3d 503, 518 (5th Cir. 1998).

6. The Disclosure Statement cannot be approved because it contains no information as to how the Debtor has determined the marketing price for the Property, the time horizon for additional marketing, the likelihood that a buyer will be found, an analysis of the Jonesboro Arkansas real estate market, or the results of the Debtor’s nine (9) month marketing process to date. In short, even though the Plan is premised upon a potential sale of the Debtor’s Property post-confirmation, to an unknown entity, for an unknown price, on an unknown date, the Disclosure Statement lacks any information that would enable creditors to make rational judgments as to these variables.

7. The Disclosure Statement also makes no attempt to reconcile its own estimates of secured claims with the amounts actually claimed by individual secured creditors. Similarly, the Debtor’s post-petition interest calculations appear quite dubious. For example, it appears to the Lender that the Debtor has understated its interest accrual through the date of the Debtor’s hypothetical sale by approximately \$23,000, as well as the interest accrual associated with the oversecured claim of the Arkansas Department of Finance by approximately \$50,000. Again, without knowing the basis of the Debtor’s calculations, creditors cannot make an informed decision about the accuracy of the Debtor’s projections. While these amounts may not seem

material, taken together, these errors exceed the Debtor's total proposed distribution to unsecured creditors assuming, of course, that the Property sells in the next six (6) months for a price that the Debtor has not been able to achieve during all of 2017. The Debtor should clearly demonstrate how its proposed sale at a \$3.5 million price will result in any distribution for unsecured creditors, after factoring in post-petition interest on secured claims, brokerage fees and costs of sale. Or, it should highlight the risks to creditors of a sub-\$3.5 million price.

8. Finally, the Disclosure Statement makes no mention of the secured creditors' right to credit bid at any proposed sale, nor does it purport to restrict the Debtor from attempting to short sale the Property post-confirmation. It is not clear whether the Debtor intends to attempt to use Section 363(f) to sell the Property for less than the aggregate amount owed to all secured creditors in the event that the Debtor's \$3.5 million marketing effort fails. If the Debtor intends to return to this Court post-confirmation utilizing the powers set forth in 363(f) of the Bankruptcy Code, the Disclosure Statement and Plan should so state.

B. The Disclosure Statement Should Not Be Approved Because the Plan is Not Feasible on its Face

9. The Disclosure Statement should also not be approved because the Plan is patently unconfirmable. It is not enough for the Debtor to simply say that it will sell the Property or it won't. Absent a reasoned discussion of the marketing process, price and the market of buyers for the Property, the Debtor cannot show that a proposed sale is not "likely to be followed by the liquidation, or need for further financial reorganization of the debtor" as 1129(a)(11) requires. Because proceeding with confirmation of the Plan would be futile, the Disclosure Statement should not be approved. *See In re Am. Cap. Equip., LLC*, 688 F.3d 145, 153-54 (3d Cir. 2012) (courts may refuse to approve disclosure statement where plan is patently unconfirmable).

C. Notice of the Hearing on the Disclosure Hearing is Defective.

10. Finally, although the Lender previously pointed out that the ad valorem taxing authority owed more than \$250,000 had not been apprised of this case until only December 2017, the Debtor has again failed to advise that taxing authority – Craighead County – of the hearing on the Disclosure Statement. *See* Docket No. 103. Similarly, creditors in general have apparently also been deprived notice of the Disclosure Statement hearing. *Id.* Accordingly, since the Debtor did not comply with F.R.B.P. 3017(a), the Court should not approve the Disclosure Statement.

CONCLUSION & PRAYER

11. Afforded more than 30 months to repay its creditors, the Debtor has made literally no progress. Instead, the Debtor has proposed a patently unconfirmable Plan. The Disclosure Statement should not be approved. Accordingly, Lender requests that the Court enter an order denying approval of the Disclosure Statement and awarding Lender any further relief the Court deems appropriate.

Submitted on December 27, 2017.

Respectfully submitted,

By: /s/ Howard Marc Spector

Howard Marc Spector

TBA #00785023

Nathan M. Johnson

TBA #00787779

SPECTOR & JOHNSON, PLLC

12770 Coit Road, Suite 1100

Dallas, Texas 75251

(214) 365-5377

FAX: (214) 237-3380

EMAIL: hspector@spectorjohnson.com

ATTORNEYS FOR

CIENA CAPITAL FUNDING, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document was served via electronic means to all parties and counsel receiving ECF notification in this case, and via first class mail to the parties listed on the attached service list on this the 27th day of December, 2017.

/s/ Howard Marc Spector
Howard Marc Spector