

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

In re: §
§
ALPHA NURSING & THERAPY, LLC § Case No. 17-50668
§
Debtor § Chapter 11
§

**OBJECTION OF REHABCARE, GROUP EAST, INC. D/B/A
REHABCARE TO DEBTOR’S DISCLOSURE STATEMENT DATED JUNE 22, 2017**

Creditor, and party in interest, RehabCare Group East, Inc. d/b/a RehabCare (“RehabCare”), files this Objection to Debtor’s Disclosure Statement Dated June 22, 2017 (Docket No 74) (the “Disclosure Statement”) and in support hereof would show the Court as follows:

BACKGROUND

1. RehabCare obtained a Judgment against Debtor in the United States District Court for the Western District of Texas on January 11, 2017 in the amount of \$226,292.05 (the “Judgment”).

2. RehabCare domesticated the Judgment in the Dallas County District Court and commenced garnishment proceedings seeking to collect on the Judgment. RehabCare served a writ of garnishment (“Garnishment”) upon JPMorgan Chase Bank, N.A. (“Chase”) and the Debtor via Dallas County Constable on February 21, 2017.

3. By operation of law, when the Garnishment was served on Chase, RehabCare became a secured creditor with a lien on the Debtor’s deposit accounts with Chase. *See In re Olivas*, 129 B.R. 122, 124 (Bankr. W.D. Tex.1991); *Citizens Nat. Bank in Ennis v. Hart*, 321 S.W.2d 319, 320 (Tex. Civ. App.—Fort Worth 1959, writ ref'd); *see also* Tex.R.Civ.P. 668; and

see Olivas, 129 B.R. at 124; *In the Matter of Latham*, 823 F.2d 108, 110 (5th Cir.1987)

(“According to Texas case law, a garnishment lien attaches from the date of service of the summons”); *In the Matter of T.B. Westex Foods, Inc.*, 950 F.2d 1187, 1192 (5th Cir.1992); *U.S. v. Standard Brass & Mfg. Co.*, 266 S.W.2d 407, 408 (Tex. Civ. App.—Beaumont 1954, no writ) (emphasis added).

4. This Chapter 11 case was filed on March 24, 2017 (Docket No 1) (the “Petition Date”). The Debtor’s schedules list a secured claim for RehabCare in the amount of \$164,132.54 and indicate the claim of RehabCare is disputed.

5. On May 8, 2017 the Court entered an Agreed Final Order Authorizing Use of Cash Collateral (“Final Cash Collateral Order”) which acknowledges RehabCare’s secured claim against cash collateral and grants RehabCare replacement liens to the same extent and validity as existed on the Petition Date.

6. On July 19, 2017, RehabCare filed a secured proof of claim on account of the Judgment and the Garnishment lien in the amount of \$225,976.42 with the amount in the Debtor’s account with Chase on the date of service of the Garnishment, \$38,697.42, being the secured portion and \$187,279.00 as the unsecured portion the (“Proof of Claim”).

7. The Debtor filed the Disclosure Statement on June 22, 2017 and a Chapter 11 Plan of Reorganization contemporaneously therewith (Docket No. 73) (the “Plan”).

8. The Disclosure Statement and Plan classify RehabCare as unsecured but do not provide an allowed or asserted amount for the RehabCare claim nor give any reason that RehabCare’s secured claim is not provided for in the Plan.

9. On page 6 of the Disclosure Statement, the Debtor states: “a garnishment on the Agency’s bank account with improper/no notice to the Agency, caused the Agency to file

Chapter 11.” The Agency is not a defined term, but apparently refers to the Debtor in this case. In the paragraph following the statement above, the Debtor states that the “Chapter 11 bankruptcy protection filing was made on March 24, 2017 in response to collection efforts by Rehabcare Group East, dba Rehabcare.” As discussed further below, RehabCare disputes the Debtor’s characterization that the garnishment was with improper or no notice and that it was the sole cause of the Debtor’s bankruptcy filing.

ARGUMENT

10. Section 1125(b) of the Bankruptcy Code provides that a plan proponent may solicit acceptance or rejection of a plan of reorganization only if the proponent provides to holders of claims and interests a written disclosure statement that contains “adequate information.” 11 U.S.C. § 1125(b). Adequate information means “information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor” to make an informed judgment about the plan. 11 U.S.C. § 1125(a); *In re LJM2 Co-Inv., L.P.*, 327 B.R. 786, 792 (Bankr. N.D. Tex. 2005).

11. More particularly, courts hold that the purpose of the disclosure statement is to provide holders of claims and interests with adequate information prior to acceptance or rejection of reorganization plan in order for them to be able to make informed judgment as to feasibility of plan. *In re Microwave Products of America, Inc.*, 100 B.R. 376 (Bkrcty. W.D.Tenn.,1989).

12. The Disclosure Statement does not contain adequate information with respect to RehabCare’s claim because it does not address RehabCare’s secured claim of \$38,697.42. Since RehabCare is classified only as unsecured, it appears the Debtor disputes that RehabCare has an

allowed secured claim, but no detail is provided as to what the basis for the dispute is or how the Debtor will address the dispute.

13. The Disclosure Statement also fails to provide adequate information because of the mischaracterization of the circumstances surrounding RehabCare's Garnishment and lien and the impact of such debt on the Debtor's bankruptcy filing. RehabCare disputes that there was improper or lack of notice of the Garnishment. The Garnishment action was served on the Debtor on February 22, 2017 pursuant to Rule 663a of the Texas Rules of Civil Procedure allowing service by mail under Rule 21a. Tex. R. Civ. Pro. 663a and 21a. Proof of such service on the Debtor is attached hereto as Exhibit "A." Chase was served with the Garnishment on February 21, 2017, as acknowledged by Chase in the Answer they filed in the Garnishment proceeding, a copy of which is attached to the Proof of Claim of RehabCare. Accordingly, the Debtor has no basis to assert there was no or improper notice of the Garnishment and it is misleading for the Debtor to imply to creditors that lack of notice may serve as a basis for the Debtor to challenge the Garnishment. If the Debtor intends to file an objection to RehabCare's Proof of Claim that fact is also absent from the Disclosure Statement as is any discussion of the cost of such dispute.

14. It also appears misleading for the Debtor to state that the bankruptcy filing was caused by RehabCare's collection efforts or the Garnishment. Of the few details about the claims against the Debtor provided in the Disclosure Statement, one detail made clear elsewhere is that the Debtor owes the IRS \$611,874.64, but that debt is not mentioned in regard to the reason for the bankruptcy filing.

15. Another detail relevant to the reason for the bankruptcy filing and also the feasibility of the Plan is the number of patients with the Debtor. The Patient Care Ombudsman's

First Report (Docket No 50) indicates the Debtor had 2 patients on the Petition Date down from 39 patients in February 2017. There is no mention of the patient census in the Disclosure Statement and, since the Debtor's revenue is directly tied to their patient census, it would clearly be a factor relevant to the bankruptcy filing.

16. The Disclosure Statement also does not provide adequate information with respect to the amount of RehabCare's unsecured claim nor the amount of any unsecured claims in Class 5. The Disclosure Statement only provides that the Class 5 Claims will be paid 100% over 60 months, but no amounts of claims are provided nor even a complete list of claimants. Without providing a list of the unsecured claims and their amounts, creditors cannot judge the feasibility of the Plan and will therefore not have sufficient information to make a decision as to whether to vote on the Plan or not. Even if the Debtor has not made a final determination as to what claims are objectionable and what amounts may be ultimately allowed, at least there should be an estimate provided for purposes of judging feasibility.

17. Also relevant to feasibility is the Debtor's plan and proposal for increasing the patient census. The Ombudsman's Second Report (Docket No. 84) indicates the patient census has improved as of the date of the filing to 20 patients. It is not clear when that increase in patients occurred, but the most recent Monthly Operating Report for the Debtor from June indicates total income in that month of \$16,389.71. However, the budget for the Plan filed with the Disclosure Statement projects and relies on revenue in 2018 of \$845,000, which is approximately \$70,000 per month. As such, the Debtor will need a dramatic increase in the patient census by 2018, but there is no mention in the Disclosure Statement regarding what the current census is, what it is projected to be in the future, and how the Debtor will reach the census goal.

WHEREFORE, RehabCare requests that approval of the Disclosure Statement be denied or conditioned upon revisions in accordance with the above and that RehabCare be granted any other further relief to which it may be justly entitled.

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument was served by electronic transmission via the Court’s CM/ECF system upon all parties registered to receive electronic notice in this bankruptcy case, or otherwise by U.S. first class mail, postage prepaid, on this 7th day of August, 2017, upon all counsel of record as follows:

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