

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

FILED  
O'clock &  
OCT 15 1999  
BRENDA K. ARGOE, CLERK  
United States Bankruptcy Court  
Columbia, South Carolina

In re:

William Hardee McLeod, Jr.,

Debtor.

Case No. 99-04327-W  
Chapter 11

**JUDGMENT**

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, Debtor's Application to Employ Real Estate Agent is denied.

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,  
October 15, 1999.

ENTERED  
OCT 15 1999  
J.G.S.

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**ORDER**

THIS MATTER comes before the Court on the United States Trustee's Objection to Debtor's Application to Employ Real Estate Agent filed August 3, 1999. The United States Trustee objected on the basis that certain real estate sales agents employed by the proposed professional were not disinterested persons and possessed an interest adverse to the interest of Debtor, the estate, and the creditors, thus prohibiting them from being employed pursuant to 11 U.S.C. §327(a).<sup>1</sup>

**FINDINGS OF FACT**

On July 9, 1999, pursuant to §327(a), Debtor filed his Application to Employ Real Estate Agent (Bond and Associates Real Estate, hereinafter "Bond") as listing agent for certain real properties in which Debtor has a 1/4 undivided interest. Bond has previously worked in that capacity for a number of years prepetition and employs a total of five (5) sales agents. On August 3, 1999, the United States Trustee filed its Objection citing, *inter alia*, Debtor's failure to disclose in his Application the following information: (1) whether Claude M. McLeod (hereinafter "Claude") and Hope McLeod Cappelmann (hereinafter "Hope") are related to

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Further references to the Bankruptcy Code will be by section number only.

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Debtor; (2) whether Claude and Hope have an interest in any of the real properties to be sold by this professional in this bankruptcy case; (3) whether Claude and Hope are creditors in this case; and (4) whether Claude and Hope will be the real estate agents for the sale of properties in this case.

In his Return to United States Trustee's Objection filed August 4, 1999, Debtor disclosed the following information: (1) Claude is Debtor's cousin; (2) Hope is Debtor's sister; (3) both Claude and Hope have an undivided interest in the real properties of Debtor's estate to be sold by the real estate agent in this case; (4) Claude has an unsecured claim in this case as a creditor; (5) both Claude and Hope are real estate agents with Bond; and, in all likelihood, either or both of them would ordinarily be involved as agents in any real estate sales; and (6) both Claude and Hope have a personal interest in particular sales, whereby they may benefit by sharing commissions or receiving some of the real estate proceeds of sale as an owner.

At the hearing on the Objection, the United States Trustee argued, citing §101(14) and (31), that Bond did not qualify for employment as a professional under §327(a) because Bond was not disinterested and may hold or represent an interest adverse to the estate as a result of Bond's employer-employee relationship with Claude and Hope. The United States Trustee asserted that Claude and Hope were not only insiders, but also owners of undivided interests in the properties to be marketed; and, by virtue of their employment relationship with Bond, would share in the properties' sales commissions as well as the distribution of the sales proceeds. Furthermore, Claude is also a creditor of the estate.

#### **CONCLUSIONS OF LAW**

Section 327(a) provides:



Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

Real estate brokers are considered "professional persons" under § 327. Eastern Inns, Inc. v. Indian Head Bank & Trust Co. (In re Eastern Inns), 72 B.R. 418, 420 (Bankr. D. Me. 1987).

"Disinterested person" is defined in § 101(14) as "[a] person that – (A) is not a *creditor*, an equity security holder, or an *insider* . . . ." (Emphasis added.) The Bankruptcy Code's broad definition of "disinterested person" is construed to disqualify the employment of any professional "who might have the slightest degree of interest or relationship with the debtor that would color independent and impartial judgment required by the Code." In re Sauer, 191 B.R. 402, 408 (Bankr. D. Neb. 1995). By virtue of his creditor status, Claude is not a "disinterested person".

In the case of an individual, the term "insider" includes a "*relative* of the debtor." §101(31) (emphasis added). A Chapter 11 debtor cannot employ a real estate agent for the sale of the debtor's property if the agent is an insider. See Childress v. Middleton Arms, Ltd. Partnership (In re Middleton Arms, Ltd. Partnership), 934 F.2d 723 (6<sup>th</sup> Cir. 1991). Because of their status as relatives of Debtor, Claude and Hope are insiders and cannot be considered "disinterested persons" for purposes of § 327. Therefore, without question, they would be disqualified from being directly employed as professionals by Debtor. Even though Claude and Hope's interests as co-owners of the properties or agents on a commission may be the same as the estates', that is, to sell the properties for the highest price possible and the greatest return of equity for the creditors, including taxing authorities; that commonality of interest does not allow

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this Court, either by its equity powers or otherwise, to skirt the prohibitions of the Code.

The remaining question however is whether their disqualification to serve individually constitutes a basis for disqualifying the agency for which they work.

From the pleadings and the presentations at the hearings, it does not appear that either Claude or Hope are interest holders or owners of Bond so as to immediately disqualify Bond. However, Bond admitted that it is presently contemplated that Claude and Hope, as sales agents, will have a great deal of involvement in the marketing of the properties and procurement and closing of contracts. Furthermore, Bond indicated that it would not presently be feasible for agents other than Claude and Hope to handle these transactions.

While this Court does not agree with the United States Trustee that the only way to permit Bond's employment would be to require it to completely terminate the employment relationship with Claude and Hope, absent some effective means of divorcing and separating Claude and Hope from control over the services which Bond would provide to the estate; this Court finds, based on the specific facts of this case, that Bond is tainted by the relationship it presently proposes with Claude and Hope for these transactions. Therefore,

**IT IS ORDERED** that the objection of the United States Trustee is sustained, and Debtor's Application to Employ Real Estate Agent is hereby denied.

**AND IT IS SO ORDERED.**

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina  
October 15, 1999.



**CERTIFICATE OF MAILING**  
The undersigned deputy clerk of the United States  
Bankruptcy Court for the District of Columbia hereby certifies  
that a copy of the enclosed petition and this certificate appears  
to be a true and correct copy of the original as filed below to

OCT 15 1999

**DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE**  
**JUDY G. SMITH**  
Deputy Clerk

w/ judgment  
McLeod  
Nossakoff  
Calloway  
JSTC