

IN THE CHANCERY COURT OF THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

LESLIE A. NEWMAN,)
Commissioner of the Tennessee)
Department of Commerce and Insurance,)
)
Petitioner,)
)
v.) No. 07-1163-IV
)
NATIONAL FOUNDATION OF)
AMERICA, a Tennessee corporation,)
RICHARD K. OLIVE, an individual,)
SUSAN L. OLIVE, an individual,)
BREANNA MCINTYRE, an individual,)
)
Respondents.)

FILED
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CLERK & MASTER
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D.C.M.

**MOTION TO APPROVE LIQUIDATOR'S
REPORT ON CLASS 2 CLAIMS AND APPROVE
PARTIAL INTERIM DISTRIBUTIONS TO CLASS 2 CLAIMANTS**

Leslie A. Newman, Commissioner of the Department of Commerce and Insurance and Liquidator for National Foundation of America ("NFOA"), by her Special Deputy Liquidator Paul Eggers, whose affidavit is submitted herewith, moves this Court for an order to:

- A. Approve, pursuant to Tenn. Code Ann. § 56-9-331, the Liquidator's report and recommendation on the valuation of claims (Exhibit 1 to the Special Deputy Liquidator's Affidavit); and
- B. Authorize the Special Deputy Liquidator, pursuant to Tenn. Code Ann. §56-9-332, to distribute \$12,621,966.11 of NFOA's assets to pay Class 2 claims totaling \$19,418,409.40, by making a pro rata partial interim distribution at the rate of 65% of the approved claim amount (i.e., "Liquidator Determination" column) as set forth in Exhibit 1 to the Special Deputy Liquidator's Affidavit.

In support of this Motion, the Liquidator relies upon the following and upon the Affidavit of Special Deputy Liquidator Paul Eggers along with its Exhibits 1-2 (collectively, the “pleadings”) that is being filed contemporaneously herewith and is incorporated by reference herein.

Liquidation Order

1. On September 11, 2007, the Court ordered the conversion of the Rehabilitation of NFOA to the Liquidation of NFOA. See Final Order of Liquidation and Injunction (“Liquidation Order”) (entered Sept. 11, 2007).

2. The Court established that, because of the age of the individuals who had been issued illegal annuity contracts by NFOA (i.e., Class 2 claimants), the Liquidator would determine the value of refunds due to these known individuals. Further, on or before November 1, 2007, the Liquidator would provide notice of the amount of such refund claims and the priority of such claims for payment from the assets of the NFOA receivership estate pursuant to Tenn. Code Ann. § 56-9-330(a)(2) (hereinafter referred to as “Notice of Annuity Refund Claim Against NFOA” or “NARC”). See Liquidation Order, ¶ 21(a). Any objections to either the amount or payment priority set forth in the NARC were to be filed with the Special Deputy Liquidator no later than 4:30 p.m. C.S.T. on December 3, 2007. Id. Objections timely raised would be subject to the disputed claims process set forth in Tenn. Code Ann. § 56-9-327. Id.

3. The Court ordered the Liquidator to provide all other known creditors of NFOA with notice of the Liquidation Order and the form for filing a Proof of Claim (“POC”) against the NFOA estate. See Liquidation Order, ¶ 21(b). The deadline for filing POCs was set for no later than 4:30 p.m. C.S.T. on December 3, 2007. Id.

4. The Court further ordered that the annuities of contract holders that had not been surrendered by the issuing insurers with payment of proceeds made to and received by NFOA as of the entry of the Liquidation Order were not considered assets of the NFOA Liquidation estate and NFOA had no liability or obligation in relation to these unsurrendered annuities. See Liquidation Order, ¶ 6.

Notice Pursuant to Tenn. Code Ann. § 56-9-311 and the Liquidation Order

5. Promptly after September 11, 2007, in accordance with Tenn. Code Ann. § 56-9-311, the Special Deputy Liquidator sent by first class mail notices of the Liquidation Order, along with POC forms, to all known annuity contract holders and creditors. The Special Deputy Liquidator caused the notice to be published in the newspaper of general circulation in the following cities: Nashville, Tennessee; Topeka, Kansas; Austin, Texas; Tallahassee, Florida; Sacramento, California; Montgomery, Alabama; Springfield, Illinois; Olympia, Washington; and St. Paul, Minnesota.

6. Pursuant to the Liquidation Order, the Special Deputy Liquidator determined the value of refunds due to the known individuals and entities who were issued illegal annuity contracts by NFOA (i.e., Class 2 claimants). The value of each NFOA annuity contract was determined based on the amount of the surrendered annuities, cash, real estate, and other investments that was actually received by NFOA prior to the entry of the Liquidation Order, less any installment payments received by the annuity contract holder from NFOA and charitable contributions made at the request and/or on behalf of the holders of the illegal annuity contracts.

7. In accordance with the Liquidation Order as explained in Paragraph 4 above, the Special Deputy Liquidator valued the claims of the unsurrendered policy holders at \$0 since the policies were not surrendered by the original insurer to NFOA and NFOA never received the

money associated with the unsurrendered annuities. On September 18, 2007, the Special Deputy Liquidator sent letters to all insurance companies that had originally held annuities related to an illegal NFOA annuity contract that had not been surrendered to NFOA by the date of the entry of the Liquidation Order. The letter explained that the Liquidation was relinquishing any and all rights to the annuity and directed the insurance company to place the ownership of the annuity back into the name of the original annuitant.

8. On or before November 1, 2007, the Special Deputy Liquidator sent by first class mail to all known annuity contract holders the NARCs, setting forth the value of refunds due as determined by the Special Deputy Liquidator and the Class 2 payment priority pursuant to Tenn. Code Ann. § 56-9-330(a)(2).

Resolving Class 2 Claims Pursuant to Tenn. Code Ann. § 56-9-327

9. By the December 3, 2007 deadline for filing POCs and objections to the NARCs, the Special Deputy Liquidator had received 37 POCs from all known claimants and 26 objections to the NARCs from Class 2 claimants. The Special Deputy Liquidator mailed a Final Liquidation Advice to each claimant and objector, explaining the Liquidator's valuation of each claim. The Special Deputy Liquidator received one objection to the Final Liquidation Advice from Kaufman & Canoles, P.C., a Class 5 claimant, who objected to the value, not the Class 5 payment priority, of the claim. All of the objections to the NARCs were withdrawn except for three objections that were filed by contract holders of unsurrendered policies.

10. The Special Deputy Liquidator has continued to work with these three contract holders of unsurrendered annuities to confirm from the issuing insurers that the ownership of the unsurrendered policies are correctly titled in the original annuitant's name. The Special Deputy has confirmed from two of the issuing insurers that the ownership of two of the unsurrendered

policies has been correctly titled in the original annuitant's name. The Special Deputy Liquidator has provided this information to the two annuitants and has requested that they withdraw their objections as the ownership issue has been resolved. The third issuing insurer is requiring that a change of ownership form be completed by the original annuitant. The Special Deputy Liquidator has sent the change of ownership form to the annuitant but has not received the executed form. The Special Deputy Liquidator anticipates that the third objection will be resolved upon the execution of the proper paperwork by the annuitant. Since these unsurrendered annuity policies are not assets of the NFOA Liquidation estate as determined by the Court in the Liquidation Order and the Liquidator is working to confirm that the ownership of the policies is not with NFOA, the Special Deputy Liquidator has determined that the resolution of these objections will have no effect on the distributions of NFOA and should not prevent the partial interim distributions being sought in this Motion. The Special Deputy Liquidator is reserving an amount sufficient to cover a pro rata distribution at the rate of 65% for the third policy in the event that the annuitant fails to complete the change of ownership paperwork and the Liquidator has to seek permission to bring the unsurrendered policy into the NFOA estate.

11. Regarding the objection that the Special Deputy Liquidator received from Kaufman & Canoles, P.C., a Class 5 claimant, who objected only to the Liquidator's determination of the value of the claim not to the Class 5 payment priority, the Special Deputy Liquidator currently has taken the objection under review. As there are not currently enough funds in the Liquidation estate to pay 100% of all Class 2 claims, the Special Deputy Liquidator does not anticipate that there will be sufficient funds to pay claims below Class 2 priority. If it should be determined in the future that claims below Class 2 priority will receive payment, the

Special Deputy Liquidator will resolve the objection to the value of this Class 5 claim in accordance with Tenn. Code Ann. § 56-9-327.

12. All Class 2 claims that are currently entitled to assets of the NFOA Liquidation estate have been resolved as to value and payment priority. The Liquidation is appropriately reserving amounts to cover any distributions that the Liquidation may be ordered to make in the future on the unsurrendered policy that requires completion of paperwork by the annuitant.

Liquidator's Report and Recommendation For Claims
Pursuant to Tenn. Code Ann. § 56-9-331

13. The Special Deputy Liquidator has set forth the value of all known claims in Exhibit 1 to the Affidavit of Paul Eggers that is being filed contemporaneously herewith. Pursuant to Tenn. Code Ann. § 56-9-331, the Special Deputy Liquidator is submitting this report and recommendation for claims to the Court. Pursuant to the Court's Order entered August 27, 2007, the address information of the Class 2 claimants has been redacted from Exhibit 1. An unredacted version of Exhibit 1 containing the detailed address information for the Class 2 claimants is being filed under seal pursuant to the Court's August 27, 2007 Order.

Partial Interim Distribution to All Class 2 Claimants
Pursuant to Tenn. Code Ann. § 56-9-332

14. Due to the advanced age of the Class 2 claimants (whose average age is 76), and further due to the tax event that has been created by surrendering their original investment policies to invest with NFOA under the false pretense that the NFOA contract was charitable and able to confer substantial tax benefits, the Class 2 claimants are in need of distributions to pay tax liabilities and living expenses. The last installment payments that any Class 2 claimant received from NFOA were made in October 2007.

15. The total amount of all Class 2 claims is approximately \$19,418,409.40.

16. The NFOA estate currently has \$15,202,097.00 available in cash assets.

17. At this time, the Special Deputy Liquidator on behalf of the Liquidator recommends that \$12,621,966.11 be immediately distributed to Class 2 claimants using a pro rata percentage of 65% of the value of the claims. Exhibit 1 to the Affidavit of Paul Eggers sets forth the amount of partial interim distributions to be made to each Class 2 claimant.

18. After making the proposed partial interim distributions, NFOA will have remaining cash assets totaling approximately \$2,580,130.89.

19. The proposed partial interim distributions ensure that each Class 2 claimant will receive the same pro rata distribution and that no subclasses will be created within Class 2 as required by Tenn. Code Ann. § 56-9-330. Further, the proposed partial interim distribution plan ensures that adequate funds have been retained to pay Class 1 administrative costs and expenses of the Liquidation going forward and to pay the same pro rata distribution to any future claimants determined to have Class 2 payment priority.

20. The Liquidation is in the process of seeking the disgorgement of commissions paid to approximately sixty-five (65) agents and investment advisors who were unjustly enriched and benefited improperly from the issuance of NFOA's illegal insurance contracts.

21. The Liquidation is also in the process of evaluating other claims against third parties, including Richard and Susan Olive, the former President and Vice President respectively of NFOA.

22. The Liquidation continues to seek purchasers for two pieces of real estate owned by NFOA.

23. In the future, once the Liquidator determines that either all of the available estate assets have been marshaled or that the costs of continuing to marshal any additional assets are

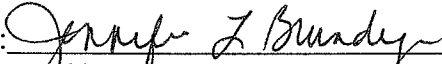
greater than any additional assets that might be recovered, the Liquidator will seek an order to make a final distribution from the estate assets.

24. In addition to the service list, the Special Deputy Liquidator will cause the pleadings to be served on the claimants of the estate as set forth in Exhibit 1. In addition, the Special Deputy Liquidator will post the pleadings on the websites of the NFOA Liquidation and the Tennessee Department of Commerce and Insurance.

NOW, THEREFORE, for the foregoing reasons, the Liquidator respectfully requests that the Court enter an order:

- (1) Approving, pursuant to Tenn. Code Ann. § 56-9-331, the Liquidator's report and recommendation on claims set forth in Exhibit 1 to the Affidavit of Paul Eggers;
- (2) Authorizing, pursuant to Tenn. Code Ann. § 56-9-332, the partial interim distributions to Class 2 claimants as set forth in Exhibit 1 to the Affidavit of Paul Eggers; and
- (3) Authorizing the Special Deputy Liquidator to stay the resolution of the objection received from Kaufman & Canoles, P.C., a Class 5 claimant, as to the value of the claim unless and until the Special Deputy Liquidator determines that there will be sufficient assets in the NFOA Liquidation estate to pay all Class 2 claimants in full with sufficient reserves to pay claims with lower payment priority.

Respectfully submitted,

By: 
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Special Counsel to Liquidator

THIS MOTION IS SET TO BE HEARD ON FRIDAY, MAY 16, 2008, AT 9:00 A.M. OR AS SOON THEREAFTER AS IT MAY BE HEARD. IF NO RESPONSE IS TIMELY FILED AND SERVED, THE MOTION SHALL BE GRANTED WITHOUT FURTHER HEARING.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been forwarded via U.S. Mail, postage pre-paid, to the parties and interested entities listed below on this the 2nd day of May, 2008.

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And all of the Claimants Listed in Exhibit 1 to P. Eggers' Affidavit.

