

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re: : Chapter 11
: :
Philadelphia Newspapers, LLC *et al.*,¹ : Case No. 09-11204 (JKF)
: :
Debtors. : Jointly Administered
: :
: :

**OBJECTION OF THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS TO APPLICATION OF TENNENBAUM CAPITAL
PARTNERS, LLC FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM**

The Official Committee of Unsecured Creditors (the “Committee”), appointed in the chapter 11 cases of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), hereby objects (the “Objection”) to the application of Tennenbaum Capital Partners, LLC (“Tennenbaum”) for allowance of its administrative expense claim, filed October 7, 2009 (the “Application”). [Docket No. 1223]. In support of this Objection, the Committee respectfully states as follows:

ARGUMENT

1. By their Application, the Debtors seek authority to pay Tennenbaum fees in excess of the fees authorized by the Court at the hearing on August 11, 2009. On July 30, 2009, the Debtors filed a motion seeking authority to pay Republic First Bank, Inc. (“RFB”) a due diligence fee of \$300,000 in connection with a proposed non-consensual priming DIP loan to be provided by RFB and a group of other lenders. [Docket No. 822]. That motion was strenuously opposed by the Senior Lenders [Docket No. 858]. At the hearing held on August 11, 2009, the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Philadelphia Newspapers, LLC (3870), PMH Acquisition, LLC (1299), Broad Street Video, LLC (4665), Philadelphia Direct, LLC (4439), Philly Online, LLC (5185), PMH Holdings, LLC (1768), Broad Street Publishing, LLC (4574), Philadelphia Media, LLC (0657) and Philadelphia Media Holdings, LLC.

Committee joined in that objection and suggested that the Court authorize payment of only \$100,000. The Court agreed and limited the authorization to \$100,000. [Docket 903]. At the August 11, 2009 hearing, the Court suggested that if the due diligence fees exceeded \$100,000, it may be necessary for the insider stalking horse to fund any excess.

2. Tennenbaum's Application indicates that Tennenbaum was contacted by Sonenshine Partners, LLC on August 6, 2009 and did some work in considering this proposed DIP financing until August 26, 2009, at which point the Debtors dropped any effort to have this DIP financing approved. Tennenbaum seeks reimbursement of \$14,012 to pay its counsel (Latham & Watkins) for fees and expenses incurred by Latham from August 18 - 25, 2009. In its Application, Tennenbaum specifically references the Court's August 11, 2009 order limiting the fees and expenses to \$100,000 and indicates that "Applicant performed the Post Petition Services in reliance on that Order." Application at ¶5.² This should end the inquiry. Having relied on the Court's order that capped the fees for this effort at \$100,000, at most, Tennenbaum should look to RFB to share the \$100,000 paid to RFB rather than seeking to push the Estates' reimbursement of fees for this failed non-consensual priming DIP financing over the \$100,000 limit set by the Court. As Tennenbaum admits, it had no expectation to receive compensation on top of that \$100,000 cap.

3. Furthermore, the Application should be denied because it seeks reimbursement of fees that provided no benefit to the Debtors' estates. Section 503(b) of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") provides that "[a]fter notice and a hearing, there shall be allowed administrative expenses, ... including – the actual, necessary costs and expenses

² The invoice from Latham & Watkins attached as Exhibit B to the Application, for which Tennenbaum seeks reimbursement, indicates that Latham performed its first work on August 18, 2009 -- i.e., 8 days after the Court entered its order capping these fees at \$100,000.

of preserving the estate.” 11 U.S.C. § 503(b)(1)(A). While the Bankruptcy Code does not itself elaborate on what constitutes an actual, necessary cost or expense of preserving a debtor’s estate, the Third Circuit has established that “[a] party seeking payment of costs and fees as an administrative expense must ... carry the heavy burden of demonstrating that the costs and fees for which it seeks payment provided an *actual benefit* to the estate and that such costs and expenses were *necessary to preserve the value of the estate assets*.” *Calpine Corp. v. O’Brien Env’tl. Energy, Inc. (In re O’Brien)*, 181 F.3d 527, 533 (3d Cir. 1999) (emphasis added).

4. Tennenbaum incurred fees conducting due diligence for and negotiating terms of a proposed insider DIP financing package that was extremely unlikely ever to be approved given that it was a non-consensual priming DIP loan that was adamantly opposed by the Senior Lenders, whom the Debtors acknowledged were significantly undersecured. Tennenbaum must have known that the DIP financing package it was considering had extremely little chance of being approved, in addition to knowing definitively that fees and expenses that would be paid to these DIP lenders had been capped at \$100,000. The \$100,000 already authorized by the Court is more than generous and should not be increased, particularly given Tennenbaum’s admission that it did its work in reliance on the Court’s order capping these fees at \$100,000.

5. The Application attaches a declaration from Scott Baker, the Debtors’ general counsel, which asserts that when the Court entered its August 11 Order this was “with the understanding that Tennenbaum and its co-lenders could seek approval of an administrative claim for expenses in excess of the \$100,000 cap.” Baker Declaration at ¶7. That is not correct. Indeed, on August 21, 2009, the Debtors filed a motion asking the Court to reconsider its August 11, 2009 ruling and urged the court to increase the cap to \$200,000 (the “Motion for Reconsideration”). [Docket No. 954]. The Debtors’ Motion for Reconsideration was opposed

by the Committee [Docket No. 963] and the Senior Lenders [Docket No. 967] in objections filed on August 24, 2009. The Court never acted on the Debtors' Motion for Reconsideration. Instead, in connection with the mediation before Judge Fehling, the Debtors raised the prospect that the parties agree to pay Tennenbaum a sum in excess of the \$100,000 cap. This request was again opposed by the Committee and the Senior Lenders. The parties agreed to disagree. This was documented in a Stipulation and Order that the Court approved on August 28, 2009 [Docket No. 1006]. Paragraph 5(a) of the Stipulation and Order provides that RFB and Tennenbaum reserved their right to seek allowance of fees in excess of \$100,000 and all "Parties and other parties-in-interest in the Bankruptcy Case reserve their rights to object to any such request ...". The Committee continues to believe that RFB and Tennenbaum should live with the \$100,000 cap already approved by the Court and objects to the Application on the grounds stated herein.

[Remainder of page intentionally left blank.]

WHEREFORE, for the reasons stated above, the Committee respectfully requests that the Court deny the relief sought in the Application, and grant such other and further relief as the Court deems just and proper.

Dated: October 22, 2009
Philadelphia, Pennsylvania

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CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO APPLICATION OF TENNENBAUM CAPITAL PARTNERS, LLC FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM was served this 22nd day of October, 2009 on the parties listed below by electronic mail and by the Court's CM/ECF transmission:

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