



**ENTERED**  
TAWANA C. MARSHALL, CLERK  
THE DATE OF ENTRY IS  
ON THE COURT'S DOCKET

**The following constitutes the ruling of the court and has the force and effect therein described.**

**Signed October 16, 2008**

**United States Bankruptcy Judge**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

In re: §  
SURETY CAPITAL CORPORATION, § CASE NO.: 07-45637-dml  
DEBTOR. § CHAPTER 11  
§

MEMORANDUM ORDER

Before the court is the *Objection of Richard Abrams to Debtor's First Amended Plan of Reorganization as Modified* (the "Objection"). The Objection was filed by Richard Abrams ("Abrams") objecting to debtor Surety Capital Corporation's ("Debtor") *First Amended Plan of Reorganization as Modified* (the "Plan").<sup>1</sup> A hearing was conducted on the Plan and the Objection on October 1, 2008 (the "Hearing"). At the Hearing the court heard argument from counsel for Abrams, the Debtor, the Unsecured Creditors Committee and Bank of Texas. In

<sup>1</sup> Filed at docket no. 184.

addition, the court heard testimony from Weiner.<sup>2</sup> At the Hearing the court confirmed the Plan, but left open the issue of the Bonus<sup>3</sup> payment.

## I. JURISDICTION

This court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. § 1409. This memorandum order embodies the court's findings of fact and conclusions of law. *See* FED. R. BANKR. P. 9014 and 7052. The court finds that notice was proper for the Hearing.

## II. DISCUSSION

The Objection raises several issues that Abrams has with the Plan, however at the Hearing the parties informed the court that only one issue remained. The remaining issue is the \$50,000 bonus payment (the "Bonus") for Jeremy Weiner ("Weiner") as chairman of the Debtor and employee of Technical Management Institute, Inc. (collectively, "TMI").<sup>4</sup> The Bonus is purportedly sought pursuant to a Consulting Agreement whereby TMI would provide management services for the Debtor (the "Consulting Agreement").<sup>5</sup>

The portion of the Consulting Agreement at issue is a provision which awards the Bonus in the event that Surety Bank (the "Bank") is sold by March 31, 2008 (the "Sale Deadline"). The parties agree that the Bank was not sold by the Sale Deadline. The Consulting Agreement, by its own terms, was to terminate on March 31, 2008 (the "Termination Date"). On or about March 4, 2008 the Consulting Agreement was extended by Debtor on a month to month basis (the

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<sup>2</sup> As defined below.

<sup>3</sup> As defined below.

<sup>4</sup> Except for Abrams, no party objected to payment of the Bonus.

<sup>5</sup> The Consulting Agreement was admitted into evidence at the Hearing.

“Extension”) at a Special Meeting of the Board of Directors of the Debtor (the “Meeting”).

Weiner acted at the Meeting as the sole director of the Debtor, although he invited comments regarding the Extension from John H. Mackey, John Hernandez, Roman Palomares, Stephen R. Oeffner, all members of the Bank’s board of directors, Larry Morgan, an advisory director to the Bank, Cindy Swindle, the Banks senior vice president and cashier, Jacob Thompson of Commerce Street Capital, LLC, and Justin M. Long<sup>6</sup> of Bracewell & Giuliani, LLP who attended the meeting. The minutes of the Meeting (the “Meeting Minutes”) were admitted into evidence at the Hearing.

The issue then before the court is whether the Extension operated to extend the Sale Deadline, or simply the Termination Date of TMI under the Consulting Agreement or if there is any other reason that TMI may be entitled to the Bonus.

#### A. The Terms of the Consulting Agreement

The Consulting Agreement is a one page document which simply lays out the terms under which TMI and Wiener will provide services to the Debtor. Under the heading of “Period of Performance” the Consulting Agreement addresses the Termination Date by stating: “The services under this Agreement will be performed during the period of October 1, 2007 through March 31, 2008. This agreement [sic] can be extended by the Board of Directors at their sole discretion.” Consulting Agreement at ¶ 2.

In addition to the foregoing, the Consulting Agreement sets out the terms of compensation, including payment of the Bonus and Sale Deadline, in a separate paragraph. That provision states: “TMI will submit an invoice for payment monthly. SCC agrees to pay TMI \$10,000 per month plus expenses until Surety Bank is sold, and a bonus of \$50,000 if sale [sic] is

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<sup>6</sup> Mr. Long apparently participated at the Meeting by telephone.

completed before 31 March, 2008.” See Consulting Agreement at ¶ 3. In the court’s opinion, there is nothing in the Consulting Agreement which would in any way link the Termination Date to the Sale Deadline other than that both were originally set for on the same day.

The Debtor and TMI argue that the Extension not only changed the Termination Date, but also the Sale Deadline. Abrams, on the other hand, takes the position that the Extension was ineffective and in any case did not change the Sale Date. In relevant part, the Meeting Minutes read in relevant part as follows:

Mr. Wiener next noted that the consulting agreement with Technical Management Institute, Inc. was set to terminate on March 31, 2008. [Wiener proposed] that the consulting agreement be extended on a month to month basis, or until liquidation of the Company....[Wiener] made a motion to approve and authorize the extension of this employment agreement and asked those in attendance at the meeting if there were any questions or comments regarding the extension. There being no comments, Mr. Weiner seconded his motion and then voted to approve the extension of employment contract...

See Meeting Minutes at p. 1.

The court has reviewed the Consulting Agreement and the Extension and is of the opinion that the Extension affected only the Termination Date, i.e. extended the last day of employment of TMI, and did not affect the Sale Deadline. This being the case, because the Bank was sold after the Sale Deadline, the Consulting Agreement, taking into account the Extension, does not provide a basis for awarding the Bonus. The court must then consider if the inclusion of the Bonus in the confirmed Plan creates any basis for the Bonus to be paid to TMI.

#### B. The Bonus as a Plan Provision

At the Hearing the Court confirmed the Plan, finding that it met the requirements of 11 U.S.C. 1129. The terms of the Plan are therefore binding on the creditors and shareholders of the Debtor. Section 6.4 of the Plan, reads:

Mr. Weiner shall be entitled to compensation in the amount of \$10,000 per month beginning in January 2008 and a \$50,000 bonus for selling Surety Bank, plus reimbursement of actual and necessary expense, for so long as he remains Chairman of the Debtor through the month in which Effective Date occurs....

See Plan at Section 6.4, p. 13.

Section 6.4 of the Plan makes no reference to the Consulting Agreement and is therefore not subject to the terms of the Consulting Agreement. That being the case, the court concludes that the Plan provision provides an independent, but not cumulative, basis for awarding the Bonus to TMI. Because that the Plan has been confirmed and the Plan contains the provision above, the court concludes that TMI is entitled to the Bonus.<sup>7</sup>

TMI is entitled to receive the Bonus in accordance with the provisions of the confirmed Plan.

**IT IS SO ORDERED.**

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<sup>7</sup> At the Hearing and in the Objection Abrams also urged the court to deny allowance of the Bonus on the basis that the proper regulatory approval was not obtained in accordance with the Extension as described in the Meeting Minutes. Because the court has decided the issue based on the provisions of the Plan and not the Consulting Agreement or Extension, such argument is moot.