

E. Stuart Phillips
Assistant Attorney General
Attorney General's Office
Bankruptcy & Collections Division
P. O. Box 12548, MC-008
Austin, Texas 78711-2548
P: 512/463-2173
F: 512/482-8341

ATTORNEY FOR THE TEXAS STATE
SECURITIES BOARD

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
RETIREMENT VALUE, LLC,	§	CASE NO. 11-35165
	§	INVOLUNTARY CHAPTER 7
ALLEGED DEBTOR.	§	

**OBJECTION AND JOINDER OF THE TEXAS STATE SECURITIES BOARD
IN THE RECEIVER'S OBJECTION TO THE
EMERGENCY MOTION FOR APPOINTMENT OF CHAPTER 7 TRUSTEE**

The Texas State Securities Board ("SSB") objects to the petitioning creditors' Emergency Motion for Appointment of a Chapter 7 Trustee ("Trustee Motion") and joins in the Receiver's Objection to the Trustee Motion, as follows:

1. The SSB opposes appointment of an interim trustee because such a trustee is not necessary to preserve the property of the estate or to prevent loss to the estate. The SSB sought and obtained appointment of the Receiver in state district court well over a year ago. All of the debtor's assets have been in his care, custody, and control. The Receiver has also been subject to the ongoing and close supervision of a specially-assigned state district judge, until this involuntary case was filed the business day before a hearing at which the state district judge would have considered the Receiver's proposed plan of distribution.

2. The upshot of the grounds asserted by the petitioning creditors in the Trustee Motion is that the Receivership estate is costing too much. The SSB does not believe this allegation is borne out by a review of the facts. The State Securities Act specifically provides for the appointment of a state court receiver in cases involving securities fraud (Section 25-1 of the Texas State Securities Act); as such, the agency has overseen a number of similar receiverships and is familiar with the challenges and issues presented in a receivership such as the Retirement Value case. The SSB and its counsel at the Attorney General's Office have been closely involved in the Retirement Value state court proceedings. The SSB believes that the Receiver and his legal counsel have administered the complex facts and issues in this Receivership estate with expertise, efficiency, and competence. The agency further believes, given the complexities and exigencies of this case, the fees charged by the Receiver and by his legal counsel (all of which are subject to approval by the Travis County District Court) have been reasonable.

3. The SSB, like the parties involved in the case, is seeking to maximize the return to defrauded investors. Appointment of an interim chapter 7 trustee, however, is not consistent with that goal. Not only is the Receiver preserving property of the estate and protecting the estate from loss, the estate will likely be diminished by the costs one can reasonably anticipate a chapter 7 trustee will incur in becoming acquainted with the facts and law in this case and in progressing to the already advanced stage of the state court proceedings.

4. The SSB recognizes that, absent appointment of an interim chapter 7 trustee, someone must be responsible for preserving the estate and managing the affairs of Retirement Value. The SSB believes that leaving the Receivership undisturbed will best serve the creditors and, as such, the agency strongly supports the Receiver's request that he be excused from turnover under 11 U.S.C. § 543 (Dkt. #17). The Receivership has been pending almost a year

past the 120-day period set out in § 543(d)(2). The Receiver was on the verge of completing his work before the involuntary petition was filed. The Court will be presented with motions to dismiss, and the SSB supports the Receiver's request that he be permitted to continue administering and protecting the assets of the estate and allowing parties-in-interest (including but not limited to the Petitioning Creditors) to raise any concerns about the Receiver or the proposed plan of distribution in the state court.

5. The SSB joins in the allegations and arguments in the Receiver's objection concerning the requested § 303(g) relief.

As this Court is well aware, Section 303(g) contemplates appointment of an interim trustee only where "necessary to preserve the property of the estate or to prevent loss to the estate." The SSB respectfully submits that under these facts and circumstances such an appointment is not necessary, and the agency requests that this Court deny the Trustee Motion.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

BILL COBB
Deputy Attorney General for Civil Litigation

RONALD R. DEL VENTO
Assistant Attorney General
Chief, Bankruptcy & Collections Division

/s/ E. Stuart Phillips
E. STUART PHILLIPS
Texas State Bar No. 14485410
Assistant Attorney General
Bankruptcy & Collections Division
P. O. Box 12548
Austin, Texas 78711-2548
P: (512) 463-2173/F: (512) 482-8341
E-mail: *Stuart.Phillips@oag.state.tx.us*

ATTORNEYS FOR THE TEXAS STATE
SECURITIES BOARD

CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2011, a true and correct copy of the foregoing pleading was served on parties through the court's electronic filing (ECF) system and on the following by regular mail:

Isabelle M. Antongiorgi
Taylor Dunham, L.L.P.
301 Congress Ave. Ste. 1050
Austin, TX 78701

Retirement Value, LLC
457 Landa St., Suite B
New Braunfels, TX 78130

/s/ E. Stuart Phillips
E. STUART PHILLIPS