

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In re: GARY SASSO,  
Debtor.

No. 7-12-14564 JA

**ORDER TERMINATING EMPLOYMENT OF  
ASKEW & MAZEL, LLC AS COUNSEL FOR THE CHAPTER 7 TRUSTEE**

On June 30, 2015, this Court entered an Order Granting Chapter 7 Trustee's Application to Employ Askew & Mazel, LLC (the "Employment Order").<sup>1</sup> See Docket No. 74. Askew & Mazel, LLC also represents Dennis Pantano, as Independent Administrator of the Estate of Marie Sasso, and trustee of the Marie Sasso Trust dated August 15, 2001, as restated on October 21, 2015 (referred to hereafter as, Dennis Pantano, or Mr. Pantano). On November 25, 2016, the Chapter 7 Trustee filed a Motion to Approve Sale of Monte Carlo Trailer to Debra Sasso (the "Motion to Sell Monte Carlo"). See Docket No. 106. Askew & Mazel, LLC did not file the Motion to Sell Monte Carlo on behalf of the Chapter 7 Trustee. Dennis Pantano, through his attorneys of record, Askew & Mazel, LLC, objected to the Motion to Sell Monte Carlo. See Docket No. 108. Even though Askew & Mazel, LLC did not file the Motion to Sell Monte Carlo on behalf of the Chapter 7 Trustee, Askew & Mazel, LLC has an actual conflict of interest that disqualifies it from continuing to represent the Chapter 7 Trustee in this bankruptcy case.<sup>2</sup> The Court, *sua sponte*, will terminate Askew & Mazel, LLC's employment by the Chapter 7 Trustee

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<sup>1</sup> The Employment Order approved the Chapter 7 Trustee's employment of Askew & Mazel, LLC as his counsel in the Gary Sasso bankruptcy case to represent the Chapter 7 Trustee in matters relating to the bankruptcy case, "including but not limited to all pending contested matters and adversary proceedings, and any other matters in which the Trustee requires bankruptcy counsel, and in such other matters as the Trustee may request of Askew & Mazel, LLC and Askew & Mazel, LLC may agree to perform." Employment Order, ¶ 1.

<sup>2</sup> No related adversary proceedings remain pending at this time. See Adversary Proceeding No. 13-1024 (closed) and Adversary Proceeding No. 15-1043 (closed).

in this bankruptcy case because of Askew & Mazel, LLC's disqualifying actual conflict of interest.

## DISCUSSION

An attorney employed by the Chapter 7 Trustee must be disinterested and must not hold or represent an interest adverse to the estate. *See* 11 U.S.C. § 327(a) (“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.”). An attorney who also represents a creditor may not be disqualified from representing the trustee solely because of the attorney’s employment by or representation of a creditor. *See* 11 U.S.C. § 327(c) (“A person is not disqualified . . . solely because of such person’s employment by or representation of a creditor”). However, if another creditor or the United States Trustee objects, the Court must disapprove the employment if the person has an actual conflict of interest. *Id.*

Even in the absence of an objection by the United States trustee or another creditor, the Court has an independent obligation to disapprove employment when there is an actual conflict of interest. *See In re Penney*, 334 B.R. 517, 520 (Bankr. D. Mass. 2005) (stating that “the Court . . . has an independent obligation to make this determination even though neither the U.S. Trustee nor a party in interest objected to the Application.”) (citation omitted); *In re American Energy Trading, Inc.*, 291 B.R. 154, 158 (D. Me. 2003) (“A bankruptcy court has the authority and the responsibility to approve the employment only of professionals who meet the minimum requirements set forth in § 327(a), independent of objections.”) (citation omitted); *In re BH & P, Inc.*, 103 B.R. 556, 565 (Bankr. D.N.J. 1989) (acknowledging that, while §327(c) provides for

action on a question of conflicts raised by an objection of a creditor or the United States Trustee, § 327(c) “of course, does not preclude the court from raising objections *sua sponte*, which is authorized by § 105(a).”). Moreover, § 327(a)’s requirements must be satisfied even when subsection (c) applies. *See Interwest Bus. Equipment, Inc. v. United States Trustee (In re Interwest Bus. Equipment, Inc.)*, 23 F.3d 311, 316 (10<sup>th</sup> Cir. 1994) (“[S]ubsection (c) of § 327 does not preempt the more basic requirements of subsection (a)[.]”).

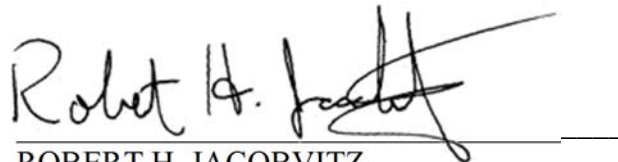
A person has an actual conflict of interest “when there is active competition between two competing interests, in which one interest can only be served at the expense of the other.” *In re HML Enterprises, LLC*, 2016 WL 5939737, \*7 (Bankr. E.D. Tex. Oct. 12, 2016) (quoting *In re Adam Furniture Indus, Inc.*, 158 B.R. 291, 301 (Bankr. S.D. Ga. 1993) (internal quotation marks omitted)). A disqualifying interest adverse to the estate also exists if the professional represents a client whose interest “would give rise to an actual . . . dispute in which the estate is a rival client.” *In re Dev’t Corp. of Plymouth, Inc.*, 283 B.R. 464, 469 (Bankr. E.D. Mich. 2002) (citing *In re CF Holding Corp.*, 164 B.R. 799 (Bankr. D. Conn. 1994) (remaining citation omitted)).

Here, the Chapter 7 Trustee seeks to sell an asset of the bankruptcy estate to Debra Sasso, the Debtor’s non-filing spouse. Dennis Pantano’s objection to the Motion to Sell Monte Carlo represents that he is willing to pay \$1,000 more to the estate to purchase the asset. By representing Mr. Pantano’s interest in objecting to the Motion to Sell Monte Carlo and making a competing offer to the Chapter 7 Trustee, while at the same time serving as general counsel for the Chapter 7 Trustee in this bankruptcy case, Askew & Mazel, LLC has an actual conflict of interest. Mr. Pantano and the Chapter 7 Trustee, as representative of the bankruptcy estate, are rival clients.

The Court previously found that Askew & Mazel, LLC had an actual conflict of interest in representing the Chapter 7 Trustee in prosecuting another motion to sell a different asset of the bankruptcy estate to Mr. Pantano. *See* Memorandum Opinion and Order Denying Trustee's Motion to Sell, Docket No. 101. The same disqualifying conflict persists with respect to the Motion to Sell Monte Carlo now before the Court.

Askew & Mazel, LLC's continued simultaneous representation of Mr. Pantano and the Chapter 7 Trustee raises an actual conflict of interest that disqualifies Askew & Mazel, LLC from continuing to represent the Chapter 7 Trustee in this bankruptcy case. In addition, the Court is well aware from various hearings held in this bankruptcy case of the antagonism between Mr. Pantano and Gary Sasso. That animosity further supports the Court's conclusion that it is no longer appropriate for Askew & Mazel, LLC to continue to represent the Chapter 7 Trustee.

WHEREFORE, IT IS HEREBY ORDERED that the employment of Askew & Mazel, LLC as counsel for the Chapter 7 Trustee in this bankruptcy case is terminated, effective upon entry of this order.

  
ROBERT H. JACOBVITZ  
United States Bankruptcy Judge

Date entered on docket: January 18, 2017

COPY TO:

Gary Edward Sasso  
PO Box 50513  
Albuquerque, NM 87181

James A Askew  
Edward Alexander Mazel  
Askew & Mazel, LLC  
Attorneys for Dennis Pantano  
320 Gold Ave S.W., Suite 300A  
Albuquerque, NM 87102

Philip J. Montoya  
Chapter 7 Trustee  
3800 Osuna Rd. NE, Suite #2  
Albuquerque, NM 87109

United States Trustee  
PO Box 608  
Albuquerque, NM 87103