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6 UNITED STATES BANKRUPTCY COURT
7 IN AND FOR THE DISTRICT OF ARIZONA

8 In re:) Case No.: 03-03803 PHX RJH
9) 03-03799 PHX RJH
10 AMERICAN NATIONAL MORTGAGE)
PARTNERS, LLC.,)
11 Debtor.) **OBJECTION TO DISCLOSURE**
) **STATEMENT BY REHMS**

12 In re:)
13 ANMP 74th ST., LLC.,)
14 Debtor.)
15

16 Robert K. Rehm, Robert C. Rehm and Lois Rehm, by and through their counsel
17 undersigned, hereby object to the Debtors' Disclosure Statement. This objection is more fully
18 supported by the attached Memorandum of Points and Authorities.

19 DATED this 12th day of September, 2005.

20 LAW OFFICE OF BARBARA MARONEY, P.C.
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22
23 By /s/ Barbara Maroney
Barbara B. Maroney, Esq.
24 Attorney for Rehms
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. FACTUAL BACKGROUND

3 A. The Rehms' Investments

4 Robert C. Rehm and Lois Rehm are retirees that live in Florida. They invested
5 \$50,000.00 of their own funds into Hudson Park, LLC. (No. 66 on Exhibit B of the Disclosure
6 Statement), one of the entities apparently owned by the Debtor. They have never been involved
7 in the management of Hudson Park, and do not qualify as "insider" under Section 101 of the
8 Code. The Debtor's Disclosure Statement identifies them as insiders and subordinates their
9 claim without explanation.

10 Robert C. Rehm is the son of Robert K and Lois Rehm. He invested his personal sums in
11 the amount of \$60,000.00 in Hudson Valley, LLC. (No. 67 on Exhibit B). His claim as to this
12 entity has also been subordinated with no explanation.

13 Robert C. Rehm's SEP account (Mid Ohio Securities Custodian or "MOSC") also
14 invested \$50,000.00 of Mr. Rehm's retirement funds in Hudson Valley, LLC. His claim as to
15 this entity has also been subordinated with no explanation.

16 Robert C. Rehm also made investments in Corporate Fiducial Services, Inc. (No. 45 on
17 Exhibit B), and Western + Gulf Capital, Inc. (No. 112 on Exhibit B). His investments in these
18 entities have also been subordinated with no factual explanation.

19 B. Disclosure Statement Issues for Evaluation

20 Essentially, there are two issues that the Disclosure Statement in this case needs to
21 address:

22 (1) *What is the financial condition of the Debtors?* This would include information

23 about:

- 24 (a) the assets at the time the Receiver took over the properties,
25 (b) what the Receiver has been doing with the assets and income of the Debtor
since his appointment, and
(c) what assets and income does the Debtor currently possess?

1
2 (2) *Is this Plan in the best interests of the investors?* To determine that, investors
3 must be able to assess:

- 4 (a) the individual financial condition and assets of each entity on an
5 individual basis,
6 (b) how successful has the Receiver been in performing his duties and
7 maximizing recovery for investors on a consolidated basis?

8 The Receiver's business judgment and operating history is imperative for investors to assess.

9 This is especially true given that he is proposing to also act as Distributing Agent under the Plan.

10 It is difficult to tell from the Disclosure Statement exactly what activities the Receiver has
11 done with respect to the assets of each individual entity. There is no information provided
12 summarizing what properties have been sold, what properties are income producing and what
13 income has been received. Further, the Plan identifies only five sources of funding (See Page 2
14 of the Plan):

- 15 1. Castle Bankruptcy Settlement (\$16,000,000.00 over time)
16 2. Restitution Litigation settlement/recovery funds (if any)
17 3. Financial Litigation settlement/recovery funds (if any)
18 4. General Litigation settlement/recovery funds (if any)
19 5. Preference action settlement/recovery funds (if any)

20 Thus, the Plan does not identify what hard assets of the various entities will be applied to the
21 Plan, if any. The State Court Receivership has been pending approximately two years and yet *no*
22 *information as to the financial operations of the Receivership have been provided.* The Plan
23 proponent does not provide any summaries, year end statements, or other financial information
24 as to the Receiver's beginning inventory of assets, income received in the last two years, and
25 expenses paid out. Given the amount of professional fees that have been paid to both the
Receiver and his accountant, it would seem that this information would be easy to provide in a
summary format so that investors can make an informed decision about the Disclosure Statement
and the Plan.

1 More specific details and additional information are missing from the Disclosure
2 Statement, as detailed below. It is the Rehms' position that the Disclosure Statement cannot be
3 approved because it fails to provide adequate information.

4 **II. FAILURE TO PROVIDE ADEQUATE INFORMATION**

5 Section 1125 (a)(1) of the Bankruptcy Code requires that the Plan provide creditors In
6 "adequate information". The term "adequate is defined as:

7 "information of a kind, and in sufficient detail, as far as is reasonably practicable
8 in light of the nature and history of the debtor and the condition of the debtor's
9 books and records, that would enable a hypothetical reasonable investor typical
10 of holders of claims or interest of the relevant class to make an informed
11 judgment about the plan, . . .

12 Courts interpreting "adequate information" have developed checklists of information
13 necessary to satisfy the requirements of Section 1125. These include:

- 14 a. Events Giving Rise to the Chapter 11 Filing
- 15 b. A description of the Debtor's assets and the values thereof
- 16 c. Anticipated future of the Debtor
- 17 d. The present financial condition of the Debtor
- 18 e. Discussion of all secured claims and their treatment under the Plan
- 19 f. A liquidation analysis
- 20 g. Accounting procedures used and Reliability of experts
- 21 h. Qualifications of future management
- 22 i. Estimate of Administrative expenses
- 23 j. Risks to creditors under the Plan
- 24 k. Feasibility analysis
- 25 l. Possible recovery of preferences and fraudulent conveyances
- 26 m. Tax consequences of the plan
- 27 n. Proposed payments and relations with affiliates
- 28 o. Source of information in the Disclosure Statement

29 See e.g. *In Re Metrocraft Publishing Service, Inc.* 39 Bankr. 567 (Bankr. N.D. GA. 1984), *In re*
30 *A.C. Williams Co.*, 25 B.R. 173 (Bankr. N.D. Oh. 1982), *In re William F. Gable Co.*, 10 B.R. 248
31 (Bankr. N.D.W.Va. 1981). It is the Rehm's position that the proposed Disclosure Statement fails
32 to provide much of the above information. In fact, an investor of any individual entity cannot
33

1 make any informed financial decision about the plan because no financial operating information
2 has been provided.

3 **III. MISSING INFORMATION**

4 The Disclosure Statement appears to be missing vital information which is crucial for
5 creditors and investors to determine (1) what the post-petition activities of the Receiver have
6 been in terms of income and expenses and (2) what all classes are likely to receive as a
7 distribution under the Plan. For example, the following information is missing:

8 A. Asset Information: Creditors and investors need a visual aid to ascertain the
9 status of their particular investment entity and to assess whether the Plan makes sense for their
10 investment. For example, Rehm suggests that the Receiver be required to provide a chart in
11 substantially the following format:

12

ENTITY NAME	# OF INVESTORS	SECURED (Y/N)	PROPERTY (Y/N)	NET FMV	STATUS(SOLD, ABANDONED, SALEPENDING)	SALE PROCEEDS REC'D	SETTLEMENT (Y/N)	SETTLEMENT FUNDS REC'D/EXPECTED
				\$		\$		\$
TOTAL S								

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16 This type of chart would also allow creditors and investors to assess the Receiver's post-petition
17 performance and the assets likely to become available to distribution to creditors over the course
18 of the plan.

19
20
21 B. Administrative Expenses: In order to assess the Receiver's performance and
22 attempt to evaluate the Receiver's estimate of expenses for Plan administration, it is appropriate
23 for the Plan proponent to provide a summary of the administrative expenses incurred to date. On
24 the Receiver's website (www.americannationalreceivership.com), counsel for Rehms was able to
25 determine the following amounts have already been incurred in connection with this case:

PROFESSIONAL	SELL	CARMEL	WILK	DOW	ACCTNT	SPEC. COUNSEL
1 ST	97,855.00	8,310.00	107,540.00	104,826.00		44,706.00
2 ND	94,132.00	50,085.00	95,944.00		26,071.00	8,690.00
3 RD	72,493.00		104,966.00		7,409.00	
4 TH	109,727.00					
5 TH	142,581.00		96,348.00			
6 TH	94,404.00	31,680.00	79,240.00		13,840.00	
7 TH	93,710.00	15,315.00	94,243.00		2,147.00	
8 TH	150,598.78					
TOTAL	855,500.78					

The Plan proponent should be required to complete this chart to provide full and complete disclosure. In addition, creditors and investors should be provided the total of administrative fees incurred to date in order to compare it to the recovery obtained by the Receiver to date. ¹

C. Individual Investors Cannot Evaluate Their Own Investments

While the Receiver and the Debtor apparently believe that lumping all 96 of the entities together is appropriate, an individual investor cannot evaluate that decision based on the information provided. For example, the Receiver has not provided the following information:

1. Separate identification of each property owned by each individual entity and its fair market value, and the current status of each entities property.
2. The number and names of the investors in each entity and the amount of each investor's claim,
3. The costs attributable to each entity in terms of the bankruptcy or recovery efforts. Each individual must be able to assess whether lumping all of the 96 related entities together will result in a better recovery than treating each entity separately.

D. Investors Need Basic Balance Sheet Information on Assets Held by Receiver

Presumably the Receiver prepared an initial inventory of assets held by each entity on the date of the appointment and the liabilities of each. However, none of the Operating Reports filed by the Receiver show: (1) how much is held in his accounts, (2) what the post-receiver expenses

¹ One has to wonder if this information is already in the possession of the Unsecured Creditors Committee because surely they would be requesting such information as part of their obligations to represent all investors.

1 have been, and (3) the current balance in his accounts. Further, the Plan does not apparently
2 provide for including these assets as part of the distribution to investors.

3 Section 6 of the Disclosure Statement, on Page 9 entitled "Financial Information" is only
4 two paragraphs long. It does not refer to any attachment, nor does it refer to a single dollar
5 amount. This is clearly not "financial" information. Rather it is simply a self serving statement
6 that all income (whatever that may be) is solely due to the efforts of the Receiver with no
7 supporting information or documentation. The Debtors appear to characterize the investors in
8 this case as relatively unsophisticated. Therefore, investors should not be expected to wade
9 through the mountains of documents, much of it useless, that is on the Receiver's website, to
10 determine what the financial status of the Debtor was at the time of the petition, what the
11 Receiver has been doing, how well he has been doing, and what the current financial status is of
12 the Consolidated Debtors. The Receiver's accountants should be able to provide summaries for
13 these investors to evaluate the Plan and the Receiver.

14 IV. MISCELLANEOUS INFORMATION NECESSARY TO EVALUATE THE PLAN

15 In addition to the above, Rehms believe that the following information is required in this
16 particular case to meet the "adequate disclosure" standards of Section 1125:

- 17 1. Summary of the totals of all operating reports filed by the Receiver on a monthly basis as
18 required by the State Court Order. This summary should itemize all income received
19 since the appointment of the Receiver, all expenses paid, and the remaining funds on
20 account.
- 21 2. If the settlements entered into did not result in an immediate cash payment to the
22 Receiver, a summary of the payment terms of each settlement should be provided.
- 23 3. An analysis of the fees and costs to be incurred in each of the enumerated types of
24 litigation as compared to the realistically anticipated recovery, not just the demand
25 amount.
4. An explanation of the litigation pending in the New York District court filed in 2003, the
expenses incurred with respect to that litigation and whether an recovery is realistically
expected.

- 1 5. A factual description of the basis for classifying persons in Class 4 as “Insider” under the
2 definition set forth in 11 U.S.C. 101(31)
- 3 6. A factual description of the factual basis for classifying each person in Class 4 as
4 “Ineligible Investor”.
- 5 7. The anticipated percentage recovery for each class under the Plan.
- 6 8. Identify by name and amount of the secured creditors in Class 2 of the Plan and whether
7 such claims will be paid by selling the Property or relinquishing it to the secured creditor.
- 8 9. Clarify and identify by amount, collateral, and entity the taxes due and to be paid
9 pursuant to Class 1.C.
- 10 10. Clarify and identify by name, amount and entity those persons included in Classes 3.A
11 and class 3.B.
- 12 11. Clarify and explain the date upon which distributions under the Plan will commence. For
13 example, will distributions be delayed until all claims objections are resolved?
- 14 12. An explanation as to the basis for the fees anticipated expenses for professionals
- 15 13. Itemize information as to Castle Boutique entities, the investor amounts as to those
16 entities and compare those figures to the \$16,000,000 settlement amount.
- 17 14. Explain on what basis an investor will be deemed an “Ineligible Investor” under Section
18 2.2.35 of the Plan, and the amounts of each such “Ineligible Investor”.
- 19 15. Explain the status and outcome of all stay relief motions filed in the bankruptcy
20 proceedings.
- 21 16. Explain the legal and factual basis for allowing the Receiver the discretion to distribute
22 the Auxiliary Fund to anyone other than investors as an additional return on their
23 investment.
- 24 17. Provide the fee terms upon which Mr. Sell will act as manager and Distribution Agent
25 and whether there will be any cap on those particular fees.

Rehms believe that all of the above information is necessary for an investor to make an informed decision about the proposed plan. Rehm requests that the Court deny approval of the Plan until the above information has been provided. Rehm reserves the right to supplement this Objection upon review of the Amended Disclosure Statement.

1 V. REHMS' CLASSIFICATION AS INSIDERS IS FACTUALLY UNSUPPORTED

2 The Disclosure Statement and Plan classify all of the Rehms as Insiders and subordinates
3 their investment claims to those of other similarly situated investors. Rehms object to this
4 classification as being factually unsupported and request that any such claim of insider status be
5 set forth as to each person so classified, or that the Rehms claims be reclassified as general
6 unsecured creditors similarly situated.

7 Furthermore, all of the Rehm's strenuously object and disagree with the Debtor's
8 description of any or all of them as part of the "Rogue Management". There is no factual or
9 financial support to these allegations. Rehms do not admit that any of the allegations of the
10 Disclosure Statement with regard to a "Ponzi" scheme are true, accurate, or supported by the
11 financial records of the Debtors. Rehms believe that the Receiver has failed to provide evidence
12 in this case of a "Ponzi" scheme, or how that entitles him to treat Rehm's as insiders.

13 DATED this 12th day of September, 2005.

14 LAW OFFICE OF BARBARA MARONEY, P.C.

15 By /s/Barbara Maroney
16 Barbara B. Maroney, Esq.
17 Attorney for Rehms

18 Copy of the foregoing
19 Mailed this 12th
20 Day of September, 2005, to:

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/s/ B.Maroney