

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 7 Case
BKY Case No. 92-40578-RJK

T.G. Morgan Inc.,

Debtor.

ORDER OVERRULING OBJECTIONS TO TRUSTEE'S FINAL REPORT

At Minneapolis, Minnesota, September 5, 2007.

This case came on for hearing on the objections filed by Diane Blodgett, Audrey Florence, Tom Lingenfelter and Edward Clement to the trustee's final report. John Stoebner, the trustee, appeared *in propria* persona. Other appearances were as noted in the record.

Based on the Trustee's Final Report and the documents of record herein, and the Court being fully advised in the premises,

IT IS ORDERED: The objections of Diane Blodgett, Audrey Florence, Tom Lingenfelter and Edward Clement to the trustee's final report are overruled.

/e/ Robert J. Kressel
Robert J. Kressel
United States Bankruptcy Judge

NOTICE OF ELECTRONIC ENTRY AND
FILING ORDER OR JUDGMENT
Filed and Docket Entry made on 09/05/07
Lori Vosejpk, Clerk, By lmh

LAWRENCE M. OTTER
ATTORNEY AT LAW
P O BOX 2131
DOYLESTOWN, BUCKS COUNTY, PA 18901
215-230-5330
215-230-7197 (FAX)

September 14, 2007

John Stoebner, Esq.
Lapp, Libra, Thomson, Stoebner & Pusch
Suite 2500
120 S. Sixth Street
Minneapolis, MN 55402

In re: T. G. Morgan, Inc.
September 5, 2007 Order of Judge Kressel

Dear Mr. Stoebner:

I recently received the Order of Judge Kressel wherein he states that a “hearing” was held on my Objections without notification to me. You had what amounted to an *ex parte* conference with Judge Kressel. This raises serious ethical and due process considerations.

On August 15, 2007, I filed Objections and Exhibits in this matter with the US Bankruptcy Court in Minneapolis. You had notice of these filings and obviously had my contact information. I am shocked by your deliberate failure to notify me or any other counsel of the hearing. I am equally appalled by the Court’s failure to notify counsel of the hearing. We do things properly in the Eastern District of Pennsylvania.

As you know, those filings specifically requested a full formal hearing on the record, and detailed witnesses and material issues implicating your counsel and yourself, among others in misconduct including violations of your fiduciary and institutional duties.

After checking with local counsel, it is clear that *none* of the Objectors’ counsel were ever notified of any such hearing. Without actual notice, you made sure no one else would attend! A hearing without notice, without opposing counsel, without witnesses or submissions of testimony and evidence, is tantamount to no adversary hearing at all.

I demand that you contact me immediately to promptly schedule the actual hearing. By copy of this letter, I am also notifying Judge Kressel of our concerns and the demand on you to schedule an actual noticed hearing.

I have taken the precaution of filing a Notice of Appeal, but expect that you could obviate the need for any appeal by timely scheduling a full hearing with proper notice to

all counsel since the case has not yet been closed up. I trust that you will promptly contact me and the other counsel for Objectors to arrange to schedule an actual hearing.

Sincerely,

s/Lawrence M. Otter, Esq
Lawrence M. Otter
Attorney at Law
Pro Hac Vice USDC, MN

cc: Hon. Robert J. Kressel
US Bankruptcy Court
300 S. Fourth Street
Minneapolis, MN 55415

Hon. Diane Weiss Sigmund
U. S. Bankruptcy Court, EDPA
900 Market St. Suite 400
Philadelphia, PA 19107-4299

Robert B. Raschke, Assistant U.S. Trustee
1015 U.S. Courthouse
300 S. 4TH Street
Minneapolis, MN 55415

Kelly Beaudin Stapelton
UNITED STATES TRUSTEE (REGION 3)
833 Chestnut St., SUITE 500
Philadelphia, PA 19107

Senator Arlen Specter
United State Senate
Judiciary Committee
Washington, D.C.

C. Peter Erlinder, Esquire
875 Summit Avenue
St. Paul, MN 55105

John Tancabel, Esquire
895 Osceola
St. Paul, MN 55105

LAWRENCE M. OTTER
ATTORNEY AT LAW
P O BOX 2131
DOYLESTOWN, BUCKS COUNTY, PA 18901
215-230-5330
215-230-7197 (FAX)

September 19, 2007

The Honorable Robert J. Kressel
United States Bankruptcy Court
US Courthouse
300 S. Fourth Street
Minneapolis, MN 55415

Re: Docket No.92-40578 In re: T. G. Morgan, Inc.

By letter on September 14, 2007, I requested Trustee John Stoebner schedule the hearing required on the Objections we filed on August 15, 2007, and this time to notify opposing counsel.

Since it appears that this Court did not require any formal or informal response from Trustee Stoebner to the Objections, and did not specify any particular facts or law in its Order of September 5, 2007, except to state that a 'hearing' was held and appearances were 'as noted'. It is again important to note that I never received notice of this hearing from anyone!

This letter is thus intended to materially advance the bankruptcy case.

As I have no idea if Trustee Stoebner actually plans to contact me, as he did not before, this letter is intended to help Trustee Stoebner in scheduling an actual hearing, so as to allow sufficient time for witnesses to testify and evidence to be formally introduced on the key issues of:

- (1) Actual [undisclosed] conflicts of interest,
- (2) Breach of contract and lawful District Court Orders;
- (3) Violations of *judicial estoppel*;
- (4) And bankruptcy fraud under 11 USC §§ 152, 157 and 549(a)(2)(B).

My request of Stoebner to hold an actual hearing was done in response to the September 5, 2007 Order of this Court, stating that a hearing had been held, and my letter of September 14, 2007 was sent confirming that *none* of the counsel for the Objectors had received *any notice* of any such hearing. The hearing referenced in the Order must have been an *ex parte* hearing.

In all our collective experience, *ex parte* hearings cannot be substituted for full, formal hearings at which witnesses are called, examined and cross examined, testimony is taken, and the Court if necessary has the opportunity to assess the credibility of witnesses. Certainly not where the Objections were supported by sworn deposition testimony implicating attorney Conn, and his law firm Faegre and Benson in misconduct constituting actual, undisclosed conflicts of interest.

Because so many objections and concerns were officially noticed to this Court over the fifteen years of these proceedings, I have no idea why someone decided now to utilize an *ex parte* hearing to dispose of all the formal Objections, and especially the sworn evidentiary filings submitted as Exhibits, seemingly to allow the Court to close up the case without ever formally addressing the verified Objections.

According to sworn testimony, Conn and his law firm were hired *before* the involuntary bankruptcy was filed, by W. David Stedman on behalf of his family and others, specifically to undermine the entire FTC settlement, and thus Judge Murphy's lawful Orders issued by the US District Court. As a unit of the District Court, this Bankruptcy Court presumably has no choice but to honor those lawful Orders and to require that anyone appearing before the Court do likewise. That actual conflict *was never disclosed* in any of Gordon Conn's affidavits or applications for employment.

According to additional sworn testimony, Conn was present at a meeting hosted by the US Attorney's Office, before the involuntary bankruptcy was filed, at which four lawyers including Conn planned how to interfere with the FTC settlement and Judge Murphy's lawful US District Court Orders. That additional actual conflict *was never disclosed* in any of Gordon Conn's affidavits or applications for employment.

The original of the deposition about Conn's participation pre-petition in the US Attorney's Office meetings is on file in the original civil case, FTC v. T. G. Morgan, Inc. and Michael W. Blodgett, Defendants Case No. 4-91-638. Judge Murphy's actual 1993 factual [un-appealed] finding of *judicial estoppel* adverse to Stoebner and Conn is also contained in those files. Objectors ordered up that case so it would be available for the Bankruptcy Court hearing, and so notified the Clerks and the Court.

Excerpts of that deposition were included as Exhibit T with the formal Objections filed well before the *ex parte* hearing, and that this Court dismissed at or after the *ex parte* hearing.

We can find no case law or authority in the Bankruptcy Code that approves of or directs a trustee to fraudulently expand the size of a bankruptcy estate, by sweeping in as many non-bankruptcy assets as possible, by employing professionals with an actual conflict of interest who were retained to and did perform precisely such illegal activities. We can find no authorities for a trustee or his professional employees then to mislead a court as to those actual conflicts of interest or what was actually properly property of the estate. All the authorities we are aware of hold the opposite is true.

We have searched the history of this Court's rulings concerning actual conflicts of interest on the part of a Trustee or his professional employees. This Court has participated on the record in drafting or issuing multiple rulings holding that under § 328(c), an [undisclosed] actual conflict of interest mandates disqualification or precludes approval of even previously approved employment as a professional person for the trustee, when such *actual conflicts of interest* are analyzed under §§ 327(a), 330, and 105, and Rule 2014. Duty to disclose is an ongoing duty and breach of such duty is an ongoing breach. Where an actual conflict of interest tainted the entire bankruptcy, disqualification while otherwise permissive, is mandatory.

We have searched the history of other federal bankruptcy courts, the Courts of Appeals and the US Supreme Court. Since neither this Court nor other courts of which I am aware would dismiss objections detailing such prohibited actual conflicts of interest as tainting an entire bankruptcy, given the weight that has to be accorded to such undisputed, sworn deposition testimony, has the Court been misled about either notice to counsel or the actual content of Exhibit T and the Objections?

Certainly *Stoebner* did not or could not have refuted such prior *testimony of others*, at the *ex parte* hearing, without calling witnesses to refute their *own* prior sworn depositions. We can only ask the Court, were such witnesses called, and if not how was their prior sworn testimony refuted?

This conundrum is all the more reason for holding the noticed hearing that has not been held, and compelling such deposition witnesses to address the prior un-denied sworn, filed and served testimony relating directly to such actual, undisclosed conflicts of interest.

Now that LarsonAllen has resigned, and the Trustee is personally mailing out unsigned, un-sworn income tax forms and stating on the record that those are final income tax returns, how were those issues addressed at the *ex parte* hearing, if at all?

The Eighth Circuit has a sham affidavit rule that precludes prior sworn testimony from being undone by a "new" affidavit. Since no new affidavits appear to have been filed, and if filed would have been condemned as of no effect under the Eighth Circuit's sham affidavit rulings, how could this Court have issued a ruling but for being falsely advised about either notice to counsel and/or the content of Exhibit T?

Applying solely this Court's own prior rulings, an actual conflict of interest on the part of Gordon Conn, who was retained prior to the bankruptcy to undermine the entire FTC settlement, cannot be approved by a Trustee's wink and a nod in an *ex parte* hearing. Likewise, Conn's paid employment by a major creditor, to undermine the lawful Orders of a US District Court, and his participation in meeting with three other lawyers to extort an ERISA pension fund that could not have been part of the bankruptcy estate, and otherwise fraudulently sweep as many assets as possible improperly into the bankruptcy

estate, and his paid participation to do so, surely cannot be approved by another wink and a nod in an *ex parte* hearing.

Of particular concern, these actual conflicts of interest tainted the entire bankruptcy as Conn's law firm, Faegre and Benson served as professional counsel for the Trustee, at the same time throughout the bankruptcy that they or Conn were also employed by W. David Stedman, or members of his family or employees. Stedman had hired Conn and Faegre prior to the bankruptcy to destroy or undermine the entire FTC settlement and violate Judge Murphy's lawful Orders of a US District Court.

Conn and Stoebner promised on the record to honor the entire settlement and Judge Murphy's Orders. That also constitutes an actual conflict of interest, undisclosed by Conn or Faegre. Conn and Stoebner both have lost multiple times, including twice before this Court under the adverse factual finding [unappealed] of *judicial estoppel*. See In re: T. G. Morgan, Inc. (Stoebner v. Ward) 172 F. 3d 607 (8th Cir. 1999). How were their duties to honor the entire FTC settlement and Court Orders analyzed, if no one asked them any such questions, or cross examined them under oath at an *ex parte* hearing?

The Objections also cited knowing, intentional and negligent violations of 11 USC § 549(a)(2)(B) and federal contract law, and failure to notify adverse parties of their affirmative defenses, also undisclosed, either of which would arguably disqualify Conn, Faegre, and Stoebner and his law firm from serving as professional employees or as Trustee.

Again, since only the Court knows what really went on at the *ex parte* hearing, perhaps the Court can promptly clear up any confusion by directing Stoebner to schedule and notice a hearing.

Thank you for your prompt attention to this distressing matter.

Sincerely,

s/Lawrence M. Otter, Esq.
Lawrence M. Otter
Attorney at Law
Pro Hac Vice USDC, MN

cc: Hon. Diane Weiss Sigmund
U. S. Bankruptcy Court, EDPA
900 Market St. Suite 400
Philadelphia, PA 19107-4299

Robert B. Raschke, Assistant U.S. Trustee
1015 U.S. Courthouse

300 S. 4TH Street
Minneapolis, MN 55415

Kelly Beaudin Stapelton
UNITED STATES TRUSTEE (REGION 3)
833 Chestnut St., SUITE 500
Philadelphia, PA 19107

Senator Arlen Specter
United State Senate
Judiciary Committee
Washington, D.C.

C. Peter Erlinder, Esquire
875 Summit Avenue
St. Paul, MN 55105

John Tancabel, Esquire
895 Osceola
St. Paul, MN 55105

John Stoebner, Esquire
Suite 2500
120 S. Sixth St.
Minneapolis, MN 55402