

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

SHARITY MINISTRIES, INC.,¹

Debtor.

Chapter 11 (Subchapter V)

Case No. 21-11001 (JTD)

Re: D.I. 9, 10, 11, 13, 15, 16, 17, 18,
and 72

Hearing Date: August 5, 2021, at 1:00 p.m. (ET)

Objection Deadline: July 29, 2021, at 4:00 p.m.
(ET)

**UNITED STATES TRUSTEE'S OMNIBUS OBJECTION AND REQUEST FOR
ADJOURNMENT CONCERNING CERTAIN SECOND DAY MOTIONS AND
RESERVATION OF RIGHTS AS TO ALL OTHER MOTIONS**

Andrew R. Vara, the United States Trustee for Region 3 (the "U.S. Trustee"), through his undersigned counsel, objects to several of the Debtor's motions noticed for a hearing on August 5, 2021 ("Omnibus Objection"), and in support of the Omnibus Objection, states as follows:

PRELIMINARY STATEMENT

1. Pending before this Court on August 5, 2021 is the U.S. Trustee's *Motion for Removal of Debtor in Possession, or Alternatively, Motion to Expand the Duties of the Subchapter V Trustee* at D.I. 68, which is an issue dispositive motion as to the Debtor's gross and/or incompetent mismanagement of its affairs both pre and post-petition. The Debtor, however, insists

¹ The last four digits of the Debtor's federal tax identification number is 0344. The Debtor's mailing address is 821 Atlanta Street, Suite 124, Roswell, GA 30075.

that the CRO and Interim Officer Application and the Rejection Motion (both defined below) should be heard and decided before there is a ruling on the U.S. Trustee's Motion even though those motions and/or applications presuppose the very issues raised in the U.S Trustee Motion.

2. As set forth below, the U.S. Trustee objects to the Rejection Motion and CRO and Interim Officer Application being heard before there is a ruling of the U.S. Trustee Motion and requests that these motions and/or applications be adjourned until such time.

JURISDICTION

3. Under (i) 28 U.S.C. § 1334, (ii) applicable order(s) of the United States District Court for the District of Delaware issued pursuant to 28 U.S.C. § 157(a), and (iii) 28 U.S.C. § 157(b)(2), this Court has jurisdiction to hear and determine the Omnibus Objection.

4. The U.S. Trustee is charged with overseeing the administration of chapter 11 cases, including Subchapter V cases, filed in this judicial district, pursuant to 28 U.S.C. § 586. This duty is part of the U.S. Trustee's overarching responsibility to enforce the bankruptcy laws as written by Congress and interpreted by the courts to guard against abuse and over-reaching to assure fairness in the process and adherence to the provisions of the Bankruptcy Code. *See In re United Artists Theatre Co.*, 315 F.3d 217, 225 (3d Cir. 2003) ("U.S. Trustees are officers of the Department of Justice who protect the public interest by aiding bankruptcy judges in monitoring certain aspects of bankruptcy proceedings."); *United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.)*, 33 F.3d 294, 298 (3d Cir. 1994) ("It is precisely because the statute gives the U.S. Trustee duties to protect the public interest . . . that the Trustee has standing to attempt to prevent circumvention of that responsibility."); *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 499 (6th Cir. 1990) ("As Congress has stated, the U.S. trustees

are responsible for protecting the public interest and ensuring that the bankruptcy cases are conducted according to [the] law”).

5. Under § 307 of title 11 of the United States Code (the “Bankruptcy Code” or “Code”), the U.S. Trustee has standing to be heard on the issues raised in this Motion.

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

6. On July 8, 2021 (the “Petition Date”), Sharity Ministries, Inc. (“Sharity,” or “Debtor”) filed a voluntary chapter 11 petition in this Court. D.I. 1.

7. On the petition, Sharity elected to proceed under Subchapter V of chapter 11, and it asserts that its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$7.5 million. *Id.*

8. The Debtor filed a motion to limit the scope of notice to its approximately 10,000 Members and approval of an “opt-in” procedure whereby Members can elect to receive more notice of filings in this case. *See* Limit Notice Motion at D.I. 10. Sharity justifies this limited notice by alleging that “Members do not have a right to payment on account of sharing requests for medical expenses.” *See id.* at ¶ 6. The Limit Notice Motion has been adjourned to the second day hearing.

9. The Debtor also filed a motion seeking approval and authority to continue paying Members’ Share Requests of up to \$1.4 million on an interim basis. *See* Share Request Motion at D.I. 9. This Court approved the Share Request Motion but ordered that the Debtor, prior to payment of any Share Requests, submit an itemization of the Share Requests sought to be paid to the U.S. Trustee and Subchapter V Trustee (defined below). On July 21, 2021, the Debtor announced to the Court that it will no longer honor Members’ Share Requests.

10. On July 9, 2021, the U.S. Trustee appointed Holly Smith Miller (“Subchapter V Trustee”) as the trustee in this case pursuant to section 1183(a) of the Bankruptcy Code. D.I. 21.

11. On, or after, the Petition Date, the Debtor also filed the following motions and/or applications which are presently set to be heard on August 5, 2021.

- Rejection Motion (D.I. 13): The Debtor request approval to reject, as of the Petition Date, certain contracts with affiliates of the Alera Companies, Inc. (“Alera”). This Motion also contends that Alera is in possession of the Debtor’s books and records and that “continuing to perform under the [contracts] would be burdensome to Sharity’s ongoing operations and charitable mission.” D.I. 13 at ¶ 9.
- CRO and Interim Officers Application (D.I. 15): By this application, the Debtor requests authority to retain SOLIC Capital Advisors LLC to provide the services of Neil F. Luria as Chief Restructuring Officer (“CRO”), Raoul Nowitz as Assistant CRO, and Kevin Tavakoli as Director of Finance nunc pro tunc to the Petition Date. D.I. 15 at ¶ 7.
- Interim Compensation Procedures Motion (D.I. 16): By this Motion, the Debtor seeks to establish procedures for the payment of professionals in this case.
- Seal Member Information Motion (D.I. 72): By this Motion, the Debtor seeks to seal and/or redact the Members’ (as defined in D.I. 72) names, addresses, and email addresses for certificates of service and other pleadings filed in this Court.

12. After the Debtor’s announcement to this Court that it would cease operations and discontinue share requests, the U.S. Trustee filed its *Motion for Removal of Debtor in Possession, or Alternatively, Motion to Expand the Duties of the Subchapter V Trustee* at D.I. 68 (“U.S. Trustee Motion”). In sum, the U.S. Trustee Motion argues that there is cause to remove the Debtor as debtor in possession or to expand the duties of the Subchapter V Trustee because the Debtor has, and continues to, grossly and/or incompetently mismanage its affairs to the detriment of its stakeholders—in particular, the Members (as defined in the U.S. Trustee Motion). D.I. 68 at ¶ 1. The U.S. Trustee Motion is also set to be heard on August 5, 2021.

OBJECTION AND REQUEST FOR ADJOURNMENT

13. The Rejection Motion and the CRO and Interim Officer Application should be adjourned pending a decision on the U.S. Trustee Motion. Deciding these motions/applications on August 5, 2021 or before there is a ruling on the U.S. Trustee will promote judicial economy because the U.S. Trustee Motion is an issue dispositive motion that questions the Debtor's management of its affairs.

14. The U.S. Trustee Motion argues that the Debtor has, and continues to, gross and/or incompetently, mismanage its affairs to the detriment of the Members due to its lack of care and obligation to the Members. Indeed, the U.S. Trustee Motion contends that the Debtor's position that its Members are not creditors or claimants of the estate with respect to Share Requests is a position that needs to be independently evaluated because the Debtor's insurance-like business structure would suggest otherwise and because the Members' status as creditors affects whether this case is eligible to proceed as a Subchapter V case.

15. Concerning the CRO and Interim Officer Application, the U.S. Trustee Motion is dispositive of whether the services detailed in that application will be necessary or has been in the best interest of the estate as of the date hereof. Moreover, the U.S. Trustee Motion raises several reasons why the retention of a CRO and other officers does not, and has not, cured the issues of mismanagement of the Debtor. As such, it is clear that the CRO and Interim Officer Application should be adjourned or heard after there is a ruling on the U.S. Trustee Motion. If the U.S. Trustee Motion is denied, the U.S. Trustee is confident that based on the discussion to date with the Debtor, that the parties would be able to submit an order under certification of counsel with respect to the CRO and Interim Officer Application.

16. Without the development of a record, the Rejection Motion presupposes that the Debtor has been managing its affairs in a competent manner. The U.S. Trustee Motion puts this issue of the Debtor's competence in handling its affairs squarely before the Court. Accordingly, the Rejection Motion should also be adjourned until there is a ruling on the U.S. Trustee Motion.

RESERVATION OF RIGHTS AS TO ALL OTHER MOTIONS'

17. Concerning the other motions and/or applications that are also noticed for hearing on August 5, 2021 and filed at D.I. 9 (Share Request), 10 (Limit Notice), 11 (Cash Management), 16 (Interim Compensation), 17 (Landis Rath Retention Application), 18 (BMC 327(a) Application), and 72 (Seal Member Information), the U.S. Trustee and the Debtor are currently negotiating acceptable resolutions to each corresponding form of proposed order and/or the Debtor has represented that the motion will be withdrawn. The U.S. Trustee is hopeful that such motions and/or applications will be consensually resolved, but out of an abundance of caution, specifically reserves the right to request an adjournment of these motions and/or application at the hearing on August 5, 2021 if resolutions are not reached, or to substantively object to the motions and/or application on the same date.

Dated: July 29, 2021
Wilmington, Delaware

Respectfully submitted,

ANDREW R. VARA
UNITED STATES TRUSTEE

By: /s/ Rosa Sierra

Rosa Sierra

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CERTIFICATE OF SERVICE

I, Rosa Sierra, hereby attest that on July 29, 2021, I caused to be served a copy of this Objection by electronic service on the registered parties via the Court's CM/ECF system, or by electronic mail, upon the following parties:

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