

STATE OF CONNECTICUT
COMMISSIONER OF SOCIAL
SERVICES

: SUPERIOR COURT
:
:
: JUDICIAL DISTRICT OF HARTFORD

915 ELLA T. GRASSO BOULEVARD
OPERATIONS LLC, d/b/a UNIVERSITY
SKILLED NURSING AND
REHABILITATION; 2432 ALBANY
AVENUE OPERATIONS LLC, d/b/a
BISHOPS CORNER SKILLED NURSING
AND REHABILITATION; 60 WEST
STREET OPERATIONS LLC, d/b/a
ROCKY HILL SKILLED NURSING AND
REHABILITATION; 1 CARE LANE
OPERATIONS LLC, d/b/a SOUNDVIEW
SKILLED NURSING AND
REHABILITATION

MARCH 15, 2011

OHI (Connecticut), Inc. and OHI Asset (CT) Lender, LLC (collectively, “OHI”) hereby file this Objection to Motion to Close Receivership Facilities (the “Motion”) filed by Phyllis A. Belmonte, the duly appointed receiver (the “Receiver”) of 915 Ella T. Grasso Boulevard Operations LLC, d/b/a University Skilled Nursing and Rehabilitation; 2432 Albany Avenue Operations LLC, d/b/a Bishops Corner Skilled Nursing and Rehabilitation; 60 West Street Operations LLC, d/b/a Rocky Hill Skilled Nursing and Rehabilitation; and 1 Care Lane Operations LLC, d/b/a Soundview Skilled Nursing and Rehabilitation (collectively, the

viability of the Receivership Facilities. OHI's funding enabled the State to save millions of dollars.

4. Shortly before the Receivership Date, OHI participated in several discussions and negotiations with, among others, the plaintiff herein – the State of Connecticut, Commissioner of Social Services (the “State”) – the Receiver, and the Defendants herein, with regard to the proposed receivership. The State made certain funding requests of OHI, as a secured creditor of the Defendants. More specifically, the State asked OHI to fund (or to allow pre-receivership assets to fund) pre-receivership provider taxes, real and personal property taxes, essential maintenance and repair issues with respect to the subject facilities and certain employee obligations, including pre-receivership payroll and paid time off (“PTO”). Although not required to do so, OHI agreed not to challenge and/or to pay directly (and continues to pay directly), among other large expenses, the requested pre-receivership provider taxes and pre-receivership payroll from January 1-10, 2011. In connection therewith, OHI, among others, was told that any interested operators of the Receivership Facilities should contact the Receiver (or her counsel) so as to be included in the bidding for the sale of the Defendants’ assets. Indeed such representations are consistent with Conn. Gen. Stat. section 19a-545.

5. After the Receivership Date, the Court has acted upon various Receiver motions including, among others, a motion to enter into a transition agreement with the prior manager of the Receivership Facilities, a motion for the replacement of information technology structure,

and motions to enter into interim agreements with NEHCEU District 1199 and UFCWU Local 371. The latter motions involved the payment to union employees of five (5) days of pre-receivership PTO at a cost of approximately \$366,000. The filing, consideration, and approval of such motions, along with the expenditures involved, were consistent with the expectation that the Receiver would forthwith put the Defendants' assets up for bid to all interested parties.

6. With no warning to OHI (and, upon information and belief, to any other interested parties other than the State), on March 10, 2011, only fifty-nine (59) days following the Receivership Date, the Receiver, in open court, disclosed her viability report on the Receivership Facilities, even though, by statute, the Receiver had up to ninety (90) days to issue the report. *See Conn. Gen Stat. § 19a-545(b)(1)*. At the outset of her remarks, the Receiver indicated she had two options: either commence a sales process for the Receivership Facilities or recommend that they be closed. The Receiver thereafter stated that, upon consideration of various factors, she had determined that all of the Receivership Facilities should be closed. Immediately following the oral report given to the Court, the Receiver circulated and filed a written viability report, which was attached as Exhibit A to the Motion (the "Viability Report").

7. To compound the ramification of the surprise of the Receiver's determination, the Court scheduled a hearing on the Motion to take place in less than two (2) weeks from the date of the filing of the Motion: Tuesday, March 22, 2011 at 11:30 a.m. The Court also scheduled an

expedited hearing on March 18, 2011 at 11:15 a.m., to consider whether any buyers exist to purchase the Receivership Facilities.

8. In light of the foregoing, OHI objects to the Motion. As an initial matter, the proposed closing of the Receivership Facilities without a sales process is contrary to representations made, and the impression created, prior to the Receivership Date that such a process would be initiated, thereby frustrating the reasonable expectations of OHI, which has spent millions of dollars to maintain the Defendants to the benefit of the residents, employees, and the State. Statutory law in Connecticut allows the Receiver up to ninety (90) days to make a viability determination. *See* Conn. Gen Stat. § 19a-545(b)(1). Here, the Receiver reached her conclusions in less than sixty (60) days. Although the State undoubtedly urged the Receiver to act quickly given the monthly losses of the Receivership Facilities, such a prompt determination is premature in that it fails to allow sufficient time for, *inter alia*, prospective buyers to be identified and invited to bid (much less for any such prospective buyer to perform due diligence and make an offer). Given the vast amounts of money already spent and all that is stake, including the serious disruption in the residents' lives (which will undoubtedly affect such residents' health, safety and welfare), the lives of their loved ones, and the potential loss of many jobs, this Court should not prematurely allow the Receivership Facilities to close under a time period that does not afford an adequate determination of the future viability of the Receivership Facilities. To permit such a rush to judgment would be unprecedented. At a minimum, the

Court should compel the Receiver to begin immediately a bidding process covering no less than sixty (60) days. It is only with such a process that a true determination may be made as to whether one or more of the Receivership Facilities is viable. OHI, the residents, the residents' families, and employees are entitled to at least such a true determination, particularly since, as written by the Receiver, "[t]he closing of any nursing home is a serious, life-altering matter, affecting residents and their family members, employees, and the community within which it resides". Viability Report at 2.

WHEREFORE, OHI requests an order of this Court sustaining its objection, denying the Motion, and granting it such other and further relief as is just and equitable.

OHI (CONNECTICUT), INC. and
OHI ASSET (CT) LENDER, LLC

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ORDER

The foregoing Objection to Motion to Close Receivership Facilities having been duly considered, it is hereby ORDERED:

SUSTAINED /OVERRULED

BY THE COURT

Judge/Clerk/Assistant Clerk

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Objection to Motion to Close Receivership Facilities was sent this 15th day of March by first-class mail, postage prepaid, and by facsimile transmission to:

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