

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. Diane Koken, :
Insurance Commissioner of the :
Commonwealth of Pennsylvania, :
Plaintiff :
:

v. :
:

Reliance Insurance Company, : No. 269 M.D. 2001
Defendant :


IN RE: Order Approving Referee James C. Schwartzman's Recommendation
Alfred Amato POC No. 1397149

RECEIVED AND FILED
COMMONWEALTH COURT
OF PA (PHILA)
2005 MAY 16 P 2:20

ORDER

AND NOW, this 16 day of May 2005, upon consideration of Referee James C. Schwartzman's recommendation to affirm the Liquidator's assignment of priority (e) to the above-captioned proof of claim, the recommendation is ACCEPTED and the assignment of priority (e) to the captioned proof of claim is AFFIRMED.

The Liquidator is directed to serve a copy of this order upon those listed on the Master Service List.



JAMES GARDNER COLINS, President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. Diane Koken,
Insurance Commissioner of the
Commonwealth of Pennsylvania,

Plaintiff

v.

No. 269 M.D. 2001

Reliance Insurance Company,

Defendant

v.

Alfred J. Amato,

Objector.

IN THE MATTER OF OBJECTIONS TO NOTICE OF DETERMINATION
BY ALFRED J. AMATO
CLAIM NO. 1397149

James C. Schwartzman, Esquire, duly appointed Referee in the Matter of Objection to Notice of Determination by Alfred J. Amato on Proof of Claim Number 1397149, hereby recommends to the Honorable James Gardner Collins, President Judge of the Commonwealth Court of Pennsylvania, that the Liquidator's Notice of Determination be approved and the Objection be denied, and in support thereof presents the following:

FINDINGS OF FACT

Procedural History

1. By Order of the Commonwealth Court of Pennsylvania (the "Court") dated October 3, 2001 (the "Liquidation Order"), Reliance Insurance Company ("Reliance") was found to be insolvent and placed into liquidation. M. Diane Koken, Insurance Commissioner of the

Commonwealth of Pennsylvania (the "Liquidator"), was appointed Liquidator of Reliance.

2. By Order of the Court dated September 9, 2002 (the "Claims Filing Order"), the Honorable James Gardner Collins, President Judge, established claims filing procedures, claim filing deadlines and dispute resolution procedures for claims.

3. Alfred J. Amato ("Mr. Amato") filed a timely Proof of Claim Number 1397149 (the "POC"). The POC sought reimbursement for losses arising out of an alleged breach of contract, totaling \$83,687.55. Mr. Amato alleges that after 34 years as a Reliance employee, his job was eliminated. On June 19, 2000 he undertook a new role relating to the downsizing of the IT infrastructure of Reliance. He further alleges that a letter agreement of that date provides for a severance package upon termination of that project and of his employment with Reliance. Mr. Amato contends that his employment was terminated on August 31, 2000, at which time severance payments began and were to continue for eighteen months. (Reliance agrees that there was a contractual obligation to pay severance pay for eighteen months, but alleges that the obligation arose under the terms of an Agreement and General Release dated August 31, 2000.) However, all severance payments ended July 15, 2001, after Reliance was placed into rehabilitation by the Commonwealth Court.

4. On July 7, 2004, the Liquidator issued a Notice of Determination ("NOD") to Mr. Amato, assigning Priority Level (e) to the POC, citing Section 544 of the Insurance Department Act, 40 P.S. § 221.44. The NOD further indicated that it appeared unlikely that there would be sufficient funds available to make payments to any class with priority below (b) and that, therefore, the claim would not be evaluated at the time the NOD was issued.

5. On or about August 15, 2004, Mr. Amato filed with the Court a Notice of Objection to the Liquidator's NOD.

6. On September 21, 2004, the Liquidator filed with the Court a response to Mr. Amato's Objection to the NOD.

7. On December 20, 2004, pursuant to this Court's prior Order of September 9, 2002, the undersigned was appointed as Referee to hear objections, to submit findings of fact, where appropriate and necessary, and to issue a recommended decision in this matter.

~~8. On February 1, 2005, a telephone conference was held between counsel for the~~
Liquidator, Mr. Amato, and the Referee. At the conclusion of the conference, the Parties agreed that there was no need for an evidentiary hearing, but that each side would be provided with an opportunity to file memoranda and reply memoranda in support of their respective positions.

9. On February 4, 2005, Mr. Amato submitted additional argument by means of electronic mail.

10. On February 17, 2005, the Liquidator filed its Reply Memorandum to the Trustee.

Summary of Parties' Positions

11. Mr. Amato contends that his claim for severance pay should be deemed to be a cost or expense of administration and should, therefore, be assigned priority level (a). He contends that because of the nature of the work he performed, his work supported the preservation of Reliance's capital. He contends that it is unfair to treat him differently than employees whose severance occurred after Reliance was placed in rehabilitation. He asks that, at a minimum, two months of severance pay be assigned priority level (a), on the theory that if he had not undertaken the IT downsizing project, he would have been terminated two months earlier and, hence, would have received two more months of severance pay. Finally, Mr. Amato concedes that there "may not be plain reading in the court order," but asks that the rules be construed liberally in his favor.

12. The Liquidator contends that the POC was appropriately assigned Priority Level (e) because Mr. Amato's employment was terminated well prior to Reliance's receivership, and the services provided by Mr. Amato were to Reliance, and not to the Rehabilitator/Liquidator.

DISCUSSION

~~13. In this situation, where there are insufficient funds to satisfy all of the claimants, it~~
is inevitable that some claimholder will be disappointed. Claims must be assigned priorities so that those claimants that the legislature was *most* concerned to protect shall receive the maximum possible protection. There is no authority that would allow the Court to apply considerations of equity, or to decide this matter on the basis of its own perception of fairness, rather than on the plain words of the statute.

14. Clearly, Mr. Amato was an employee of Reliance, and his contract was with Reliance. While the work he performed may have preserved assets of the company, it must be said that all company employees should be working to preserve or increase the assets of their employer.

15. Although 40 P.S. § 221.44(a) does not purport to set forth an all inclusive list of items that may constitute costs and expenses of administration, it is clear that such costs and expenses include only the costs and administration of the receivership estate, beginning at the date of the commencement of the receivership. The high priority given those claims, even over the claims of policyholders, reflects a sound legislative judgment that recognizes that unless such claims are honored, the process of rehabilitation and/or liquidation cannot even begin. *See U.S. Dept. of Treasury v. Fabe*, 508 U.S. 491, 509, 113 S. Ct. 2202, 2212 (1993). The same rationale does not extend to the claims of former employees.

16. Mr. Amato was never employed by, and never performed any services for, the Rehabilitator/Liquidator. His severance pay therefore does not constitute a cost or expense of the administration of the receivership estate.

17. Mr. Amato was a general creditor of Reliance.

CONCLUSIONS OF LAW

18. There is no dispute as to any issue of material fact.

19. Section 544 of the Insurance Department Act, 40 P.S. § 221.44, defines Priority Level (a) as "[t]he costs and expenses of administration, including but not limited to the following: the actual and necessary costs of preserving or recovering the assets of the insurer; compensation for all services rendered in the liquidation; any necessary filing fees; the fees and mileage payable to witnesses; reasonable attorney's fees; [and] the expenses of a guaranty association in handling claims."

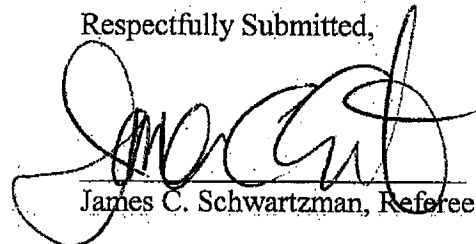
20. Section 544 of the Insurance Department Act, 40 P.S. § 221.44, defines Priority Level (e) as "claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors."

21. Mr. Amato's claim has been properly assigned Priority Level (e) pursuant to Section 544 of the Insurance Department Act, 40 P.S. § 221.44.

CONCLUSION

WHEREFORE, for the reasons set forth above, the Liquidator's Notice of Determination should be approved and the Objection of Alfred J. Amato denied.

Respectfully Submitted,



James C. Schwartzman, Referee

3/18/05

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v.

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v.

Alfred J. Amato,

Objector.

No. 269 M.D. 2001

ORDER

AND NOW, this _____ day of _____, 2005, after consideration of the Report and Recommendation of the Referee and any exceptions filed, the Court hereby adopts the Referee's Report and Recommendation attached hereto.

BY THE COURT:

J.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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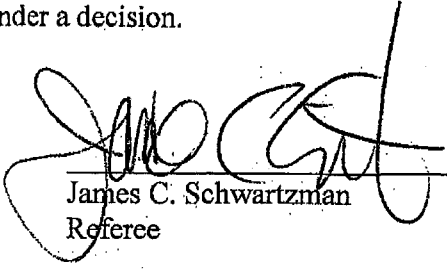
Alfred J. Amato,

Objector.

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NOTICE TO PARTIES

Specific exceptions to this recommended decision must be filed with the Court within 20 days of the mailing date of this decision. Those exceptions should be accompanied by a brief supporting memorandum of law. Any response to those exceptions must be filed with the Court within 27 days of the mailing date of this decision, and should also be accompanied by a brief supporting memorandum of law. The Court, upon consideration of the recommended decision and of any exceptions and responses, will render a decision.


James C. Schwartzman
Referee

3/18/05