

Date : 6/1/2023 10:18:44 PM
From : "T Kost"
To : "Paul Dulberg" , "Alphonse Talarico"
Subject : Heeg resignation could be valid
Attachment : missing bk 22-0.pdf;

I believe that Megan Heeg resigned as bankruptcy trustee on August 31, 2016 or September 1, 2016 and that Olsen was appointed at the same time.

I believe Heeg resigned correctly according to "Federal Rules of Bankruptcy Procedure" and that Olsen was appointed correctly according to "Federal Rules of Bankruptcy Procedure" (so there is no time interval in which there were 2 trustees).

I believe that the U S Trustee ... has the authority to remove one Trustee and immediately appoint another "automatically" without a motion for approval in front of the bankruptcy judge according to "Federal Rules of Bankruptcy Procedure".

In the Baudin motion to dismiss, a court docket on page 101 shows that on August 31, 2016 a total of 4 documents were filed with the bankruptcy court. This is what I believe happened that day:

The assistant U.S. Trustee filed a motion incorrectly. She incorrectly put a Heeg letter of resignation and the U.S. Trustee appointment of Olsen together in the same document (bk document 22-0). She was told this is not valid because she has to file each separately (bk document 23-0). She then filed each document separately (bk documents 24-0 and 25-0). She filed 24-0 which is Heeg's resignation letter and 25-0 which is Olsen's appointment by the U.S. Trustee. I think this was probably valid under "Federal Rules of Bankruptcy Procedure".

Bankruptcy document 22-0 is not currently in the court record but I have a copy of it that I received from Williams. It is attached to this message. Also we couldn't get 24-0 from the clerk but I believe it is the same as the Heeg resignation letter in 22-0 so now we can see it.

I believe that according to "Federal Rules of Bankruptcy Procedure" this is a valid replacement of trustees and the replacement happened on August 31 or September 1 of 2016.

Law firms, on the other hand, are handled differently. I believe that Olsen, according to "Federal Rules of Bankruptcy Procedure", had the choice of whether he wished to continue retaining the current law firm (Heeg, Badger) or to hire someone else (his own). The law firm Heeg, Badger, .. withdrew on November 2, 2016 after filing a notice of motion on ..

In short, Heeg the bankruptcy trustee withdrew on September 1, 2016 and Heeg the attorney withdrew on November 2, 2016.

The sources of my belief are "Federal Rules of Bankruptcy Procedure" and the "Handbook for Chapter 7 Trustees" quoted below:

Federal Rules of Bankruptcy Procedure here:

<https://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-bankruptcy-procedure>

go to :

Part II—Officers And Administration; Notices; Meetings; Examinations; Elections; Attorneys And Accountants (rules 2001 to 2020)

Rule 2012. Substitution of Trustee or Successor Trustee; Accounting

(b) Successor Trustee. When a trustee dies, resigns, is removed, or otherwise ceases to hold office during the pendency of a case under the Code (1) the successor is automatically substituted as a party in any pending action, proceeding, or matter; and (2) the successor trustee shall prepare, file, and transmit to the United States trustee an accounting of the prior administration of the estate.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 11, 2022, eff. Dec. 1, 2022.)

Notes of Advisory Committee on Rules—1983

Paragraph (2) places it within the responsibility of a successor trustee to file an accounting of the prior administration of the estate. If an accounting is impossible to obtain from the prior trustee because of death or lack of cooperation, prior reports submitted in the earlier administration may be updated.

Notes of Advisory Committee on Rules—1991 Amendment

Subdivision (b) is amended to require that the accounting of the prior administration which must be filed with the court is also transmitted to the United States trustee who is responsible for supervising the administration of cases and trustees. See 28 U.S.C. §586(a)(3). Because a court order is not required for the appointment of a successor trustee, requiring the court to fix a time for filing the accounting is inefficient and unnecessary. The United States trustee has supervisory powers over trustees and may require the successor trustee to file the accounting within a certain time period. If the successor trustee fails to file the accounting within a reasonable time, the United States trustee or a party in interest may take appropriate steps including a request for an appropriate court order. See 28 U.S.C. §586(a)(3)(G). The words "with the court" are deleted in subdivision (b)(2) as unnecessary. See Rules 5005(a) and 9001(3).

RESOURCES FOR CHAPTER 7 BANKRUPTCY TRUSTEES available at :

<https://www.justice.gov/ust/private-trustee-handbooks-reference-materials/chapter-7-handbooks-reference-materials>

"Handbook for Chapter 7 Trustees" is at:

<https://www.justice.gov/ust/page/file/762521/download>

IMPORTANT SECTIONS FROM 'HANDBOOK':

I. SUCCESSOR TRUSTEES

When a trustee dies, resigns, fails to qualify under section 322, is removed from a case under section 324, or otherwise ceases to hold office, and until creditors elect a new trustee, the United States Trustee will appoint an interim successor trustee under section 703(b) to preserve or prevent loss to the estate. The successor trustee must be a disinterested person who is a member of the panel of private trustees. 11 U.S.C. § 703(c)(1). If no member of the panel is willing to serve, the United States Trustee may serve as successor trustee. [Language amended September 8, 2016.] The successor trustee must promptly take control of the cases and ensure that the estate files, accounting records, and estate funds are expeditiously transferred to the successor trustee. If the prior trustee is not available due to death or incapacity, the successor trustee will need to work with the prior trustee's staff, family, or law firm; the prior trustee's bank and computer software vendor; the United States Trustee; and the estate's professionals to assure a smooth transition of the records and bank accounts. The successor trustee must consult with the estate's professionals to identify pending court hearings involving adversary proceedings and contested matters, sales and auctions, and other important issues. See also Chapter 4.C.10.c (Employment of Professionals – Employment Standards). In addition, the successor trustee must consider whether it is in the best interests of the estate to continue the employment of the current professionals where, for example, the retention of new counsel would lower the cost of administration or increase the dividend for creditors. [Added September 8, 2016.]

Fed. R. Bankr. P. 2012(b) requires a successor trustee to file with the court and transmit to the United States Trustee an accounting of the prior trustee's administration of the estate. This accounting must be a separate and distinct record of the activities which were solely within the control of the prior trustee. Rule 2012(b) does not specify a deadline for submission of the accounting or a form of accounting to be used. Absent some evidence of defalcation or other harm to the estate, the successor trustee should include an accounting of the prior trustee's administration as part of his or her next scheduled Trustee Interim Report (TIR). The accounting filed with the court can be the standard Form 1 and Form 2 required by the United States Trustee, even in jurisdictions where they are not normally filed with the court, or a form approved by the United States Trustee or the local bankruptcy court. See Forms and Instructions under Supplementary Materials on the Program's web site. [Language amended September 8, 2016.]

J. RESIGNATION OF A TRUSTEE

A trustee may voluntarily resign from a pending case or from the trustee panel. The procedures for suspension and termination, 28 C.F.R. § 58.6 (described at Handbook Chapter 6.D.2), do not apply. A resignation must be submitted to the United States Trustee in writing to be effective. 28 U.S.C. § 586. Local rules or practice may also prescribe a form or notice to be filed with the Court. A trustee must take reasonable steps to ensure that a resignation from a pending case does not unduly impede its administration. 28 U.S.C. § 586.