

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE: *
* CASE NUMBER 05-44529
D & M TURNER ENTERPRISES, INC., *
* CHAPTER 7
*
Debtor. * HONORABLE KAY WOODS
*

ORDER OVERRULING OBJECTION TO ALLOCATION OF SALE PROCEEDS

On November 21, 2005, the Chapter 7 Trustee in this case filed a Motion for Order Authorizing Sale of Certain Personal Property and Liquor License Free and Clear of Liens, Claims and Encumbrances (the "Sale Motion"). In connection with the Sale Motion, the Trustee filed a motion for an expedited hearing. As a consequence, a hearing on the Sale Motion was scheduled for November 30, 2005. Two parties - Triadic Associated [sic], Ltd. ("Triadic") and C.T.W. Development Corporation ("C.T.W.") - filed objections to the Sale Motion. Triadic claimed a security interest in the liquor license and alleged that it had a first priority position regarding all proceeds of the sale. The objection by C.T.W., which indicated that the exhibit detailing the personal property to be sold had not been attached to the Sale Motion, alleged that C.T.W. had a valid and subsisting lien on substantially all of the assets belonging to the Debtor and further objected to the allocation of the sale proceeds between the equipment and the liquor license.

A hearing was held, as scheduled, on November 30, 2005.

At the hearing, the Trustee acknowledged that Exhibit A had not been attached to the Sale Motion, but he provided copies to the

Court and all parties at that time. The Trustee also indicated that the exhibit had been filed that morning. All parties had an opportunity to review the exhibit.

The parties acknowledged that the liquor license could not be transferred without a contemporaneous transfer of personal property. The Trustee set forth on the record the resolution of both objections, including that Two Thousand Five Hundred Dollars (\$2,500.00) of the total Thirty Thousand Dollar (\$30,000.00) sales proceeds would be allocated to the personal property designated on the exhibit. No one objected to the resolution of the disputes and, indeed, all parties present - the Trustee, C.T.W. and Triadic - stated that they would sign off on an agreed order.

The day following the hearing - December 1, 2005 - Triadic filed Objection to Allocation of Sale Proceeds (the "Objection"), raising for the first time the issue that the allocation, as set forth on the record at the hearing, was excessive as to the personal property and undervalued the liquor license.

The Court held a telephonic hearing on December 5, 2005 regarding the Objection. At that time, counsel for Triadic acknowledged that the issue in the Objection had not been raised at the hearing and further acknowledged that he had not raised any issue about having had insufficient time to review the exhibit. The Trustee and C.T.W. stated that the allocation of Two Thousand Five Hundred Dollars (\$2,500.00) to the personal property had been a negotiated settlement, resulting in a compromise amount rather than being based on a valuation of the property.

The issue of allocation between the personal property and the liquor license was fully addressed at the hearing and all parties

were provided with an opportunity to speak. Triadic made no objection to the allocation at the hearing and, indeed, indicated its willingness to sign off on an agreed order that incorporated the allocation to which it now objects. As a consequence, the Court overrules the Objection as untimely.

IT IS SO ORDERED.

**HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE**