

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

IN RE: \*  
\* CASE NUMBER 04-41352  
RANDALL JOSEPH HAKE and \*  
\* MARY ANN HAKE, \*  
\* CHAPTER 7  
\*  
\* Debtors. \* HONORABLE KAY WOODS  
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ORDER GRANTING MOTION TO RESOLVE DISPUTED ELECTION OF TRUSTEE  
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The matter before the Court is the Motion to Resolve Disputed Election of Trustee and Notice ("Motion to Resolve") filed by Buckeye Retirement Co., L.L.C., Ltd. ("Buckeye") to confirm the election of Mark M. Gleason CPA as the permanent trustee in this case. In connection therewith, Debtors Randall J. Hake and Mary Ann Hake ("Debtors") filed Debtors' Limited Opposition to Buckeye's Motion to Resolve Disputed Election of Trustee ("Limited Opposition"). The Court held a hearing on the Motion to Resolve and the Limited Opposition on August 22, 2006.

By way of background, Debtors filed a Chapter 11 case on March 25, 2004. This case was converted to a Chapter 7 case on April 26, 2006. Subsequent to conversion of the case, pursuant to 11 U.S.C. § 701, the United States Trustee appointed Michael D. Buzulencia to serve as interim trustee. At the first meeting of creditors pursuant to 11 U.S.C. § 341 (the "341 Meeting") on June 20, 2006, Buckeye made a request for the election of a permanent trustee pursuant to 11 U.S.C. § 702. The 341 Meeting was continued until July 11, 2006, at which time, Buckeye renewed

its request for an election of a trustee. A representative of the United States Trustee's office was present at the continued 341 Meeting and conducted the election. No creditors other than Buckeye were present at the 341 Meeting. Buckeye nominated and cast its vote for Mark M. Gleason ("Gleason") of Gleason & Associates, One Gateway Center, Suite 525, 420 Fort Duquesne Boulevard, Pittsburgh, PA 15222-1402 as the permanent trustee.

Although it was not initially clear whether Buckeye met the requirements of 11 U.S.C. § 702 as a creditor holding at least 20% in amount of allowable, fixed, liquidated unsecured claims, by the time of the hearing, there was no dispute that Buckeye met such requirement by holding Claim No. 13 in the amount of \$1,894,501.97, of which \$1,504,501.97 is listed as unsecured.<sup>1</sup> At the conclusion of the election, the United States Trustee asked the parties if there was anything they would like included in the record. At that time, Mark Beatrice, attorney for Debtors, indicated that Debtors might have an issue with the ability of Buckeye to vote for a trustee on the basis that Buckeye might hold an interest materially adverse to the interests of creditors entitled to distribution in the case.

At the conclusion of the 341 Meeting, the United States Trustee announced that it would file a report of the election, pursuant to

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<sup>1</sup>Buckeye filed claims identified as Claim Nos. 1, 5, 6, 7, 10 and 13. Claim Nos. 5, 6, and 7 were disallowed in their entirety on December 7, 2005. Claim No. 1 was amended by Claim No. 10, which, in turn, was amended by Claim No. 13. Debtors had objected to Claim No. 10, but that objection was resolved when Buckeye amended Claim No. 10 through Claim No. 13. Buckeye confirmed at the hearing that its only surviving claim is Claim No. 13, in the amount set forth herein.

Federal Rule of Bankruptcy Procedure 2003, which report was filed on July 13, 2006 (Doc. # 486). The United States Trustee's Report of Election of Trustee provided that, if no party filed a motion for resolution of the dispute within ten days after the report was filed, Mr. Buzulencia would serve as trustee in the case. In response, Buckeye timely filed the Motion to Resolve, which is presently before this Court.

Debtors' Limited Opposition sets forth a very limited objection. Debtors opposed the Motion to Resolve to the "limited extent that Buckeye is unwilling to reaffirm its offer to purchase all of the non-exempt assets of the estate as set forth in its pre-conversion pleading and representations to this Court." (Limited Opposition at 1.) Buckeye filed Reply by Buckeye Retirement Co., L.L.C., Ltd. to Debtors' Limited Opposition to Buckeye's Motion to Resolve Disputed Election of Trustee ("Buckeye's Reply"), in which it "reaffirm[ed] its \$650,000 offer to purchase the assets stated in its offer, under the terms and conditions stated in its offer, subject to verification by the Chapter 7 trustee that the specified assets still exist and they are subject to sale by such Chapter 7 trustee." (Buckeye's Reply, ¶ 2.)

Because there was some confusion about the date of the last offer made by Buckeye, at the hearing, Buckeye clarified that it was reaffirming its last offer to purchase.

In light of the resolution of the limited objection, it is not entirely clear if the election is or was, in fact, disputed. To the extent the election was disputed, this Court finds that Buckeye

properly elected Gleason as the trustee in this case pursuant to Section 702 of the Bankruptcy Code. Accordingly, Buckeye's Motion to Resolve is granted. Mark M. Gleason shall serve as trustee in this case.

**IT IS SO ORDERED.**

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**HONORABLE KAY WOODS  
UNITED STATES BANKRUPTCY JUDGE**