

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: : Chapter 11
: :
NEWBURY COMMON : Case No. 15-12507 (LSS)
ASSOCIATES, LLC, et al., : :
: Jointly Administered
Debtors. :

**DECLARATION OF KAREN E. STARR, BANKRUPTCY ANALYST,
IN SUPPORT OF THE UNITED STATES TRUSTEE’S MOTION FOR AN ORDER
DIRECTING THE APPOINTMENT OF AN EXAMINER**

I, Karen E. Starr, of full age, hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a Bankruptcy Analyst for the Office of the United States Trustee, Region 3, District of Delaware, and I have full knowledge of the facts herein.

2. I have been employed as a Bankruptcy Analyst for the Office of the United States Trustee for over six years. Prior to my employment with the Office of the United States Trustee, I was employed as a Certified Public Accountant with several accounting firms for over twenty years, and then with various Fortune 500 companies within their finance and treasury departments. I have a Bachelor of Science degree in Accounting from the University of Delaware, and I have been licensed as a Certified Public Accountant in the State of Delaware since 1982.

3. On December 13, 2015, Newbury Common Associates, LLC and thirteen related affiliates filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The related debtors include the following:

- a. Seaboard Realty, LLC
- b. 600 Summer Street Stamford Associates, LLC

- c. Seaboard Hotel Member Associates, LLC
- d. Seaboard Hotel LTS Member Associates, LLC
- e. Park Square West Member Associates, LLC
- f. Seaboard Residential, LLC
- g. One Atlantic Member Associates, LLC
- h. 88 Hamilton Avenue Member Associates, LLC
- i. 316 Courtland Avenue Associates, LLC
- j. 300 Main Management, Inc.
- k. 300 Main Street Member Associates, LLC
- l. PSWMA I, LLC
- m. PSWMA II, LLC

4. Tag Forest, LLC filed its petition on December 14, 2015. An Order Directing Joint Administration of these fifteen related cases was entered on December 18, 2015.

5. According to the Lists of Equity Security Holders filed on December 21, 2015, each of the debtors has a separate list of equity security holders that is unique and distinct to that particular entity. There is no ultimate parent company.

6. The Debtors represent that Seaboard Realty, LLC serves as the managing member of most of the Debtors and is owned 50% by John DiMenna, 25% by Thomas Kelly, and 25% by William Merritt. The Debtors' Lists of Equity Security Holders in Accordance with Bankruptcy Rule 1007 filed December 21, 2015 (D.E. 26, "Equity Security Holder List") lists Kelly as a 50% owner and Merritt as a 50% owner. DiMenna is not disclosed as an owner.

7. The most recently filed 2014 tax return for Seaboard Realty, LLC indicates different ownership interests (31% by John DiMenna, 30% by TLK Partners LLC c/o Thomas

Kelly, and 30% by William Merritt). Besides the percentage ownership interest not being the same, the tax return also indicates that there are two other investors who own an additional 9%. The general ledger as of December 31, 2015 for Seaboard Realty, LLC confirms this and shows capital distributions to a total of five distinct investors.

8. Based on the engagement letters dated December 13, 2015 with Dechert LLP and December 10, 2015 with Beilinson Advisory Group, respectively, the two firms were also retained by non-debtor affiliates that include the following:

- a. 220 Elm Street I, LLC
- b. Century Plaza Investor Associates, LLC
- c. One Atlantic Investor Associates, LLC
- d. 88 Hamilton Avenue Associates, LLC
- e. Seaboard Hotel Associates, LLC
- f. Park Square West Associates, LLC
- g. Seaboard Hotel LTS Associates, LLC
- h. Clocktower Close Associates, LLC
- i. 300 Main Street Associates, LLC
- j. Newbury Common Member Associates, LLC

On February 3, 2016, the above entities filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code and are now referred to as the “Additional Debtors” in these Chapter 11 cases.

9. Based on Exhibit 1 to the Declaration of Brian E. Greer dated January 7, 2016 (D.E.43-3, “Greer Declaration”), there are numerous non-debtor entities affiliated with John J. DiMenna, Jr. (the “DiMenna entities”), a former managing member of the Debtors. These include the following:

- a. Seaboard Property Management, Inc.
- b. Seaboard Associates, LLC
- c. Seaboard Capital Fund II, LLC
- d. Seaboard Consolidated, LLC
- e. Seaboard Properties Group, LLC
- f. MJTB Realty, LLC
- g. Seaboard Properties Inc.
- h. Seaboard Stamford Investment Group, LLC
- i. 25 Bank Street Member Associates, LLC
- j. Seaboard Stamford Investor Associates, LLC
- k. 25 Bank Street, LLC
- l. 220 Elm Street II, LLC
- m. Fuller Development, LLC
- n. Seaboard Properties Group, LLC
- o. Stamford Residential Member Associates, LLC
- p. Ashforth CTMF, LLC
- q. Stamford Residential Associates, LLC

10. In their Status Report dated January 12, 2016 (D.E. 47, “Status Report”) the Debtors admit that, prior to the petition date, both debtors and non-debtors extensively commingled cash receipts in Seaboard Consolidated, LLC (a non-debtor DiMenna entity) and also made payments related to properties and investors’ distributions without regard to which property originated or otherwise supported the cash funds.

11. Prior to the filings on December 13 and 14, 2015, the Debtors initially represented

to the U.S. Trustee that there were no bank accounts. Then, the Schedules filed on January 12, 2016 and the general ledgers with postings through mid-December 2015 that were provided to the U.S. Trustee by the Debtors, indicated numerous bank accounts maintained by the Debtors at a variety of banking institutions.

12. In the Status Report filed on January 12, 2016, the Debtors maintained that all of the cash was being retained in bank accounts with then non-debtors Newbury Common Member Associates, LLC¹, One Atlantic Investor Associates, LLC or Century Plaza Investor Associates, LLC. (These entities subsequently became debtors on February 3, 2016.) In accordance with the U.S. Trustee Operating Guidelines for Chapter 11 Cases, the Debtors have not, as of the date of this Declaration, opened a single debtor-in-possession bank account. The Debtors did not file any motion with the Court seeking a cash management order until February 4, 2016.

13. On December 21, 2015, the Debtors also provided to the U.S. Trustee information on 35 bank accounts with TD Bank holding approximately \$731,000 as of December 10, 2015. Of those accounts at the time, 13 were Debtors' accounts holding approximately \$276,000. This included an account for Tag Forest, LLC with approximately \$226,000 on deposit. The Schedules filed for Tag Forest, LLC on January 12, 2016 (D.E 76) indicate a TD Bank balance of \$961.29 as of the December 14, 2015 petition date. The Statement of Financial Affairs filed for Tag Forest, LLC (D.E. 77) indicates a payment to Dechert LLP in the amount of \$618,582.26 on December 11, 2015.

14. On January 29, 2016, the Debtors filed an Initial Operating Report and Monthly

1. In January 2016, in response to our inquiry, Debtors' Counsel responded "Newbury Common: Entity was inactive." The Debtors previously provided to us a copy of the 2012 U.S. Partnership Return for Newbury Common Member Associates, LLC (Federal Form 1065) that was marked "Final Return."

Operating Reports for December 2015, all of which were incomplete and missing such required information as a cash flow projection, balance sheets for each of the debtor entities as of the petition date and as of the end of the current accounting period, bank statements, bank reconciliations, and cash disbursement journals.

15. The Initial Operating Report includes certificates of insurance. The insurance certificates name the following non-debtor DiMenna entities as insureds:

- a. Seaboard Property Management, Inc.
- b. Seaboard Property Management Corporation
- c. Seaboard Properties Group, LLC
- d. 220 Elm Street II, LLC
- e. 25 Bank Street, LLC
- f. Seaboard Properties, Inc.
- g. Seaboard Stamford Investor Associates, LLC

16. On page 7 of the Global Notes and Statements of Limitations, Methodology, and Disclaimer Regarding the Debtors' Schedules of Assets and Liabilities and Statements of Financial Affairs that were filed on January 12, 2016 (D.E. 48-77) the Debtors state:

- a. Schedule E/F – Creditors Who Have Unsecured Claims – Intercompany payables are not included on Schedule E/F.
- b. SOFAs Question 4 – Payments or Other Transfers of Property Made Within 1 Year Before Filing This Case That Benefitted Any Insider – SOFA question 4 does not include any intercompany transfers.

17. Despite the Declaration of Marc Beilinson, the Chief Restructuring Officer, that was filed on December 14, 2015 claiming that the filing of these Chapter 11 cases will preserve

and maximize the value of the Debtors' estates and assist the Debtors in achieving a successful reorganization, most, if not all, of the major investment assets listed on the Schedules filed on January 12, 2016 record their values as "Unknown".

18. Based on several teleconferences between the Office of the U.S. Trustee and the Debtors and their representatives over the last seven or eight weeks, it is my understanding that substantially all the real property that is owned either directly or indirectly by the Debtors (with the exception of a Courtyard hotel that is operated by an unaffiliated third party) was managed by Seaboard Property Management, Inc., a non-debtor property management company owned by Mr. John DiMenna.

19. Prior to February 3, 2016, the Debtors previously represented to us that they had no employees. In the post-petition period, under the supervision of the CRO, the Debtors were continuing to use the services of Seaboard Property Management, Inc. employees to run day-to-day operations, and assist the CRO and the forensic accountants. It is unclear how and by whom these employees were paid in the early weeks of these cases.

20. Per the general ledger dated December 31, 2015 of Debtor Tag Forest, LLC that was provided by the Debtors to the U.S. Trustee, there was due to/from intercompany activity classified as a loan receivable from Seaboard Consolidated (a DiMenna entity) in the amount of \$529,689.08, evidence of the commingling of funds as referenced in paragraph 10 above. This does not appear on Schedule A/B filed on January 12, 2016.

21. The general ledger dated December 31, 2015 of Debtor Seaboard Realty, LLC that was provided by the Debtors to the U.S. Trustee showed the following intercompany balances, further evidence of commingling as referenced in paragraph 10 above, which do not appear on the Schedules filed on January 12, 2016:

- a. Due from intercompany - \$668,465.60
- b. Due from 25 Bank Street (a DiMenna entity) - \$24,000.00
- c. Due from Seaboard Property Management (a DiMenna entity) - \$860,065.45
- d. Due from Seaboard Consolidated (a DiMenna entity) - \$4,525,983.04
- e. Due to Seaboard Properties (a DiMenna entity) - \$2,505,881.05

22. The purpose of Seaboard Consolidated, LLC was simply to facilitate intercompany transfers among debtors and non-debtors, by utilizing a single bank account solely for the purpose of commingling funds into one large pot of available cash. The general ledger of Seaboard Consolidated, LLC as of December 7, 2015 that was provided by the Debtors to the U.S. Trustee presents nothing more than multiple loans to and from the various debtor and non-debtor entities.

23. The engagement letter with Dechert LLP dated December 13, 2015 reads in part:

You have provided us with an evergreen retainer in the amount \$618,582.26, comprised of \$200,000 provided directly by Tag Forest LLC and \$418,582.26 sent to us by William Merritt. The funds sent to us by Bill represent proceeds distributed to him from Tag Forest LLC following the sale of 11 Forest Street, Stamford, Connecticut.

This appears to differ from the Statement of Financial Affairs as referenced in paragraph 13 above.

24. According to the general ledger dated December 31, 2015 of Debtor Tag Forest, LLC that was provided by the Debtors to the U.S. Trustee, the \$418,582.26 distribution to Mr. Merritt was dated November 24, 2015 (check number 001129), prior to the sale closing on December 3, 2015, as represented on the closing statement, not an official HUD-1 form, supplied by the Debtors.

25. It is my understanding, based on information provided by Debtors' Counsel on January 29, 2016, that First American Title Insurance Company did not prepare a HUD-1 form,

nor do they retain an escrow file for the transaction referenced in paragraph 24 above. All the documentation maintained by the title company includes only an invoice for title charges, the title policies, and a map.

26. Debtor Tag Forest, LLC filed its Statement of Financial Affairs on January 12, 2016. The pre-petition sale of assets, namely 11 Forest Street, Stamford, Connecticut, on December 3, 2015, is not disclosed in that document.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Karen E. Starr

Karen E. Starr
Bankruptcy Analyst

Executed on: February 4, 2016