Filed in Second Judicial District Court
11/22/2011 1:10:50 PM
Ramsey County Civil, MN

STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

Case Type: Other Civil

Court File No. 62CV-11-9400

In the Matter of the Liquidation of
Minnesota Surety and Trust Company

LIQUIDATION ORDER

This matter is before the Court upon the Verified Petition For Liquidation Order ("Petition") from the Minnesota Department of Commerce ("Department").

FINDINGS OF FACT

1. The Court has reviewed the Verified Petition of the Minnesota Commissioner of Commerce Mike Rothman and the supporting Affidavit of Martin Fleischhacker.

2. Mike Rothman is the Minnesota Commissioner of Commerce, duly appointed by Governor Mark Dayton in accordance with Minn. Stat. §§ 15.06 and 60A.03, subd. 1 (2010). Commissioner Rothman is charged with administering and enforcing the laws of the State of Minnesota relating to insurance, including the Insurers Rehabilitation and Liquidation Act, set forth in Chapter 60B of the Minnesota Statutes.

3. MSTC has been a Minnesota domiciled and licensed insurance company since February 11, 1965. MSTC is engaged in the business of writing property and casualty insurance, with fidelity and surety as its primary lines.

4. In the course and scope of his duties, the Commissioner has examined the affairs and conditions of MSTC. The Commissioner determined that MSTC is in an unsafe and

unsound condition based upon his review of its financial reports and based upon interviews and meetings with its officers and directors.

5. On June 27, 2008, MSTC entered into a Consent Order whereby it agreed to maintain its total capital and surplus at or above $1,100,000 at all times. MSTC has failed to maintain the minimum amount agreed upon according to the most recent two quarterly filings with the Department. By doing so, MSTC has failed to take all reasonable steps to remedy its violation of the Consent Order and, moreover, failed to prevent the same violations from occurring in the future. Minn. Stat. § 60B.15(10) (2010).

6. In a Letter of Expectations dated June 14, 2010, the Department directed MSTC to find a successor trustee for the trust business within 90 days. MSTC failed to move the trust business as agreed upon.

7. In addition, the June 14, 2010 letter required MSTC to record all financial examination report adjustments on its financial statements. This included non-admitted amounts due from affiliates. MSTC has continued to admit affiliate receivables on subsequent financial filings, which causes its surplus position to be overstated. By doing so, MSTC has failed to take all reasonable steps to remedy the situation resulting from the violation of the Department's Letter of Expectations and failed to prevent the same violations from occurring in the future. Minn. Stat. § 60B.15(10) (2010).

8. The June 30, 2011 Statement of Condition filed by MSTC with the Department, reported negative Equity Capital of $32,454 and negative year to date income of $404,873. Based on these figures, the Department considered the trust company to be in an unsafe and unsound financial condition.

Filed in Second Judicial District Court
11/22/2011 1:10:50 PM
Ramsey County Civil, MN

9. Effective November 10, 2011, MSTC's trust charter was revoked via Consent Order.

10. Effective November 17, 2011, MSTC's certificate of authority to operate as an insurance company were revoked via Consent Order. As part of the November 17, 2011 Consent Order, MSTC voluntarily agreed to be subject to liquidation by the Commissioner pursuant to Minn. Stat. §§ 60B.01-.61 (2010).

11. MSTC has since informed its agents and assured the Department that it is not accepting any further business which will result in no further income to MSTC; however, there remains liabilities to other entities which will leave MSTC in such a condition that the further transaction of business would be hazardous financially or otherwise to its policyholders, its creditors, or the public. In addition, MSTC would not satisfy the requirements that would be applicable if MSTC were seeking initial authorization in this state to do the business for which it was organized or incorporated, pursuant to the June 27, 2008 Consent Order.

Based upon the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the subject matter of this case pursuant to Minn. Stat. § 60B.04, subd 1 (2010). Venue is appropriate in Ramsey County in accordance with Minn. Stat. §§ 60B.04, subd. 4 and 60B.20 (2010).

2. MSTC meets the definition of an insurer as set forth in Minn. Stat. § 60B.03, subd. 4 (2010), and is a covered person as that term is defined under the Insurers Rehabilitation and Liquidation Act, pursuant to Minn. Stat. § 60B.02(5) (2010).

3. The Insurers Rehabilitation and Liquidation Act, Minn. Stat. §§ 60B.01, *et seq.* (2010), is to be liberally construed to effect, its public purposes of protecting the interests of

Filed in Second Judicial District Court
11/22/2011 1:10:50 PM
Ramsey County Civil, MN

policyholders, creditors, and the public by the early detection of potentially dangerous conditions in an insurer and promptly applying appropriate corrective measures. Minn. Stat. § 60B.01, subds. 3 and 4a (2010).

4. The Commissioner submitted a Verified Petition, supported by the Affidavit of Martin Fleischhacker. Those documents establish to the satisfaction of the Court that sufficient grounds exist for the issuance of an order to liquidate MSTC pursuant to Minn. Stat. §§ 60B.15(10) and (16), and 60B.20(1) and (6) (2010). The accompanying exhibits also include a November 17, 2011 Consent Order whereby MSTC consented that it should be subject to liquidation proceedings.

Based upon the foregoing Findings of Fact and Conclusions of Law:

IT IS HEREBY ORDERED, pursuant to Minn. Stat. § 60B.21 (2010), that the Commissioner shall liquidate MSTC.

IT IS FURTHER ORDERED, that the Commissioner and his successors in office are hereby appointed as Liquidator of MSTC, and that the Commissioner shall forthwith take possession of the assets of the insurer and administer them under the orders of the Court. The Liquidator shall be vested by operation of law with the title to all of the property, contracts, and rights of action and all of the books and records of the insurer ordered liquidated, wherever located, as of the date of the filing of the petition for liquidation. The Commissioner may recover and reduce the same to possession except that ancillary receivers in reciprocal states shall have, as to assets located in their respective states, the rights and powers which are prescribed in section 60B.55, subdivision 3, for ancillary receivers appointed in this state as to assets located in this state. The recording of the order with any county recorder in this state

Filed in Second Judicial District Court
11/22/2011 1:10:50 PM
Ramsey County Civil, MN

imparts the same notice as a deed, bill of sale, or other evidence of title duly recorded with that county recorder. Minn. Stat. § 60B.21, subd. 1 (2010).

IT IS FURTHER ORDERED, that the Commissioner is hereby authorized to exercise all powers set forth in Minn. Stat. § 60B.25 (2010).

IT IS FURTHER ORDERED, that if the Commissioner employs a Special Deputy Commissioner to assist in the liquidation of MSTC, the Special Deputy shall have all of the powers of the Liquidator granted by this action and shall serve at the pleasure of the Liquidator pursuant to Minn. Stat. § 60B.25(1) (2010). The Court will approve any arrangements for compensation at a future date.

IT IS FURTHER ORDERED, that MSTC's former officers, directors, managers, trustees, agents, or general agents, shall cooperate fully with the Commissioner, his agents, employees, and designees, including any Special Deputy, in liquidation of MSTC as required by Minn. Stat. § 60B.07 (2010).

IT IS FURTHER ORDERED, that commencing April 1, 2012, the Commissioner or his Special Deputy shall file quarterly reports with this Court on the progress of the liquidation.

DATED: 11-22, 2011

BY THE COURT:

John R. Rutherford

Judge of District Court

AG: #2915667-v1