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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LYNN E. FELDMAN, AS TRUSTEE
FOR THE BANKRUPTCY ESTATES OF
IRA J. PRESSMAN AND PJI DISTRIBUTION CORP.,

Plaintiff,

v.

RAGGI LISOWSKI, LLP CPAs & CONSULTANTS,
FORMERLY KNOWN AS
RAGGI & WEINSTEIN, LLP, CPAs & CONSULTANTS,
HERBERT WEINSTEIN,
ROBERT RAGGI and
THOMAS LISOWSKI,

Defendants.

Civil Action

No. 13-4627

FILED

JUN 08 2016

MICHAEL E. KUNZ, Clerk
By _____ Dep Clerk

STIPULATION AND CONSENT ORDER

Plaintiff, Lynn E. Feldman, Trustee for the Bankruptcy Estates of Ira J. Pressman and PJI

Distribution Corporation, and Defendant Herbert Weinstein, by their undersigned attorneys,

hereby stipulate and jointly request the Court to approve their Assignment and Cooperation

Agreement dated June 6, 2016 ("Agreement").

WEIDMAN LAW, LLC

Peter J. Weidman, Esq.
600 West Germantown Pike
Suite 400
Plymouth Meeting, PA 19462

FREUNDLICH & LITTMAN, LLC

Gregory C. Littman, Esq.
1500 Walnut Street, Suite 206
Philadelphia, PA 19102

Attorney for Lynn E. Feldman,
LLP, CPAs &
Trustee for the Estates of Ira J. Pressman
and PJI Distribution Corporation

Personal Attorney for Herbert Weinstein

AND NOW, this 7th day of June, 2016, upon consideration of the parties' joint request,
it is hereby ORDERED that the Agreement is APPROVED.

Joel Slomsky, J.

ENTERED
JUN - 8 2016
CLERK OF COURT

6/8/16 mails
McCrath
Frank

ASSIGNMENT AND COOPERATION AGREEMENT

This Assignment and Cooperation Agreement (“Agreement”) is entered into this ^{6th} day of June, 2016 by and between Lynn E. Feldman, Trustee for the Bankruptcy Estates of Ira J. Pressman and PJI Distribution Corporation (the “Trustee”), and Herbert Weinstein (“Weinstein”) (collectively the “Parties” and each a “Party”).

BACKGROUND

A. The Trustee is the trustee for the bankruptcy estates of Ira J. Pressman (“Pressman”) and PJI Distribution Corporation (“PJI”) in the consolidated and jointly administered Chapter 7 bankruptcy matters pending in the Bankruptcy Court, captioned In re Ira J. Pressman and PJI Distribution Corp., USBC, EDPA, Case Nos. 11-13080 and 11-13082 (the “Bankruptcy Proceeding”).

B. Weinstein is a certified public accountant who was formerly a partner in the accounting firm of Raggi & Weinstein, LLP CPAs & Consultants (“R&W”).

C. Weinstein resigned from R&W effective August 31, 2014. Prior to Weinstein’s resignation, his partners in R&W were Robert Raggi (“Raggi”) and Thomas Lisowski (“Lisowski”). After Weinstein’s resignation, Raggi and Lisowski continued practicing through the same legal entity, but under a new name, Raggi Lisowski, LLP CPAs & Consultants (“RL”). Weinstein, R&W (now RL), Raggi and Lisowski are hereinafter referred to collectively as the “Defendants.”

D. The Bankruptcy Proceeding arose out of a Ponzi scheme orchestrated by Debtor Ira J. Pressman through his ownership and operation of Debtor PJI. R&W provided accounting services to PJI during the period of the Ponzi scheme.

E. On or about April 24, 2011, R&W received a letter from an attorney for Real Estate Investment Company (“REIC”), one of the Ponzi scheme victims. The letter advised that REIC intended to pursue a claim against R&W arising from the services the firm had provided to PJI.

F. At the time, R&W had professional liability insurance issued by CPA Mutual Insurance Company of America Risk Retention Group (“CPA Mutual”). The applicable “claims made” policy was Accountants Policy Liability Policy No. PL11463-04 (the “Policy”), which provided for policy limits of \$1,000,000 for each claim and \$1,000,000 in the aggregate. After receiving the letter from counsel for REIC, R&W notified CPA Mutual of REIC’s claim in accordance with the terms of the Policy.

G. On or about September 14, 2012, counsel for the Trustee sent a letter to the Defendants' attorney (the "Trustee's Letter") placing the Defendants on notice of a claim by the Trustee arising from the services performed by R&W for PJI (the "Trustee's Claim"). After receiving this letter, the Defendants notified CPA Mutual in accordance with the terms of the Policy.

H. In a letter dated November 29, 2012 addressed to and referencing only R&W and the claims against it, CPA Mutual stated that the insurance policy applicable to the Trustee's Claim was the Policy, as opposed to the later CPA Mutual policy that was in effect at the time of the Trustee's Letter, because the claims of the Trustee and REIC were allegedly interrelated, having both arisen out of the services provided to PJI. This November 29, 2012 letter from CPA Mutual was signed by its assigned adjuster, W. Wesley Marston ("Marston"). Weinstein, Raggi and Lisowski in their individual capacities never received such a letter.

I. CPA Mutual undertook to provide the Defendants with a defense to the Trustee's Claim, assigning Wilhelm Dingler ("Dingler") of the law firm of Marshall Dennehey Warner Coleman Goggin to represent the Defendants.

J. On May 14, 2013, the Trustee filed an adversary action against the Defendants in the Bankruptcy Proceeding. By stipulation of the parties, the adversary action was transferred to the United States District Court for the Eastern District of Pennsylvania (the "District Court"), where it was captioned Lynn Feldman, as Trustee for the Bankruptcy Estates of Ira J. Pressman and PJI Distribution Corp. v. Raggi & Weinstein, LLP, CPAs & Consultants, et al., USDC, EDPA, Civil Action No. 13-4627 (Slomsky, J.) (the "Litigation").

K. After the Litigation had been actively litigated for approximately 22 months, Dingler withdrew his appearance on March 16, 2015 and CPA Mutual hired John Hanamirian ("Hanamirian") of Hanamirian, Garibian & Kranjac, P.C. (now the Hanamirian Law Firm) to represent the Defendants in the Litigation as well as CPA Mutual. As used hereinafter, the term "Assigned Counsel" refers to Dingler during the entirety of his representation of the Defendants, and to Hanamirian in the period after Dingler's withdrawal.

L. During the course of the Litigation, the Trustee and Defendants participated in three court-ordered mediation sessions presided over by Magistrate Judge Carol Sandra Moore Wells, on March 5, 2014, June 12, 2014 and November 9, 2015. CPA Mutual was an active participant in these sessions, with Marston attending in person on one occasion and being available and consulted by phone on the other occasions. During the first session, the Trustee offered to settle the case for the Policy limits of \$1 million, and CPA Mutual, on behalf of the

Defendants, counter-offered \$50,000. As of the end of the third session, the Trustee's demand was \$900,000 and CPA Mutual had offered \$200,000.

M. In approximately February, 2016, prior to the trial of the Litigation, the Defendants advised CPA Mutual that they consented to a settlement for up to the Policy limits of \$1 million, and they directed CPA Mutual to settle the case for up to that amount.

N. The week before the trial began, at CPA Mutual's request, the Trustee made a "bottom line" demand to settle for \$650,000. CPA Mutual responded with an offer of \$250,000, and did not increase its offer thereafter.

O. The Litigation was tried before Judge Joel Slomsky from March 7 – 18, 2016. At the conclusion of the trial, the jury rendered a unanimous verdict in favor of the Trustee and against the Defendants, awarding compensatory damages of \$1,955,923.24 against R&W (the full amount sought by the Trustee); \$1,173,554 against Weinstein; \$586,777 against Raggi; and \$195,592 against Lisowski. The jury also awarded punitive damages of \$450,000 against R&W and \$50,525 against Weinstein. On March 21, 2016, the Court entered judgment against the Defendants in the amounts awarded by the jury (the "Judgment").

P. On May 5, 2016, after granting the Trustee's Motion to Amend the Judgment to Add Discretionary Prejudgment Interest, the Court entered an order increasing the Judgment amounts to \$2,535,302.28 against R&W; \$1,521,177.82 against Weinstein; \$760,579.90 against Raggi; and \$253,526.30 against Lisowski.

Q. On April 15, 2016, the Defendants filed a Notice of Appeal to the United States Court of Appeals for the Third Circuit.

R. Since the entry of the Judgment, the Trustee has undertaken execution against the Defendants, serving writs of execution and garnishment interrogatories on bank accounts, and taking the Defendants' depositions in aid of execution.

S. By letter dated April 14, 2016, an attorney for CPA Mutual wrote to all of the Defendants (unlike the letter dated November 29, 2012, this letter was addressed to and referenced each of the Defendants individually, not just R&W) advising, among other things, that CPA was rescinding the Policy in its entirety and refusing to provide coverage for damages pursuant to the Judgment.

T. On or about April 22, 2016, CPA Mutual filed a lawsuit against the Defendants seeking, among other things, a declaratory judgment that the Policy has been rescinded and that CPA Mutual has no obligation to provide coverage for the Judgment. This lawsuit, which was

filed as a related case to the Litigation and has been assigned to Judge Slomsky, is captioned CPA Mutual Insurance Company v. Herbert Weinstein, et al., USDC, EDPA, Civil Action No. 16-01936 (the “Declaratory Judgment Action”).

U. The Defendants deny the allegations and relief sought by CPA Mutual in the Declaratory Judgment, and contend, to the contrary, that CPA Mutual is liable for breach of the Policy, contractual bad faith and statutory bad faith, among other causes of action.

V. The Parties now wish to enter into this Agreement, by which, as set forth more fully below, the Trustee has agreed to forbear from execution against Weinstein on the Judgment; Weinstein has agreed to make a payment to the Trustee and to assign to the Trustee all of his rights and claims against CPA Mutual, its reinsurers and/or any of their respective employees arising out of or related to the Trustee’s Claim or the Litigation; Weinstein has agreed to cooperate fully with the Trustee and her attorneys in her prosecution of the assigned claims and in the defense of the Declaratory Judgment Action; and the Trustee has agreed to ultimately satisfy the Judgment contingent upon Weinstein’s full cooperation and satisfaction of his payment obligation, all as described more fully herein.

TERMS OF AGREEMENT

NOW, THEREFORE, the Parties, for an in consideration of the mutual covenants and promises set forth herein, and intending to be legally bound hereby, agree as follows:

1. Court Approval. Upon execution of this Agreement, the Parties shall seek District Court approval of the Agreement by filing a Stipulation and Consent Order in the Litigation in the form attached hereto as Exhibit A. If the District Court denies the request to approve the Agreement, the Agreement will be void except as set forth in the final sentence of Section 2(a).

2. Payment by Weinstein. Weinstein shall pay the Trustee the sum of One Hundred Fifty Five Thousand Dollars (\$155,000.00) as follows:

a. Upon execution of this Agreement by all Parties, the Trustee shall enter judgment for Sixty Nine Thousand Dollars (\$69,000.00) of the funds previously garnished by the Trustee in Weinstein’s accounts at Wells Fargo Bank ending in numbers 2605, 6632 and 0482. Weinstein agrees to the entry of judgment and authorizes Wells Fargo Bank to pay this amount to the Trustee upon entry of the judgment. The balance of the funds garnished from Weinstein’s bank accounts will be released to Weinstein. The Trustee will be entitled to keep the money it receives pursuant to this subparagraph regardless of whether the District Court ultimately approves the Agreement.

b. Weinstein shall pay the sum of Eighty Six Thousand Dollars (\$86,000.00) within five (5) calendar days after the execution of this Agreement by all Parties. If the District Court has yet to approve the Agreement as of the due date of the payment, Weinstein will still make the payment, and the Trustee's attorney will hold the check pending District Court approval. Upon such approval, the check will be released to the Trustee. If the District Court denies the request to approve, the check will be returned to Weinstein.

c. All payments by Weinstein shall be made by check in immediately available funds made payable to "*Lynn E. Feldman, Chapter 7 Trustee for the Estate of PJI Distribution Corp.*," and delivered to the Trustee's attorney, Peter J. Weidman of Weidman Law, LLC, 600 West Germantown Pike, Suite 400, Plymouth Meeting, PA 19462. All payments shall be delivered so that they are received by the Trustee's attorney by the due date of the payment, with time being of the essence. In the event of a default, the Trustee shall provide Weinstein with written notice of default, and Weinstein shall have three (3) calendar days within which to cure.

3. Assignment of Claims. Weinstein does hereby agree to and does hereby assign to the Trustee any and all rights, claims, causes of action, remedies or interests, in law and/or in equity, that he now has or may in the future have, whether now known or hereinafter ascertained, against CPA Mutual, its reinsurers, and/or their respective employees (specifically including, but not limited to, Marston, regardless of whether Marston was an employee or independent contractor of CPA) (collectively, the "CPA Mutual Parties") arising out of or in any manner related to the Trustee's Claim and/or the Litigation. It is expressly intended that the rights so assigned shall include but not be limited to any and all claims and/or remedies at law and/or in equity against any of the CPA Mutual Parties for bad faith, breach of contract, negligence, breach of fiduciary duty, breach of implied and/or express covenants of fair dealing and good faith, violation of 42 Pa. C. S. § 8371, fraud, and any and all other actions, claims and/or causes of action arising out of or in any manner related to the Policy, the investigation of the Trustee's Claim and/or the Litigation, the defense of the Trustee's Claim and/or the Litigation, the selection of counsel, discovery, settlement discussions and negotiations, trial preparation, trial, post judgment motions, the appeal, and all decisions and strategies pursued on Weinstein's behalf by CPA Mutual and/or Assigned Counsel. The assignment described herein shall also include the defense of the Declaratory Judgment Action and any counterclaims that may be available in such proceeding. The rights, claims, causes of action, remedies and interests described herein shall hereinafter be referred to as the "Assigned Claims."

4. Covenant to Cooperate. Weinstein does hereby covenant, acknowledge and agree to cooperate fully with the Trustee and her attorneys in any and all of the Assigned Claims and in any legal action, litigation, arbitration, mediation or other proceeding relating to the Assigned Claims (collectively, "Assigned Claim Litigation"). More specifically, but without limitation,

Weinstein shall assist the Trustee and her counsel in the pursuit of any Assigned Claim Litigation in any reasonable manner as the Trustee or her attorneys shall decide or direct. This cooperation shall include, but not be limited to, the matters addressed in Section 5, as well as attending mediation, meeting with and providing information to the Trustee or her attorneys, being available for depositions, preparing for depositions, providing any and all documents related to the Assigned Claims in his possession, custody or control (including documents in the possession of Assigned Counsel), providing written statements, answering interrogatories, responding to document requests, and preparing for, attending and participating in the trial. For purposes of this Agreement, trial shall mean any form of dispute resolution, including but not limited to legal actions, mediations and arbitrations. It is the express intent of Weinstein to cooperate fully with all reasonable requests by the Trustee and her counsel to aid in the effective and proper prosecution of the Assigned Claims. It shall not be necessary for the Trustee to provide Weinstein with prior notice of any failure to cooperate, except that if the Trustee in her sole discretion determines that the failure to cooperate is capable of being cured, the Trustee shall provide Weinstein with written notice of such failure, and Weinstein shall have three (3) calendar days to cure.

5. Communications Relating to Trustee's Claim and Litigation. Weinstein acknowledges that the Trustee, as the assignee of the Assigned Claims, shall "stand in the shoes" of Weinstein and, in this capacity, shall be privy to and entitled to review all communications relating to the Trustee's Claim and the Litigation between or among (i) Weinstein and Assigned Counsel; (ii) Weinstein and CPA Mutual; and/or (iii) Assigned Counsel and CPA Mutual. To this end, Weinstein shall direct Assigned Counsel and CPA Mutual to produce at the Trustee's request their complete files with respect to the Trustee's Claim and Litigation. Upon request by the Trustee, Weinstein agrees to waive the attorney-client and/or attorney work product privileges with respect to any of the above-described communications if the Trustee deems such a waiver to be reasonably necessary in her pursuit of the Assigned Claim Litigation. If CPA Mutual objects to the disclosure of any communications or materials described in this Section 5, or objects to any discovery requests by the Trustee, Weinstein will cooperate fully with the Trustee in her efforts to compel such disclosure from CPA Mutual. As long as Weinstein has so cooperated, and has otherwise complied with his cooperation obligations in these Sections 4 and 5, the fact that CPA Mutual has objected shall not constitute a breach of this Agreement by Weinstein. Nothing in this Agreement will be deemed to be a waiver of Weinstein's attorney-client and work product privileges with respect to communications between Weinstein and Hanamirian during the period before Hanamirian became Assigned Counsel. However, Weinstein agrees to waive such privileges at the Trustee's request if she deems a waiver to be reasonably necessary in her pursuit of the Assigned Claim Litigation.

6. Stay of Execution. Subject to Section 9, the Trustee agrees to immediately cease, stay and forbear from execution on the Judgment against Weinstein or his estate, as the case may

be, during the pendency of any Assigned Claim Litigation. The pendency of such litigation shall include the initiation of such actions against the CPA Mutual Parties and the litigation of such actions through trial or hearing and all appeals therefrom, until such time as any judgments become final as to all defendants or the actions are marked settled, discontinued and ended as to all defendants.

7. Garnishment and Discovery Against CPA Mutual. Notwithstanding anything to the contrary in this Agreement, the Trustee shall be free to serve a writ of execution and garnishment interrogatories on CPA Mutual and to litigate such garnishment proceeding to its conclusion. The duty of cooperation, as described above in Sections 4 and 5, shall include Weinstein's obligation to cooperate with the Trustee in connection with any such garnishment proceeding. The term "Assigned Claim Litigation," as defined above and as used in this Agreement, shall include any garnishment proceedings pursued by the Trustee against CPA Mutual. The Trustee shall also be free to pursue or to continue pursuing discovery in aid of execution on the Judgment to the extent such discovery is directed to any of CPA Mutual Parties.

8. Satisfaction of Judgments. If Weinstein has (i) made the payments set forth in Section 2 on a timely basis, and (ii) complied fully with his duty of cooperation as set forth in Sections 4 and 5, then:

a. within thirty (30) days after receipt of all the payments set forth in Section 2, the Trustee shall mark the judgment for punitive damages against Weinstein satisfied;

b. within thirty (30) days after (i) the termination of all Assigned Claim Litigation following exhaustion of all appeals and the entry of a final judgment as to all defendants, or (ii) the date all Assigned Claim Litigation is marked settled, discontinued and ended as to all defendants, whichever occurs first, the Trustee shall mark the compensatory damage judgment against Weinstein satisfied.

If neither of the conditions set forth in Section 8(b) has been met, and more than ten (10) years have passed since the entry of the Judgment, Weinstein may file a motion with the District Court (or other court of competent jurisdiction, as set forth in Section 12(b)) seeking to mark the compensatory judgment satisfied; provided, however, it shall be a complete defense to such motion if (a) there has been any activity in any Assigned Claim Litigation within the one (1) year period prior to the filing of such motion; (b) Weinstein failed to make the payments set forth in Section 2 on a timely basis; or (c) Weinstein failed to comply fully with his duty of cooperation as set forth in Sections 4 and 5.

9. Breach of Payment Obligation and/or Covenant to Cooperate. Weinstein acknowledges that the Trustee shall expend considerable resources in the prosecution of the

Assigned Claims in specific reliance upon Weinstein's agreement to make the payments set forth in Section 2 and his agreement to cooperate as set forth in Sections 4 and 5. Accordingly, Weinstein acknowledges and agrees that should he either fail to make any payment set forth in Section 2 on a timely basis, or fail to cooperate reasonably with the Trustee or her attorneys in the prosecution of the Assigned Claims as required in Sections 4 and 5, then (i) the stay of execution of the Judgment as set forth in Section 6 shall cease and terminate upon five (5) calendar days written notice by Trustee, and (ii) the Trustee shall have no obligation to mark any portion of the Judgment satisfied.

10. No Refund or Payment. The payments made by Weinstein pursuant to Section 2 are final and without recourse of any kind. Weinstein shall not be entitled to any refund or any payment from Trustee, regardless of the amount of any verdict, judgment, settlement or other result that the Trustee may obtain in any Assigned Claim Litigation.

11. Representations and Warranties.

a. No Assignment of Transfer. Weinstein hereby warrants and represents that he has not assigned or transferred or purported to assign or transfer, whether voluntarily, involuntarily or by operation of law, the Assigned Claims or any portion thereof to any person or entity not a party to this Agreement.

b. Advice of Counsel. The Parties represent and warrant that they have each had the benefit of consultation with legal counsel and have been fully advised by counsel concerning the execution of this Agreement. Further, the Parties represent and warrant that they are executing this Agreement voluntarily and have each read and fully understand the terms of this Agreement without the undue influence of any person and without relying on any promises, conditions, terms, statements or representations not expressly contained herein.

c. Ownership of Claims. Weinstein represents and warrants that he is the owner of the claims being assigned hereby.

12. Miscellaneous.

a. Entire Agreement; Amendment. This Agreement constitutes the entire agreement with respect to the subject matter hereof, supersedes all prior and contemporaneous agreements or understandings, and may not be amended unless in a writing signed by all Parties.

b. Governing Law; Retention of Jurisdiction. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to conflict of law principles. The Parties agree that the District Court shall retain

jurisdiction to enforce this Agreement as part of the Litigation. If it should be determined that, notwithstanding the foregoing, the District Court lacks jurisdiction, the Parties shall be free to enforce this Agreement in any other court of competent jurisdiction.

c. Attorney's Fees and Expenses. In the event of a breach of this Agreement, the breaching Party shall be responsible for the reasonable attorney's fees and litigation expenses of the non-breaching Party.

d. Agreement to Complete Further Documentation. Upon execution of this Agreement, the Parties agree to execute, as necessary, any and all further documents reasonably required to effectuate this Agreement.

e. Counterparts. This Agreement may be executed in counterparts, each of which shall be binding on the Party signing, and all of which together shall constitute one and the same instrument. A counterpart with a copy of a Party's signature shall have the same effect as a counterpart with an original signature.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, execute this Agreement below:

THE ESTATES OF IRA J. PRESSMAN AND
PJI DISTRIBUTION CORPORATION


By: Lynn E. Feldman, Trustee for the Chapter 7
Bankruptcy Estates of Ira J. Pressman and
PJI Distribution Corporation


Herbert Weinstein

EXHIBIT A