

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

In re:

PROCOM AMERICA, LLC,

Debtor.

Case No.: 8:20-bk-03522-MGW
Chapter 7

MOTION FOR TURNOVER OF BOND AND ASSOCIATED COLLATERAL

NOTICE OF OPPORTUNITY TO OBJECT AND REQUEST FOR HEARING

Pursuant to Local Rule 2002-4, the Court will consider the relief requested in this paper without further notice or hearing unless a party in interest files a response within thirty (30) days from the date set forth on the attached proof of service, plus an additional three days for service if any party was served by U.S. Mail. You should read these papers carefully and discuss them with your attorney if you have one. If the paper is an objection to claim in this bankruptcy case, your claim may be reduced, modified, or eliminated.

If you object to the relief requested in this paper, you must file a response with the Clerk of the Court at 300 North Hogan Street, Suite 3-150, Jacksonville, FL 32202 and serve a copy on the movant's attorney, Steven M. Berman, Esq., Shumaker, Loop & Kendrick, LLP, 101 E. Kennedy Blvd., Suite 2800, Tampa, Florida 33602, and any other appropriate persons within the time allowed. If you file and serve a response within the time permitted, the Court will either schedule and notify you of a hearing or consider the response and grant or deny the relief requested without a hearing.

If you do not file a response within the time permitted, the Court will consider that you do not oppose the relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

Douglas N. Menchise, as Chapter 7 Trustee for the estate of Procom America, LLC, (hereinafter "Trustee"), pursuant to 11 U.S.C. §§ 541 and 542, and other applicable law, hereby moves the Court to compel Great American Insurance Group and/or the Florida Department of Agriculture and Consumer Services (the "Department") to turn over property of the estate and to

ensure bond proceeds are shared equally amongst similarly situated creditors and, in support thereof, states as follows:

I. Background

1. On or about May 1, 2020 (the “Petition Date”), Electronic Merchant Systems, LLC, Dennis J. Ross, and Rivergate Tower Owner, LLC (collectively the “Petitioning Creditors”) filed an involuntary petition under Chapter 7 of the Bankruptcy Code for Procom America, LLC (“Debtor”) in the United States Bankruptcy Court for the Middle District of Florida.

2. Thereafter, Trustee was appointed as Chapter 7 Trustee.

3. On May 7, 2020 the Debtor filed its Consent to the entry of an order for relief in the involuntary case.

4. On June 18, 2020, an Order was entered approving the Trustee’s application to retain Steven M. Berman as Special Counsel.

5. Thereafter, on or about September 8, 2020, the Office of General Counsel of the Department, contacted the undersigned and advised that the Department was responsible for overseeing those bonds required of the Debtor as a seller of travel in Florida. Furthermore, the representative of the Department advised that it was processing a number of bond claims made by “injured consumers against the surety bond filed with the [D]epartment.” A true and correct copy of this correspondence is attached as **Exhibit “A”**.

II. Property of the Estate

6. On the Petition Date and continuing thereafter, the Debtor maintained certain bond(s) as a seller of travel, and required by §§ 559.926, *et seq.*, Fla. Stat.

7. Specifically, the Debtor, as principal, maintained a bond issued by Great American Insurance Group, and identified as bond number E260271, in a total amount of at least \$25,000.00 (hereinafter the “Bond”).

III. Basis for Relief

8. The Bond, and any collateral held therewith, constitute property of the Estate within the meaning and effect of 11 U.S.C. § 541.

9. The Bond, and any collateral so held, are subject to turnover pursuant to 11 U.S.C. §§ 542 and 543, by Great American Insurance Group and/or the Department, who had or now has possession of the Bond and collateral held for said bond. *See Matter of Celotex Corp.*, 128 B.R. 478, 480, 484 (Bankr. M.D. Fla. 1991) (holding bond was property of the estate and stating “the latter two are property of the estate” when referring to a surety agreement and collateral securing a bond).

10. Further, turnover of the Bond, along with all collateral held therewith, is appropriate as the face value of the Bond is far exceeded by the outstanding claims of creditors in this case.

11. Accordingly, the Bond and all such proceeds should be turned over to the Estate for the benefit of the Debtor’s creditors and to be distributed equally.

WHEREFORE, the Trustee respectfully requests that this Court (i) enter an Order Granting this Motion for Turnover and to Enforce Automatic Stay, (ii) direct Great American Insurance Group to turn over bond number E260271 and any collateral held for said bond, and (iii) for such other relief as this Court deems just and appropriate.

Dated: September 25, 2020

SHUMAKER, LOOP & KENDRICK, LLP

/s/ Steven M. Berman
STEVEN M. BERMAN, ESQ.
Florida Bar No. 856290
sberman@shumaker.com
bgasaway@shumaker.com
THOMAS M. WOOD, ESQ.
Florida Bar No. 10080
twood@shumaker.com
101 E. Kennedy Blvd., Suite 2800
Tampa, FL 33602
Phone: (813) 229-7600
Fax: (813) 229-1660
Counsel for Trustee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 25, 2020, a true and correct copy of the foregoing Motion for Turnover and to Enforce Automatic Stay was by CM/ECF notice to all counsel of record, United States mail postage prepaid per Limited Notice Order and to:

Commissioner Nicole Fried
Florida Department of Agriculture
and Consumer Services
407 South Calhoun Street, Suite 520
Tallahassee, Florida 32399

Great American Insurance Group
Great American Tower Floor 24N
301 East Fourth Street
Cincinnati, OH 45202

Jared S. Gardner
Office of General Counsel
Florida Department of Agriculture
and Consumer Services
407 South Calhoun Street, Suite 520
Tallahassee, Florida 32399

United States Trustee
Timberlake Annex, Suite 1200
501 E. Polk Street
Tampa, FL 33602

/s/ Steven M. Berman
Steven M. Berman, Esq.

Exhibit A

Ceriale, Matthew A.

From: Berman, Steven M.
Sent: Tuesday, September 8, 2020 11:56 AM
To: Gardner, Jared
Cc: Wood, Thomas M.; Ceriale, Matthew A.; Furst, Jamie L.
Subject: RE: Procom America, LLC; Great American Insurance Company Bond No. E260271; Case No. 2007-24434/AF

Jared

Thank you for your email. I was not aware you were processing bond claims. Please do not process any further claims. The bond constitutes property of the bankruptcy estate and processing claims against the bond violates the automatic stay and is not an exercise of any police power. The bond should be turned over to the Trustee for administration of all consumer claims in the bankruptcy case. Please forward to us all bond information and a list of any creditors who received payments on the bond at any time following the filing of the case as those distributions were not authorized by the Bankruptcy Court and are avoidable transfers.

If you would like to discuss this, please let me know a time tomorrow.

Thanks
Steve

From: Gardner, Jared [mailto:Jared.Gardner@fdacs.gov]
Sent: Tuesday, September 8, 2020 10:35 AM
To: Berman, Steven M.
Subject: Procom America, LLC; Great American Insurance Company Bond No. E260271; Case No. 2007-24434/AF

Dear Mr. Berman,

Our department was recently contacted by Lynn Sherman, an attorney representing Peter Gaal, who brought to our attention that a Chapter 7 bankruptcy liquidation was pending in the matter of Procom America, LLC. It is my understanding that you represent Douglas Menchise, the bankruptcy trustee. Our department is responsible for registering and providing regulatory oversight of sellers of travel within the state of Florida. While I presume that Procom has ceased its business operations in this state, would you please be able to provide a response confirming that is the case?

In addition, the department is processing bond claims made by injured consumers against the surety bond filed with the department in connection with Procom's registration. The processing of bond claims are not subject to the automatic stay as surety bonds are not considered property of the bankruptcy estate. In re Hallmark Builders, Inc., 205 B.R. 974, 976 (Bankr. M.D. Fla. 1996). If your client has information indicating that any of the bond claimants have already been compensated, we would appreciate that information as well. The names of the bond claimants are Sue Grossman, Harold Everett, and Irena M. Kildisas.

Thank you for your assistance in this matter. Please let me know if you have any questions you would like to discuss.

Jared S. Gardner
Senior Attorney
Office of General Counsel
Florida Department of Agriculture and Consumer Services

(850) 245-1000
(850) 245-1001 Fax

Jared.Gardner@FDACS.gov

The Mayo Building
407 South Calhoun Street, Suite 520
Tallahassee, Florida 32399-0800

www.FDACS.gov

Please note that Florida has a broad public records law (Chapter 119, Florida Statutes). Most written communications to or from state employees are public records obtainable by the public upon request. Emails sent to me at this email address may be considered public and will only be withheld from disclosure if deemed confidential pursuant to the laws of the State of Florida.