

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

	X	
	:	Chapter 9
In re	:	
	:	Case No. 13-53846
CITY OF DETROIT, MICHIGAN,	:	
	:	Hon. Thomas J. Tucker
Debtor	:	

**DEBTOR’S REPLY TO RESPONSE TO OBJECTION TO
CLAIM NO. 2252 FILED BY LAURENCE WOODY WHITE**

The Debtor, the City of Detroit (the “City”), by and through its undersigned counsel, for its reply (the “Reply”) to the Response filed on behalf of Laurence Woody White dated May 21, 2015 (the “Response”) [Dkt. No. 9587] to the City’s Seventeenth Omnibus Objection to Certain Incorrectly Classified Claims (“Seventeenth Omnibus Objection”) [Dkt. No. 9741] regarding claim number 2252 (the “Claim”), respectfully states as follows:

BACKGROUND

1. On July 18, 2013 (the “Petition Date”), the City filed this bankruptcy case.
2. On November 21, 2013, this Court entered its *Order, Pursuant to Sections 105, 501, and 503 of the Bankruptcy Code and Bankruptcy Rules 2002 and 3003(c), Establishing Bar Dates for Filing Proofs of Claim and Approving Form and Manner of Notice Thereof* (the “Bar Date Order”) [Dkt. No. 1782].
3. On July 9, 2014, this Court entered its Order Pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 3007 Approving Claim Objection Procedures [Dkt. No. 5872] (the “Claims Procedures Order”), allowing the City to file an omnibus objection with respect to incorrectly classified claims (Claim Procedures Order at 2).



4. On February 20, 2014, Mr. White filed Claim No. 2730 in an undetermined amount as an administrative priority claim.¹

5. On April 23, 2015, the City filed its Seventeenth Omnibus Objection [Dkt. No. 9741]. As to the claims objected to in the Seventeenth Omnibus Objection, the City determined that they were incorrectly classified as administrative claims.

6. The stated basis of the Claim is “employed by and for City of Detroit for twenty-three years and seven months, city engineering; also bldg. and safety engineering.” It appears that the Claim is related to a pension Mr. White has been receiving.

7. The City filed the Seventeenth Omnibus Objection and objected to the Claim because it is incorrectly classified as an administrative claim.

8. On or about April 23, 2015, Mr. White was served notice of the Seventeenth Omnibus Objection [Dkt. No. 9741].

9. On May 21, 2015, Mr. White filed his response, which does not explain why he believes the Claim is entitled to administrative priority, but does oppose the relief sought by the City. *Response*, p. 1

10. Other than seeking reclassification of the incorrectly classified Claim as a general unsecured claim, the Seventeenth Omnibus Objection did not address the substance of the Claim. Accordingly, the City reserves all of its rights to object, on any basis, to the Claim.

ARGUMENT

11. Section 502(a) of the Bankruptcy Code provides that a claim is deemed allowed unless a party in interest objects. 11 U.S.C. § 502(a).² Bankruptcy Rule 3007(d) and the Claims

¹ The Claim seeks an amount of \$22,148.30 “gross annually until my death!”

² Section 502 of the Bankruptcy Code is applicable to this Chapter 9 case through Section 901 of the Bankruptcy Code. *See* 11 U.S.C. § 901.

Procedure Order allow the City to object to multiple claims in an omnibus objection if the claims are incorrectly classified.

12. Only proofs of claim that comply with Bankruptcy Rule 3001 are presumed to be valid in the amount filed.

13. Mr. White apparently argues that his claim is entitled to administrative priority.

14. Section 503(b) allows creditors to file claims seeking administrative expense priority. Claims which meet the requirements of Section 503(b) are entitled to administrative, rather than general unsecured, priority.

15. Courts give “strict construction of the Bankruptcy Code provisions governing requests for priority payment of administrative expenses.” *Woburn Assocs. v. Kahn (In re Hemingway Transport, Inc.)*, 954 F.2d 1, 5 (1st Cir. 1992). “[Administrative expense claims] under § 503(b) are strictly construed because priority claims reduce the funds available for creditors and other claimants.” *National Union Fire Insurance Co. v. VP Buildings, Inc.*, 606 F.3d 835, 838 (6th Cir. 2010) (*quoting In re Federated Dept. Stores, Inc.*, 270 F.3d 994, 1000 (6th Cir. 2001)). “The party seeking the priority ‘has the burden of proving that his claim constitutes an administrative expense.’” *Id. (quoting McMillan v. LTV Steel, Inc.*, 555 F.3d 218, 226 (6th Cir. 2009)).

16. First, Mr. White did not properly file his Claim as an administrative priority claim pursuant to the Bar Date Order.

17. Under the Bar Date Order, “all administrative claims under Section 503(b) of the Bankruptcy Code, other than 503(b)(9) claims and the administrative portion of Rejection Damages Claims, shall not be deemed proper if asserted by proof of claim.” Bar Date Order, ¶ 5. If the alleged administrative priority claim did not fall under Section 503(b)(9) and was not the

administrative portion of a Rejection Damages Claim, then it was required to be filed with 45 days after the Effective Date and, pursuant to the Bar Date Order, “shall not be deemed proper if asserted by proof of claim.” *See* Plan Art. II.A.2(a); Bar Date Order ¶ 5.

18. The Claim at issue here was not properly filed as administrative priority claim pursuant to the Bankruptcy Code or the Bar Date Order. Specifically, though the Claim is not a 503(b)(9) or Rejection Damages Claim, it was filed by proof of claim, in direct contravention of the Bar Date Order.

19. For this reason, the Claim should be reclassified as a general unsecured claim.

20. Second, administrative expenses are those “costs and expenses of preserving the estate.” 11 U.S.C. § 503(b). However, in a Chapter 9 case, there is no “estate.” *See* Collier on Bankruptcy § 901.04[13][a]; *In re New York City Off-Track Betting Corp.*, 434 B.R. 131, 141-43 (Bankr. S.D.N.Y. 2010) (“Because a chapter 9 debtor’s property remains its own and does not inure into a bankruptcy estate as provided by section 541 of the Bankruptcy Code, there can be no administrative expenses for ‘the actual and necessary costs of preserving the estate’ as contemplated by section 503(b)(1)(A) of the Bankruptcy Code.”). As such, administrative expenses in a Chapter 9 case, such as this, are limited to those expenses incurred in connection with the administration of the Chapter 9 case. *Id.*

21. Mr. White has not provided any support for his arguments that the amounts listed in his proof of claim, which appear to have arisen from a pension, were expenses incurred in connection with the administration of the Chapter 9 case. As a result, even if Mr. White had properly filed his alleged administrative claim (he did not), the Claim would not qualify as an administrative claim in this Chapter 9 bankruptcy.

22. To the extent the Claim is related to a pension that Mr. White has been receiving, the Seventeenth Omnibus Objection does not seek to disallow it. Pension claims are being handled separately through the City's Eighth Amended Plan for the Adjustment of Debts of the City of Detroit, pursuant to Article IV.

23. Given all of these factors, the Claim should be reclassified as a general unsecured claim.

WHEREFORE, the City respectfully requests that this Court enter an order reclassifying the Claim as a general unsecured claim, and granting the City such other and further relief as this Court may deem just and proper.

Dated: May 21, 2015

FOLEY & LARDNER LLP

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EXHIBIT 1: PROOF OF CLAIM NO. 2252

4838-8081-9236.1

UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT of MICHIGAN		CHAPTER 9 PROOF OF CLAIM
Name of Debtor: City of Detroit, Michigan		Case Number: 13-53846
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): LAURENCE WOODY WHITE		<div style="border: 1px solid black; padding: 5px;"> RECEIVED 2014 FEB 20 A 10:24 COURT USE ONLY <input type="checkbox"/> Check this box if the claim is for a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____ <input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars. </div>
Name and address where notices should be sent: P.O. Box 163 (MAILING ADDRESS) 1753 WALNUT ROAD (RESIDENCE) CHLOE, WV 25235 Telephone number: 304-655-6763 email: lww933@frontier.com		
Name and address where payment should be sent (if different from above): P.O. Box 163 CHLOE, WV 25235 Telephone number: 304-655-6763 email: lww933@frontier.com		
1. Amount of Claim as of Date Case Filed: \$22,148.30 GROSS ANNUALLY UNTIL DEATH! If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: EMPLOYED BY AND FOR CITY OF DETROIT FOR TWENTY-THREE YEARS AND SEVEN MONTHS (See instruction #2) CITY ENGINEERING; ALSO BLDG SAFETY ENGINEERING, 23 YEARS AND 7 MONTHS		
3. Last four digits of any number by which creditor identifies debtor: 5115	3a. Debtor may have scheduled account as: SAME AS #1 and #2 of this document (See instruction #3a)	
4. Secured Claim (See instruction #4) YES Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other Describe: EMPLOYED BY CITY OF DETROIT Value of Property: \$22,148.30 Annual Interest Rate (when case was filed) N/A % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: AS OF 2/21/2014 \$0 Basis for perfection: _____ Amount of Secured Claim: \$22,148.30 SEE ITEM ① ABOVE Amount Unsecured: \$0 AS OF 2/21/2014 (SEE ITEM ① ABOVE)
5. Amount of Claim Entitled to Priority as an Administrative Expense under 11 U.S.C. §§ 503(b)(9) and 507(a)(2).		\$22,148.30 ANNUALLY
5b. Amount of Claim Otherwise Entitled to Priority. Specify Applicable Section of 11 U.S.C. § 503(b)(9), 507(a)(2)		\$22,148.30 ANNUALLY
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)		
7. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. (See instruction #7, and the definition of "redacted".) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:		
8. Signature: (See instruction # 8) Check the appropriate box. <input checked="" type="checkbox"/> I am the creditor. <input type="checkbox"/> I am the creditor's authorized agent. <input type="checkbox"/> I am the trustee, or the debtor, or their authorized agent. <input type="checkbox"/> I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.) (See Bankruptcy Rule 3004.) I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.		
Print Name: LAURENCE WOODY WHITE Title: RETIRED CITY OF DETROIT EMPLOYEE Company: Address and telephone number (if different from notice address above): SAME AS ABOVE		(Signature) Laurence W. White 18 February 2014 (Date)
Telephone number: 304-655-6763 email: lww933@frontier.com 13-53846-11 Doc 286-1 Filed 02/20/14 Entered 05/21/14 15:32:32 Page 2 of 3 Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment		

CORRECTED (if checked)

PAYER'S name, street address, city, state, and ZIP code

**GENERAL RETIREMENT SYSTEM
OF THE CITY OF DETROIT
2 WOODWARD AVE RM 908
DETROIT, MI 48226-3455**

1 Gross Distribution

\$22,148.30

OMB No. 1545-0119

2013Form **1099R**

**Distributions from
Pensions, Annuities,
Retirement or Profit-
Sharing Plans, IRAs,
Insurance Contracts, etc.**

PAYER'S Federal Identification number

38-2457952

RECIPIENT'S Identification number

234-48-5115

2a Taxable Amount

\$22,148.302b Taxable amount
not determined ☐Total
Distribution ☐

3 Capital gain (included in box 2a)

4 Federal Income tax withheld

\$3,300.005 Employee Contributions
/Designated Roth Contributions or
insurance premiums6 Net unrealized appreciation
in employer's securities

7 Distribution Code(s)

7IRA/SEP/
SIMPLE

8 Other

9a Your percentage of total
distribution

9b Total employee contributions

12 State tax withheld

13 State/Payer's state no

15 Local tax withheld

16 Name of locality

RECIPIENT'S Name and Address

**WHITE LAURENCE W
PO BOX 163
CHLOE, WV 25235-0163**

10 Amount allocable to IRR within 5
years

11 1st Yr of Desig Roth contrib.

Account Number 365294

**Copy 2
File this copy with your
state, city, or local
income tax return,
when required.**

This information is being
furnished to the Internal
Revenue Service.

14 State distribution

17 Local distribution