

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:

NEIGHBORS LEGACY HOLDINGS, INC.,
et al.,

Debtors.

§
§ Chapter 11
§
§ Case No. 18-33836
§
§ (Jointly Administered)
§

**LIQUIDATING TRUSTEE’S OBJECTION TO THE
INTERNAL REVENUE SERVICE’S CLAIM NOS. 160 AND 840**
(Relates to Claim Nos. 160 and 840)

THIS IS AN OBJECTION TO YOUR CLAIM. THE OBJECTING PARTY IS ASKING THE COURT TO DISALLOW ALL OR A PORTION OF THE CLAIM THAT YOU FILED IN THESE BANKRUPTCY CASES. YOU SHOULD IMMEDIATELY CONTACT THE OBJECTING PARTY TO RESOLVE THE DISPUTE. IF YOU DO NOT REACH AN AGREEMENT, YOU MUST FILE A RESPONSE TO THIS OBJECTION AND SEND A COPY OF YOUR RESPONSE TO THE OBJECTING PARTY WITHIN 30 DAYS AFTER THE OBJECTION WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE OBJECTION IS NOT VALID. IF YOU DO NOT FILE A RESPONSE WITHIN 30 DAYS AFTER THE OBJECTION WAS SERVED ON YOU, YOUR CLAIM MAY BE DISALLOWED.

THIS MATTER HAS BEEN SET FOR HEARING ON JULY 17, 2019 AT 10:00 A.M. BEFORE THE HONORABLE MARVIN ISGUR, UNITED STATES BANKRUPTCY JUDGE, 515 RUSK AVENUE, 4TH FLOOR, COURTROOM 404, HOUSTON, TEXAS 77002.

Tensie Axton, Trustee (the “Liquidating Trustee”) of the Liquidating Trust (the “Trust”) of Neighbors Legacy Holdings, Inc. (“NLH”) and certain of its affiliates and subsidiaries, files her *Objection to the Internal Revenue Service’s Claim Nos. 160 and 840* (the “Objection”).

I. PRELIMINARY STATEMENT

1. The Internal Revenue Service (the “IRS” or the “Claimant”) filed claim nos. 160 and 840 (the “Claims”), as further defined below. Claim no. 840 was filed after the Bar Date and is therefore untimely. Additionally, the IRS’s Claims assess payroll taxes during a period where



the Debtors did not have employees and assess excise taxes for an entity that is not required to pay excise taxes. The Debtors are therefore not liable for the Claims and the Liquidating Trustee respectfully requests that the Court disallow, in their entirety, the Claims and expunge both from the claims register.

II. JURISDICTION

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This Objection is a core proceeding arising under title 11 pursuant to 28 U.S.C. § 157(b)(2)(B). The Court has constitutional authority to enter a final order in this matter under *Stern v. Marshall*, 564 U.S. 462 (2011).

III. BACKGROUND

3. On February 20, 2019, the Debtors filed their *First Amended Joint Plan of Liquidation of Neighbors Legacy Holdings, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* (the “Plan”).¹ [Docket No. 772].

4. On March 22, 2019, the Court entered its *Order Approving Debtors’ Second Amended Disclosure Statement and Confirming Debtors’ First Amended Joint Plan of Liquidation of Neighbors Legacy Holdings, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* (the “Confirmation Order”). [Docket No. 847].

5. The Plan and the Confirmation Order established the Liquidating Trust and approved the Liquidating Trust Agreement, which, among other things, appointed the Liquidating Trustee to distribute the Liquidating Trust Assets in accordance with the Plan and the Confirmation Order. *See* Liquidating Trust Agreement [Docket No. 802-1]. Pursuant to the Plan, the Debtors estates are deemed consolidated for purposes of making distributions to certain claimants.

¹ Terms not specifically defined in this Motion shall be defined by the Plan.

6. Pursuant to Art.V.F of the Plan and Section 5.1 of the Liquidating Trust Agreement, the Liquidating Trustee has the exclusive authority to file, settle, compromise, withdraw, or litigate to judgment any objection to claims, other than Class 4 General Unsecured Claims.

7. On October 5, 2018, the Debtors' filed their *Notice of Deadlines for Filing Proofs of Claim* (the "Bar Date Notice"). [Docket No. 551], which gave notice of the November 14, 2018 Bar Date (for all non-governmental claimants) and the January 8, 2019 Bar Date for all governmental claimants. Accordingly, the Bar Date for the IRS was January 8, 2019.

8. The IRS filed its first claim on September 21, 2018 (claim no. 160, the "Payroll Claim"), asserting a total claim of \$31,000.00, \$25,000.00 of which is asserted as a priority claim. The IRS filed its second claim (claim no. 840, the "Excise Tax Claim" and, together with the Payroll Claim, the "Claims") untimely on February 14, 2019, asserting a total claim of \$52,906.65, \$40,906.65 of which is asserted as a priority claim.

IV. OBJECTION

9. Under section 502 of the Bankruptcy Code, a proof of claim is deemed allowed "unless a party in interest . . . objects." 11 U.S.C. § 502. Although Bankruptcy Rule 3001(f) provides that "[a] proof of claim executed and filed in accordance with [the Bankruptcy Rules] shall constitute prima facie evidence of the validity and amount of the claim," *see, e.g., In re Jack Kline Co., Inc.*, 440 B.R. 712, 742 (Bankr. S.D. Tex. 2010), a proof of claim loses the presumption under Bankruptcy Rule 3001(f) when an objecting party refutes at least one allegation that is essential to the claim's legal sufficiency. *See In re Fidelity Holding Co., Ltd.*, 837 F.2d 696, 698 (5th Cir. 1988). The burden then shifts to the claimant to prove the validity of its claim by a preponderance of the evidence. *Id.* Even with the burden-shifting framework, "the ultimate burden of proof always lies with the claimant." *In re Armstrong*, 347 B.R. 581, 583 (Bankr. N.D. Tex.

2006) (citing *Raleigh v. Ill. Dep't of Rev.*, 530 U.S. 15 (2000)).

10. The Debtors are not liable for the Claims. First, the Excise Tax Claim is asserted against EDMG, LLC (“EDMG”), but fails to include any documentation that explains why EDMG would be liable for excise taxes. The Liquidating Trustee is not aware of any excise taxes for which EDMG may be subject. Additionally, the Excise Tax Claim asserts a general unsecured claim for \$12,000.00 for unfiled partnership returns, but again, the Excise Tax Claim attaches no documents that explain why EDMG would be required to file partnership returns. EDMG is a disregarded entity for tax purposes and does not file partnership returns. Finally, the Excise Tax Claim was filed untimely and should be disallowed on that basis alone.

11. The Debtors are also not liable for the Payroll Claim. The Payroll Claim is asserted against Neighbors Practice Management, LLC (“NPM”) for Federal Insurance Contributions Act (“FICA”) taxes between the period of December 31, 2012, through March 31, 2015, and Federal Unemployment Tax Act (“FUTA”) taxes between the period of December 31, 2012, through March 31, 2014. NPM, however, did not have employees until June 2015 and therefore does not owe payroll taxes for the period between December 31, 2012, and March 31, 2015. The Debtors are therefore not liable on the Payroll Claim.

12. Based on the foregoing the Debtors are not liable for the Claims and respectfully requests that the Claims be disallowed in their entirety and expunged from the claims register.

V. CONCLUSION

13. The Liquidating Trustee respectfully requests that the Court i) disallow the Claims in their entirety; ii) order that the Claims are expunged from the claims register; and iii) grant the Liquidating Trustee such other and further relief to which she may be entitled.

Dated: Houston, Texas
June 3, 2019.

PORTER HEDGES LLP

By: /s/ John F. Higgins
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**COUNSEL FOR TENSIE AXTON,
LIQUIDATING TRUSTEE OF THE
NLH LIQUIDATING TRUST**

CERTIFICATE OF SERVICE

This will certify that on June 3, 2019, a true and correct copy of the foregoing Objection was forwarded via United States mail, postage prepaid, and through the Court's CM/ECF filing system.

Internal Revenue Service
Centralized Insolvency Operations
PO Box 7346
Philadelphia PA 19101-7346

Internal Revenue Service
Centralized Insolvency Operations
2970 Market Street
Philadelphia PA 19104

Internal Revenue Service
c/o Clarice Randolph
1919 Smith Street
M/S 5022HOU
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Houston, TX 77002

/s/ John F. Higgins
John F. Higgins

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

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Debtors.

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Chapter 11

Case No. 18-33836

(Jointly Administered)

**AFFIDAVIT OF TENSIE AXTON IN SUPPORT OF
OBJECTION TO THE INTERNAL REVENUE SERVICE'S CLAIM NOS. 160 AND 840**

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared TENSIE AXTON, known to me to be the person whose name is subscribed below, and who being duly sworn, stated the following:

1. My name is Tensie Axton and I am the Liquidating Trustee in the above-styled case. I am a CPA with more than 25 (twenty-five) years of experience in finance and accounting, including extensive experience in the healthcare industry. Prior to serving as the Liquidating Trustee, beginning in December 2016, I was the Debtors' Chief Financial Officer. Before starting as the Debtors' Chief Financial Officer, I was the Chief Operating Officer of a healthcare company where I developed and managed a multispecialty medical practice group.

2. I am generally familiar with the Debtors' financing arrangements, business affairs and books and records that reflect, among other things, the Debtors' liabilities and the amounts owed to their creditors as of the Petition Date. I have reviewed the Claims and the Objection to the Claims (the "Objection") filed contemporaneously with this Affidavit.¹

3. To the best of my knowledge, information, and belief, the assertions made in the Objection are accurate. I have reviewed the Debtors' books and records and the Claims, as well as the supporting documentation provided by the Claimant, and have determined that the Claims should be disallowed and expunged.

¹ Capitalized terms used but not defined in this declaration shall have the meaning ascribed to them in the Objection.

4. Failure to disallow and expunge the Claims could result in the Claimant being paid when it is not entitled to payment. As such, I believe that the disallowance and expungement of the Claims is appropriate.

5. Accordingly, I request that the Claims be disallowed and expunged.

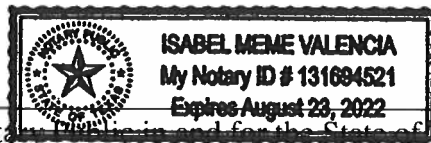
6. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the facts set forth in the foregoing declaration are true and correct to the best of my knowledge, information, and belief.

Dated: June 3, 2019



Tensie Axton, C.P.A

SUBSCRIBED TO AND SWORN TO before the undersigned authority on this 3 day of June 3, 2019.



Notary Public in and for the State of Texas

UNITED STATES BANKRUPTCY COURT
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(Jointly Administered)

**ORDER SUSTAINING LIQUIDATING TRUSTEE'S OBJECTION TO THE
INTERNAL REVENUE SERVICE'S CLAIM NOS. 160 AND 840**

Upon consideration of the *Liquidating Trustee's Objection to the Internal Revenue Services' Claim Nos. 160 and 840* (the "Objection"), the Court concludes that the Claimant failed to sufficiently demonstrate that the Debtors are obligated on the Claim. It is therefore

ORDERED that Claim Nos. 160 and 840, filed by the Internal Revenue Service, are **DISALLOWED** in their entirety and expunged.

SIGNED:

MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE