

STATE OF VERMONT
WASHINGTON COUNTY, SS

VT SUPERIOR COURT
WASHINGTON UNIT
CIVIL DIVISION

AW-ORDER
2018 MAY 15 P 3:05

COMMISSIONER OF THE)
DEPARTMENT OF FINANCIAL)
REGULATION,)
PLAINTIFF,)
v.)
ELITE TRANSPORTATION RISK)
RETENTION GROUP, INC.,)
RESPONDENT.)

SUPERIOR COURT
DOCKET NO. 175-3-18 Wncv

FILED

ORDER OF LIQUIDATION

This matter came before the Court on the Petition for Order of Liquidation for Elite Transportation Risk Retention Group, Inc., (“Petition”) of the Commissioner of the Vermont Department of Financial Regulation (“Commissioner”), for an order of liquidation for Elite Transportation Risk Retention Group, Inc. (“Elite RRG”) pursuant to 8 V.S.A. § 7056. In support of the Petition, the Commissioner filed an Affidavit of J. David Leslie, Special Deputy Commissioner. Based on the evidence presented the Court finds that Elite RRG is insolvent, that its board of directors has consented to liquidation under 8 V.S.A. ch. 145, and that it is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public.

THEREFORE, it is hereby ORDERED:

1. Appointment of Commissioner as Liquidator. Pursuant to 8 V.S.A. § 7057(a), the Commissioner, and any successor in the office of Commissioner, is hereby appointed the Liquidator of Elite RRG (the “Liquidator”).

2. Liquidator to Take Possession of Assets. Pursuant to 8 V.S.A. § 7057(a), the Liquidator is directed forthwith to take possession of the assets of Elite RRG wherever located, and to administer these assets under the general supervision of this Court and pursuant to the terms of this Order and 8 V.S.A. ch. 145.

3. Title to Property and Assets. Pursuant to 8 V.S.A. § 7057(a), the Liquidator is vested by operation of law with the title to all of the property, contracts and rights of action, and to all of the books and records of Elite RRG, wherever located, as of the date of entry of this Order.

4. Accountings. Pursuant to 8 V.S.A. § 7057(e), within one year of this Order and at least annually thereafter the Liquidator shall file an accounting with the Court. The accountings shall include (at a minimum) the assets and liabilities of Elite RRG and all funds received or disbursed by the Liquidator during the current period.

5. Powers of the Liquidator. Pursuant to 8 V.S.A. § 7060:

a. The Liquidator shall have the power to:

i. Appoint a special deputy to act for the Liquidator and to determine reasonable compensation for the special deputy. The special deputy shall have all the powers of the Liquidator granted by this section. The special deputy shall serve at the pleasure of the Liquidator;

ii. Employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and such other personnel as may be deemed necessary by the Liquidator to assist in the liquidation;

iii. Fix the reasonable compensation of employees and agents; legal counsel, actuaries, accountants, appraisers and consultants with the approval of the Court;

iv. Pay reasonable compensation to persons appointed and to defray from the funds or assets of Elite RRG all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of Elite RRG. In the event that the property of Elite RRG does not contain sufficient cash or liquid assets to defray the costs incurred, the Commissioner may advance the costs so incurred out of any appropriation for the maintenance of the department. Any amounts so advanced for expenses of administration shall be repaid to the Commissioner for the use of the department out of the first available moneys of Elite RRG;

v. Hold hearings, subpoena witnesses to compel their attendance, administer oaths, examine any person under oath, and compel any person to subscribe to testimony after it has been correctly reduced to writing; and in connection with such proceedings, require the production of any books, papers, records or other documents which the Liquidator deems relevant to the inquiry;

vi. Audit the books and records of all agents of Elite RRG insofar as those records relate to the business activities of Elite RRG;

vii. Collect all debts and moneys due and claims, belonging to Elite RRG, wherever located, and for this purpose:

a. institute timely action in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts;

b. do such other acts as are necessary or expedient to collect, conserve or protect its assets or property, including the power to sell, compound, compromise or assign debts for purposes of collection upon such terms and conditions as the Liquidator deems best; and

- c. pursue any creditor's remedies available to enforce the Liquidator's claims;
- viii. Conduct public and private sales of the property of Elite RRG;
- ix. Use assets of the estate of Elite RRG to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities,
- x. Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with, any property of Elite RRG at its market value or upon such terms and conditions as are fair and reasonable. The Liquidator shall also have power to execute, acknowledge, and deliver any and all deeds, assignments, releases and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation;
- xi. Borrow money on the security of Elite RRG 's assets or without security and execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation. Any such funds borrowed may be repaid as an administrative expense and have priority over any other claims in Class 1 under the priority of distribution;
- xii. Enter into such contracts as are necessary to carry out this Order, and affirm or disavow any contracts to which the insurer is a party;
- xiii. Continue to prosecute and institute in the name of Elite RRG or in the Liquidator's own name any and all suits and other legal proceedings, in this state or elsewhere, and abandon the prosecution of claims the Liquidator deems unprofitable to pursue further. If Elite RRG is dissolved, the Liquidator shall have the power to apply to

any court in this state or elsewhere for leave to substitute the Liquidator for Elite RRG as plaintiff;

xiv. Prosecute any action which may exist in behalf of the creditors, members, policyholders or shareholders of Elite RRG against any officer of Elite RRG, or any other person;

xv. Remove any or all records and property of Elite RRG to the offices of the Liquidator or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation;

xvi. Deposit in one or more banks in this state such sums as are required for meeting current administration expenses;

xvii. Invest all sums not currently needed, unless the Court orders otherwise;

xviii. File any necessary documents for record in the office of any recorder of deeds or record office in this state or elsewhere where property of the insurer is located;

xix. Assert all defenses available to Elite RRG as against third persons, including statutes of limitation, statutes of frauds, and the defense of usury. A waiver of any defense by Elite RRG after a petition in liquidation has been filed shall not bind the Liquidator;

xx. Exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by the general law;

xxi. Intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered;

xxii. Enter into agreements with any receiver or commissioner of any other state relating to the liquidation or dissolution of Elite RRG if Elite RRG was doing business in both states; and,

xxiii. Exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with the provisions of 8 V.S.A. ch. 145.

b. The enumeration of the powers and authority of the Liquidator shall not be construed as a limitation upon the Liquidator, nor shall it exclude in any manner the Liquidator's right to do such other acts not herein specifically enumerated or otherwise provided for, as may be necessary or appropriate for the accomplishment of or in aid of the purpose of Elite RRG's liquidation.

6. Notice to Creditors and Others. Pursuant to 8 V.S.A. § 7061:

a. The Liquidator shall give or cause to be given notice of the issuance of this Order as soon as possible:

i. By sending the form of notice ("Notice") and proof of claim form ("POC Form") included in Exhibit A to the Petition by first class mail and e-mail to the insurance commissioner of each jurisdiction in which Elite RRG is doing business;

ii. By sending the Notice and POC Form to all insurance agents shown as agent of records on Elite RRG policies with coverage effective on and after January 1, 2013 at their last known address as indicated by records of Elite RRG;

iii. By sending the Notice and POC Form by first class mail to all persons known or reasonably expected to have claims against Elite RRG, including to all policyholders with coverage effective on and after January 1, 2013 at their last known address as indicated by the records of Elite RRG;

iv. By publication in a newspaper of general circulation in the county in which Elite RRG has its principal place of business and in such other locations as the Liquidator deems appropriate; and,

v. By posting the Notice, POC Form, and this Order on Elite RRG's webpage: www.etrreg.com.

b. The notice to potential claimants shall require claimants to file with the Liquidator their claims, together with proper proofs thereof pursuant to 8 V.S.A. § 7075 and this Order, before a date specified by the Liquidator in the notice, which must be no less than 120 days after the date of this Liquidation Order. All claimants shall have a duty to keep the Liquidator informed of any changes of address.

c. If notice is given in accordance with this section, the distribution of assets of Elite RRG under 8 V.S.A. ch. 145 shall be conclusive with respect to all claimants, whether or not they received notice.

7. Approval of the Plan of Liquidation. The Liquidator is authorized to implement the Plan of Liquidation attached to the Petition as Exhibit A, which is hereby found to be in the best interests of the policyholders of Elite RRG and the public.

8. Seizure Order Vacated. Entry of this Order of Liquidation vacates the Order entered in this proceeding on March 29, 2018 ("Seizure Order") pursuant to 8 V.S.A. § 7042.

9. Stay of Proceedings Involving Claims Defended by Elite RRG. Pursuant to 8 V.S.A. § 7033(a)(6) and (a)(11), for a period of sixty (60) days from the date of the entry of this Order for Liquidation, to the extent of the jurisdiction of this Court and the comity given to its orders, all persons are hereby enjoined from the further prosecution of any action that

involves a claim being defended by Elite RRG as of March 29, 2018, the date the Seizure Order was entered. Such time is necessary for the orderly transition of the defense of claims.

10. Actions By and Against Liquidator.

a. Pursuant to 8 V.S.A. § 7063, upon issuance of this Order, no action at law or equity shall be brought against Elite RRG or the Liquidator, whether in this state or elsewhere, nor shall any such existing actions be maintained or further presented after issuance of such Order. Whenever, in the Liquidator's judgment, protection of the estate of Elite RRG necessitates intervention in an action against Elite RRG that is pending outside this state, the Liquidator may intervene in the action. The Liquidator may defend any action in which the Liquidator intervenes under this section at the expense of the estate of Elite RRG.

b. Elite RRG, its officers, directors, trustees, agents, employees, and all other persons, are hereby enjoined and otherwise prevented from:

i. instituting or further prosecuting any actions or proceedings of any nature whatsoever, including matters in arbitration, against Elite RRG, its assets or the Liquidator or any Special Deputy;

ii. interfering with the Liquidator or with a proceeding under 8 V.S.A. ch. 145;

iii. causing waste of Elite RRG's assets;

iv. obtaining preferences, judgments, attachments, garnishments or liens against Elite RRG or its assets;

v. levying execution against Elite RRG or its assets;

vi. withholding from the Liquidator books, accounts, documents, or other records or information relating to the business of Elite RRG, or failing to preserve such material;

vii. any other threatened or contemplated action that might lessen the value of Elite RRG's assets or prejudice the rights of policyholders, creditors or shareholders, or the administration of the liquidation; or

viii. the setoff of any debt owing to Elite RRG; provided, however, that nothing herein shall prohibit the setoff of mutual debts or mutual credits in accordance with 8 V.S.A. § 7069.

11. Attachment, Garnishment and Levy of Execution. Pursuant to 8 V.S.A. § 7098, during the pendency in this or any other state of an Elite RRG liquidation, whether called by that name or not, no action or proceeding in the nature of an attachment, garnishment or levy of execution shall be commenced or maintained in this state against Elite RRG or its assets.

12. Effectiveness of Provisions of this Order. Each of the provisions of this Order of Liquidation shall be effective unless it is found by this Court in a proceeding expressly addressing the issue to be prohibited by 8 V.S.A. ch. 145.

13. Retention of Jurisdiction. This Court shall retain jurisdiction for all purposes necessary to effectuate and enforce this Order.

14. Finality of Order. Notwithstanding the retention by this Court of jurisdiction under section 13 hereof, or any other provisions hereof, this is a Final Order.

15. Incorporation of Provisions of 8 V.S.A. ch. 145. To the extent that any applicable provisions of 8 V.S.A. ch. 145 are not explicitly incorporated in this Order of Liquidation, such provisions shall be deemed to be incorporated herein.

Dated at Montpelier, Vermont, this 15th day of May, 2018.

May Mills Leachant
Superior Court Judge