

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF GEORGIA

IN RE: :
 :
ALPHA PROTECTIVE SERVICES, INC. : Chapter 7, by conversion
 : Case No. 12-70482-JTL

**APPLICATION FOR APPROVAL OF EMPLOYMENT OF COUNSEL
FOR TRUSTEE FOR SPECIFIED SPECIAL PURPOSES**

COMES NOW Neil C. Gordon, as Trustee ("Trustee"), appointed in the above captioned bankruptcy case (the "Proceeding"), and as Trustee of the estate of the above-referenced Debtor, and makes this application (the "Application") to employ Fife M. Whiteside, P.C. ("FMW") of Columbus, Georgia, as Special Counsel ("Counsel") for the Trustee, and, in support thereof, shows this Court the following:

1. On April 2, 2012, Alpha Protective Services, Inc. ("Debtor") filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). The Debtor operated as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108, until December 18, 2012, when the Court granted the oral motion of a creditor, Bank of American ("BOA"), for the appointment of Trustee as a trustee for the debtor as an operating Chapter 11 debtor. On December 20, 2012 (the "Conversion Date"), Trustee's Motion to Convert Case to Chapter 7 was granted, the case was converted to Chapter 7, and Trustee was appointed as the Chapter 7 trustee.

2. Prior to the appointment of Trustee or conversion, on June 26, 2012, the Debtor had filed an Application for Approval of Employment of Counsel for Debtor for Specified Special Purposes (the "Original Application") by which the Debtor sought to appoint FMW as special counsel for the Debtor on certain matters. BOA objected and two Orders (cumulatively "Appointment Orders") were entered by which FMW was appointed as counsel, on June 26,

2012 and August 9, 2012. Under the Appointment Orders, it was anticipated that FMW would prosecute on behalf of the estate certain Chapter 5 claims on a contingency basis to be divided with General Counsel for the Debtor as approved by the Court. The overall contingency was set at 33.3% if the matter was settled prior to trial, 40% if settled after trial, and 50% if settled after an appeal notice was filed. Costs were to be repaid. BOA agreed to fund \$10,000 of the litigation costs on a "carve-out" from cash collateral. That "carve-out" was never used and terminated on the Conversion Date.

3. After the Conversion Date, FMW approached Trustee to continue his engagement to pursue Chapter 5 claims in this proceeding, and the Trustee agreed, but on a modified compensation basis as compared to that provided in the Appointment Orders: FMW would be compensated at 25% if a matter is settled prior to trial, 33.3% if a matter is settled after trial commences, and 40% if a matter is settled after a notice of appeal is filed. FMW would make advances on litigation costs until recoveries generated funds sufficient to cover those costs. FMW would act as local counsel on local matters (appearing to make announcements, etc.) at the election of the Trustee, where such matters are not within his specified special appointment, so as to conserve assets of the estate, through savings in travel time, etc. Counsel would provide up to four (4) hours per month on such matters at no additional charge and then after that at his hourly rate for highly contingent, but hourly, Chapter 7 trustee work, in nominally "no asset" estates, of \$350.00 per hour.

4. Trustee alleges as follows to satisfy the requirements of Fed. R. Bk. Pro. 2014(a):
- a) FMW is needed to assist the Trustee in asserting preference claims, and other Chapter 5 avoidances, including those against insiders, one claim having a nominal value of over \$1,100,000.
 - b) FMW is to be employed for the reason that this Special Counsel has over 35

years' experience in bankruptcy matters and has brought or defended over 300 preference cases.

- c) FMW was also selected by the Trustee because of a willingness to work on a contingency basis, to make litigation cost advances, and provide incidental local counsel services.

5. FMW, as counsel, will render the following legal services (on a special retainer) to the Trustee:

- a) Represent the Trustee in asserting preference claims under 11 U.S.C. § 547 and objecting to claims on preference related bases;
- b) Represent the Trustee in asserting fraudulent claims under 11 U.S.C. § 548 and objecting to claims on related matters;
- c) Represent the Trustee in enforcing claims (as relief is granted) under 11 U.S.C. § 550;
- d) Represent the Trustee on other matters that can be asserted under Title 5 of the Bankruptcy Code;
- e) Represent the Trustee on related State law claims under 11 U.S.C. § 544 and otherwise; and
- f) Act as local counsel at the pleasure of the Trustee to appear on uncontested matters and make announcements, for up to four (4) hours per month.

6. FMW does not represent another entity in connection with this Proceeding and is disinterested as defined in Section 101 of the Bankruptcy Code, and does not represent or hold any interest adverse to the interests of the estate of the Debtor with respect to the matters on which FMW is to be employed. FMW has no connection with the Debtor, creditors, or other parties in interest, its attorneys, accountants, agents or the U.S. Trustee, or any of its agents or

employees except that FMW spoke with potential Credit Committee members about formation and his representation of a committee. FMW represented the Debtor as Debtor-in-Possession, for which he has waived all compensation. See Affidavit of Fife M. Whiteside, attached as Exhibit "A."

7. Counsel will file a fee application from time to time under Sections 330 and 331 of the Bankruptcy Code and will follow the fee and expense reimbursement application guidelines set by the Court and the U.S. Trustee, and as provided in the Bankruptcy Code.

WHEREFORE, the Trustee prays that this Court:

- (a) Authorize the employment of FMW as Counsel to represent the Trustee for special purposes set forth above;
- (b) Authorize the employment of FMW on the bases indicated herein subject to the ultimate approval of this Court; and
- (c) Grant such other and further relief as is just and proper.

This the 5th day of February, 2013.

Respectfully submitted,

ARNALL GOLDEN GREGORY LLP

By: */s/Neil C. Gordon*

Neil C. Gordon
Georgia Bar No. 302387
171 17th Street, N.W., Suite 2100
Atlanta, Georgia 30363-1031
Ph: 404.873.8596/Fax: 404.873.8597
Email: neil.gordon@agg.com

Attorneys for Chapter 7 Trustee Neil C. Gordon

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF GEORGIA

IN RE: :
ALPHA PROTECTIVE SERVICES, INC. : Chapter 11 Case No.12-70482
Debtor. :

**AFFIDAVIT OF FIFE M. WHITESIDE
AS PROPOSED COUNSEL FOR THE TRUSTEE OF THE ESTATE OF DEBTOR**

Personally appeared before me, the undersigned notary public, Fife M. Whiteside ("Affiant"), who, after being duly sworn, did declare, state, and propose as follows:

1. Affiant states that he is an attorney duly admitted to practice in the State of Georgia, and before the United States District Court for the Middle District of Georgia. Affiant states that he maintains his practice of law in Columbus, Georgia, and that his mailing address is P.O. Box 5383, Columbus, GA 31906. He is the principal of Fife M. Whiteside, P.C. ("Firm")

2. Affiant further states that neither he nor his firm have any connection with Alpha Protective Services, Inc., Debtor (the "Debtor") or Neil C. Gordon, Trustee of the Estate of Debtor, in the above-captioned bankruptcy case, other parties in interest herein, or the respective attorneys or accountants of parties in interest, the United States Trustee, or any other person employed by the United States Trustee. Excepted only from this is the following:

- a. that Affiant contacted various prospective creditor committee members to discuss engagement by the committee, but no committee was ever formed; and
- b. that Affiant represented the Debtor for a specified special purpose, similar to that for which engagement is requested here, but all fees and reimbursements related to that work have been and are waived.

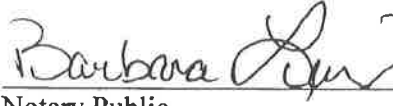
3. Affiant further states that neither he nor his firm represent or hold any interest adverse to the Debtor or the Estate of the Debtor upon matters upon which Affiant is to be engaged.

AFFIANT FURTHER SAYETH NOT, this 31st day of January, 2013.



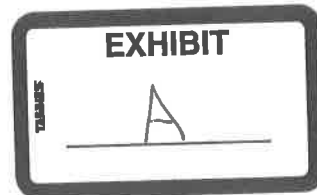
Fife M. Whiteside
Georgia Bar No. 756025

Sworn to and subscribed before me
this 31st day of January, 2013.



Notary Public
Commission Expiration Date: 12/05/2016

BARBARA LEWIS
NOTARY PUBLIC-OFFICIAL SEAL-
MUSCOGEE COUNTY, GA
My Commission Expires December 5, 2016



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CERTIFICATE OF SERVICE

This is to certify that on this date, acting on behalf of the Trustee, I served a true and correct copy of the within and foregoing *Application for Approval of Employment of Special Counsel for Trustee for Specified Purposes and Declaration in Support Thereof*, by causing same to be deposited in the U.S. Mail, with adequate posted prepaid, on the following persons or entities at the addresses stated:

Office of the United States Trustee
440 Martin Luther King Blvd.
Suite 302
Macon, Georgia 31201-7910

Macon, Georgia 31201

Alpha Protective Services, Inc.
P.O. Box 6670
Thomasville, Georgia 31758

Fife M. Whiteside
Box 5383
Columbus, GA 31906

Wesley J. Boyer
Katz, Flatau & Boyer, LLP
353 Cotton Avenue

Beth E. Rogers, Esq.
ROGERS LAW OFFICES
The Equitable Building
100 Peachtree Street, Suite 1950
Atlanta, GA 30303

This 5th day of February, 2012.

By: /s/Neil C. Gordon
Neil C. Gordon
Georgia Bar No. 302387
171 17th Street, N.W., Suite 2100
Atlanta, Georgia 30363-1031
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