

**Matter of Greater Harlem Nursing Home &
Rehabilitation Ctr., Inc.**

2020 NY Slip Op 32070(U)

June 28, 2020

Supreme Court, New York County

Docket Number: 156915/2019

Judge: Melissa A. Crane

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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: IAS PART 15

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In the Matter of the Application of

GREATER HARLEM NURSING HOME AND
 REHABILITATION CENTER, INC.,

Petitioner,

Index No. 156915/2019

For Approval of Plan of Dissolution and
 Distribution of Assets, pursuant to
 Section 1002 of the Not-For-Profit
 Corporation Law.

Mot seq. 002

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MELISSA A. CRANE, J.:

Petitioner, Greater Harlem Nursing Home and Rehabilitation Center, Inc. (“Greater Harlem”) petitions the court, pursuant to section 1002 of the Not-For-Profit Corporation Law (“NPCL”), for a judgment and order approving its plan for dissolution and distribution of certain assets.

On February 8, 1973, Greater Harlem was incorporated as a charitable corporation to operate a licensed nursing home and adult care facility that provided long-term residential care. On March 14, 2018, the Supreme Court of New York County approved Greater Harlem’s application to sell its nursing home business to “Harlem Center for Nursing and Rehabilitation, LLC,” and the nursing home’s property to “Harlem Center Properties, LLC,” for \$32,000,000 (*see Matter of Greater Harlem Nursing Home and Rehabilitation Center, Inc.*, Sup Ct, NY County, March 14, 2018, Kotler, J., Index No. 155305/2016).

After the closing on June 27, 2018, Greater Harlem submitted its plan for dissolution and distribution of assets (the “Plan”) to the Charities Bureau of the New York State Attorney General’s Office in accordance with NPCL § 1002 (d). The Plan provides for payment in full of all outstanding creditors of Greater Harlem in the aggregate amount of \$697,657.68 (*see* Petition,

exhibit E, NYSCEF Doc. No. 18 [Liabilities List]). Following payment to those creditors, Greater Harlem intends to distribute approximately \$835,000.00 to various charities that generally promote the same charitable purposes as Greater Harlem, as provided in NPCL § 1001 (d) (3).

Greater Harlem met with Assistant Attorney General Linda Rosen Heinberg (“Heinberg”) of the Charities Bureau who approved proposed distributions in the amount of \$337,996.11. However, Heinberg said she needed additional back-up information as to a \$180,885.96 reimbursement to the buyer in connection with the settlement of labor law litigation. She also required more information as to the disputed portions of the proposed distributions to two creditors, HHM CPAs LLP (“HHM”) for accounting fees, and Nicholas M. Cherot, Esq. (“Cherot”) for legal fees¹ (*see* Heinberg affirmation, exhibit D, NYSCEF Doc. No. 30 [March 20, 2019 email]).

According to the petition, the Attorney General disputes \$20,457.50 of \$29,732.50 owed to HHM for accounting fees related to calculating Closing and post-Closing adjustments (*see* Petition, NYSCEF Doc. No. 23, ¶ 17). According to the objection of the Attorney General, based on the Liabilities List annexed to the Petition, HHM is actually seeking \$36,820, not \$29,732.50 like Greater Harlem indicated. The Attorney General contends that \$8,930 of that amount was approved and paid at the Closing and, therefore, objects to an additional payment of that amount (Heinberg affirmation, ¶ 18, referencing Closing Statement annexed as exhibit B, NYSCEF Doc. No. 28).

The Attorney General also objects to “certain accounting and legal fees because adequate payment has already been made to these professionals and the time spent in relation to the task of

¹ Heinberg disputed \$29,732.50 of the \$36,820 in accounting fees of HMM related to calculation of closing and post-closing adjustments, and \$86,147.50 of \$94,461.50 in legal fees of Cherot (also listed as Cherot & Michael P.C.) (*see* Heinberg email, dated March 20, 2019, NYSCEF Doc. No. 30).

managing a non-operating entity was excessive” (Heinberg affirmation, ¶ 3). The Attorney General indicates that it will, however, approve an additional payment of \$9275 for services rendered after the June 2018 Closing.²

Greater Harlem contends that it had previously explained to the Attorney General that the \$8930 was not previously paid at the Closing, “but rather was a credit between the buyer and seller for an unrelated payment made to HMM by buyer at an earlier date on Greater Harlem’s behalf because Greater Harlem did not have the money available to make the payment” (Didora Reply Affirmation, ¶ 8). However, Greater Harlem submits no documents in support. Even assuming the assertion is accurate, Greater Harlem’s claim raises the question of whether the buyer, on behalf of Greater Harlem, previously compensated HMM. Nor does Greater Harlem indicate whom, if anyone, is entitled to payment at this point. Further, the basis for which Greater Harlem seeks \$29,732.50 for payment to HMM is unclear, as the Liabilities List states that HMM claims \$36,820 (*see* NYSCEF DOC. NOS. 18 & 29).³

The Attorney General also objects to certain proposed payments to Cherot for legal fees. According to the Petition, the Attorney General disputes \$65,707.50 of \$86,147.50 set forth in the outstanding invoices from Cherot, for fees incurred after December 1, 2015.⁴

The petition contends that the Attorney General incorrectly believes that Cherot received \$45,492 at the Closing, but that the \$45,492 actually relates to a credit between the buyer and Greater Harlem for amounts Cherot received for operations’ costs prior to when the voluntary receivership of Greater Harlem commenced. However, Greater Harlem does not submit

² According to HMM’s statement of charges, it submitted three invoices for work done after June 2018, that total \$9037.50 (*see* NYSCEF Doc. No. 20 [HMM Statement])

³ In its Petition, Greater Harlem contends that it is only seeking payment of \$29,732 for HMM although HMM’s Statement submitted on June 24, 2019 seek a total of \$36,820.00 (*see* NYSCEF DOC. NO. 20). Nor is it clear why Greater Harlem is not seeking payment for the two invoices submitted after that date which total \$7087.50 (*id.*)

⁴ The court notes that the letter containing the bill for services rendered, dated June 25, 2019, from Cherot, (NYSCEF Doc. No. 21) seeks a total of \$94,861.50 for the dates of December 1, 2015 through June 25, 2019. The reason for this discrepancy in total fees is not clear.

documentation to support that assertion. Nor does it explain how the alleged credit operated, and why Cherot is now entitled to payment. Finally, the petition states that Greater Harlem did not pay Cherot at the time of the Closing because the amounts owed were not expressly set forth in the Sale Petition.

In the affirmation objecting to the Plan, the Attorney General asks why bills for work performed beginning in December 2015 were not submitted until nearly four years later, in June 2019. The Attorney General does approve payment of \$20,400 for post-Closing services, that covers the vast majority of billings for time spent post-Closing, but does not provide a reason for reducing the fees for post-Closing work or disapproving the remaining \$28,929 Cherot billed,⁵ beyond the general objection that “adequate payment has already been made to these professionals and the time spent in relation to the task of managing a non-operating entity was excessive” (Heinberg affirmation, NYSCEF Doc. No. 26, ¶ 3).

The overall discrepancies in amounts that HMM and Cherot billed and the amounts Greater Harlem seeks, the lack of specific documentation and explanation as to the significance of the alleged credits between the buyer and Greater Harlem that the Attorney General believes were made at the time of Closing, and the Attorney General’s failure to give specifics regarding the purportedly excessive time that these professionals spent on a non-operating entity, make it impossible for the court to determine, on these submissions alone, whether to approve the relief requested in the petition regarding payments to HMM and Cherot. The court, therefore, concludes that the issue of the proposed distributions to HMM and Cherot must be determined at a hearing.

Accordingly, it is hereby

⁵ \$28,929 represents the remaining balance, from the \$94,861 minus \$45,492, that the Attorney General contends was approved and paid, and the \$20,440 in post-closing charges which the Attorney General does approve.

ORDERED that the issue of proposed distributions to two creditors, HHM CPAs LLP and Nicholas M. Cherot, Esq. is set for a hearing on September 14, 2020 at 2:15 PM by Skype.

Dated: June 28, 2020

ENTER:



J.S.C.