



SO ORDERED.

SIGNED this 02 day of October, 2008.

A. Thomas Small

A. Thomas Small
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

IN RE: CASTLETON GROUP, INC.)	CASE NO.: 07-02896-5-ATS
)	
IN RE: CASTLETON AFFILIATES, LLC)	CASE NO.: 07-02894-5-ATS
)	
IN RE: CASTLETON ASSOCIATES, LLC)	CASE NO.: 07-02895-5-ATS
)	(Jointly Administered)
)	
Debtors)	CHAPTER 7

ORDER AUTHORIZING AND DIRECTING THE REPLACEMENT OF SUZANNE CLIFTON AS NAMED FIDUCIARY AND TRUSTEE TO THE CASTLETON 401(K) PLAN

THIS MATTER having come on before the undersigned Bankruptcy Judge upon a Motion Authorizing and Directing the Replacement of Suzanne Clifton as Named Fiduciary and Trustee to the Castleton 401(k) Plan (the "Motion"), filed by Richard D. Sparkman, Chapter 7 Trustee ("Chapter 7 Trustee") for The Castleton Group, Inc., Castleton Affiliates, LLC, and Castleton Associates, LLC ("the Debtors") in the above referenced bankruptcy proceedings, and it appearing:

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. § 704(a)(11). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of the Debtors' Chapter 7 cases and this Motion in this district are proper pursuant to 28 U.S.C. § 1408 and 1409.

2. On or about December 22, 2007, the Debtors filed voluntary petitions for relief pursuant to Chapter 7 of the Bankruptcy Code. The Chapter 7 Trustee was appointed Chapter 7 Trustee in each such case, and has qualified and is now acting in such capacity. Pursuant to an order of the Court dated February 28, 2008, the three cases are being administered jointly.

3. Pre-petition, effective January 1, 1998, The Castleton Group, Inc. ("Castleton Group") established and adopted the 401(k) Plan. The 401(k) Plan is a "multiple employer" plan, and the Debtors and many of the Debtors' clients adopted the 401(k) Plan for their respective employees. The Debtors and the Debtors' clients who adopted the 401(k) Plan are referred to as "Participating Employers" in the 401(k) Plan.

4. Suzanne Clifton is currently serving as the 401(k) Plan's trustee and "named fiduciary".

5. Transamerica Financial Life Insurance Company and certain of its affiliates ("Transamerica") provide recordkeeping and third-party administration services with respect to the 401(k) Plan pursuant to Transamerica's September 22, 2005 services agreement with Castleton Group and Transamerica's September 1, 2005 group annuity contract issued to the 401(k) Plan (collectively, the "Service Agreements"). In performing such services, Transamerica acts at the direction of the 401(k) Plan's trustee and the named fiduciary of the 401(k) Plan. Transamerica has informed the Chapter 7 Trustee that it is not required or authorized to take discretionary actions in connection with the operation of the 401(k) Plan.

6. At the time of the commencement of the above-captioned cases, Castleton Group was serving as the "plan administrator" of the 401(k) Plan. Pursuant to 11 U.S.C. § 704(a)(11), the Chapter 7 Trustee is obligated to continue to perform the obligations required of Castleton Group as administrator of the 401(k) Plan.

7. The 401(k) Plan is in the process of being terminated. The Chapter 7 Trustee has concluded that it would be in the best interests of participants in the 401(k) Plan to appoint a new 401(k) Plan trustee and a new 401(k) Plan named fiduciary, experienced in the administration and termination of 401(k) plans, to administer the 401(k) Plan and its termination in accordance with applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

8. The Chapter 7 Trustee wishes to remove Suzanne Clifton as trustee of the 401(k) Plan and to employ Jeanne B. Bryant as successor trustee (the "Successor 401(k) Trustee"). Ms. Bryant is willing to serve as Successor 401(k) Trustee.

9. The Chapter 7 Trustee wishes to remove Suzanne Clifton as named fiduciary of the 401(k) Plan and to employ Jeanne B. Bryant as successor named fiduciary and as plan administrator. Ms. Bryant is willing to serve as the 401(k) Plan's named fiduciary and plan administrator.

10. Before deciding to recommend Ms. Bryant to this Court, the Chapter 7 Trustee considered the credentials of Ms. Bryant and two other quality candidates. Ms. Bryant's *Curriculum Vitae* is attached to the Motion as Exhibit A. Ms. Bryant has served in a similar capacity with respect to a number of other 401(k) plans sponsored by employers in bankruptcy.

She has terminated (28) retirement plans covering over 4400 participants over the last five years, and has been appointed as independent fiduciary by courts in a number of jurisdictions. The Chapter 7 Trustee has concluded that Ms. Bryant is well-qualified to serve as Successor 401(k) Trustee and as the 401(k) Plan's named fiduciary and plan administrator.

11. While serving as Successor 401(k) Trustee and as the 401(k) Plan's named fiduciary and plan administrator, Ms. Bryant will employ the services of her firm, Receivership Management, Inc. ("RMI"). The proposed fee schedule for services to be performed by Ms. Bryant and by RMI is attached to the Motion as Exhibit B. All such fees and expenses, provided they are reasonable, will be paid from the assets of the 401(k) Plan.

12. While serving as Successor 401(k) Trustee and as the 401(k) Plan's named fiduciary and plan administrator, Ms. Bryant will employ other service providers from time to time as Ms. Bryant deems necessary or appropriate and in the best interests of the 401(k) Plan and its participants and beneficiaries. Ms. Bryant will have complete discretion in employing such service providers. The fees and expenses of such service providers, provided they are reasonable, will be paid from the assets of the 401(k) Plan.

13. The Chapter 7 Trustee has concluded that the 401(k) Plan and the related trust agreement should be amended to clarify the allocation of responsibilities among the named fiduciary, Successor 401(k) Trustee and other parties involved in the administration of the 401(k) Plan. The Chapter 7 Trustee seeks an order from this Court directing him to amend the 401(k) Plan and to execute such other documents (including a trust agreement with the Successor 401(k) Trustee) as the Chapter 7 Trustee deems necessary or appropriate to:

- a. Remove Suzanne Clifton as 401(k) Plan trustee and as named fiduciary of the 401(k) Plan;
- b. Designate and appoint Ms. Bryant as the Successor 401(k) Trustee; and
- c. Designate and appoint Ms. Bryant as successor named fiduciary with discretionary authority to control and manage the operation and administration of the 401(k) Plan, to act as "Plan Administrator" as defined in the 401(k) Plan, and to direct Transamerica in the performance of their services to the 401(k) Plan.

14. To the best of the Chapter 7 Trustee's knowledge, Ms. Bryant is a disinterested party and has no connections with the Debtors, creditors, Transamerica or any other party in interest, with their respective attorneys and accountants in the present cases, or with the 401(k) Plan or its fiduciaries, except as noted in Ms. Bryant's Affidavit of Disinterestedness attached to the Motion.

The Court finds that the Motion was duly served. Having heard the objections filed by various parties in this matter, and for sufficient reasons appearing,

IT IS ORDERED THAT:

- a. The Chapter 7 Trustee shall take, on behalf of Castleton Group as sponsor of the 401(k) Plan, the following actions:

i. The Chapter 7 Trustee shall remove Suzanne Clifton as 401(k) Plan trustee and named fiduciary of the 401(k) Plan, and from any other position of authority or responsibility under the 401(k) Plan;

ii. The Chapter 7 Trustee shall designate and appoint Jeanne B. Bryant as the Successor 401(k) Trustee and enter into a trust agreement with Ms. Bryant to effect such appointment;

iii. The Chapter 7 Trustee shall designate and appoint Jeanne B. Bryant as successor named fiduciary of the 401(k) Plan and as "Plan Administrator" as defined in the 401(k) Plan; and

iv. The Chapter 7 Trustee shall amend the 401(k) Plan as the Chapter 7 Trustee deems necessary or appropriate to effect the removal of Suzanne Clifton as trustee and named fiduciary of the 401(k) Plan (and from any other position of authority or responsibility under the 401(k) Plan), and to designate and appoint Ms. Bryant as successor named fiduciary with discretionary authority to control and manage the operation and administration of the 401(k) Plan, to act as "Plan Administrator" as defined in the 401(k) Plan, and to direct Transamerica in the performance of its services to the 401(k) Plan;

b. Suzanne Clifton, as the 401(k) Plan's current trustee and named fiduciary, shall work with Ms. Bryant to insure a smooth and orderly transition of fiduciary duties and responsibilities to Ms. Bryant;

c. Ms. Bryant shall serve in a fiduciary capacity for and with respect to the 401(k) Plan; the terms of Ms. Bryant's employment as Successor 401(k) Trustee and as the 401(k) Plan's named fiduciary and plan administrator will be as specified in the governing documents for the 401(k) Plan, and will be further subject to orders of this Court as well as the requirements of federal law, including ERISA; and, consistent with the requirements of ERISA, Ms. Bryant will not have any fiduciary duties or responsibilities under the Bankruptcy Code or otherwise to the Court or to the Debtors or their estates;

d. Ms. Bryant, in her capacity as Successor 401(k) Trustee and as the 401(k) Plan's named fiduciary and plan administrator, shall have full access to all 401(k) Plan data, information and calculations in the possession or under the control of the 401(k) Plan, Transamerica, any Participating Employer, or any other fiduciary or service provider ("401(k) Plan data, information and calculations" includes but is not necessarily limited to data, information and calculations bearing on or relating to contributions, account balances, plan assets and distribution of benefit payments);

e. Ms. Bryant, in her capacity as Successor 401(k) Trustee and as the 401(k) Plan's named fiduciary and plan administrator, is authorized to retain such persons and firms, including but not limited to RMI, as she deems reasonably necessary or appropriate to perform her duties with respect to the 401(k) Plan (including but not limited to the termination of the 401(k) Plan), without further approval of this Court;

f. The 401(k) Plan is authorized and directed to pay the reasonable compensation, fees and expenses of Ms. Bryant and such persons and firms retained by Ms. Bryant in the performance of services to or for the 401(k) Plan, subject to the following procedures:

i. Before causing the 401(k) Plan to pay compensation, fees or expenses to Ms. Bryant or any persons or firms retained by Ms. Bryant, Ms. Bryant shall provide written notice (the "Fee Notice") of such compensation, fees or expenses, by filing the Fee Notice with this Court, and by serving a copy to the United States Department of Labor (c/o the Employee Benefits Security Administration in Atlanta, Georgia), and to all of the Participating Employers in the 401(k) Plan;

ii. The Fee Notice shall include a detailed invoice itemizing the compensation, fees and expenses to be paid by the 401(k) Plan;

iii. Ms. Bryant shall not be required to file, serve or otherwise deliver the Fee Notice to any person or persons other than the Court, to the United States Department of Labor (c/o the Employee Benefits Security Administration in Atlanta, Georgia), and the Participating Employers;

iv. If, within fifteen (15) days after filing of a Fee Notice, no objection to the Fee Notice or payment by the 401(k) Plan of the compensation, fees or expenses described therein is filed with this Court, such compensation, fees and expenses shall be deemed reasonable expenses of the 401(k) Plan and shall be paid by the 401(k) Plan without further action or approval of this Court;

v. If an objection to a Fee Notice or payment by the 401(k) Plan of the compensation, fees or expenses described therein is filed with this Court within fifteen (15) days after filing of such Fee Notice, the Court shall hold a hearing on the matter and the compensation, fees and expenses described in the Fee Notice shall be paid by the 401(k) Plan only to the extent approved by this Court; and

vi. This paragraph (f) shall not apply to fees and expenses of Transamerica generated in the course of its performance under its pre-petition Service Agreements.

END OF DOCUMENT