

SO ORDERED.

SIGNED this 02 day of October, 2008.



A handwritten signature in black ink, appearing to read "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 CERTAIN ACTIONS IN CONNECTION WITH THE
ADMINISTRATION AND TERMINATION OF THE CASTLETON 401(K) PLAN**

THIS MATTER having come on before the undersigned Bankruptcy Judge upon motion of Richard Dewitte 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. On or about March 26, 2008, the Chapter 7 Trustee filed with this Court a Motion Authorizing and Directing Certain Actions in Connection with the Termination of the Castleton 401(k) Plan and the Withdrawal of Participating Employers from the Plan, and Directing the 401(k) Plan to Set Aside Funds for the Payment of Certain Plan Administration Expenses (the "First Motion"). Several formal objections to this First Motion were filed with the Court. Coincident with the filing of this Motion, the Chapter 7 Trustee is withdrawing the First Motion.

4. 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.

5. The Debtors provided payroll and human resources services to their clients. In order to provide services to their clients, the Debtors employed a number of individuals who worked under the direct supervision and control of the Debtors handling internal matters for the Debtors ("Debtor Employees"). In providing services to their clients, the Debtors also acted as co-employers of the employees working for and under the supervision and control of their clients ("Client Employees"). Client Employees received their wages from the Debtors, and each Client Employee received a Form W-2 that included one of the Debtors' federal employer identification numbers.

6. Suzanne Clifton is currently serving as the 401(k) Plan's trustee and "named fiduciary". Coincident with the filing of this Motion, the Chapter 7 Trustee is filing a motion with this Court seeking to remove Ms. Clifton from such positions and to appoint a new 401(k) Plan trustee and a new named fiduciary.

7. 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").

8. 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 the administrator."

9. The 401(k) Plan is in the process of being terminated.

10. On or about December 20, 2007, it appears that Castleton Group sent Participating Employers a Withdrawal from Participation Notice, by which each Participating Employer could elect to withdraw from participation in the 401(k) Plan. Prior to February of 2008, several Participating Employers submitted withdrawal election paperwork to Transamerica.

11. By letter dated January 8, 2008, the Chapter 7 Trustee advised Transamerica that the Bankruptcy Code now makes bankruptcy trustees responsible for the termination of 401(k) plans in pending Chapter 7 cases, and instructed Transamerica to freeze until further notice the portion of the 401(k) Plan covering participants who were Debtor Employees.

12. By letter dated February 4, 2008, the Chapter 7 Trustee instructed Transamerica not to process any withdrawals of Participating Employers from the 401(k) Plan until further notice and furthermore indicated that Transamerica should freeze until further notice the portion of the 401(k) Plan covering participants who were Client Employees.

13. Before the Debtors ceased operations, the 401(k) Plan permitted participating employees to contribute to the 401(k) Plan a portion of their compensation on a tax-deferred basis ("Employee Deferrals"). Participating employees authorized the Debtors to withhold the Employee Deferrals from their wages, and the Debtors remitted the Employee Deferrals to the 401(k) Plan's trust (the "401(k) Plan Trust"). With respect to certain pay periods ending in November and December of 2007, the Chapter 7 Trustee has found evidence that the Debtors withheld but failed to remit Employee Deferrals to the 401(k) Plan Trust.

14. Before the Debtors ceased operations, the 401(k) Plan permitted and in some cases required Participating Employers to contribute to the 401(k) Plan on behalf of eligible employees ("Employer Contributions"). The Debtors remitted these Employer Contributions to the 401(k) Plan Trust. With respect to certain pay periods ending in November and December of 2007, the Chapter 7 Trustee has found evidence that the Debtors collected from Participating Employers but failed to remit to the 401(k) Plan Trust some of these Employer Contributions.

15. Before the Debtors ceased operations, the 401(k) Plan permitted participating employees to borrow from their 401(k) Plan account balances. Participating employees who borrowed from their account balances authorized the Debtors to withhold loan payments from their wages, and the Debtors remitted the loan payments to the 401(k) Plan Trust. With respect to certain pay periods ending in November and December of 2007, the Chapter 7 Trustee has found evidence that the Debtors withheld but failed to remit some of these employee loan payments to the 401(k) Plan Trust.

16. In one or more pay periods in December of 2007 and continuing into 2008, it appears that no Employee Deferrals or loan payments were withheld from employee wages for deposit into the 401(k) Plan. However, participating Client Employees continued to receive wages (from the Debtors, from new third-party payroll providers, or directly from Participating Employers for whom they worked). The Chapter 7 Trustee is concerned that the 401(k) Plan might be subject to disqualification by the Internal Revenue Service as a result of the Debtor's and Participating Employers' failure to withhold and deposit to the 401(k) Plan Employee Deferrals and loan repayments with respect to such wages, as well as their failure to make related Employer Contributions.

17. Each year, the 401(k) Plan must perform certain tests and take appropriate remedial actions ("Annual Testing") to satisfy applicable requirements under 26 U.S.C. §§ 401(a), 401(k), 401(m), 410(b), 415 and 416. Pursuant to its September 22, 2005 services agreement with Castleton Group, Transamerica does the Annual Testing work. Because some

contributions for 2007 have not been deposited to the 401(k) Plan and because required data has not been provided to Transamerica, Transamerica has not yet done the Annual Testing for 2007. If the Annual Testing for 2007 is not completed, the Chapter 7 Trustee is concerned that the Internal Revenue Service might have additional grounds for disqualifying the 401(k) Plan.

18. If the Internal Revenue Service were to disqualify the 401(k) Plan, the 401(k) Plan Trust would lose its tax-exempt status and the income of the trust would be taxable. In addition, Participating Employers and current and former 401(k) Plan participants and their beneficiaries might suffer serious adverse tax consequences.

19. As a “multiple employer” plan, the 401(k) Plan is subject to 26 U.S.C. § 413(c) and Treasury Regulation § 1.413-2. The regulation provides that:

The qualification of a section 413(c) plan, at any relevant time, under section 401(a), 403(a) or 405(a), as modified by section 413(c) and this section, is determined with respect to all employers maintaining the section 413(c) plan. Consequently, the failure by one employer maintaining the plan (or by the plan itself) to satisfy an applicable qualification requirement will result in the disqualification of the section 413(c) plan for all employers maintaining the plan.

Treas. Reg. § 1.413-2(a)(3)(iv). Accordingly, each and every compliance issue with respect to the 401(k) Plan poses a risk to all Participating Employers and to all current and former 401(k) Plan participants.

20. Allowing Participating Employers to withdraw from the 401(k) Plan at this time: (a) will make it more difficult for the 401(k) Plan to complete the Annual Testing for 2007; (b) might complicate the 401(k) Plan’s efforts to recover Employee Deferrals, Employer Contributions and participant loan payments owed to the 401(k) Plan; (c) will compromise the 401(k) Plan’s ability to take other steps necessary or appropriate to protect the continued qualification of the 401(k) Plan; and (d) might result in some 401(k) Plan participants bearing a disproportionate share of the expenses incurred in administering the 401(k) Plan’s termination.

21. Processing distributions and rollovers for the 401(k) Plan’s participants with account balances at this time: (a) might complicate and render more expensive the work needed to correct administrative errors and to protect the continued qualification of the 401(k) Plan; and (b) might result in some 401(k) Plan participants bearing a disproportionate share of the expenses incurred in administering the 401(k) Plan’s termination.

22. Consistent with customary practices in the administration of qualified 401(k) plans that are being terminated, and to protect the qualification of the 401(k) Plan and the respective interests of all Participating Employers and 401(k) Plan participants and beneficiaries with account balances, it is appropriate for the 401(k) Plan to suspend certain plan activities, including distributions, in-service withdrawals and loans, and Participating Employer withdrawals until: (a) the 401(k) Plan documents have been updated to reflect all changes in applicable laws and regulations through the termination date; (b) the Chapter 7 Trustee has taken the necessary steps to amend the 401(k) Plan documents so as to remove Suzanne Clifton as the 401(k) Plan’s trustee and named fiduciary and so as to appoint a new 401(k) Plan trustee and named fiduciary; (c) the Chapter 7 Trustee has taken the necessary steps to amend the 401(k) Plan documents so as to make it clear that the new named fiduciary of the 401(k) Plan will be the

“plan administrator”; (d) the Chapter 7 Trustee or its designee, on behalf of Castleton Group as the 401(k) Plan’s sponsor, has applied for and received an Internal Revenue Service determination letter confirming the 401(k) Plan’s continued qualification through the termination date, or has decided not to apply for such a determination; (e) the Chapter 7 Trustee and the 401(k) Plan’s fiduciaries are satisfied that operational errors that might jeopardize the 401(k) Plan’s qualification have been corrected to the extent possible; and (f) the Chapter 7 Trustee and the Plan’s fiduciaries have received confirmation from the Internal Revenue Service (in the form of a compliance statement issued pursuant to Revenue Procedure 2006-27, 2006-22 I.R.B. 945, or any successor Revenue Procedure) that the corrections are appropriate, or have decided not to apply for such confirmation.

23. Pursuant to the 401(k) Plan’s governing documents, the Debtors’ estates are not liable for the costs of administering the 401(k) Plan. The 401(k) Plan is governed in part by that certain Transamerica Financial Life Insurance Company Volume Submitter Multiple Employer Tax-Favored Savings and Discretionary Contribution Plan and Trust Agreement (Approved 04/17/2002; Revised 03/27/2003) (the “Plan Document”). Section 20.9 of the Plan Document provides that reasonable expenses incurred in the administration of the 401(k) Plan and the reasonable compensation of attorneys, accountants, consultants or others as may be agreed to by the plan sponsor:

shall become a direct charge on the assets of the Trust forming a part of this Plan, except to the extent the Participating Employer (or [plan sponsor], as applicable) pays such expenses directly or reimburses the [401(k) Plan’s trustee] for appropriate disbursements on account of such expenses, but the Participating Employer (or [plan sponsor], as applicable) will not be obligated on account thereof.

24. The withdrawal of one or more Participating Employers from the 401(k) Plan at this time will not result in a material reduction in the costs that will likely be incurred by or on behalf of the 401(k) Plan in remedying compliance defects and terminating in an orderly manner. Rather, the withdrawal of one or more Participating Employers from the 401(k) Plan at this time will increase costs to participants currently or formerly employed by the Participating Employers that do not withdraw.

25. 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. Pursuant to 11 U.S.C. § 704(a)(11), the Chapter 7 Trustee shall continue to perform the obligations required of the administrator of the 401(k) Plan, or assign such obligations to a new administrator.

b. The Chapter 7 Trustee is directed to take on behalf of Castleton Group as sponsor of the 401(k) Plan, all plan sponsor actions that he determines to be necessary or desirable to effect the termination of the 401(k) Plan in accordance with the Internal Revenue Code of 1986, as amended (the “Code”), and the Employee Retirement Income Security Act of 1974, as amended (“ERISA”).

c. On and after the date of this Order, and except as provided herein, Transamerica, the Chapter 7 Trustee, and the fiduciaries of the 401(k) Plan (including its trustee and named fiduciary) shall freeze distributions, in-service withdrawals, loans and other payments to 401(k) Plan participants and beneficiaries, as well as withdrawals of Participating Employers from the 401(k) Plan.

d. While such freeze remains in effect:

i. The 401(k) Plan shall not make or otherwise process withdrawals, distributions or rollovers in any form to or on behalf of 401(k) Plan participants or beneficiaries;

ii. The 401(k) Plan shall not make or otherwise process any new loans to or on behalf of 401(k) Plan participants or beneficiaries;

iii. The 401(k) Plan shall not process Participating Employer requests for withdrawal from the 401(k) Plan or otherwise transfer plan assets or liabilities to any party or parties pursuant to such withdrawal requests;

iv. 401(k) Plan participants and beneficiaries of deceased participants shall retain the right to access information about their accounts by telephone and/or internet, and to direct the investment of their accounts, all in accordance with such 401(k) Plan rules and procedures as may be duly established or modified from time to time by the 401(k) Plan's trustee or named fiduciary;

v. The 401(k) Plan's fiduciaries shall take such actions as they deem necessary, appropriate and reasonable under the circumstances to collect on behalf of and contribute to the 401(k) Plan all Employee Deferrals and loan payments that were withheld from participating employee wages but not deposited to the 401(k) Plan, plus all related Employer Contributions and any lost earnings;

vi. The 401(k) Plan's fiduciaries shall take such actions as they deem necessary, appropriate and reasonable under the circumstances to collect on behalf of and contribute to the 401(k) Plan all Employee Deferrals and loan payments that should have been withheld from wages paid to 401(k) Plan participants, plus all related Employer Contributions and any lost earnings;

vii. The 401(k) Plan's fiduciaries shall work with Transamerica or another service provider of the fiduciaries' choosing to complete the Annual Testing for 2007 and to take such remedial actions as may be required based on the results of such testing;

viii. The 401(k) Plan's fiduciaries shall take such actions as they deem necessary, appropriate and reasonable under the circumstances to correct 401(k) Plan defects that might subject the 401(k) Plan to disqualification by the Internal Revenue Service, including but not limited to applying for a compliance statement from the Internal Revenue Service pursuant to Revenue Procedure 2006-27, 2006-22 I.R.B. 945, or any successor Revenue Procedure;

i x . On behalf of Castleton Group, the Chapter 7 Trustee shall amend the 401(k) Plan to reflect changes in applicable laws and regulations through the effective date of the 401(k) Plan's termination; and

x . The 401(k) Plan's fiduciaries may in their discretion apply to the Internal Revenue Service for a determination of the 401(k) Plan's qualification upon termination.

e . The freeze described in paragraph (c) above shall remain in effect until the Chapter 7 Trustee and the 401(k) Plan's fiduciaries determine that all of the actions described in paragraph (d) have been completed to the extent they are deemed necessary and they are reasonably possible under the circumstances.

f . The reasonable expenses incurred in the administration of the 401(k) Plan, including but not limited to the reasonable compensation of attorneys, accountants, consultants or others retained in connection with the administration of the 401(k) Plan and its termination, shall, in such manner as the 401(k) Plan's fiduciaries deem appropriate, be charged to and paid by the 401(k) Plan and allocated among participants. However, in recognition of the inherent conflict between the Chapter 7 Trustee's duties with respect to the 401(k) Plan and the Chapter 7 Trustee's duties with respect to the Debtors' estates, fees and expenses to be charged to the 401(k) Plan (other than fees and expenses of Transamerica generated in the course of its performance under its pre-petition Service Agreements) shall be subject to the prior review and approval of this Court.

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