

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

IN THE MATTER OF THE POSSESSION)
AND CONTROL OF THE COMMISSIONER)
OF BANKS AND REAL ESTATE OF) No. 00 CH 5905
INDEPENDENT TRUST CORPORATION) Judge Sidney A. Jones III
Illinois Corporate Fiduciary.)
)

**MOTION TO VACATE ORDER GRANTING
MOTION OF ELBAOR FAMILY L.P. FOR EXCLUSION FROM ALLOCATION**

PricewaterhouseCoopers, LLP (“Receiver”) by and through its attorneys respectfully requests that this Court set aside and vacate the order entered on September 13, 2000 granting the motion for exclusion from allocation of the cash trust fund shortage filed by the Edward and Edna Elbaor Family Limited Partnership (“Elbaor Family L.P.” or “Movants”). In support thereof, the Receiver states as follows:

1. On August 17, 2000 this Court entered an order permitting Independent Trust Corporation (“Intrust”) account holders to file motions requesting exclusion from allocation of the cash trust fund shortage (the “Shortage”) on or before August 31, 2000. (8/17/00 Order, Ex. A) The Court further ordered that it would permit the Receiver to select certain of those exclusion motions as “exemplars” and that the Court would schedule hearings on such exemplar motions on September 12, 2000. Exclusion motions not selected as exemplars were not scheduled for hearing at that time, as the expectation of the Receiver was that resolution of the remaining exclusion motions would be deferred until after hearings on the exemplar motions.

2. On August 29, 2000 the Elbaor Family L.P. filed a motion for exclusion from allocation of the Shortage on the grounds that “substantially all cash in the account was not subject to risk since it was fully invested in mutual funds on each of the dates after March 12, 1999, on which Intrust transferred funds to Intercounty Title.” (Motion, ¶ 2, Ex. B) Notably, Movants stated that their motion was brought pursuant to the Court’s August 17, 2000 Order. (*Id.*)

3. On September 8, 2000, the Receiver posted on the Intrust website a list of all exclusion motions that it had selected as exemplar motions. On September 12, 2000, the Court entered an order setting those motions for hearings during the week of September 25. (9/12/00 Order, Ex. C) The Movants’ motion was not selected by the Receiver as an exemplar motion nor was it scheduled for hearing during the week of September 25. Counsel for the Movants, if present during the September 12, 2000 hearing, did not object to the exemplar motion hearing schedule entered by the Court, nor did they request that their exclusion motion be added to the schedule.

4. On September 13, 2000, counsel for Movants appeared before this Court on their motion for exclusion. The Receiver was not provided with notice that Movants had put their exclusion motion on the Court’s motion call for that day. Accordingly, the Receiver did not appear in Court that day and an order granting Movants’ motion for exclusion was entered by this Court. (9/13/00 Order, Ex. D)

5. The Receiver was provided with a copy of the Court’s September 13, 2000 Order on September 15, 2000. (Ex. E) This was the first notice that the Receiver had that: (a) the Movants had brought their motion for exclusion before the Court on September 13, 2000; and (b) that the Court had granted their motion.

6. The Receiver requests that this Court vacate its September 13, 2000 Order granting Movants' motion for exclusion. *First*, the Receiver was not provided with notice that the Movants had set their motion for hearing on September 12, 2000, and thus, the Receiver was not given an opportunity to appear and respond to the motion. *Second*, the Movants' motion was not properly brought before this Court. As the August 17, 2000 Order makes clear, the time for hearings on exclusion motions has not yet been set. Indeed, allowing Movants to simply bring their motion before this Court (without notice) is unfair to the thousands of other account holders who have also filed motions for exclusion, yet are awaiting the time at which the Court decides to hear such motions.¹ *Third*, the Receiver does not agree that Movants' account should properly be excluded from allocation of the Shortage. As explained in the Receiver's response to the motion for exclusion filed by Joseph Umbach (Ex. F), there are substantial and significant reasons why accounts should not be excluded from the allocation on the grounds raised by Movants. Furthermore, numerous other account holders have moved for exclusion on the same basis as Movants; the Receiver has selected some of these motions as exemplars and intends to contest them before this Court.

WHEREFORE, PricewaterhouseCoopers respectfully requests that this Court vacate its September 13, 2000 Order granting the motion for exclusion from allocation of the cash trust fund shortage filed by the Elbaor Family L.P. and award any other relief deemed necessary and just.

¹ Furthermore, in light of the pending motion to reconsider those portions of the Court's August 17, 2000 order permitting such motions for exclusion to be filed and heard, it appears to be premature for this Court to rule on any such motions.

Dated: September 18, 2000

Respectfully submitted,

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