

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

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|---------------------|---|-------------------------|
| In Re: | § | Case No. 15-10940-TMD |
| BULLIONDIRECT, INC. | § | |
| Debtor. | § | Complex Chapter 11 Case |

LIMITED OBJECTION TO APPLICATION FOR EMPLOYMENT OF ATTORNEYS
(Relates to dkt#8)

Kazu Suzuki (“Creditor”), a creditor, files this Limited Objection (“Objection”) to the Application for Employment of Attorneys Pursuant to Local Rule 2014 and 9013(c)(3) [dkt#8] (“Application”) filed by BullionDirect Inc. (“Debtor”).

1. The Debtor filed a petition for relief under chapter 11 of the Bankruptcy Code on July 22, 2015 (“Petition Date”). This case is designated as a ‘Complex Chapter 11 Case.’

2. Customers bought precious metals from the Debtor with the understanding the specific precious metals were on hand and available to them.

3. Debtor alleges it changed the terms and conditions in 2012 to allow for Debtor to use the precious metals as it deemed and also to only give customers an undivided interest in precious metals that remained.

4. Debtor, after filing bankruptcy, has now revealed that there is approximately \$600,000 of precious metals available rather than the over \$10 million (and maybe even over \$20 million) purchased by customers.

5. Debtor disclosed it is under investigation by federal and state agencies.

6. The United States Trustee mailed a questionnaire on July 31, 2015 to the Top 20 Largest Unsecured Creditors to gauge interest in an Official Committee of Unsecured Creditors. The deadline to respond was 10 days or August 10, 2015. Creditor is aware of at least three creditors, including Creditor, that submitted a completed questionnaire to the United States Trustee on August 7, 2015. At least one other creditor also submitted a questionnaire on August 10, 2015. No Committee has been formed yet.

7. The Application was filed on the Petition Date seeking to employ Martinec, Winn & Vickers, P.C (“Law Firm”). The Application was served with 21 days negative notice language. The Court could grant the application if no objection is filed. This Objection is filed to prevent such action.

8. The Application does not disclose any connection between the Law Firm and Debtor nor any compensation 12 months prior the Petition Date. The Bankruptcy Code only requires a lookback of compensation of 12 months in the disclosure. The Application only shows

Law Firm being retained recently by attaching an engagement agreement executed on July 20, 2015 with an effective date of June 16, 2015.

9. On August 12, 2015, however, the Debtor's Statement of Financial Affairs (dkt#45, Response #9) reveals that Law Firm received a retainer of \$100,000.00 on October 17, **2012** or almost three years prior to the Petition Date.

9. Payments related to debt counseling or bankruptcy

None List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of a petition in bankruptcy within one year immediately preceding the commencement of this case.

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| NAME AND ADDRESS OF PAYEE | DATE OF PAYMENT, NAME OF PAYER IF OTHER THAN DEBTOR | AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY |
|---|---|--|
| Debtor: Martinec, Winn & Vickers, P.C. 919 Congress Avenue, Suite 200 Austin, TX 78701 | 7/20/2015 | \$20,020.04 \$100,000.00 Retainer was received from B Direct, Inc. on 10/17/2012. \$79,352.67 was returned to Debtor on 8/4/2014 due to inactivity, leaving a retainer of \$20,000.00 in Trust Account. |

10. The prior connection and timing may or may not be an issue. This, along with other questions about this case and consideration of immediate pursuit and seizure of funds received by Debtor and apparently transferred, need to be reviewed by a Committee. No single creditor should have to carry this financial burden alone, rather it should be paid from assets of the estate for the benefit of all creditors.

11. This Objection is filed requesting that no further relief be entered on the Application, or any other matters in this case, until the Committee has been formed and has had a chance to retain counsel to review the Application and respond as the Committee deems appropriate.

12. The Local Rules support postponement of a ruling on the Application in a Complex Chapter 11 Case until after a Committee is appointed, by providing:

If, in a chapter 11 case, a professional to be employed pursuant to section 327 or 1103 of the Bankruptcy Code desires to have the terms of its compensation approved pursuant to section 328(a) of the Bankruptcy Code at the time of such professional's retention, then the application seeking such approval should so indicate and the Court will consider such request after an evidentiary hearing on notice to be held after the United States trustee has had an opportunity to form a statutory committee of creditors pursuant to section 1102 of the Bankruptcy Code and the debtor had such committee have had an opportunity to

review and comment on such application. At a hearing to consider whether a professional's compensation arrangement should be approved pursuant to section 328(a), such professional should be prepared to produce evidence that the terms of compensation for which approval under section 328(a) is sought comply with the certification requirements of section I.G(3) of these guidelines.

Exhibit H to Local Rules Appendix L-1020.1. Here, the Application is silent as to whether compensation sought is pursuant to section 328(a) or not. Thus, this Objection is filed to avoid any order being entered prior to a Committee being appointed.

13. Creditor reserves additional objections he may have to the Application.

WHEREFORE, Creditor requests that this Limited Objection be granted and that no order be entered on the Application until after an Official Committee of Unsecured Creditors is formed and has had an opportunity to review and comment on the Application, and grant Creditor such other relief the Court deems just.

Date: August 12, 2015

Respectfully submitted,

/s/ Peter C. Ruggero

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COUNSEL FOR KAZU SUZUKI

CERTIFICATE OF SERVICE

I certify that on August 12, 2015 a copy of the above *Limited Objection to Application for Employment of Attorneys* was served on those parties identified on the attached First Master Limited Service List (dkt#39) by First Class Mail unless otherwise indicated by email or ECF.

/s/ Peter C. Ruggero
Peter C. Ruggero