

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

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In re) Chapter 7
SOUTHEAST BANKING CORPORATION,) Case No. 91-14561-BKC-PGH
Debtor.)
_____)

**MOTION FOR APPROVAL OF CONSULTING AGREEMENT
FOR PROPERTY DEVELOPMENT AND MARKETING BETWEEN
CHAPTER 7 TRUSTEE, SECOND PIONEER CORPORATION, JAMES H.
EFSTATHION, AND SIGA DEVELOPMENT AND INVESTMENT, INC.**

NOTICE

Any interested party who fails to file and serve a written response to this Motion within 20 days after the date of service stated in this Motion shall, pursuant to Local Rule 9013-1(D), be deemed to have consented to the entry of an Order in the form attached to this Motion. Any scheduled hearing may then be cancelled.

Jeffrey H. Beck, as Trustee for the Chapter 7 estate of Southeast Banking Corporation (the “Debtor”), moves, pursuant to Bankruptcy Code Sections 105(a) and 363(b)(1) and Local Rule 9013-1(D), for authority to enter into the Consulting Agreement for Property Development and Marketing (the “Consulting Agreement”) attached as **Exhibit A**, and states:

General Factual Background

1. This case was commenced on September 20, 1991 (the “Petition Date”), upon the filing of a voluntary petition for relief under Chapter 7 of the Bankruptcy Code. Jeffrey H. Beck serves as the duly qualified and appointed Trustee of the Chapter 7 estate, having been

appointed to that position upon the resignation of William A. Brandt, Jr. ("**Trustee Brandt**") on April 1, 1998.

2. As of the Petition Date, the Debtor owned or held equity interests in as many as 60 direct and indirect subsidiaries which, in turned, owned interests or various real estate and other assets located primarily within the State of Florida. Among those entities, is Second Pioneer Corporation ("**Second Pioneer**") which owns or holds interests in various properties located in and around Jacksonville, Florida. Second Pioneer has not sought relief under the Bankruptcy Code.

The Belfort Property

3. The Trustee holds all of the common stock shares in Second Pioneer. Second Pioneer owns approximately 7.321 acres in Jacksonville, Florida located at the intersection of A.C. Skinner Parkway and Salisbury Road (the "**Belfort Property**").

4. James Efstathion is associated with Siga Development and Investment, Inc. ("**Siga**"), and Efstathion has already or will associate with Siga as independent contractor or employee.

5. Efstathion has been engaged in development and sale of residential and commercial real properties and businesses in northern Florida and the Jacksonville area for over 25 years.

6. The Trustee, Efstathion and Siga have an existing business relationship in respect of property located at the Southwest Quadrant of the interchange of J.T. Butler Boulevard and Southside Boulevard consisting of approximately 194 acres.

7. The Trustee has determined it is in the best interest of the Chapter 7 estate to continue its business relationship with Efstathion and Siga and to obtain their assistance in the development, management and sale of the Belfort Property due to: (a) their expertise in marketing and development of real properties in Northeast Florida; (b) their familiarity with local market conditions and potential buyers; (c) their familiarity with local professionals skilled in the areas of need to the development and sale of the Belfort Property; (d) their proximity to provide oversight for maintenance and protection of the property; and (e) their familiarity with applicable regulatory agencies and local government.

8. The Trustee submits Efstathion and Siga would provide assistance in connection with the strategic planning and coordination for the realization of the greatest value possible for the Belfort Property, and believes it is necessary to employ local assistance. Among the options for the Trustee to accomplish the management of marketing, planning and maintenance of the Belfort Property would be the employment of a development and/or marketing management firm and, possibly, a real estate brokerage firm to assume primary responsibility for these activities, subject to the direction of the Trustee. Siga has offered, utilizing the talents, experience and contacts of Efstathion, to provide these services and to assume responsibility for primary local coordination of these efforts, subject to the direction of the Trustee.

9. Based upon Siga's offer and the Trustee's satisfaction with the services of Siga and Efstathion in respect of the Southwest Quadrant property, the Trustee desires to enter into the Consulting Agreement, substantially in the form attached as Exhibit A. In exchange for these services, the Agreement provides that Siga shall receive compensation in the form of 6% percent of the gross proceeds actually realized by Second Pioneer from the sale of the Belfort Property.

Should the Trustee and Second Pioneer be required under any contract of sale of all or a portion of the Belfort Property to pay a real estate commission to a real estate broker for a buyer, the commission payable shall be a maximum of 2%. The payment of this commission to a broker for a buyer shall not reduce the entitlement to Siga to a total of 6% less the amount of the commission due to the broker for the buyer.

Legal Basis

10. Bankruptcy Code Section 363(b)(1) provides an avenue for the trustee, after notice and a hearing, to use property of the estate in other than in the ordinary course of business. This section specifically states: “[t]he trustee, after notice and a hearing,¹ may use, sell or lease, other than in the ordinary course of business, property of the estate.” It has been held that voting shares of stock that are property of the estate constitutes a “use” of estate property for purposes of §363 of the Bankruptcy Code.² Because Trustee seeks authorization to exercise the full extent of Debtor’s voting and other rights as shareholder of Second Pioneer, this motion should be considered under Section 363(b)(1).

11. A court should approve the use of estate property under Section 363(b)(1) when the trustee articulates “some business justification”³ or when the decision to use estate property is “good business judgment.”⁴ As explained above, the Debtor owned 100% or controlling interest

¹ Authorization to use property of the estate other than in the ordinary course of business under 11 U.S.C. §363(b)(1) does not require an actual hearing under the circumstances set forth in 11 U.S.C. §102(1) and Local Rule 6004-1(B).

² See *In re Consolidated Auto Recyclers, Inc.*, 123 B.R. 130, 140 (Bankr. D. Me. 1991)(“Voting the shares was ‘use’ of them for purposes of §363.”).

³ *In re Continental Airlines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986).

⁴ *Matter of St. Petersburg Hotel Assoc., Ltd.*, 37 B.R. 341, 43 (Bankr. M.D. Fla. 1983)(citing *In re Shear Realty and Investment Co., Inc.*, 25 B.R. 461 (S.D. Ohio 1982)).

in Second Pioneer and this interest, and the related rights, now are property of the chapter 7 estate. Granting this Motion and authorizing the Trustee to take the necessary corporate action to authorize these entities to enter into the Consulting Agreement will further the purpose of enabling the Trustee to satisfy his duty to recover estate assets for the benefit of the estate's creditors. Under these circumstances, the business judgment test is satisfied and authorization to "use" the stock and other interests of the estate is appropriate under Section 363(b)(1).⁵

12. Therefore, the Trustee requests that the Court grant the Motion and enter the Order attached as **Exhibit B**.

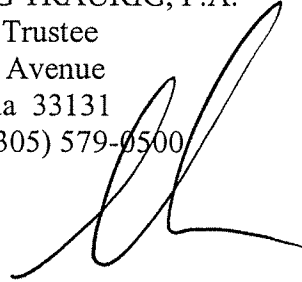
WHEREFORE, Jeffrey H. Beck, as Trustee, respectfully requests that the Court grant this Motion, approve the Consulting Agreement and enter the proposed Order attached hereto as Exhibit B.

⁵ See *In re Consolidated Auto Recyclers*, 123 B.R. at 142-43 (granting retroactive authority for chapter 11 trustee to vote shares of stock held by debtor where voting shares was consistent with duty to preserve assets and maximize their value).

I hereby certify that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this Court set forth in Local Rule 2090-1(A).

Respectfully submitted, this 8th day of August, 2005.

GREENBERG TRAURIG, P.A.
Attorneys for Trustee
1221 Brickell Avenue
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Telephone: (305) 579-0500



By: _____
LUIS SALAZAR
Florida Bar No. 147788

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion was served by U.S. mail to all parties identified on the Service List attached to the original hereof, this 8th day of August, 2005.



LUI\$ SALAZAR

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CONSULTING AGREEMENT FOR PROPERTY DEVELOPMENT AND MARKETING

This Agreement is entered into this _____ day of July, 2005, among Jeffrey H. Beck, as Chapter 7 Bankruptcy Trustee of Southeast Banking Corporation (the "Trustee"), Second Pioneer Corporation ("Second Pioneer"), James H. Efstathion ("Efstathion") and Siga Development and Investment, Inc. ("Siga").

WHEREAS:

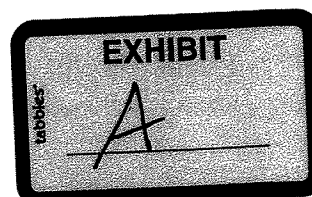
A. Efstathion is associated with Siga as an independent contractor or employee and the Trustee holds all of the common shares of Second Pioneer;

B. Second Pioneer owns approximately 7.321 acres in Jacksonville, Florida located at the intersection of A. C. Skinner Parkway and Salisbury Road (the "Belfort Parcel");

C. Trustee, Efstathion and Siga have existing business relations regarding a property located at the Southwest Quadrant of the interchange of J.T. Butler Boulevard and Southside Boulevard consisting of approximately 194 acres ("Southwest Quadrant");

D. Efstathion has been engaged in development and sale of residential and commercial real properties and businesses in northern Florida and the Jacksonville area for over 25 years. Trustee determined it was in the best interest of the Chapter 7 estate of Southeast Banking Corporation to forge a constructive relationship with Efstathion and Siga and to obtain their assistance in the development, management and sale of the Southwest Quadrant because of: a) their expertise in marketing and development of real properties in Northeast Florida; b) their familiarity with local market conditions and potential buyers; c) their familiarity with local professionals skilled in the areas of need to the development and sale of the Southwest Quadrant; d) their proximity to provide oversight for maintenance and protection of the property; and e) their familiarity with applicable regulatory agencies and local government; and

E. Among the options for the Trustee to accomplish the management of marketing, planning and maintenance of the Belfort Parcel would be the employment of a development and/or marketing management firm and, possibly, a real estate brokerage firm to assume primary responsibility for these activities, subject to the direction of the Trustee. Siga has offered, utilizing the talents, experience and contacts of Efstathion, to provide these services and to assume responsibility for primary local coordination of these efforts, subject to the direction of the Trustee. Based upon the offer of Siga and the experience of the Trustee with the services of Siga and Efstathion in respect of the Southwest Quadrant, Trustee desires to engage Siga upon the terms and conditions of this agreement.



NOW THEREFORE, in consideration of the mutual covenants contained herein and other consideration receipt whereof is hereby acknowledged, Efstathion, Siga, Second Pioneer and Trustee hereby agree as follows:

1. The recitals set forth above are true and correct.

2. Siga and Efstathion represent and warrant that Efstathion has agreed to act as an employee or independent contractor of/to Siga for the purposes of this agreement. Efstathion will, in such capacity, devote such time and skills as are necessary to perform the services required of Siga under this agreement. The duties to be performed by Siga are to provide overall strategic planning, marketing, maintenance and coordination of the remaining development and marketing of the Belfort Parcel, all subject to the direction and control of the Trustee. The services to be performed will include, but not be limited to:

- a. obtaining permits and governmental authorities necessary for the development and sale of the Belfort Parcel, including
 - (i) negotiating with the Corps of Engineers and local environmental authorities, as necessary, over wetlands jurisdiction lines and the obtaining of fill permits,
 - (ii) coordinating with the Trustee and professionals to plan appropriate subdivision of the Belfort Parcel to conform with its highest and best use and the needs of potential buyers;
- b. supervising and working with professionals engaged by the Trustee, including engineers, surveyors, environmental experts and lawyers;
- c. developing site disposition approaches and plans for the property;
- d. overseeing the maintenance of the property;
- e. planning to assess and correct any drainage problems which may be found on the property;
- f. marketing the Belfort Parcel, developing leads and responding to inquiries from sales prospects, endeavoring to work directly with the principals sale prospects where possible and working with brokers as necessary;
- g. advising the Trustee on the negotiations and sale of parcels or the entire of the property;
- h. keeping the Trustee fully and completely informed on all activities and complying with all instructions of the Trustee;
- i. providing the Trustee with reports of their activities and the results thereof; and
- j. providing the Trustee such reasonable assistance as he may require.

3. For these services, the parties hereto agree that Siga shall receive compensation in the form of 6% percent of the gross proceeds actually realized by Second Pioneer from the sale of the Belfort Parcel. Should Second Pioneer be required under any contract of sale of all or a portion of the Belfort Parcel to pay a real estate commission to a real estate broker for a buyer, the commission payable shall be a maximum of 2% of the gross proceeds of sale. The payment of this commission to a broker for a buyer shall not reduce the entitlement to Siga hereunder to a total of 6% of the gross proceeds.

4. This agreement may be terminated for cause at any time. Otherwise, this agreement will terminate, unless extended by written agreement of the parties, on December 31, 2005. Except for a termination for cause, the proceeds of sale received from the sale of all or a portion of the Belfort Parcel under any contract for sale binding upon the termination of this agreement will be subject to the compensation entitlement set forth in paragraph 3.

5. Siga and Efstathion hereby indemnify and holds harmless the Trustee and Second Pioneer ("Indemnified Parties") from any and all liability and damages arising against Indemnified Parties from the performance of duties hereunder by Siga and Efstathion, including all attorney fees and costs incurred by Indemnified Parties in defense of any claim arising from such performance of duties hereunder. Neither Siga nor Efsthion shall not be considered the agent of the Indemnified Parties for any purpose and shall have no authority to bind the Indemnified Parties to any obligation or undertaking.

6. Unless waived by the Trustee based upon advice of counsel, this agreement is subject to the approval of the United States Bankruptcy Court for the Southern District of Florida, which approval shall be sought as soon as practicable by the Trustee.

SIGA DEVELOPMENT AND
INVESTMENT, INC.

Jeffrey H. Beck, as Chapter 7 Trustee
of Southeast Banking Corporation

By _____
James B. Efstathion,
Its President

SECOND PIONEER CORPORATION

By _____
Jeffrey H. Beck,
Its President

James H. Efstathion, Individually

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

In re)	Chapter 7
)	
SOUTHEAST BANKING CORPORATION,)	Case No. 91-14561-BKC-PGH
)	
Debtor.)	
)	

**ORDER GRANTING MOTION FOR APPROVAL OF CONSULTING
AGREEMENT FOR PROPERTY DEVELOPMENT AND MARKETING
BETWEEN CHAPTER 7 TRUSTEE, SECOND PIONEER
CORPORATION, JAMES H. EFSTATHION, AND SIGA
DEVELOPMENT AND INVESTMENT, INC.**

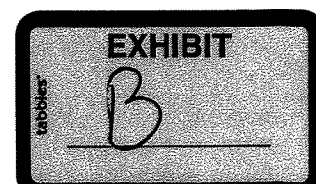
THIS MATTER came before the Court upon the *Motion for Approval of Consulting Agreement for Property Development and Marketing Between Chapter 7 Trustee, Second Pioneer, James H. Efstathion, and Siga Development and Investment, Inc.*, filed by Jeffrey H. Beck, as Chapter 7 Trustee for the Estate of Southeast Banking Corporation. The Court, having considered the Motion, and been duly advised in the premises, finds as follows:

A. The Court has jurisdiction to entertain the Motion pursuant to 28 U.S.C. §§ 157(b) and 1334(b). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The Motion is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2).

B. The Consulting Agreement is reasonable, is in the best interests of the estate, and is a product of arms' length negotiations. Entering into the Consulting Agreement is a proper exercise of the Trustee's business judgment.

Accordingly, it is

ORDERED and ADJUDGED that:



1. The Motion is GRANTED;
2. The Consulting Agreement is APPROVED in its entirety;
3. The Trustee is AUTHORIZED to take any and all actions that may be necessary or appropriate to perform under the Consulting Agreement or in connection with any transaction contemplated under the Consulting Agreement;
4. The Trustee is AUTHORIZED to use the estate's interest and control in Second Pioneer as may be necessary to perform under the Consulting Agreement; and
5. The Court retains jurisdiction to construe, interpret, and enforce this Order.

ORDERED in the Southern District of Florida on _____.

Honorable Paul G. Hyman
United States Bankruptcy Judge

Copies furnished to:
Luis Salazar, Esq.

(Attorney Salazar is directed to serve a conformed copy of this Order on all parties entitled to service and to file with the Court a Certificate of Service).

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THIS MATTER came before the Court upon the *Motion for Approval of Consulting Agreement for Property Development and Marketing Between Chapter 7 Trustee, Second Pioneer, James H. Efstathion, and Siga Development and Investment, Inc.*, filed by Jeffrey H. Beck, as Chapter 7 Trustee for the Estate of Southeast Banking Corporation. The Court, having considered the Motion, and been duly advised in the premises, finds as follows:

A. The Court has jurisdiction to entertain the Motion pursuant to 28 U.S.C. §§ 157(b) and 1334(b). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The Motion is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2).

B. The Consulting Agreement is reasonable, is in the best interests of the estate, and is a product of arms' length negotiations. Entering into the Consulting Agreement is a proper exercise of the Trustee's business judgment.

Accordingly, it is

ORDERED and ADJUDGED that:

1. The Motion is GRANTED;
2. The Consulting Agreement is APPROVED in its entirety;
3. The Trustee is AUTHORIZED to take any and all actions that may be necessary or appropriate to perform under the Consulting Agreement or in connection with any transaction contemplated under the Consulting Agreement;
4. The Trustee is AUTHORIZED to use the estate's interest and control in Second Pioneer as may be necessary to perform under the Consulting Agreement; and
5. The Court retains jurisdiction to construe, interpret, and enforce this Order.

ORDERED in the Southern District of Florida on SEP 12 2005.

PAUL G. HYMAN

Honorable Paul G. Hyman
United States Bankruptcy Judge

Copies furnished to:
Luis Salazar, Esq.

(Attorney Salazar is directed to serve a conformed copy of this Order on all parties entitled to service and to file with the Court a Certificate of Service).