

Notice in Hand
04/29/19
Mass. A.G.

(14)

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT

C.A. No.

19-13561

MAURA HEALEY, ATTORNEY GENERAL
OF THE COMMONWEALTH OF MASSACHUSETTS

v.

BEDFORD GARDENS CARE AND
REHABILITATION CENTER LLC, BEDFORD VILLAGE
CARE AND REHABILITATION CENTER LLC,
HALLMARK CARE AND REHABILITATION CENTER
LLC d/b/a ROCKDALE CARE AND REHABILITATION
CENTER, DIGHTON CARE AND REHABILITATION
CENTER LLC, and HIGHLAND MANOR CARE AND
REHABILITATION CENTER LLC.

Motion
4/29/19 Allowed,
ex parte and on a
summary basis, subject
to de novo reconsideration
upon motion by any
defendant or affected
party. Any such motion
shall be heard on an
expedited basis.

PROPOSED ORDER FOR THE APPOINTMENT OF A RECEIVER

It appearing to the Court that, as a result of conditions created by Defendants' acts and **WILKINS, J**
omissions, an "emergency" exists as defined under G.L. c.111, §72M, and that the entry of this
Order appointing a temporary receiver is necessary to preserve the health, safety and well-being
of the residents residing at: Bedford Gardens Care and Rehabilitation Center LLC, a
Massachusetts nursing home facility, located at 4586 Acushnet Ave., New Bedford,
Massachusetts; Bedford Village Care and Rehabilitation Center LLC, a Massachusetts nursing
home facility, located at 9 Pope St., New Bedford, Massachusetts; Hallmark Care and
Rehabilitation Center LLC d/b/a Rockdale Care and Rehabilitation, a Massachusetts nursing
home facility, located at 1123 Rockdale Ave., New Bedford, Massachusetts; Dighton Care and
Rehabilitation LLC, a Massachusetts nursing home facility, located at 907 Center St., Dighton,
Massachusetts; and Highland Manor Care & Rehabilitation Center LLC, a Massachusetts nursing

home facility, located at 761 Highland Ave., Fall River, Massachusetts, which are long-term care facilities (the "Facilities"); It further appearing:

That a temporary receiver is necessary: (a) to protect the immediate health and safety of the Facilities' residents by ensuring that they receive the care and support they need, (b) to protect the health and safety of the residents during the coming weeks by taking measures to ensure that the Facilities retain adequate vendors and staff, and (c) to ensure the implementation of an orderly and safe closure of the Facilities and resident transfers over the coming weeks;

That there is both subject matter and personal jurisdiction as well as sufficient basis of fact presented in the Attorney General's Petition for the Appointment of a Receiver, Affidavits of Sherman Lohnes, Whitney Moyer, and Lauren Moran, and related pleadings, for the entry of this Order;

IT IS HEREBY:

1. ORDERED that KCP Advisory Group LLC (the "Receiver"), 700 Technology Park Drive, Suite 212, Billerica, MA 01821, by and through Paul Valentine, be, and hereby is, appointed temporary receiver of (a) Bedford Gardens Care and Rehabilitation Center LLC, a Massachusetts nursing home facility, located at 4586 Acushnet Ave., New Bedford, Massachusetts; (b) Bedford Village Care and Rehabilitation Center LLC, a Massachusetts nursing home facility, located at 9 Pope St., New Bedford, Massachusetts, (c) Hallmark Care and Rehabilitation Center LLC d/b/a Rockdale Care and Rehabilitation, a Massachusetts nursing home facility, located at 1123 Rockdale Ave., New Bedford, Massachusetts; (d) Dighton Care and Rehabilitation LLC, a Massachusetts nursing home facility, located at 907 Center St., Dighton, Massachusetts, and (e) Highland Manor Care & Rehabilitation Center LLC, a Massachusetts nursing home facility, located at 761 Highland Ave., Fall River, Massachusetts, to

manage and operate the Facilities and to effectuate an orderly closure of the Facilities.

2. ORDERED that the Receiver shall have full power and authority:
- (a) to take custody and control of all cash, property, real property including leasehold interests, bank accounts, accounts receivable and other assets, tangible or intangible, now held or hereafter acquired by the Facilities and to take possession of all books, records and accounts of the Facilities;
 - (b) to employ, discharge, assign, supervise and fix the compensation, salaries and wages for all officers, managers, agents, employees and servants of the Facilities as Receiver may deem necessary and advisable for the proper operation of the Facilities' business and management, preservation and protection of their property and their residents;
 - (c) to pay wages due to existing employees of the Facilities for the purpose of retaining their services during the period of the receivership;
 - (d) to pay, and satisfy out of any funds now or hereafter coming into the possession of the Facilities, for services hereafter rendered;
 - (e) to buy and sell merchandise, supplies and other property and to render services, for cash or on credit for the Facilities;
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- (f) to purchase or otherwise acquire for cash or on credit such materials, equipment, machinery, supplies, services or other property as the Receiver may deem necessary and advisable in connection with the Facilities and the management and preservation of said Facilities;
 - (g) to enter into any contracts, in the name of the Facilities or in the Receiver's own

name, incidental to the normal and usual operation of said Facilities and the management and temporary preservation of said Facilities or as are necessary or appropriate to consummate transactions authorized by this order;

- (h) to keep the assets and business of the Facilities insured in such manner and to such extent as the Receiver may deem necessary and advisable;
- (i) to collect and to open any mail intended for and/or directed to the Facilities;
- (j) to collect and receive all rents, income and profits, and all outstanding accounts, insurance proceeds, things-in-action and credits due or to become due to the Facilities and to hold and receive all monies thus received to that end that the same may be applied under this Order of the Court;
- (k) to open any new bank accounts on behalf of the Facilities as the Receiver deems necessary to allow for the collection of any income and disbursement of any necessary payments;
- (l) to take possession or control of all of the Facilities' existing bank accounts, including without limitation the bank accounts listed on Exhibit A to this Order, cash and funds belonging to or for the benefit of the Facilities in bank accounts associated with the Property of the Facilities (defined below) (regardless from what time period), whether in the name of the Facilities, or their agents or employees, and to open, transfer, and change all such bank accounts into the name of the Receiver, if appropriate, or otherwise take such actions as necessary to ensure such bank accounts are under the control of the Receiver, all in compliance with legal requirements;

- (m) to take possession and control of all payments that are due or pending to the Facilities, including amounts paid by the Commonwealth and yet to be deposited into the Facilities' accounts; and
- (n) to pay and discharge out of any funds now or hereafter coming into the possession of the Facilities all taxes and similar charges hereafter lawfully incurred in the operation of said business and the temporary preservation and maintenance of said business, for which Receiver may use all tax identification numbers of the Facilities;
- (o) to expend those funds required to maintain the conditions at the Facilities in compliance with the standards required by the Massachusetts Department of Public Health and the Centers for Medicare and Medicaid Services;
- (p) to comply with all applicable rules and regulations governing the operation of a long term care facility and, as necessary, relocate and transfer residents living in the Facilities;
- (q) to continue the business of operating and managing the Facilities subject to the requirements of paragraph 5 below;
- (r) to wind-down, as necessary, the business of operating and managing the Facilities as long-term care facilities, and to transfer all residents currently residing in the Facilities to other health care facilities where suitable placement shall have been found for them, or to discharge such residents for whom discharge is appropriate;
- (s) to do any and all acts not inconsistent with the terms and conditions of this Order to carry out the purpose thereof; and

- (1) to petition this court requesting any additional authority the Receiver deems necessary or desirable to effectuate the purposes of this Order and the receivership.

3. ORDERED that all persons or entities, including without limitation the Facilities' directors, officers, employees and agents, having possession or custody thereof shall turn over or cause to be turned over to the Receiver possession and control of: (a) all real estate or real estate interests (including leasehold interests) owned directly or indirectly by the Facilities; (b) all books and records, funds, assets and personalty of the Facilities; and (c) any other property of the Facilities now or at any time hereafter coming under their possession, custody or control (collectively, "Property of the Facilities"). The Receiver may engage attorneys or other professionals, as appropriate, in order to advise and assist the Receiver in carrying out its duties and appearing in court or other proceedings on its behalf.

4. ORDERED that the Respondents shall have neither possession nor control of, nor any right to, the Property of the Facilities or money or other proceeds derived from Property of the Facilities unless and until the receivership is terminated and the Receiver is discharged. The Respondents are hereby ordered and directed to comply in all respects with this order, and are hereby enjoined and restrained from impeding or interfering in any manner with the exercise by the Receiver of its rights, powers, and duties hereunder. From and after the date of this Order, neither the Respondents, nor any agents of the Respondents shall enter into any lease, contract, or agreement of any kind or character relating to Property of the Facilities, and shall not grant any lien upon or security interest in Property of the Facilities. The Respondents are hereby

enjoined and restrained from collecting any revenues, receivables, proceeds, or other sums payable with respect to Property of the Facilities.

5. ORDERED that during the pendency of the receivership, the Receiver shall consult with the Department of Public Health and with the Attorney General in executing the plans for the orderly closure of the Facilities.

6. ORDERED that any certification or licensure by the Department of Public Health to the Facilities hereunder shall run only to the Receiver appointed herein and shall not be construed to be a certification of the Facilities on behalf of any person other than the Receiver, nor shall the certification or licensure in any way affect the certification or licensure status of the Facilities upon the termination of the receivership.

7. ORDERED that the costs of this receivership as approved by the Court shall be deemed to be reasonable operating costs of the Facilities and a lien in favor of the Commonwealth for such costs shall be placed on the property upon which the Facilities are located as provided by G.L. c.111, §72Q. Such lien shall not in any way limit recourse to any additional remedy for recouping the Commonwealth's expenditures from the licensees or any person(s) responsible for the affairs of the licensees or the owners of the Facilities. The Receiver may request loans or advances from the Commonwealth or its agencies for the costs of the receivership and the operating costs of the Facilities. The Commonwealth and its agencies may, in their discretion and to the extent permitted by law, make such loans or advances, which will constitute expenditures of the Commonwealth pursuant to G.L. c.111, §72O for which a lien in favor of the Commonwealth shall be placed on the property upon which the Facilities are located as provided by G.L. c.111, §72Q. The Receiver's compensation shall be on an hourly basis for

its professionals at the rates agreed to by the Receiver and the Department of Public Health. The Receiver shall maintain records of its professionals' time.

8. ORDERED that the Receiver shall have no obligation to expend funds in excess of the funds or receipts actually collected or received by the Receiver. The liability of the Receiver and any person or entity engaged by the Receiver hereunder is and shall be limited to Property of the Facilities and proceeds therefrom, in accordance with G.L. c.111, §72S, and neither the Receiver nor any person or entity engaged by the Receiver hereunder shall be personally liable for any actions taken pursuant to this Order or carrying out the Receiver's duties, excepting only claims which arise from the gross negligence or intentional wrongdoing of such person as determined by a final order of this or another court of competent jurisdiction. No person shall bring an action against the Receiver without first securing leave of this Court in accordance with G.L. c.111, §72S.

9. ORDERED that the Receiver shall file reports of its operations with this Court showing its progress in maintaining health care standards and its receipts, disbursements, accruals and profit or loss for the reporting period and for the duration of these proceedings. Said reports shall be served by the Receiver on all parties to this action.

10. ORDERED that the Receiver shall, within two weeks of the entry of this Order, report to the Court the existence of any lease of, mortgage upon, or security interest in any Property of the Facilities, held by or owed by any party to this action or any other person and that the Receiver shall apply to this Court for an order prior to paying any lease, rent or mortgage payment. In making such report, the Receiver shall comply with the provisions of G.L. c. 111 §72P.

11. ORDERED that pursuant to G.L. c. 111, §72N, no person shall impede the operation of this receivership and there shall be an automatic stay of any action that would interfere with the functioning of the Facilities upon entry of this Order until the receivership is terminated, unless otherwise ordered by this Court.

12. ORDERED that all persons, firms and corporations be, and they hereby are, enjoined from disturbing or interfering with the present gas, telephone, service, heat, electrical service, water supplies or any other utility of like kind, now being furnished to the Facilities, and from cutting off or disconnecting the furnishing of any service, except upon notice to the Receiver in writing and after the Receiver has had an opportunity to be heard before this Court.

13. ORDERED that all creditors of the Facilities, and any and all persons or parties are restrained and enjoined from taking possession of or interfering with the Property of the Facilities, whether by attachment, trustee process, levy or otherwise, from discontinuing services to the Facilities or from instituting or further prosecuting in any manner, any suit, action or other proceeding without advance leave of this Court in each instance.

14. ORDERED that all banks or other financial institutions in which the Facilities may have accounts and their employees, representatives and agents, are hereby enjoined, restrained and stayed from setting off any amounts in said accounts against any debt owed to said financial institutions or any of them by the Facilities and said financial institutions, employees, representatives and agents, be enjoined, restrained and stayed from stopping payment upon any drafts, checks, money orders, letters of credit or the like, issued to or for the Facilities or issued to others for the benefit of the Facilities, or from in any way attempting to set off funds, accounts or the like which are now available for use by or for the benefit of the Facilities, except upon

notice to the Receiver in writing and after the Receiver has had an opportunity to be heard before this Court.

15. ORDERED that all lessors of either real property or furniture, furnishings, equipment or other personal property of any nature whatsoever to the Facilities or any of them, are enjoined, restrained and stayed from in any way interfering with the usual use of such property by the Facilities, except upon notice to the Receiver in writing and after the Receiver has had an opportunity to be heard before this Court.

16. ORDERED that all insurance companies and their employees, representatives and agents, which provide insurance coverage to the Facilities are enjoined, restrained and stayed from cancelling such insurance coverage except upon notice to the Receiver in writing and after the Receiver has had an opportunity to be heard before this Court.

17. ORDERED that all persons and companies providing alarm and fire protection services or equipment to the Center, their employees, representatives and agents, are enjoined, restrained and stayed from disconnecting or cancelling such services or equipment except upon notice to the Receiver in writing and after the Receiver has had an opportunity to be heard before this Court.

18. ORDERED that this Order for the Appointment of a Temporary Receiver shall remain in effect until such time as the health and safety of the residents of the facilities is no longer a concern, which is anticipated to be no more than sixty days, or until further order of the Court, provided, however, that if the Department of Public Health and the Receiver agree that the term of the receivership should be extended, they may file a joint notice with the Court, served on all parties to this action, which notice shall automatically extend the term of the receivership

to such extended date, unless the Court rules otherwise.

19. ORDERED that this Order may be modified and/or extended pursuant to further order of this Court.

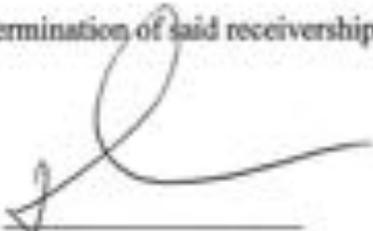
20. ORDERED that because of the limited assets of the Facilities, the Receiver shall not be required to give a surety company bond.

21. ORDERED that, except as specified in this Order, the Receiver shall be relieved from the requirements in Mass. R. Civ. P. 66(b)-(e).

22. ORDERED that the Court shall retain jurisdiction and supervision of all matters concerning the Receiver, the receivership created hereby and Property of the Facilities. Any and all actions which affect the Receiver or Property of the Facilities shall be brought in this Court.

23. ORDERED that during and at the termination of said receivership the Court may make such further orders as are just and proper.

Date: April 2, 2019



Associate Justice
Superior Court

WILKINS, J