

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

MJK Clearing, Inc.,

Bky. No. 01-4257 (RJK)

Debtor.

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James P. Stephenson, Trustee for MJK  
Clearing, Inc.,

Plaintiff,

v.

Adv. No. 03-4053 (RJK)

Leon A. Greenblatt, Banco Panamericano,  
Inc., Loop Corp., Nola L.L.C., and  
Repurchase Corp.,

Defendants.

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**NOTICE OF HEARING AND MOTION OF JAMES P. STEPHENSON, TRUSTEE  
OF MJK CLEARING, INC., FOR AN ORDER PERMITTING  
REGISTRATION OF THE SECOND AMENDED JUDGMENT IN THE UNITED  
STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS**

To: The Court, Defendants, and SIPC

1. James P. Stephenson, in his capacity as trustee for the estate of MJK Clearing, Inc. (the "Trustee"), by and through his undersigned attorneys, moves the Court for the relief requested below and gives notice of hearing.

## NOTICE OF HEARING

2. The Court will hold a hearing on this motion at 2:30 p.m. on Wednesday, October 6, 2004, in Courtroom No. 8 West at the United States Courthouse, at 300 South Fourth Street, in Minneapolis, Minnesota.

3. Pursuant to Local Rule 9006-1(b), any response to this motion must be filed and delivered not later than Friday, October 1, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than Monday, September 27, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

## MOTION

4. This Court has jurisdiction over this motion pursuant to 15 U.S.C. §§ 78eee(b)(2) and 78eee(b)(4), 28 U.S.C. §§ 157 and 1334, Fed R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The Complaint commencing this adversary proceeding was filed on February 24, 2003. This case is now pending in this Court.

5. On September 25, 2001, MJK Clearing, Inc. (the "Debtor") notified federal regulators that it lacked sufficient net capital under applicable federal and self-regulatory rules to continue operations. On September 27, 2001, the United States District Court for the District of Minnesota entered a protective decree (the "Protective Decree") against the Debtor under 15 U.S.C. § 78eee(b). By order of the District Court dated September 27, 2001, the Trustee was appointed as trustee of the estate of the Debtor, pursuant to the

Securities Investor Protection Act, 15 U.S.C. §§ 78aaa-III. Pursuant to the Protective Decree and 15 U.S.C. §§ 78eee(b)(2) and 78eee(b)(4), this Court has jurisdiction over the Debtor, its property, and any action brought by or against the Trustee.<sup>1</sup>

6. This motion arises under 28 U.S.C. § 1963. The Trustee requests that the Court grant his motion for an order permitting him to register the Second Amended Judgment in the United States District Court for the Northern District of Illinois.

7. The Trustee filed his Complaint against Defendants Leon A. Greenblatt, Banco Panamericano, Inc., Loop Corp., Nola L.L.C., and Repurchase Corp.<sup>2</sup> on February 24, 2003, commencing Adversary Proceeding No. 03-4053, through which the Trustee sought to recover amounts relating to certain margin loan accounts.

8. On September 11, 2003, this Court: (i) granted summary judgment to the Trustee; (ii) awarded the Trustee approximately \$4,500,000 in damages; (iii) awarded the Trustee \$114,986.93 in attorneys' fees and costs; (iv) and instructed Defendants Banco, Loop, Nola, and Repurchase to transfer \$3,000,000 in tax credits to the Trustee. The Bankruptcy Clerk entered final judgment on October 9, 2003.

9. Defendants appealed this Court's Order and the Judgment. United States District Judge David S. Doty affirmed the grant of summary judgment, but reduced the Trustee's award by \$3,000,000, finding that the Trustee's award should be offset by the amount paid pursuant to the Guaranty of Jack Feltl. This Court entered an amended

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<sup>1</sup> Jurisdiction of this action also arises under 28 U.S.C. §§ 1331, 1332.

<sup>2</sup> On September 3, 2004, Defendant Repurchase Corp. filed for protection under Chapter 11 of Title 11 of the United States Code. Based on the protections of the automatic stay, the Trustee does not currently seek any relief from Defendant Repurchase Corp.

judgment based on Judge Doty's Order on April 28, 2004. This Court subsequently entered a Second Amended Judgment on June 4, 2004, ordering, among other things, Defendants to transfer to the Trustee \$3,000,000 worth of tax credits pursuant to the letter agreement signed on July 12, 2001.

10. The Trustee filed a Notice of Appeal with the United States Court of Appeals for the Eighth Circuit on the issue of whether the District Court erred in allocating the \$3,000,000 credit to the cash portion of the judgment, rather than allowing the Trustee, as the beneficiary of the obligations at issue, to determine whether the credit should be applied to the cash portion of the judgment or the portion of the judgment requiring delivery of tax credits. Defendants filed a Notice of Cross Appeal on the issue of whether the District Court erred in affirming this Court's determination that there were no questions of fact on the issue of "failure of consideration" relating to the agreements at issue.

11. The Trustee has now moved to dismiss his appeal in order to focus efforts on collection of the Second Amended Judgment. Defendants' cross-appeal is still pending.

12. Through this motion, the Trustee seeks an order from this Court finding that good cause exists to register the Second Amended Judgment in the United States District Court for the Northern District of Illinois.

### **RELIEF REQUESTED**

WHEREFORE, based on the arguments made in the accompanying Memorandum of Facts and Law in Support of Plaintiff's Motion, the Trustee respectfully requests that the Court issue an order stating that the Trustee may register the Second Amended Judgment in the United States District Court for the Northern District of Illinois.

Dated: September 22, 2004

FAEGRE & BENSON LLP

/e/ Jesseca R.F. Grassley

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in his capacity as trustee for the estate of  
MJK Clearing, Inc.

M2:20653118.01

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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James P. Stephenson, Trustee for MJK  
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Adv. No. 03-4053 (RJK)

Leon A. Greenblatt, Banco Panamericano,  
Inc., Loop Corp., Nola L.L.C., and  
Repurchase Corp.,

Defendants.

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**MEMORANDUM OF FACTS AND LAW IN SUPPORT  
OF PLAINTIFF'S MOTION FOR AN ORDER PERMITTING  
REGISTRATION OF THE SECOND AMENDED JUDGMENT IN THE UNITED  
STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS**

1. James P. Stephenson, as trustee (the "Trustee") for the liquidation of MJK Clearing, Inc. moves the Court for an order pursuant to 28 U.S.C. § 1963 permitting him to register this Court's Second Amended Judgment of June 4, 2004, in the United States District Court for the Northern District of Illinois.

## STATEMENT OF FACTS

2. The Trustee filed his Complaint against Defendants Leon A. Greenblatt (“Greenblatt”), Banco Panamericano, Inc. (“Banco”), Repurchase Corp (“Repurchase”)<sup>1</sup>, Nola LLC (“Nola”), and Loop Corp. (“Loop”) (collectively “Defendants”) on February 24, 2003, commencing Adversary Proceeding No. 03-4053, through which the Trustee sought to recover amounts relating to certain margin loan accounts. (*See* Court Docket No. 1-1.)

3. On August 20, 2003, immediately after hearing oral argument, this Court granted the Trustee’s motion for summary judgment from the bench.

4. On September 11, 2003, this Court: (1) granted summary judgment to the Trustee on Counts III, IV, and V; (2) awarded the Trustee approximately \$4,500,000, including interest “until entry of judgment”; (3) awarded the Trustee \$114,986.93 in attorneys’ fees and costs; and (4) instructed Defendants Banco, Loop, Nola, and Repurchase to transfer \$3,000,000 worth of tax credits to the Trustee pursuant to the letter agreement dated July 12, 2001 (“July 12 Letter Agreement”). (*See* Court Docket No. 26-1.) The Bankruptcy Clerk entered final judgment on October 9, 2003. (Court Docket No. 31-1.)

5. Defendants appealed this Court’s Order and the Judgment. United States District Judge David S. Doty affirmed the grant of summary judgment, but reduced the Trustee’s award by \$3,000,000, finding that the Trustee’s award should be offset by the amount paid pursuant to the Guaranty of Jack Feltl. This Court entered an amended judgment based on Judge Doty’s Order on April 28, 2004.

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<sup>1</sup> On September 3, 2004, Repurchase filed for protection under Chapter 11 of Title 11 of the United States Code. Based on the protections of the automatic stay, the Trustee does not currently seek any relief from Repurchase.

6. Following various post-judgment motions, this Court entered the Second Amended Judgment on June 4, 2004. (Court Docket No. 57-1.) The Second Amended Judgment orders that the Trustee shall recover: (1) \$551,304 plus interest from Defendants Loop and Greenblatt, jointly and severally; (2) \$551,304 plus interest from Defendants Banco and Greenblatt, jointly and severally; (3) \$385,567 plus interest from Defendant Greenblatt; (4) \$114,986.93 in attorneys' fees and disbursements from Defendants Greenblatt, Banco, and Loop, jointly and severally; and (5) \$3,000,000 in tax credits pursuant to the letter agreement signed on July 12, 2001.

7. In May 2004, the Trustee filed a Notice of Appeal with the United States Court of Appeals for the Eighth Circuit on the issue of whether the District Court erred in allocating the \$3 million credit to the cash portion of the judgment, rather than allowing the Trustee, as the beneficiary of the obligations at issue, to determine whether the credit should be applied to the cash portion of the judgment or the portion of the judgment requiring delivery of tax credits. Defendants filed a Notice of Cross Appeal on the issue of whether the District Court erred in affirming this Court's determination that there were no questions of fact on the issue of "failure of consideration" relating to the agreements at issue.

8. On September 13, 2004, the Trustee filed a motion to dismiss the appeal in order to focus immediately on efforts to collect the Second Amended Judgment. Defendants cross-appeal will remain pending before the Eighth Circuit notwithstanding the Trustee's dismissal of his appeal.

9. Although counsel for Defendants has indicated numerous times that Defendants would post a bond in this matter, they have failed to do so. In addition, Defendants have failed to pay any part—even the undisputed part—of the Second Amended Judgment. Therefore, the

Trustee seeks an order from this Court permitting him to register the Second Amended Judgment in the Northern District of Illinois, the district in which some or all of Defendants' assets are believed to be located.

### LEGAL ARGUMENT

10. The Trustee seeks an order pursuant to 28 U.S.C. § 1963 permitting him to register this Court's Second Amended Judgment of June 4, 2004, in the United States District Court for the Northern District of Illinois. Section 1963 provides in relevant part:

A judgment in an action for the recovery of money or property entered in any district court . . . may be registered by filing a certified copy of such judgment in any other district . . . when the judgment has become final by appeal or expiration of the time for appeal *or when ordered by the court that entered the judgment for good cause shown.*

(Emphasis added.)

11. Because Defendants' cross appeal is still pending, the Trustee must obtain a determination from this Court that good cause exists before he can register the Second Amended Judgment in the Northern District of Illinois and proceed with collection efforts there. *See Johns v. Rozet*, 143 F.R.D. 11, 12 (D.D.C. 1992) ("Because an appeal is pending, § 1963 provides that the Court may only grant plaintiffs' motion for 'good cause shown'").

12. "The good cause requirement may be satisfied if the judgment debtor has substantial property in a foreign district and insufficient property in the rendering district to satisfy the judgment." *Schreiber v. Kellogg*, 839 F. Supp. 1157, 1162 (E.D. Pa. 1993); *see also Chicago Downs Ass'n v. Chase*, 944 F.2d 366, 372 (7th Cir. 1991) (same); *Johns*, 143 F.R.D. at 12-13 (same); *Associated Business Tel. Sys. Corp. v. Greater Capital Corp.*, 128 F.R.D. 63, 68 (D.N.J. 1989) (same). Although it has been difficult to ascertain the nature and extent of Defendants' assets given their attempts to obfuscate the Trustee's post-judgment

discovery efforts, it appears that substantial assets belonging to Defendants are located in the Northern District of Illinois. Mr. Greenblatt resides in Chicago, which is in the Northern District of Illinois, and each of the remaining Defendants appears to be headquartered in Chicago. The few documents produced to date in response to the Trustee's post-judgment document requests indicate that Defendants have accounts with banks located in Chicago. Furthermore, the Trustee is not aware of any assets belonging to any of the Defendants in the District of Minnesota. Moreover, Defendants' failure to post a bond further supports a finding of good cause. *See Chicago Downs Ass'n*, 944 F.2d at 372; *Johns*, 143 F.R.D. at 12-13.

13. Accordingly, the Trustee submits that there is good cause to register the Second Amended Judgment in the Northern District of Illinois.

### **CONCLUSION**

14. For the foregoing reasons, the Trustee respectfully requests that the Court order that the Trustee may register the Second Amended Judgment in the Northern District of Illinois pursuant to 28 U.S.C. § 1963.

Dated: September 22, 2004

FAEGRE & BENSON LLP

/e/ Jesseca R.F. Grassley

Robert L. Schnell, Jr., # 97329

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Defendants.

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**ORDER**

This matter came on for hearing on October 6, 2004, on the Motion for an Order Permitting Registration of the Second Amended Judgment in the United States District Court for the Northern District of Illinois brought By James P. Stephenson, as trustee for the liquidation of MJK Clearing, Inc. (the "Trustee"). Appearances were noted on the record. Based upon the motion papers, the arguments of counsel, and the record in this case, the Court being fully advised in the premises,

**IT IS HEREBY ORDERED:**

1. The Motion for an Order Permitting Registration of the Second Amended Judgment in the United States District Court for the Northern District of Illinois is **GRANTED.**

2. The Trustee may register the Second Amended Judgment in the United States District Court for the Northern District of Illinois.

Dated \_\_\_\_\_, 2004

\_\_\_\_\_  
Robert J. Kressel  
United States Bankruptcy Judge

M2:20653120.01

