

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

In Re:  
Immedia Duplication Services, Inc.,  
Debtor.

CHAPTER 7

Bky. 3-93-1044

ORDER

This matter is before the Court on the United States Trustee's motion to determine the validity of a trustee's election at a rescheduled 11 U.S.C. Section 341 meeting of creditors held in the case on February 23, 1994. Appearances at the hearing on the motion, held on March 10, 1994, are noted in the record. The Court, having heard and received all relevant arguments and briefs, having reviewed the file and all relevant records regarding the matter, including the claims register, and being fully advised in the matter, now makes this Order pursuant to the Federal and Local Rules of Bankruptcy Procedure.

I.  
GENERAL

11 U.S.C. Section 702 and Fed. R. Bank. Proc. 2003(b)(3), govern the election of a trustee in a chapter 7 case.(FN1) Only qualified creditors with the types of claims described in Section 702(a) are potentially eligible to vote for a trustee. Potentially eligible creditors must have filed their Section 702(a) claims prior to the vote, for their ballots to be counted. A vote will be taken for a trustee if qualified creditors holding at least 20% in amount of filed Section 702(a) claims request a vote. A candidate will be elected trustee, pursuant to Section 702(c), if:

- i) at least 20% in amount of all filed Section 702(a) claims, held by qualified creditors, are voted in the election; and,
- ii) the candidate receives the votes of qualified creditors holding a majority of the total amount of filed Section 702(a) claims voted in the election.

II.  
PARTICULAR

According to the record in this case, the following votes of asserted Section 702(a) claims were cast for a trustee at the rescheduled Section 341 meeting of creditors held February 23, 1994:

TCT Network, Inc.	\$ 38,500
Merit Acquisition, Inc.	185,696(FN2)
Utz Partners	350,000(FN3)
Mark Jared	32,146

All votes were cast for Randy Sullivan, whose address is 4387 Wilshire Blvd., Suite 212, Minneapolis, MN 55634.

At the time of the election, the following asserted Section 702(a) claims were filed in the case:

Merit Acquisition, Inc.	\$ 185,696
Utz Partners	350,000
Robert L. Olson	48,000
Total	583,696

Of those voting, only the claims of Merit Acquisition, Inc., and Utz Partners were filed claims. The claim of Utz Partners was objected to for voting purposes. Assuming that the Utz claim is disallowed, Merit Acquisition was the only qualified voter that participated in the election.(FN4) In that case, qualified creditors holding 79% of all filed Section 702(a) claims, disregarding the Utz disallowed claim, voted; and, all filed Section 702(a) claims voted were cast for Mr. Sullivan.(FN5) Accordingly, it appears from the record that Randy Sullivan was duly elected trustee pursuant 11 U.S.C. Section 702 and Fed R. Bank. Proc. 2003(b)(3).

Now therefore, based on the foregoing, IT IS HEREBY ORDERED: the election of Sandy Sullivan, whose address is 4387 Wilshire Blvd., Suite 212, Minneapolis, MN 55634, at the rescheduled meeting of creditors held February 23, 1994, is validated; and, Mr. Sullivan is authorized to perform the duties of interim trustee in the case upon the filing of bond pursuant to 11 U.S.C. Section 322, which filing shall be made within five days from the entry of this Order.

Dated: April 4, 1994

By The Court:

DENNIS D. O'BRIEN  
U.S. BANKRUPTCY JUDGE

(FN1) Section 702 provides:

(a) A creditor may vote for a candidate for trustee only if such creditor --

(1) holds an allowable, undisputed, fixed, liquidated, unsecured claim of a kind entitled to distribution under section 726(a)(2), 726(a)(3), 726(a)(4), 752(a), 766(h), 776(i) of this title;

(2) does not have an interest materially adverse, other than an equity interest that is not substantial in relation to such creditor's interest as a creditor, to the interest of creditors entitled to such distribution; and

(3) is not an insider.

(b) At the meeting of creditors held under section 341 of this title, creditors may elect one person to serve as trustee in the case if election of a trustee is requested by creditors that may vote under subsection (a) of this section, and that hold at

least 20 percent in amount of the claims specified in subsection (a)(1) of this section that are held by creditors that may vote under subsection (a) of this section.

(c) A candidate for trustee is elected trustee if --

(1) creditors holding at least 20 percent in amount of the claims of a kind specified in subsection (a)(1) of this section that are held by creditors that may vote under subsection (a) of this section vote; and

(2) such candidate receives the votes of creditors holding a majority in amount of claims specified in subsection (a)(1) of this section that are held by creditors that vote for a trustee.

(d) If a trustee is not elected under this section, then the interim trustee shall serve as trustee in the case.

Rule 2003(b) provides, in pertinent part:

(b) Order of Meeting.

(3) Right to Vote. In a chapter 7 liquidation case, a creditor is entitled to vote at a meeting if, at or before the meeting, the creditor has filed a proof of claim or a writing

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forth facts evidencing a right to vote pursuant to 702(a) of the Code unless objection is made to the claim or the proof of claim is insufficient on its face. ...In the event of an objection to the amount or allowability of a claim for the purpose of voting, unless the court orders otherwise, the United States trustee shall tabulate the votes for each alternative represented by the dispute and, if resolution of such dispute is necessary to determine the result of the election, the

tabulations

for each alternative shall be reported to the court.

(FN2) The appointed interim trustee reported that the amount of Merits claim voted was \$170,000. However, at the time of the meeting, Section 702(a) claims filed by Merit were in the higher amount stated.

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(FN3) This ballot was objected to by the appointed interim trustee grounds of an apparent final order issued in a state court action in Hennepin County, "Warren Utz, a Minnesota Limited Partnership, Plaintiff vs. David Russ, an individual, Immedia Inc., a Minnesota corporation, Defendants", Court File No. Ct 92-23105. The vote of this claim is not determinative of the election, and therefore the Court need not rule on the objection. See: Fed. Rule Bank. Proc. 2003(b)(3).

(FN4) The U.S. Trustee questions the validity of Merit Acquisition's claim in his motion to have the validity of the election determined, but no objection was raised by any party prior to the election. The issue is untimely raised in this proceeding, and the Court will not consider it.

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(FN5) Even including the Utz filed claim for purposes of applying

20% of filed claim test, the vote of Merit Acquisition was 31.8%.