

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE: )  
)  
MOLDING SYSTEMS ENGINEERING ) Bankruptcy Case No. 03-61159  
CORPORATION, d/b/a MOLDING )  
SYSTEMS ILLINOIS CORP., a/k/a )  
MOLDING SYSTEMS CORP., )  
)  
Debtor. )

OPINION

This matter having come before the Court on a Motion to Compel Payment of Commissions filed by Creditor, John Hower, and Objection to John Hower's Motion to Compel Payment of Commissions filed by the Debtor; the Court, having heard arguments of counsel and having reviewed the written memoranda of the parties, and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Findings of Fact

The material facts in this matter are not in dispute and are, in pertinent part, as follows:

1. The Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on September 26, 2003.
2. On February 12, 1996, long before filing for bankruptcy relief, the Debtor and Creditor, John Hower, entered into a Broker's Contract where it was agreed that John Hower would be paid commissions on sales to entities which he brought into contact with the Debtor Corporation.
3. Payments were not made by the Debtor under the Broker's Contract, and, in 1997, Hower

filed suit in State Court seeking a judgment in excess of \$500,000. Judgment was, in fact, rendered in favor of Hower on September 5, 2003, in Case No. 98-L-3, in the Circuit Court for the Fourth Judicial Circuit, Clay County, Illinois.

4. Following the petition for relief under Chapter 11, the Debtor filed a Motion seeking to reject Hower's Broker's Contract as an executory contract under 11 U.S.C. § 365. John Hower objected, and this Court ruled that the contract at issue was not an executory contract which could be rejected under 11 U.S.C. § 365. An appeal was taken by the Debtor to the District Court on the issue of whether the Broker's Contract was executory; however, the appeal was subsequently dismissed.

5. Following the filing of the Chapter 11 petition, the Debtor has continued to do business with entities introduced to it by Creditor, John Hower, and Hower seeks to have commissions due pursuant to the terms of the Broker's Contract treated as post-petition debts having priority over other creditors.

6. A hearing was held on April 16, 2004, where the parties made legal arguments and the matter was taken under advisement.

#### Conclusions of Law

The contract at issue is a non-executory contract. This Court has previously ruled as such, and that ruling is now part of a final non-appealable Order.

The commissions which continue to accrue, based upon purchases by customers that Creditor, John Hower, introduced to the Debtor are not post-petition debts. The obligation to make the commission payments arose when the Broker's Contract was executed pre-petition. See: In re M Group, Inc., 268 B.R. 896 (Bankr. D. Del. 2001). The commissions arising post-petition are merely contingent claims for pre-petition debt not entitled to administrative priority. See: In re Waste Systems International, Inc., 280

B.R. 824 (Bankr. D. Del. 2002). In determining whether a claim is entitled to administrative priority, Courts look to when the acts giving rise to a liability took place, not when they accrued. In re Nationwide Automotive, Inc., 250 B.R. 900 (Bankr. S.D. Ohio 2000). The events which give rise to the liability for commissions in this case took place pre-petition, and, as such, the commission obligation is not entitled to administrative priority. 11 U.S.C. § 503(b). The case cited by Movant's counsel of In re Ruiz, 146 B.R. 877 (Bankr. S.D. Fla. 1992), is not on point and is clearly factually distinguishable from the present case.

In conclusion, the Court finds that, based upon the clear language of 11 U.S.C. § 503(b) and the case authority cited above, no basis exists to sustain the Motion to Compel Payment of Commissions, and said Motion should be denied.

ENTERED: April 22, 2004.

/s/Gerald D. Fines  
GERALD D. FINES  
United States Bankruptcy Judge