

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

**DISTRICT OF COLUMBIA,
Department of Insurance, Securities, and
Banking,**

Petitioner,

v.

**D.C. CHARTERED HEALTH PLAN,
INC.,**

Respondent.

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Civil No. 2012 CA 008227 2
Judge Melvin R. Wright

ORDER

This matter comes before this Court upon Party-In-Interest D.C. Healthcare Systems, Inc.’s (hereinafter “DCHSI”) Motion for A Stay Pending Appeal of the Order Approving the Asset Purchase Agreement, Plan for Reorganization and Related Matters and for Injunctive Relief. Upon consideration of DCHSI’s Motion, the Rehabilitator’s Opposition, DCHSI’s Reply, and the Rehabilitator’s Sur-Reply, the entire record herein, and for the reasons set forth below, DCHSI’s Motion must be denied.

STANDARD

“To prevail on a motion for stay, a movant must show that he or she is likely to succeed on the merits, that irreparable injury will result if the stay is denied, that opposing parties will not be harmed by a stay, and that the public interest favors the granting of a stay.” *Akassy v. William Penn Apartments, Ltd. P’ship*, 891 A.2d 291, 309 (D.C. 2006).

ANALYSIS

DCHSI seeks to have this Court stay the March 1, 2013 Order so as to permit DCHSI to seek appellate review of the Order. DCHSI’s Motion seeks to enjoin two improper actions by the Rehabilitator: 1) the unauthorized and improper liquidation of D.C. Chartered Health Plan, Inc.

(hereinafter “Chartered”); and 2) the violation of DCHSI’s rights as sole shareholder under Chartered’s Restated Articles of Incorporation and DCHSI’s rights as a creditor to Chartered.

A. DCHSI Has Not Sufficiently Demonstrated That It Would Likely Prevail On the Merits In Demonstrating that the Rehabilitator Took Improper Steps to Liquidate Chartered

DCHSI’s states that it is likely to succeed on the merits in arguing that the Rehabilitator took improper steps to liquidate Chartered. DCHSI argues that before the Rehabilitator may take steps to liquidate an insurer, he must first petition a court for an order of liquidation. *See* DCHSI Motion at p. 23. This argument correctly states the procedure in a liquidation action. D.C. Code. § 31-1314(a). This argument incorrectly labels this action as a liquidation action, and not as a rehabilitation action. As such, a petition for liquidation is unnecessary.

DCHSI further argues that the Rehabilitator effected a “transformation of Chartered, before obtaining Court approval and without demonstrating that it would be fair and equitable, by causing Chartered not to submit a bid in response to the D.C. Department of Health Care Finance’s (hereinafter “DHCF”) RFP for Medicaid Contracts and by entering into an agreement to sell Chartered’s assets. *See* DCHSI Motion at p. 23. The Rehabilitation Code does not state that the preparation of a plan effecting a transformation of the insurer requires court approval. *See* D.C. Code § 31-1312(e). The only requirement is that the rehabilitator “shall prepare a plan to effect the changes” and submit the plan to the Court for approval. *Id.* DCHSI’s contention that the Rehabilitator is not acting in DCHSI’s best interest is unpersuasive as the Rehabilitation Code obligates the Rehabilitator to act in the best interest of the company, not the best interest of the parent company. *See* D.C. Code § 31-1312(c). The Rehabilitator is not charged with making up for the parent company’s lack of diversification in its business model.

The proposed asset purchase transaction with AmeriHealth was presented to the Court for approval and contained a number of contingencies before the transaction could be finalized. *See* Special Deputy to the Rehabilitator’s Second Status Report pg. 7. This timeline of events follows

the language of D.C. Code § 31-1312(e) in that a plan will not be carried out until it receives court approval, which this Court did on March 1, 2013.

This Court is not swayed by the argument that the Rehabilitator's failure to bid for a DHCF Medicaid contract required court approval under D.C. Code § 31-1312(e). *See* DCHSI Motion at p. 24. This decision in itself does not "transform" the company in a manner contemplated under D.C. Code § 31-1312(e). The authority of the Rehabilitator to take this step is more correctly found under D.C. § 31-1312(c) which states that the Rehabilitator has "full power to direct and manage . . . and to deal with the property and business of the insurer."

DCHSI further posits that Chartered's Articles of Incorporation were violated when the Rehabilitator did not obtain the consent of Chartered's sole shareholder, DCHSI, as required for such board actions. The Rehabilitation Code states that the "rehabilitator shall have all the powers of the directors, officers, and managers, who authority shall be suspended, except as they are re-delegated by the rehabilitator." D.C. Code § 31-1312(c). This demonstrates that the approval from DCHSI was not required under the statute.¹

Finally, DCHSI cites to a D.C. Court of Appeals case as authority for this Court to intervene in the DHCF bidding process in aid of this Court's jurisdiction. *See* DCHSI Motion at p. 24 (citing *Dist. of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 15 (D.C. 1993)). This case is distinguishable from the case pin-cited by DCHSI for the proposed authority because the basis for the emergency injunctive relief in the cited case was to preserve appellate jurisdiction of the judicial forum while the agency proceedings were on-going. *See Dist. of Columbia v. Group Ins. Admin.*, 633 A.2d at 15. This action stems from a Petition for Rehabilitation filed by the D.C. Department of Insurance, Securities and Banking, not from the need to stay a government action pending the disposition of an agency proceeding. In fact, DCHSI states in its Motion that it intends to appeal the decision of the D.C. Contract Appeals Board to dismiss its bid protest, but

¹ If this action were a liquidation action, which the Court does not believe it is, DCHSI's right to resist a petition for liquidation would be protected under D.C. Code § 31-1305(c).

has not yet done so. *See* Order Dismissing Protest, Protest of D.C. Healthcare Systems, Inc. (Feb. 27, 2013)(CAB No. P-0930). Even if this Court was persuaded that it had the ability to grant such extraordinary injunctive relief so as to halt the DHCF Medicaid contract bidding process, this Court would decline the opportunity as sufficient evidence has not been provided to demonstrate that such action is necessary or just.

In summary, DCHSI has failed to show that it is likely to prevail on the merits in this matter. The arguments of improper action are dismissed by the plain language of the law governing this proceeding. DCHSI also fails to provide sufficient support for the proposition that this Court has authority to effect the extraordinary injunctive relief requested in the Motion.

B. DCHSI Has Not Shown That It Will Be Irreparably Harmed by the Rehabilitator's Plan

DCHSI's Motion argues that the Rehabilitator's plan, including the decision not to bid on the DHCF Medicaid contract, threatens the very existence of Chartered's business and therefore the very existence of DCHSI's business and will also threaten DCHSI's right as a shareholder and as a creditor. *See* DCHSI Motion at p. 32. What DCHSI does not address, and does not refute, is the fact that Chartered was set to lose its Medicaid contract once the current contract expires at the end of April 2013 because Chartered was unqualified to receive a new contract under the term of the Medicaid RFP issued in late 2012. *See* Special Deputy Opposition to Motion to Stay p. 19. Under the terms of the proposed asset purchase agreement, the business of Chartered, the 100,000 subscribers, and most of the assets, employees and providers will continue on with the new company, AmeriHealth. *See* Special Deputy to the Rehabilitator's Second Status Report at p. 5-9. The only detriment will be to DCHSI as its only revenue stream will be cut off. Even then, the proposed AmeriHealth deal would compensate Chartered, and subsequently DCHSI, for the assets purchased. *See Id.* at 5. Specifically, Chartered would

receive \$5 million for the acquired assets. *See Id.* Additionally, Chartered would retain its claim for a loan from DCHSI to Chartered. *See* Special Deputy Opposition to Motion to Stay p. 19.

Accordingly, DCHSI has not demonstrated that it will be irreparably harmed unless the stay is granted. Chartered, and subsequently DCHSI, would be compensated for the assets purchased by AmeriHealth and would retain the rights to make a \$60 million claim against DHCF for retrospective premium claims. Additionally, DCHSI would also retain the possession of \$14 million in assets securing a loan from DCHSI to Chartered. Also, DCHSI has not refuted the Rehabilitator's allegation that the perilous situation that Chartered and DCHSI currently is a product of the mismanagement of Chartered that caused the company to be put into rehabilitation.²

CONCLUSION

Party-In-Interest DCHSI has failed to meet the standard to permit this Court to provide the extraordinary injunctive relief requested in the Motion to Stay. Specifically, DCHSI has not demonstrated that it is likely to prevail on the merits or that it will suffer irreparable injury if a stay is not granted.

Accordingly, it is by this Court this Tuesday, April 2, 2013, hereby

ORDERED that Party-In-Interest DCHSI's Motion for Stay Pending Appeal and for Injunctive Relief is **DENIED**.

SO ORDERED.



Hon. Melvin R. Wright
Presiding Judge, Civil Division

² In finding the first two requirements for a stay not met, an analysis of the final two requirements is unnecessary. It is apparent to this Court that there is a strong public interest in providing uninterrupted Medicaid coverage to Chartered's current 100,000 enrollees from the expiration of the current Medicaid contract through the expiration of the Medicaid contract that is to be awarded this year. DCHSI has also not sufficiently shown that the effort of the Rehabilitator to secure the asset purchase agreement with AmeriHealth would not be harmed by the imposition of a stay.

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