

NO. D-1-GN-16-000360

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
MILLENNIUM CLOSING SERVICES,	§	
LLC D/B/A MILLENNIUM TITLE	§	
<i>Defendant.</i>	§	53 rd JUDICIAL DISTRICT

**SPECIAL DEPUTY RECEIVER’S APPLICATION TO DISTRIBUTE ESCROW FUNDS
[TEXAS TITLE INSURANCE GUARANTY ASSOCIATION]**

TO THE HONORABLE JUDGE OF THIS COURT:

CANTILO & BENNETT, L.L.P., Special Deputy Receiver of Millennium Closing Services, L.L.C. d/b/a Millennium Title (the “SDR” and “Millennium Title,” respectively), files this Application to Distribute Escrow Funds [Texas Title Insurance Guaranty Association] (the “Application”).

I. INTRODUCTION AND AUTHORITY

1.1 The SDR seeks authority to distribute certain escrow funds to TTIGA in partial satisfaction of TTIGA’s claim. This Application is filed pursuant to TEX. INS. CODE § 443.151 and the *Order Appointing Liquidator and Permanent Injunction* (the “Liquidation Order”), which provides that:

[3.4] The Liquidator shall have possession and control of any trust or escrow funds and related accounts and records held by Defendant [Millennium Title]. The Liquidator is authorized to disburse or transfer such trust or escrow funds and related accounts and records, at his discretion, as he deems necessary to (a) fulfill Defendant’s obligations under escrow agreements; (b) implement Defendants’ responsibilities under rules adopted under 28 TEX. ADMIN CODE § 9.1; (c) facilitate the duties of the Guaranty Association under Chapter 2602; or (d) effectuate the Liquidator’s duties under any other law.

1.2 The subject matter of this Application has been referred to the Master appointed in

this proceeding in accordance with the *Order of Reference to Master* entered on March 1, 2016.

II. BACKGROUND

2.1 Millennium Title was a title insurance agent as defined in TEX. INS. CODE § 2501.003(13). It issued policies on behalf of title insurance companies and handled closings of real estate transactions as defined in TEX. INS. CODE § 2501.006(a). Its duties incident to closing transactions included accepting, safeguarding and disbursing escrow funds. The company operated from late May 2015 until late January 2016. Millennium Title's Chief Executive Officer and General Counsel was Nancy Jackson Carroll.

2.2 As a result of misappropriations of escrow accounts, Millennium Title was placed in receivership in this proceeding on January 25, 2016. This Court entered the Liquidation Order appointing the Texas Commissioner of Insurance as Liquidator. The Liquidator designated CANTILO & BENNETT, L.L.P. as SDR of Millennium Title on January 26, 2016.

2.3 Millennium Title was declared an "impaired agent" on January 25, 2016. As of that date, TTIGA became responsible for the payment of "covered claims" as defined in TEX. INS. CODE § 2602.252. In response to the nature of the claims presented by this insolvency, TTIGA established an "expedited" claims process. As of December 31, 2017, TTIGA has received 491 claims, has approved, in whole or in part, 375 claims, and has paid out over \$3.5 million.

2.4 The SDR is in possession of escrow funds from Millennium Title's escrow accounts. The Liquidation Order provides that escrow funds are not general assets of Millennium Title as defined in TEX. INS. CODE § 443.004(a)(9) and are not subject to distribution under TEX. INS. CODE § 443.301. The Liquidation Order authorizes the disbursement of the escrow funds as necessary to fulfill Millennium Title's obligations under escrow agreements.

2.5 On August 9, 2016, the receivership court entered its *Order Granting Joint Application to Provide Notice of Liquidation, Set Claims Filing Deadline and Establish a Claims Processing Procedure* (the “POC Order”).

III. TTIGA’S ROLE

3.1 TTIGA is a non-profit, statutorily created association of all title insurance companies licensed in Texas. It is governed by Chapter 2602 of the Texas Insurance Code. One of its primary functions is to reimburse the public for losses created by shortages in the escrow accounts of insolvent title insurance agents. Specifically, TTIGA is authorized to investigate, adjust, compromise, settle, and pay “covered claims” against title agents as defined in Chapter 2602. A claim against an escrow or trust account of an impaired title agent based on a shortage of funds in such account is a covered claim under TEX. INS. CODE § 2602.252. TTIGA is a party in interest, and has standing to appear in this proceeding in accordance with TEX. INS. CODE §§ 443.004(a)(17), 443.151(b), and 2602.009.

3.2 TEX. INS. CODE § 2602.302(c) provides that TTIGA shall establish procedures for filing covered claims, subject to the approval of the Commissioner. The Commissioner issued the *Designation as an Impaired Insurer under Texas Insurance Code Chapter 2602* for Millennium Title on January 25, 2016. Thereafter, TTIGA promulgated a Claims Payment Plan (the “Expedited Claims Payment Plan”), which was approved by the Commissioner. The Expedited Claims Payment Plan has been used in connection with processing all the claims filed with TTIGA since Millennium Title was designated as impaired.

3.3 Paragraph 17 of the Expedited Claims Payment Plan provides:

Assignment of Claimant’s Rights. Any cause of action or other right of the holder of a covered claim arising from the occurrence on which the claim is based shall be assigned to the Association on the holder’s acceptance of the Association’s payment of the claim. Rights are assigned to the Association

to the extent of the amount accepted by or the value of the benefit provided to the claimant.

3.4 TTIGA has a statutory right to reimbursement from the escrow funds, as follows:

ASSIGNMENT OF CLAIMANT'S RIGHTS. (a) Any cause of action or other right of the holder of a covered claim arising from the occurrence on which the claim is based is assigned to the association on the holder's acceptance of:

(1) the association's payment of the claim; ...

(b) Rights are assigned to the association under Subsection (a) to the extent of the amount accepted or the value of the benefit provided. TEX. INS. CODE § 2602.306.

IV. RELIEF SOUGHT

A. Authority to Distribute Escrow Funds to TTIGA

4.1 The SDR requests authority to distribute a portion of the escrow funds to TTIGA for those claims paid by TTIGA where the SDR holds the corresponding amount in escrow. The Liquidation Order authorizes the SDR to distribute escrow funds. The money is not a general asset of the estate and is not subject to the claims of general creditors. Instead, the escrow money is held on behalf of its rightful owner. As a matter of law, TTIGA succeeds to the rights of the rightful owner upon its payment of a claim, up to the amount paid.

4.2 The SDR does not seek to distribute any escrow money that is unclaimed, that is owed to or claimed by a party other than TTIGA, or that is otherwise subject to dispute. Likewise, the SDR does not seek in this Application to distribute any money, escrow or otherwise, to TTIGA where it has paid a covered claim for which the SDR does not hold money in escrow.

4.3 At this time there are no approved claims for any of the escrow funds that the SDR seeks to hold back from this distribution to TTIGA. The SDR holds \$260,598.15 in escrow funds for which TTIGA has not paid a claim, that is owed to or claimed by a party other than TTIGA, or is otherwise subject to dispute.

B. Amount to be distributed

4.4 As of December 31, 2017, the SDR holds \$3,094,967 in identified escrow funds. The money has been not been commingled with non-escrow funds and is held in a separate bank account. The funds in the estate escrow account are identifiable by claimant and guaranty file (GF) number. As noted above, the SDR holds \$260,598.15 in escrow funds that is not subject to a claim by TTIGA at this time.

4.5 As of December 31, 2017, TTIGA has paid \$3,573,727 under the Expedited Claims Payment Plan. The figure includes \$135,095.56 that the SDR transferred from the escrow account on February 19, 2016, for payment of two claims where the amount in escrow for each claim exceeded TTIGA's \$250,000 statutory maximum of coverage per claim.

4.6 The POC Order provides that, after TTIGA and the SDR have concluded the processing of all escrow claims, the SDR will request this Court's authority to make a distribution of the assets in the escrow account to TTIGA. Because this is not a final Application, the SDR proposes to hold back the \$260,598.15 in funds to which TTIGA is not entitled, plus a portion of the amount TTIGA may ultimately be entitled to receive from the escrow funds as a prudent reserve in recognition of the difficulty in identifying the correct owners of certain escrow funds. Accordingly, the SDR proposes to hold back a total of \$300,000 of the escrow funds from distribution under this Application.

4.7 Based on the above, the SDR seeks authority to distribute \$2,794,967 to TTIGA via this Application.

4.8 TTIGA has paid at least \$400,000 in claims for which the SDR does not hold escrow funds. The SDR does not seek to make any distribution to TTIGA in this Application on any such claim.

4.9 The SDR further proposes that the distribution made pursuant to this Application be subject to repayment in whole or in part, together with interest thereon at the annual rate of 6%, if such repayment shall be determined by the SDR to be necessary for the payment of (i) escrow claims (ii) or claims of an equal or higher priority to those of TTIGA, as established by the insurance laws of Texas, the intent being that TTIGA shall not, by virtue of this distribution, receive a larger payment on its claims than that to which it is entitled under the provisions of the Insurer Receivership Act.

V. NOTICE

5.1 Pursuant to TEX. INS. CODE ANN§ 443.007(d), this Application has been served on the entire service list for this proceeding, including TTIGA, in the manner shown on the Certificate of Service.

VI. OFFER OF PROOF AND VERIFICATION

6.1 This Application is verified by the affidavit and certification pursuant to TEX. INS. CODE § 443.017(b) of Susan E. Salch, the designated representative of CANTILO & BENNETT, L.L.P., Special Deputy Receiver of Millennium Closing Services, L.L.C. d/b/a Millennium Title

PRAYER

WHEREFORE, PREMISES CONSIDERED, the SDR and TTIGA respectfully request that this Court enter an Order:

1. Approving this Application in all respects;
2. Authorizing the SDR to distribute \$2,794,967 of the escrow funds to TTIGA;
3. Authorizing the SDR to hold back a total of \$300,000 of the escrow funds pending further order of the court; and
4. Granting the SDR such other and further relief to which it may be justly entitled.

Respectfully submitted,

FULLER LAW GROUP

By: /s/Christopher Fuller

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**Attorney for CANTILO & BENNETT, L.L.P.,
Special Deputy Receiver of
Millennium Closing Services, L.L.C. d/b/a
Millennium Title**

CERTIFICATE OF SERVICE

I certify that on February 12, 2018, a true and correct copy of this Application pursuant to the Court's order requiring electronic service, the Texas Rules of Civil Procedure and TEX. INS. CODE CHAPTER § 443.007(d) on the following by electronic mail, except as specifically noted:

Via e-Mail: specialmasterclerk@tdi.texas.gov
Special Master's Clerk
TEXAS DEPARTMENT OF INSURANCE
Rehabilitation & Liquidation Oversight
PO Box 149104
Austin, TX 78714-9104

Via e-Service: James.Kennedy@tdi.texas.gov
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/Christopher Fuller/
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APPLICANT'S NOTICE OF SUBMISSION

Pursuant to the terms of the Order of Reference to Master entered by the District Court in this cause, the SDR's *Application to Distribute Escrow Funds [Texas Title Insurance Guaranty Association]* is hereby set for written submission before the Special Master, Tom Collins, on February 26, 2018.

The Special Master has asked that the following rules be provided you:

1. Any objection must be filed with the Travis County District Clerk at least three (3) calendar days before the submission date.
2. A copy of any objection shall be served by email by such date on:
 - (a) The Special Master's Docket Clerk, at specialmasterclerk@tdi.texas.gov;
 - (b) The undersigned counsel, Christopher Fuller at cfuller@fullerlaw.org; and
 - (c) All interested parties, including those listed on the SDR's Certificate of Service.
3. The objecting party shall coordinate with the SDR's counsel and the Docket Clerk [(512)463-6450] to obtain an oral hearing setting for argument on the Application and Objection, and complete and attach an "Objecting Party's Notice of Oral Hearing" to the objection.
4. The written objection must specifically list all reasons for objection with supporting references to and discussion of statutory and case authorities. Reasons not stated in writing will not be considered orally.
5. **Please note that if an objection is not filed as described in the Notice of Submission, the Master may consider the Application without a hearing.**
6. **Failure to file timely a written objection before the Special Master constitutes a waiver of the right to object to the Special Master's recommendation to the District Court.**
7. Any Acknowledgment of Notice and Waiver to be filed by the Guaranty Association or other interested party should be filed at least three (3) calendar days before the submission or hearing date.

/Christopher Fuller/

Christopher Fuller

**SPECIAL DEPUTY RECEIVER'S CERTIFICATION PURSUANT TO
TEX. INS. CODE ANN. §443.017(b)**

AFFIDAVIT OF SUSAN E. SALCH

State of Texas

County of Travis

BEFORE ME, the undersigned authority appeared Susan E. Salch, who after being by me duly sworn, stated the following under oath:

1. "My name is Susan E. Salch. I am of sound mind, capable of making this affidavit, and am competent to testify to the matters contained in this affidavit by personal knowledge, which are true and correct.
2. I am a partner in CANTILO & BENNETT, L.L.P., the Special Deputy Receiver of Millennium Closing Services LLC, d/b/a Millennium Title (the "SDR" and "Millennium Title" respectively). I am duly authorized to make this Certification on behalf of the SDR.
3. I have read the Application to Distribute Escrow Funds [Texas Title Insurance Guaranty Association], and the facts stated therein are true and correct based on my personal knowledge, my review of estate records, and my consultation with my staff and subcontractors."

By: *Susan E. Salch*
Susan E. Salch

SUBSCRIBED AND SWORN TO BEFORE ME on February 12, 2018, by Susan E. Salch, Special Deputy Receiver of Millennium Closing Services LLC, d/b/a Millennium Title.

Linda Thomas
Notary Public

