

NO. D-1-GV-09-000007

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
	§	
VS.	§	TRAVIS COUNTY, TEXAS
	§	
SOUTHERN STAR TITLE	§	
COMPANY, LLC	§	53RD JUDICIAL DISTRICT

APPLICATION FOR AUTHORITY TO ABANDON AGENCY LICENSE

TO THE HONORABLE DISTRICT COURT:

COMES NOW Jennifer Ramsey, PC, Special Deputy Receiver of Southern Star Title Company, LLC (the “SDR” and “Southern Star”), and files this *Application for Authority to Abandon Agency License* (the “Application”), and would show as follows.

I. INTRODUCTION

1.1 The Texas Department of Insurance (“TDI”) has notified Southern Star of its intention to initiate disciplinary action. Southern Star holds a Title Insurance Agent License by TDI (the “License”). As the License has no value to the receivership estate, the SDR requests authority to abandon the License.

II. AUTHORITY

2.1 The License is property of Southern Star, title to which is vested in the Liquidator pursuant to § 443.151 of the Texas Insurance Code.¹ The Liquidator may request approval to abandon or otherwise dispose of any property of Southern Star under § 443.154 (y).

2.2 The SDR is authorized to file this Application in accordance with § 443.154 (a), which provides that the SDR has all of the Liquidator’s powers, unless limited by the Liquidator.

2.3 This Application has been referred to the Master appointed in this proceeding in accordance with the *Order of Reference to Master* entered on January 26, 2009.

¹ All statutory references are to the Texas Insurance Code, unless otherwise indicated.

III. BACKGROUND

3.1 Under Chapter 2651, Southern Star operated as a title insurance agent, as that term is defined in § 2501.003 (13). TDI issued a Title Insurance Agent License to Southern Star on August 11, 2006, which authorized Southern Star to act as an escrow officer agent for title insurers that appointed Southern Star (the “License”). A copy of the License is attached as Exhibit A.

3.2 Southern Star was placed in Liquidation under Chapter 443 on January 8, 2009. The Court entered an *Agreed Order Appointing Liquidator and Permanent Injunction* (“Liquidation Order”), finding Southern Star to be insolvent, as defined in § 443.004(a)(13). The Liquidation Order appointed the Commissioner of Insurance for the State of Texas (“Commissioner”) as Liquidator of Southern Star in accordance with § 443.151, and permanently enjoined Southern Star from engaging in business on behalf of any title insurance company.

3.3 The Commissioner entered an Impairment Order designating Southern Star as an “impaired agent” effective January 8, 2009, authorizing the Texas Title Insurance Guaranty Association (“TTIGA”) to pay “covered claims” of Southern Star under Chapter 2602. To date, TTIGA has paid \$336,813.10 in covered claims.

3.4 The Liquidator designated the SDR effective April 1, 2009.

3.5 On May 12, 2011, TDI issued a Notice of Intention to Initiate Disciplinary Action. The Notice alleges that Southern Star:

[v]iolated insurance laws and/or specific provisions of the Insurance Code, as contemplated in TEX. INS. CODE ANN. §§ 82.051 and 2651.202(a) and TEX. PENAL CODE ANN. § 31.03, by illegally transferring money held in Southern Star's escrow trust account to persons and entities who were not the lawful owner and without the lawful owners consent.

IV. RELIEF REQUESTED

4.1 Under § 443.151(a), the Liquidator is vested by law with title to all property of Southern Star, including all rights related to Southern Star's License. The Liquidation Order states:

The Liquidator shall be vested by operation of law with title to all of Defendant's property as defined in TEX. INS. CODE § 443.004 (a)(20). Such property shall include property of any kind or nature, whether real, personal, or mixed, including but not limited to money, funds, cash, stock, bonds, account deposits, statutory deposits, special deposits, contents of safe deposit boxes, funds held in shared, escrow or trust accounts, retainages and retainers, letters of credit, real estate, fixtures, furniture, equipment, books, records, documents and insurance policies, intellectual property, computer software and systems, information technology, internet domain names, patents and intangible assets, whether owned individually, jointly, or severally, wherever located, and all rights, claims or causes of action belonging to Defendant, whether asserted or not, including but not limited to accounts receivable, notes, premiums, subrogation, insurance and reinsurance proceeds, **and all licenses held by Defendant** (collectively, "Defendant's Property"). The Liquidator's title shall extend to Defendant's Property regardless of the name in which such items are held. The Liquidator is directed to take possession of the Defendant's Property, wherever located. TEX. INS. CODE § 443.151(a). (Emphasis added)

4.2 The License can no longer be used to conduct business, and Southern Star cannot be restored to operate as a title agency. Thus, the License has no value to the receivership estate, unless it can be sold.

4.3 The SDR has determined that a sale of the license is not feasible. Section 443.153 (b) provides that the Liquidator may transfer a license in conjunction with the sale of a charter. However, there does not appear to be any demand for a charter of a defunct title agency, and the SDR believes that attempts to market the charter would be futile. In the unlikely event that an offer was made for the charter that would justify the costs of the sale, the License would be of dubious value to the buyer. The *Basic Manual of Rules, Rates, and Forms for the Writing of*

Title Insurance in the State of Texas, Administrative Rule L-1, V, B.2 provides that upon a change in ownership of a title insurance agency of 50% or more, the existing license must be cancelled, and the owners must apply for a new license.

4.4 Section 2651.201 (a) allows a title insurance agent to surrender a license. If the revocation action is not resolved by surrendering the License, it will proceed to hearing. Even minimal participation in the proceeding would entail costs to the receivership, while providing no benefit. Spending money in order to preserve or maintain rights related to a worthless asset is not in the best interest of the receivership estate. This is a particular concern here, because there are insufficient assets to pay operating expenses, and amounts have been advanced by the Abandoned Property Fund to continue the administration of the receivership proceeding.

4.5 Surrendering the License will not have any detrimental impact on the creditors of the receivership estate. It will not create additional liabilities for the receivership estate, or diminish any rights of third parties. Neither will it affect TTIGA's payment of covered claims, or the obligations of title insurance companies under policies issued by Southern Star.

4.6 Under § 443.154 (y)(3), this Court may approve a request to transfer, abandon, or otherwise dispose of any property. For the reasons described above, the License has no value to the receivership estate, and efforts to maintain or sell the License would further deplete the limited funds available. The SDR therefore submits that it is appropriate and reasonable to abandon the License, and surrender it to TDI.

V. NOTICE

5.1 This Application has been served on the entire service list for this proceeding, and on all persons with an ownership interest in Southern Star, in the manner shown on the Certificate of Service in accordance with § 443.007 (d) and the Order of Reference.

VI. OFFER OF PROOF AND VERIFICATION

6.1 This Application has been verified by the SDR pursuant to § 443.017 (b).

PRAYER

WHEREFORE, PREMISES CONSIDERED, Jennifer Ramsey, PC, Special Deputy Receiver of Southern Star Title Company, LLC respectfully requests that this Court:

1. Grant this Application;
2. Authorize the SDR to abandon Southern Star’s Title Insurance Agent License and all rights thereto;
3. Authorize the SDR to surrender the original Title Insurance Agent License to TDI;
4. Grant the SDR such other and further relief to which it may be justly entitled.

Respectfully submitted,

BRIAN E. RIEWE, P.C.
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Austin, Texas 78759
Telephone: 512/236-9955
Facsimile: 512/236-9966

Brian E. Riewe
State Bar No. 16915600
briewe@riewelaw.com

Brian E. Riewe

By: _____

Attorneys for the Special Deputy Receiver

APPLICANT'S NOTICE OF SUBMISSION

Pursuant to the terms of the Amended Order of Reference to Master entered by the District Court in this cause, the *Application for Authority to Abandon Agency License* is hereby set for written submission before the Special Master, Tom Collins, on **Monday, December 19, 2011**.

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 such date on:
 - (a) The Special Master's Docket Clerk, Ms. Jean Sustaita, Texas Department of Insurance, **(Hand Delivery)** 333 Guadalupe, Hobby Tower 3, Room 550, Austin, Texas; or **(Mail To)** P. O. Box 149104, Austin, Texas 78714-9104
 - (b) All interested parties, including those listed on the Applicant's Certificate of Service.
3. 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.
4. If a matter is set for submission, an objecting party shall expeditiously coordinate with Applicant's counsel and the master's docket clerk [(512) 463-6450] to obtain an oral hearing, unless the master determines that an oral hearing is not necessary. The objecting party shall serve a Notice of Oral Hearing on applicant's counsel and all interested parties, including those listed on the Applicant's Certificate of Service.
5. 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.
6. 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.

Brian E. Riewe

Brian E. Riewe

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on all interested parties in accordance with the Texas Rules of Civil Procedure and TEX. INS. CODE ANN. § 443.007(d) this 5th day of December 2011.

Mr. Tom Collins, Special Master
by serving his Docket Clerk, Ms. Jean Sustaita
Texas Department of Insurance
333 Guadalupe, Tower III, 5th Fl., MC-305-1D
Austin, Texas 78701
Email: jean.sustaita@tdi.state.tx.us

Ms. John Walker
Ms. Leanne Layne
Ms. Rachel Giani
Texas Department of Insurance
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Email: leanne.layne@tdi.state.tx.us
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Mr. Burnie Burner
Mitchell, Williams, Selig, Gates & Woodyard
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Email: bmccandless@mwlaw.com
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Mr. Roy Ibanez, Pro Se
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General Partner of Santo Andre Investment,
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Mr. Casey Bell
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Mr. Michael McGurk
Ms. Tracy Spillman
Kittleman, Thomas & Gonzales, LLP
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Email: tspillman@ktglawfirm.com

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THE STATE OF TEXAS

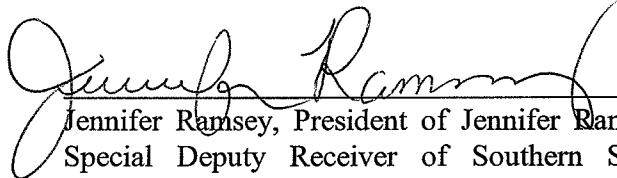
COUNTY OF TRAVIS

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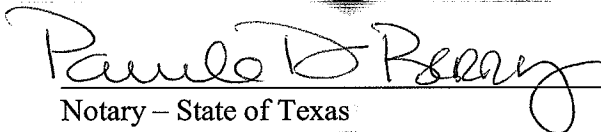
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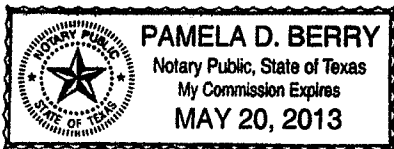
BEFORE ME, the undersigned authority appeared Jennifer Ramsey, who after being duly sworn by me, states the following under oath:

1. My name is Jennifer Ramsey. I am competent to make this affidavit. The statements of fact set forth herein are true and correct, and are within my personal knowledge.
2. I am the President of Jennifer Ramsey, PC, Special Deputy Receiver of Southern Star Title Company, LLC. I am duly authorized to make this certification and affidavit on behalf of the Special Deputy Receiver.
3. I certify that the records and documents attached hereto were produced pursuant to TEX. INS. CODE ANN. § 443.017(b), are true and correct copies of records created by and filed with the Receiver's office in connection with the receivership of this delinquent insurer, and are held by the Special Deputy Receiver in its official capacity.
4. I further state that I have read the statements contained in the attached *Application* and that they are true and correct based on my personal knowledge, my review of estate records and my consultation with my staff and sub-contractors.
5. Further affiant sayeth not.


 Jennifer Ramsey, President of Jennifer Ramsey, PC,
 Special Deputy Receiver of Southern Star Title
 Company, LLC

SWORN TO, SUBSCRIBED, and ACKNOWLEDGED BEFORE ME by Jennifer Ramsey, President of Jennifer Ramsey, PC, on this the 2nd day of December, 2011.


 Notary – State of Texas





Texas Department of Insurance
333 Guadalupe P.O. Box 149104, Austin, Texas 78714-9104

CERTIFICATE OF LICENSE

TITLE INSURANCE AGENT LICENSE

ISSUE DATE: 11-AUG-2006

EXPIRATION DATE: 01-SEP-2008

IS ISSUED TO: SOUTHERN STAR TITLE COMPANY, LLC

TITLE AGENT NAME: SOUTHERN STAR TITLE COMPANY, LLC

AGENT ADDRESS: 1410 DOVE
MCALLEN, TX 78504

UNDERWRITER: COMMONWEALTH LAND TITLE INSURANCE COMPANY

AUTHORIZED COUNTY(IES): 108

LICENSE ID: 919658

AGENT COMPANY ID: 12194844

The holder of this license has met the statutory requirements imposed by Article 9.36, *Texas Insurance Code*, to act as a Title Insurance Agent for the license period indicated. A Title Insurance Agent is required to be knowledgeable of the privileges and limitations which this license extends, and the penalties which the *Texas Insurance Code* and the *Texas Penal Code* provide for the misuse thereof.

EXHIBIT A