

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO**

In re: SANDIA RESORTS, INC.,
Debtor.

No. 11-15-11532 JA

**ORDER DENYING DEBTOR'S ORAL MOTION UNDER FED.R.BANKR.P. 2019(e)
TO DISQUALIFY COUNSEL FROM REPRESENTING PEAK HOSPITALITY, LLC**

At the continued final hearing on the Motion to Estimate Claim and for Temporary Allowance of Peak Hospitality's Claim under Rule 3018(a) ("Motion for Temporary Allowance of Claim"), held September 6, 2016, Sandia Resorts, Inc. ("Sandia Resorts") objected to Richard Leverick's representation of Peak Hospitality, LLC ("Peak") in this bankruptcy case, asserting that Mr. Leverick had, in fact, been representing Peak for some time, should have disclosed his representation earlier, and should have prosecuted Peak's Motion for Temporary Allowance of Claim on August 26, 2016 as originally scheduled. The Court determined that it would treat Sandia Resorts' objection as an oral motion for sanctions under Fed.R.Bankr.P. 2019(e) for failure to comply with the requirements of Fed.R.Bankr.P. 2019 ("Motion"). As explained below, the Court will deny the Motion.

PROCEDURAL HISTORY, FACTS, AND DISCUSSION

Mr. Leverick represents NCG, LLC ("NCG") in Sandia Resorts' bankruptcy case. On August 4, 2016, Peak filed a proof of claim in Sandia Resorts' bankruptcy case. *See* Claim No. 13-1. Richard Leverick provided Peak with a proof of claim form. Joseph Will completed the proof of claim, and Gabriel Barela, one of Peak's principals, signed it on behalf of Peak. *Id.* Peak filed the Motion for Temporary Allowance of Claim on August 17, 2016. *See* Docket No. 193. Theodore Barela signed the Motion for Temporary Allowance of Claim on behalf of Peak,

and Richard Leverick signed the certificate of service for the motion “(not as counsel)”. *Id.* Mr. Leverick electronically filed Peak’s proof of claim and the Motion for Temporary Allowance of Claim using his CM/ECF login and password.

The Court scheduled a final hearing on the Motion for Temporary Allowance of Claim on August 26, 2016. *See* Docket No. 155. Because an entity may not participate in a bankruptcy case unless it is represented by counsel, *See* NM LBR 1074-1,¹ the Court continued the hearing on the Motion for Temporary Allowance of Claim to September 6, 2016 to afford Peak an opportunity to retain counsel if it wanted to prosecute the Motion for Temporary Allowance of Claim. On September 2, 2016, Leverick and Mussleman, LLC (“L & M”) filed a Bankruptcy Rule 2019 Notice disclosing that Peak had engaged L & M to represent it in this bankruptcy case, and that L & M also represents NCG in this bankruptcy case. *See* Docket o. 227.

Bankruptcy Rule 2019 requires an attorney who wishes to represent more than one creditor in a bankruptcy case to file a verified statement disclosing such employment. *See* Fed.R.Bankr.P. 2019(a), (b), and (c). *See also, In re MJ Metal Products, Inc.*, 292 B.R. 702, 704 (Bankr.D.Wyo. 2003) (explaining that, “[u]nder Rule 2019(a), an entity representing more than one creditor is required to file a statement detailing the authority of that entity to act on behalf of those creditors.”). The Court may impose sanctions for failing to comply with the rule. *See* Fed.R.Bankr.P. 2019(e).² Sanctions under Fed.R.Bankr.P. 2019(e) are discretionary. *See In re*

¹ NM LBR 1074-1 provides:

For all purposes except filing proofs of claim, reaffirmation agreements, requests for unclaimed funds, or participating in meetings of creditors, any entity other than an individual, including, but not limited to a corporation, limited liability company, partnership, or trust, must be represented by an attorney authorized to practice before this court.

NM LBR 1074-1.

² Rule 2019(e) provides:

(1) On motion of any party in interest, or on its own motion, the court may determine whether there has been a failure to comply with any provision of this rule.
(2) If the court finds such a failure to comply, it may:
(A) refuse to permit the entity, group, or committee to be heard or to intervene in the case;

Quigley Co., Inc., 2016 WL 1084747, *7 n. 15 (S.D.N.Y. Mar. 18 2016) (observing that “the sanctions authorized by Rule 2019 are not mandatory; the Court *may* impose them.”) (emphasis in original).

The Court finds that the Rule 2019 Notice complies with the requirements of the rule and declines to impose any sanctions. The Rule 2019 Notice discloses that L & M represents both NCG and Peak in Sandia Resorts’ bankruptcy case, and further discloses that L & M has no claim against Sandia Resorts or equity interest in Sandia Resorts, and does not have any ownership or equity interest in either Peak or NCG. The Rule 2019 Notice also discloses that L & M has worked together with Peak in state court foreclosure matters, but not as client and counsel, and that Peak sought to engage L & M as a result of the hearing held August 26, 2016.

Mr. Walter Barela, a principal of Peak, testified at the hearing on September 6, 2016 that Mr. Leverick provided Peak with the proof of claim form, but that Peak had not at that time retained L & M as its counsel. Peak’s principals were long acquainted with Mr. Leverick because of his representation of the lender in a state court foreclosure action against Sandia Resorts. The receiver appointed in the state court foreclosure action retained Peak as property manager for the hotel owned by Sandia Resorts. *See* Exhibit C. In connection with Sandia Resorts’ bankruptcy case, Mr. Leverick informed Peak that it must file a proof of claim in order to receive any distribution from the bankruptcy estate. He also provided Peak with a sample motion for temporary allowance of claim. Notwithstanding evidence that Peak had been in contact with Mr. Leverick concerning Sandia Resorts’ bankruptcy case before Mr. Leverick filed the Rule 2019 Notice, the record before the Court does not establish that Peak retained Mr.

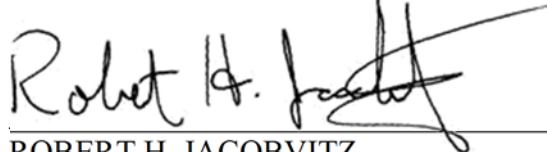
(B) hold invalid any authority, acceptance, rejection, or objection given, procured, or received by the entity, group, or committee; or

C) grant other appropriate relief.

Fed.R.Bankr.P. 2019(e).

Leverick or his firm, L & M, to represent it in Sandia Resorts' bankruptcy case before September 2, 2016. The Motion for Temporary Allowance of Claim filed August 17, 2016 reflects on its face that Mr. Leverick was not serving as Peak's counsel as of that time.

WHEREFORE, IT IS HEREBY ORDERED that Sandia Resorts' Motion is denied.



ROBERT H. JACOBVITZ
United States Bankruptcy Judge

Date entered on docket: October 11, 2016

COPY TO:

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