Docket #0496 Date Filed: 09/03/2025

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:

CBRM REALTY INC., *et al.*,

Debtors.[1]

Order Filed on September 3, 2025
by Clerk
U.S. Bankruptcy Court
District of New Jersey

Case No. 25-15343-MBK

Chapter 11

Hearing Date: August 21, 2025

Judge: Hon. Michael B. Kaplan

ORDER DENYING MOTION FOR THE APPOINTMENT OF AN EQUITY SECURITY HOLDERS COMMITTEE OR, IN THE ALTERNATIVE, APPOINTMENT OF COUNSEL

The relief set forth on the following pages, numbered two (2) through five (5), is

ORDERED.

DATED: September 3, 2025

Honorable Michael B. Kaplan
United States Bankruptcy Judge

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: CBRM Realty Inc. (2420), Crown Capital Holdings LLC (1411), Kelly Hamilton Apts LLC (9071), Kelly Hamilton Apts MM LLC (0765), RH Chenault Creek LLC (8987), RH Copper Creek LLC (0874), RH Lakewind East LLC (6963), RH Windrun LLC (0122), RH New Orleans Holdings LLC (7528), and RH New Orleans Holdings MM LLC (1951). The location of the Debtors' service address in these chapter 11 cases is: In re CBRM Realty Inc., et al., c/o White & Case LLP, 1221 Avenue of the Americas, New York, New York 10020.

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This matter comes before the Court on the motion (the "Motion") of Moshe Silber (ECF No. 348) (the "Movant"), seeking the appointment of an official equity committee pursuant to 11 U.S.C. § 1102(a)(2), or, in the alternative, the appointment of counsel to represent the interests of equity holders. The Court has considered the submissions of the parties, including the Debtors' Objection (ECF No. 374) and the Objection of the United States Trustee ("UST") (ECF No. 377), and decides this matter without oral argument, consistent with D.N.J. LBR 9013-3(d). For the reasons set forth below, and for substantially the reasons advanced in the Objections, the Court finds and concludes as follows:

In his Motion, Movant asserts that shareholders lack adequate representation in these proceedings, that the Debtor's assets are substantial and may yield a recovery for equity, and that without the requested relief equity interests will be unfairly diluted or eliminated.

The Debtors object on several grounds. They argue that the appointment of an equity committee is unwarranted because equity is "out of the money," as confirmed by their financial advisor's testimony and the Debtors' operating reports. *See* ECF No. 374 at pgs. 12-13. Under the Debtors' Plan, equity receives no recovery, and Movant himself conceded he cannot demonstrate solvency. *Id.* The Debtors further contend that adequate representation already exists because, as debtors-in-possession, they owe fiduciary duties to maximize value for all stakeholders, including equity, and an independent fiduciary—appointed with Mr. Silber's consent—is actively protecting those interests. *Id.* at 14-16. Finally, the Debtors argue that Movant has not met the standard for appointment of counsel under 28 U.S.C. § 1915(e)(1), having made no showing of indigency or exceptional circumstances, and that diverting estate resources to fund counsel for a single

shareholder would be improper given the Debtors' limited resources and Movant's own misconduct. *Id.* at 18-19.

The UST likewise objects to the Motion, emphasizing that the appointment of an equity committee is the rare exception under § 1102(a)(2). *See* ECF No. 377 at pg. 7. The UST argues that Movant, as the sole shareholder, seeks effectively a committee of one and has not met his burden of showing necessity. *Id.* at 2. Appointment of such a committee on the eve of confirmation would only cause delay, while the record shows no substantial likelihood of a distribution to equity given the Debtors' insolvency and liquidation analysis. *Id.* at 8-9. The UST further notes that Movant has made only a conclusory statement regarding his inability to retain counsel, without evidence that he cannot protect his interests by hiring counsel if he so chooses. *Id.* at 11-12. Finally, the UST stresses that avoiding unnecessary administrative costs is particularly important here, where unsecured creditors are already impaired substantially under the Debtors' plan. *Id.* at 2.

This Court finds no basis, in law or fact, for the appointment of an equity committee. Both the Debtors and the UST correctly emphasize that appointment of an equity committee is an extraordinary remedy and the rare exception. *In re Spansion, Inc.*, 421 B.R. 151, 156 (Bankr. D. Del. 2009) (quoting *In re Dana Corp.*, 344 B.R. 36, 38 (Bankr. S.D.N.Y. 2006)). The record demonstrates the extreme unlikelihood that equity will receive any distribution in this case—the Debtors' latest operating reports show negative equity, the liquidation analysis attached to the disclosure statement reflects no recovery to equity under any scenario, and the Debtors' financial advisor testified that no plausible scenario exists in which equity holders could receive a distribution. ECF No. 374 at 13. In such circumstances, there is no "substantial likelihood" of

recovery for equity, and an equity committee would serve no legitimate purpose but to impose unnecessary expense on the estate.

Equity stakeholders are adequately represented in these proceedings. The Debtors, as debtors-in-possession, owe fiduciary duties to maximize value for all stakeholders, including equity holders (*In re Reliant Energy Channelview LP*, 594 F.3d 200, 210 (3d Cir. 2010)), and an independent fiduciary was appointed—at Movant's own consent—to further safeguard stakeholder interests. The UST notes, and the Court agrees, that Movant has failed to establish that his interests cannot be adequately represented without an official equity committee. The statutory focus is adequate, not exclusive, representation, and the record amply supports that equity's interests are already represented adequately.

Furthermore, the Court agrees with the UST that the timing of the Motion, on the eve of plan confirmation and in the midst of ongoing sale processes, weighs strongly against granting the requested relief. At this stage of the case, an equity committee could not fulfill its most important function—negotiating a plan—and would only delay confirmation at the expense of other stakeholders. *Matter of Kalvar Microfilm, Inc.*, 195 B.R. 599, 601 (Bankr. D. Del. 1996).

Movant has likewise failed to meet the standard for appointment of counsel under 28 U.S.C. § 1915(e)(1). As the Debtors argue, he has not demonstrated indigency or exceptional circumstances justifying such relief. The UST notes that a bare statement of inability to afford counsel is insufficient, and this Court agrees. Requiring the estates to fund Movant's litigation would be inappropriate, especially where his own misconduct contributed substantially to these proceedings.

Accordingly, for the reasons set forth above, and for good cause shown, it is hereby

ORDERED that the Motion (ECF No. 348) is DENIED in its entirety.