UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

IN RE: COMMUNITY HOME FINANCIAL SERVICES, INC.

CASE NO.: 12-01703-EE

CHAPTER 11

**MOTION TO ALTER OR TO AMEND THE ORDER APPROVING THE APPOINTMENT OF A CHAPTER 11 TRUSTEE [DKT #473]**

Community Home Financial Services, Inc. ("the Debtor" or "CHFS") and creditor William D. Dickson ("Dickson") respectfully move the Court, pursuant to Fed. R. Bankr. P. 7052 and other applicable law, for the entry of an order altering and/or amending the order [Doc. #473] approving the appointment of a chapter 11 trustee, and would state the following in support thereof:

**BACKGROUND FACTS**

1. The United States Trustee filed an application to approve the appointment of Kristina M. Johnson ("Ms. Johnson") as the chapter 11 trustee for the Debtor on January 8, 2014.[1] The application properly disclosed that Ms. Johnson is presently partner in a law firm, Jones Walker, LLP ("Jones Walker"), which has a pre-existing and continuing attorney-client relationship with Robert A. Cunningham ("Mr. Cunningham") and his professional accounting firm ("Grantham Poole").

2. Mr. Cunningham and Grantham Poole were retained by the Debtor to render independent expert accounting services on July 11, 2013.[2] Mr. Cunningham has worked diligently to develop critical evidence which directly supports the Debtor's objections to the

[1] [Doc. #455].

[2] [Doc. #279].

proofs of claims of two creditors, Edwards Family Partnership, L.P. ("EFP") and Beher Holdings Trust ("BHT"), and also further supports the various lender-liability tort claims that the Debtor and Dickson have asserted against EFP and BHT in two pending adversary proceedings:

> 7. My preliminary findings reveal that the accounting records of EFP and BHT related to the Home Improvement loans contain significant errors and, as a result, and materially overstate the amount CHFS owes by in excess of $1,200,000. The errors in the accounting records of EFP and BHT are the result of improper charges made to loan principal, draws and repayments, and related interest amounts due under the notes. They also arise from the calculations of interest by EFP and BHT that are incorrect and not authorized by the terms and provisions of the notes and loan documents.
>
> 8. The magnitude of these overstatements gives me reason to believe that a default did not occur under the promissory notes to EFP and BHT dated on or about August 10, 2010. Any notice of default by EFP or BHT to CHFS would therefore have been without basis and improper.

*Affidavit of Robert A. Cunningham*, attached as Exhibit A.

3. Mr. Cunningham's testimony is clearly favorable to the Debtor's estate. An unavoidable consequence of this is that Mr. Cunningham's testimony is directly and materially adverse to EFP and BHT. In other words, EFP and BHT are the only creditors that stand to lose when Mr. Cunningham testifies on behalf of the Debtor and/or Dickson.

4. Mr. Cunningham's testimony, therefore, is a tremendously valuable asset of the Debtor's estate and to every claimant other than EFP or BHT. Mr. Cunningham's continued involvement is crucial and necessary. His qualifications and credentials are extensive and impeccable.[3] EFP and BHT have absolutely no basis for questioning the competency of Mr. Cunningham to offer such evidence as an expert. Mr. Cunningham's opinions are indisputably

[3] *See Curriculum Vitae of Robert A. Cunningham*, attached as Exhibit B.

favorable to the Debtor's estate and other claimants, but they are devastating to the credibility of EFP and BHT, and their principals who were involved in the apparently fraudulent overcharges that were only recently discovered through Mr. Cunningham's forensic review of the evidence.

5. Mr. Cunningham's accounting expertise dwarfs any expertise purportedly held by opposing accounting "experts" tendered by EFP and BHT. This credibility gap will unquestionably give the Debtor a distinct (if not insurmountable) advantage when the Debtor's objections to the proofs of claims filed by EFP and BHT are determined. The same critical advantage will exist when the lender-liability tort claims that the Debtor and Dickson have asserted against EFP and BHT are decided. The claims of EFP and BHT are indeterminable short of resolution of the legal issues presented in the adversary proceedings in which the Debtor's lender-liability claims are presented. Mr. Cunningham will be critically involved in this process.

6. The Debtor's continued employment of Mr. Cunningham and Grantham Poole, therefore, is crucial to the Debtor's estate and to every claimant other than EFP and BHT. And because *any* trustee who is appointed has an unwavering duty to "***decrease***" any debt allegedly owed by the Debtor's estate,[4] *no* trustee could ever reasonably decide to abandon or terminate Mr. Cunningham's employment as an expert accounting professional – even in the face of a conflict like the one that was properly disclosed in the application to appoint Ms. Johnson.

7. Creditors like EFP and BHT, however, are obviously ***not*** bound by that same unwavering obligation. EFP and BHT thus have a strong incentive to exploit the conflict

[4] *Matter of Ladner*, 50 B.R. 85, 92 (Bankr. S.D. Miss. 1985) ("The trustee's intent, if he is to faithfully discharge the obligations of his oath, ***is always to decrease debt***.") (emphasis added); *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (""Implicit in the duties of a Chapter 11 trustee or a debtor in possession as set out in Sections 1106 and 704 of the Bankruptcy Code is the duty of such a fiduciary to protect and preserve the estate, including an operating business's going-concern value . . . The duty of preservation and enhancement of the estate is also reflected in cases which cite the best interests of the estate as a pivotal issue.").

between Jones Walker and Grantham Poole as a "basis" to try to disqualify and/or strike Mr. Cunningham's testimony – unimpeachable substantive evidence that is adverse only to EFP and BHT. Indeed, EFP and BHT have already begun grasping for any reason to try to discredit Mr. Cunningham, regardless of how unmeritorious – as evidenced by the pleading that EFP and BHT filed in response to the Debtor and Dickson's underlying objection.[5] Such efforts are transparently frivolous and should be disregarded, except to the extent they reveal EFP and BHT's complicity in the maneuver to promote or secure an appointment that jeopardizes Mr. Cunningham's status as the Debtor's trusted expert.

8. The appointment of a trustee who is a partner in, and who will retain, a law firm that is admittedly not disinterested needlessly provides EFP/BHT with a new means to try to discredit and/or disqualify the Debtor's key expert witness – a means which did *not* previously exist before the appointment and would *not* exist with a conflict-free genuinely disinterested appointee. This immensely harmful result would never otherwise be possible but for the appointment of any trustee in the same or similar position as Ms. Johnson.

9. ***Tellingly, EFP and BHT refuse to waive the conflict.*** EFP and BHT clearly stand to gain by the appointment of a trustee who is employed by and/or who intends to employ counsel that has a pre-existing and continuing lawyer/client relationship with Mr. Cunningham and/or Grantham Poole. This explains why EFP and BHT refuse to assure the Debtor that this specific conflict will not be exploited for their own improper and ulterior purposes – while, at the

[5] [Doc. #463] at pp 6-7 ("In fact, it now appears that any new trustee in deciding what experts to employ will need to evaluate whether Cunningham is now disinterested as it relates to the bankruptcy estate. Cunningham's fee application filed on January 14, 2014 (Dk. # 461) indicates that he has continued to work with the debtor after the debtor absconded with the bankruptcy estate's money. Due to the theft, the interests of the debtor and the bankruptcy estate are no longer aligned. This seemingly puts Cunningham, who was hired by the debtor in possession to represent the debtor's interests, at odds with the interests of the bankruptcy estate.")

same time, advocating for such a trustee to be appointed even though other similarly qualified (and conflict-free) trustee candidates have been identified and are available.

10. First, after the application to appoint Ms. Johnson as the chapter 11 trustee was filed, the Debtor issued a letter to Ms. Johnson identifying the conflict. EFP and BHT responded – but refused to acknowledge the obvious adverse effect that the conflict will have on the Debtor's estate:

> Second, the stated objection is without merit. The trustee will be in charge of CHFS, not William D. Dickson. It will be up to the trustee to decide what experts she intends to hire. Mr. Dickson no longer has any voice in the matter. The decision whether to retain Mr. Cunningham and accept or reject whatever opinions he may have is the trustee's decision alone.[6]

11. Second (and more revealing) was that EFP and BHT also refused to provide any answer to the following critical question, which was posed by the Debtor after receiving the foregoing letter from EFP/BHT:

> If Kristi continues to use Bob Cunningham as an expert and he gives an opinion that is adverse to Edwards, ***are you going to raise any issue of conflict or the fact that he is a client of Jones Walker at any time?*** [7]

12. EFP and BHT did not respond to this critical question. The avoidance of EFP and BHT is extremely telling since other qualified conflict-free and genuinely disinterested candidates (such as former United States Bankruptcy Judge David W. Houston, III, among numerous others) are also available and capable of serving as the Debtor's chapter 11 trustee.

13. The Debtor and Dickson formally objected to the application to appoint Ms. Johnson.[8] The objection affirmatively raised all of the issues and concerns that arise from the

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[6] *Correspondence dated January 10, 2014*, attached as Exhibit C.

[7] *Correspondence dated January 10, 2014*, attached as Exhibit D (emphasis added).

[8] [Doc. #458].

appointment of Ms. Johnson (or by the appointment of *any* other individual who is a partner in and/or who intends to hire a law firm that has the same or similar pre-existing and continuing attorney-client relationship with Mr. Cunningham and/or Grantham Poole) as the chapter 11 trustee for the Debtor:

> The proposed trustee has appropriately disclosed that she and her firm currently represent CHFS's primary expert witness, Robert A. Cunningham, CPA, and his firm, Grantham Poole, whose opinions are key to a resolution of CHFS's claims herein concerning EFP/BHT's misconduct as a lender. Mr. Cunningham has testified that (i) EFP/BHT overcharged CHFS by an amount in excess of 1.2 million dollars in the years 2006 and 2007 alone on a line of credit CFHS had with EFP/BHT, and (ii) that CHFS was not in default when the operative notes were called and CHFS was forced into bankruptcy. Mr. Cunningham's expertise and credibility are crucial to CHFS's success in prosecuting its claims against EFP/BHT and others.
>
> Recognizing the conflict, EFP/BHT have suggested, through counsel, that the appointment could be made notwithstanding the conflict, and then the conflict "resolved" by options including the trustee's termination of CHFS's expert. This potential only heightens the conflict and points up the legitimate concern arising from the lack of disinterestedness of the proposed trustee. Suffice it to say, one who is not disinterested and who has a conflict may not be appointed to enable a decision to terminate an interested party's expert to cure the conflict that otherwise precluded the appointment. The question is whether there is a conflict or disinterestedness that precludes the appointment and requires consideration of an alternative. Here, the conflict is clear and precludes the requested appointment. For the reasons shown below, the motion should be denied and another, conflict-free trustee identified.[9]

14. Nothing more could possibly have been done by movants or other interested parties to have this specific issue addressed *before* the order appointing Ms. Johnson as the trustee was entered. The order that was entered, however, overruled the underlying objection in its entirety – but only addressed the narrow issue of whether a "personal conflict" existed:

> The Court, having heard arguments from the UST, the Debtor, Mr. Dickson, and BHT/EFP, finds that Kristina M. Johnson does not have any personal conflict that would

[9] [Doc. #458] at ¶¶ 2-3.

prohibit her appointment as the chapter 11 trustee. The Court also finds that Kristina M. Johnson is a "disinterested person" as defined under 11 U.S.C § 101(14). After fully considering the matter, the Court is of the opinion that the UST's application should be granted; therefore

**IT IS ORDERED** that the Debtor and William D. Dickson's Objection to the Application (DKT. #458) is overruled, and the UST's *Ex Parte* Application for Approval of Chapter 11 Trustee (DKT. #455) is hereby granted.

**IT IS FURTHER ORDERED** that the United States Trustee's appointment of Kristina M. Johnson as the chapter 11 trustee in the above styled and numbered case is hereby approved.

**IT IS FURTHER ORDERED** that the Court reserves the right to file a written opinion if this matter is appealed.

**##END OF ORDER##** [10]

15. The order implicitly recognizes that it is incomplete, as written, by containing a provision that reserves the right "to file a written opinion if this matter is appealed." Such a provision was presumably included so that the instant order could be altered and/or amended with needed, but missing, findings and conclusions. Specifically, the order made no factual findings regarding the conclusory determination of "disinterestedness" or as to the conflict arising from the pre-existing attorney-client relationship between the appointed trustee, her firm, Jones Walker, and Grantham Poole – even though (i) the conflict was fully disclosed in the underlying application; and (ii) the conflict was affirmatively raised by the objection that was overruled by the order.

16. Meanwhile (and significantly), an application to employ Jones Walker as general counsel for the trustee was filed immediately after the order overruling the Debtor and Dickson's

[10] [Doc. #473].

objection was entered, which raises a serious question whether the finding of "disinterestedness" was erroneous (or at least premature) and ignored the core concern raised by the objection.[11]

17. The order overruling the objection, therefore, should be altered and/or amended. In addition to the demonstrable prejudice to the substantive legal rights of the Debtor and every claimant other than EFP/BHT (discussed above), the procedural rights of those adversely affected parties will also sustain irreparably prejudice if the instant motion is not granted in full.

18. Fifth Circuit precedent suggests that an order appointing a *trustee* (like Ms. Johnson) is a *final order* subject to immediate appellate review – but that an order appointing a *trustee's counsel* (like Jones Walker) is an *interlocutory order* and therefore not subject to immediate appellate review:

- *In re Tullius*, 500 Fed.Appx. 286, 289 (5th Cir. 2012) ("For example, *this court has found final those orders: appointing a Chapter 11 trustee*, . . .; fixing the amount of a creditor's claim, . . .; recognizing a creditor's security interest, . . .; granting or denying an exemption, . . .; and requiring the turnover of property, . . .") (emphasis added) [12]

- *In re Smyth*, 207 F.3d 758 (5th Cir. 2000) ("Orders appointing counsel under the Bankruptcy Code are interlocutory and are not generally considered final and appealable.") [13]

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[11] [Doc. #474].

[12] *See also In re Orbit Petroleum, Inc.*, 421 B.R. 602 (10th Cir. (B.A.P.) 2009) (bankruptcy court's orders, denying debtor's motion to set aside and vacate ruling directing appointment of Chapter 11 trustee and approving trustee's appointment, were reviewable "final orders," since appellate review of decision appointing trustee could not be meaningfully postponed until end of entire Chapter 11 proceeding); *Ritchie Special Credit Investments, Ltd. v. U.S. Trustee*, 620 F.3d 847 (8th Cir. 2010) (bankruptcy court order appointing a bankruptcy trustee is "final" and, thus, reviewable)

[13] *See also In re SK Foods, L.P.*, 676 F.3d 798 (9th Cir. 2012) (bankruptcy court order denying motion for disqualification of trustee's counsel is not a final order, and thus district court decision reviewing bankruptcy court order also is not final, and is not appealable to Court of Appeals); *In re Harwell*, 298 Fed.Appx. 733 (10th Cir. 2008) (bankruptcy and district court orders granting and affirming employment of attorney and her law firm as counsel for bankruptcy trustee were not final and appealable).

19. If the issues raised in the objection about the lack of genuine "disinterestedness" of the appointed trustee (including, without limitation, the trustee's and, by extension, her law firm's attorney-client relationship with Mr. Cunningham and Grantham Poole and its effect on the conclusory finding of "disinterestedness") are not addressed in the order appointing the chapter 11 trustee, then any party adversely affected by that order may lose the opportunity to seek an immediate independent review of the appointment – a right which is expressly recognized in the Fifth Circuit.

20. By waiting to separately address issues that were timely raised and properly preserved by an objection filed on the front-end, the Court may have inadvertently limited the scope of the record and issues that a reviewing court needs to determine whether or not the correct result was reached in light of the objection and issues that were before the court when the order at-issue was entered. Such undue prejudice is clearly unfair and inconsistent with the law in the Fifth Circuit:

> It seems plain that the decision of an appeal from the court's order appointing a trustee could ***not*** be meaningfully postponed until the end of the entire Chapter 11 proceeding. If an appeal were postponed until a plan of reorganization were confirmed, there would be ***no*** satisfactory way to vindicate the debtor's rights.
>
> This rationale is well-reasoned. Without an immediate appeal, a debtor would have ***no*** effective relief from an erroneous appointment. The only option would be an appeal after a plan of reorganization was confirmed. By that time, the debtor would already have been out of possession for months, if not years, and the only relief would be to vacate the plan of reorganization and start new negotiations with creditors. An immediate appeal is a better option. Consequently, we hold that the appointment of a trustee in a Chapter 11 case is an immediately appealable final order.[14]

[14] *In re Cajun Electric Power Coop.*, 69 F.3d 746, 748 (5th Cir.1995) (emphasis added), *withdrawn, in part, on other grounds*, 74 F.3d 599, 600 (5th Cir.1996).

## ARGUMENT & AUTHORITIES

21. The appointment of *any* trustee who is a partner in, or who intends to employ, or who has sought to employ, or who has employed, a law firm already representing key professionals already employed by the Debtor (i.e., having the same or similar relationship with Mr. Cunningham and his firm, Grantham Poole, that Ms. Johnson has) is not disinterested as a matter of fact and law. Such an appointment is prejudicial to the Debtor and the claim of every creditor except EFP and BHT. The prejudice is specific, significant, and extends to both the substantive *and* the procedural legal rights of the adversely affected parties.

22. An objection was filed to affirmatively raise these issues and concerns. The order overruling that objection, however, did not address any of these issues that were raised by that objection. Moreover, a significant intervening event has occurred: Ms. Johnson has moved to hire the firm in which she is a partner (and with whom she thus has an attorney-client relationship with Mr. Cunningham and Grantham Poole, raising new (albeit not unexpected or undisclosed) questions as to a lack of disinterestedness that require consideration by the Court. Accordingly, the order entered should be altered and/or amended to address all of the issues that were raised by the Debtor and Dickson in the underlying objection and the instant motion.

23. An opinion written by the Honorable Judge Edward Ellington from a different case confirms that the instant motion to alter and/or amend must be granted:

> A party may properly use a motion to alter or amend a judgment under FRCP 59(e) to request the trial court to correct errors of law or mistakes of fact in its judgment. Rule 59(e) may be utilized:
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> * * * *
>
> -- to make minor alterations of the judgment.
>
> -- to grant relief requested but not considered in the original judgment.
>
> * * * *

> If properly raised, a motion to alter or amend a judgment is not limited to the issues expressly raised therein, but the effect of such a motion is to open up the judgment for a correction of any other error which may have intervened in entry of the judgment.
>
> * * * *
>
> As evident above, a motion to alter or amend may be utilized to correct a judgment for a wide variety of errors, but its use is not limitless. . . . The court must strike the proper balance between two competing imperatives: (1) finality, and (2) the need to render just decisions on the basis of all the facts.[15]

24. The instant motion (unlike in the *Salter* case) identifies several specific examples of substantive and procedural harm that will be sustained if the relief sought is not granted. The *Salter* case also did not involve any of the same pressing concerns or unique facts that are currently before the Court. Furthermore, the movant in the *Salter* case failed to offer any of the showings or arguments that the Debtor and Dickson raised in the instant motion and their underlying objection. As a result, this Court properly (and expressly) denied the motion to alter/amend in the *Salter* case because of these very distinctions:

> The Court does not find that its April 11, 1997, final judgment was unjust or unfounded. The Debtor has not shown where the Court needs to correct errors of law or to make minor alterations to the judgment. Nor has the Debtor shown any grounds to vacate the order of dismissal. To the contrary, the Debtor never addresses the issues raised by the Trustee in his motion to dismiss. Rather he continues to argue the previously litigated issues regarding the IRS' proof of claim. The Court rendered its decision on the motion to dismiss after considering all of the facts, evidence, and testimony presented at the trial. 'A motion brought under Rule 59(e) is not a procedural folly to be filed by a losing party who simply disagrees with the decision; otherwise, the Court would be inundated with motions from dissatisfied litigants.'[16]

25. The Debtor and Dickson have done *exactly* what this Court said the movant in the *Salter* case was obligated, but failed, to do. If the movant in the *Salter* case had done what the Debtor and Dickson have done by motion and objection in this case, then the judgment at-issue

[15] *In re Salter*, 213 B.R. 116, 118 (Bankr. S.D. Miss. 1997) (internal citations omitted).

[16] *Id.* at 118-19.

in the *Salter* case would have been subject to alteration and/or amendment to rectify the identified deficiencies. This Court should therefore grant the instant motion in its entirety.

26. Granting the relief requested is also consistent and permitted by the following applicable rules - which also serve to toll any deadline to appeal an order appointing a trustee:

**Rule 2007.1. Appointment of Trustee or Examiner in a Chapter 11 Reorganization Case**

(a) *Order to appoint trustee or examiner.* In a chapter 11 reorganization case, a motion for an order to appoint a trustee or an examiner under § 1104(a) or § 1104(c) of the Code shall be made in accordance with Rule 9014.[17]

**Rule 9014. Contested Matters**

(a) *Motion.* In a contested matter not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought. No response is required under this rule unless the court directs otherwise.

* * * *

(c) *Application of Part VII rules.* Except as otherwise provided in this rule, and unless the court directs otherwise, the following rules shall apply: 7009, 7017, 7021, 7025, 7026, 7028-7037, 7041, 7042, 7052, 7054-7056, 7064, 7069, and 7071. . . . The court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply. The court shall give the parties notice of any order issued under this paragraph to afford them a reasonable opportunity to comply with the procedures prescribed by the order.[18]

**Rule 7052. Findings by the Court**

Rule 52 F. R. Civ. P. applies in adversary proceedings, except that any motion under subdivision (b) of that rule for amended or additional findings shall be filed no later than 14 days after entry of judgment. In these proceedings, the reference in Rule 52 F. R. Civ. P. to the entry of judgment under Rule 58 F. R. Civ. P. shall be read as a reference to the entry of a judgment or order under Rule 5003(a).[19]

[17] Fed. R. Bankr. P. 2007.1.

[18] Fed. R. Bankr. P. 9014.

[19] Fed. R. Bankr. P. 7052.

**Rule 52. Findings and Conclusions by the Court; Judgment on Partial Findings**

(a) *Findings and Conclusions.*

(1) In General. In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58.

* * * *

(5) Questioning the Evidentiary Support. A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings.

* * * *

(b) *Amended or Additional Findings.* On a party's motion filed no later than 28 days after the entry of judgment, the court may amend its findings--or make additional findings--and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59.

(c) *Judgment on Partial Findings.* If a party has been fully heard on an issue during a nonjury trial and the court finds against the party on that issue, the court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The court may, however, decline to render any judgment until the close of the evidence. A judgment on partial findings must be supported by findings of fact and conclusions of law as required by Rule 52(a).[20]

**Rule 8002. Time for Filing Notice of Appeal**

* * * *

(b) *Effect of motion on time for appeal.* If any party makes a timely motion of a type specified immediately below, the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding. This provision applies to a timely motion:

(1) to amend or make additional findings of fact under Rule 7052, whether or not granting the motion would alter the judgment;

[20] Fed. R. Civ. P. 52.

(2) to alter or amend the judgment under Rule 9023;

(3) for a new trial under Rule 9023; or

(4) for relief under Rule 9024 if the motion is filed no later than 14 days after the entry of judgment. A notice of appeal filed after announcement or entry of the judgment, order, or decree but before disposition of any of the above motions is ineffective to appeal from the judgment, order, or decree, or part thereof, specified in the notice of appeal, until the entry of the order disposing of the last such motion outstanding.[21]

**Rule 9023. New Trials; Amendment of Judgments**

Except as provided in this rule and Rule 3008, Rule 59 F. R. Civ. P. applies in cases under the Code. A motion for a new trial or to alter or amend a judgment shall be filed, and a court may on its own order a new trial, no later than 14 days after entry of judgment.[22]

**Rule 59. New Trial; Altering or Amending a Judgment**

(a) *In General*. . . . (2) Further Action After a Nonjury Trial. After a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

* * * *

(e) *Motion to Alter or Amend a Judgment*. A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.[23]

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[21] Fed. R. Bankr. P. 8002(b); *see also In re Bayhi*, 528 F.3d 393 (5th Cir. 2008) (Time for filing notice of appeal from bankruptcy court's judgment was tolled by filing of timely motion to alter or amend, until such time as bankruptcy court ruled on this motion, whereupon movant had ten days to file his notice of appeal [under former version of rule], not counting date on which bankruptcy court entered its amended judgment; because notice of appeal was timely filed on last day permitted by Bankruptcy Rule, district court had jurisdiction over appeal, and Court of Appeals had jurisdiction to consider appeal from district court's affirmance of bankruptcy court's judgment); *see also South Texas Wildhorse Desert Invs., Inc. v. Texas Commerce Bank-Rio Grande Valley, N.A.*, , 314 B.R. 107 (S.D. Tex. 2004) (same).

[22] Fed. R. Bankr. P. 9023.

[23] Fed. R. Civ. P. 59.

## CONCLUSION

27. There is no legitimate reason to deny the instant motion and nothing can possibly outweigh the substantial prejudice that will be sustained if the relief sought is not granted. Because of the extreme "need to render just decisions on the basis of all the facts" in this case, the instant motion must be granted in its entirety.

WHEREFORE, PREMISES CONSIDERED, the Debtor and Dickson respectfully request the entry of an order altering and/or amending the order approving the appointment of a chapter 11 trustee [Doc. #473] to address all the issues relating to the disinterestedness of the appointed trustee that are raised by the instant motion and the underlying objection [Doc. #458] including, without limitation, findings and conclusions expressly addressing the particular circumstances of this case: (1) whether Ms. Johnson is disinterested in light of her relationship with Jones Walker and the relationships that she and/or Jones Walker have with Mr. Cunningham and Grantham Poole; (2) whether Ms. Johnson's partnership in Jones Walker and the relationship that Jones Walker has with Mr. Cunningham and Grantham Poole make her and/or Jones Walker interested parties who are not "disinterested"; and (3) whether Ms. Johnson's subsequent and intervening motion to employ Jones Walker [Doc. #474] makes her and/or Jones Walker an interested party who is not "disinterested" due to the relationships that Ms. Johnson and Jones Walker have with Mr. Cunningham and Grantham Poole, and for any other relief that the Court deems appropriate under the circumstances.

Dated: January 30, 2014

Respectfully submitted,

**COMMUNITY HOME FINANCIAL SERVICES, INC. and WILLIAM D. DICKSON**

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**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that I have this date served, via United States Mail, postage prepaid, or via the ECF Notification Service, which provides by electronic notice, a true and correct copy of the above and foregoing objection to the following, as well as to all individuals and entities having previously filed a notice or entry of appearance in the above referenced bankruptcy case:

Office of United States Trustee
USTPRegion05.JA.ECF@usdoj.gov

Jim Spencer, Esq.
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This, the 30th day of January, 2014.

s/ *Eileen N. Shaffer*
Eileen N. Shaffer