

Hearing Date: February 10, 2020 at 1:30 p.m. (Prevailing Eastern Time)
Objection Deadline: February 3, 2020 at 4:00p.m. (Prevailing Eastern Time)

GARFUNKEL WILD, P.C.
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Burton S. Weston, Esq.
Adam T. Berkowitz, Esq.

Counsel for the Estate and the Plan Administrator

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

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In re:

Chapter 11

FEDERATION EMPLOYMENT AND
GUIDANCE SERVICE, INC. d/b/a FEGS¹,

Case No. 15-71074 (REG)

Debtor.

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MOTION TO COMPEL COMPLIANCE WITH STIPULATION

Judith Pincus, as the Plan Administrator (the “Plan Administrator”)² for the Estate of Federation Employment and Guidance Service, Inc. d/b/a FEGS (the “Estate”), by and through her counsel, Garfunkel Wild, P.C., hereby submits this motion (the “Motion”) to compel Hempstead Plaza LLC (“Hempstead”) to comply with the Stipulation (as defined below) and to remit the Remainder of the Security Deposit (as defined below) to the Estate. In support of this Motion, the Plan Administrator respectfully states as follows:

SUMMARY OF RELIEF REQUESTED

1. FEGS and Hempstead were parties to a prepetition lease agreement pursuant to which FEGS leased the premises located at 175 Fulton Street, 3rd and 5th Floors, Hempstead, NY

¹ The last four digits of the Debtor’s federal tax identification number are 4000.

² Unless otherwise defined, capitalized terms used herein have the meanings ascribed to them in the Plan (as defined below).

11201 (the “Premises”) and used it for the operation of certain mental health programs. Postpetition, FECS transferred those programs to Jewish Board of Family and Children’s Services (“JBFCS”). Subsequently JBFCS negotiated and entered into a separate lease with Hempstead.

2. In order to facilitate the orderly transition of the programs to JBFCS and permit a new direct leasehold relationship between JBFCS and Hempstead, it was necessary for FECS to reject the lease of the Premises pursuant to section 365(a) and resolve certain issues related thereto, including rent arrears. Thus, on May 29, 2015, Hempstead and FECS entered into a stipulation (the “Stipulation”), which was approved by the Court on July 16, 2015 [Docket No. 330] and is annexed hereto as Exhibit A. Pursuant to the terms of the Stipulation, upon the occurrence of the effective date (the “Effective Date”), the lease of the Premises was deemed rejected, Hempstead was authorized to offset FECS’ arrears against the security deposit held by Hempstead (the “Security Deposit”), and Hempstead agreed to return to FECS the balance of the Security Deposit after such offset which totaled \$21,156.34 (the “Remainder”).

3. The Effective Date occurred; however, to date, Hempstead has not turned over the Remainder of the Security Deposit to the Estate despite repeated demands. Accordingly, the Plan Administrator respectfully requests that the Court enter an order compelling Hempstead’s compliance with the Stipulation and directing Hempstead to remit the Remainder of the Security Deposit to the Estate.

CASE BACKGROUND

4. On March 18, 2015 (the “Petition Date”), Federation Employment and Guidance Service, Inc. d/b/a FECS (the “Debtor”) filed a voluntary petition for relief under chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy

Court for the Eastern District of New York (the or this “Court”). The Debtor continued in possession of its remaining assets as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

5. The factual background relating to the commencement of this chapter 11 case is set forth in detail in the Amended Affidavit of Kristin Woodlock Pursuant to Local Bankruptcy Rule 1007-4 and in Support of First Day Motions [Docket No. 16], filed on the Petition Date and incorporated herein by reference.

6. On March 31, 2015, the United States Trustee appointed the Official Committee of Unsecured Creditors (the “Committee”) [Docket No. 105].

7. On February 6, 2018, the Court entered an Order (the “Confirmation Order”) confirming the Third Amended Plan of Liquidation Under Chapter 11 of the Bankruptcy Code of Federation Employment and Guidance Service, Inc. d/b/a FECS (the “Plan”) [Docket No. 1050].

8. The Plan became effective March 1, 2018 and, pursuant to the Confirmation Order, Judith Pincus has been appointed as Plan Administrator and Robert N. Michaelson, Esq. has been appointed as Creditor Trustee [Docket No. 1056].

BASIS FOR RELIEF REQUESTED

9. Section 105(a) of the Bankruptcy Code provides that “the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). “Section 105(a) of the Bankruptcy Code provides broad equitable power for a Bankruptcy Court to maintain its own jurisdiction and to facilitate the reorganization process.” *In re Adelpia Commc'ns Corp.*, No. 02-41729 (REG), 2006 WL 1529357, at *4 (Bankr. S.D.N.Y. June 5, 2006); *In re Momentum Mfg. Corp.*, 25 F.3d 1132,

1136 (2d Cir. 1994) (“It is well settled that bankruptcy courts are courts of equity, empowered to invoke equitable principles to achieve fairness and justice in the reorganization process.”).

10. Pursuant to the Stipulation, Hempstead was to turn over the Remainder of the Security Deposit to the Estate. The Effective Date of the Stipulation occurred; however, Hempstead never remitted the Remainder of the Security Deposit to the Estate despite repeated requests and demands. Extended good faith discussions to resolve the matter consensually have been unsuccessful. Accordingly, the Plan Administrator respectfully requests that the Court enter an order compelling Hempstead to comply with the terms of the stipulation and remit the Remainder of the Security Deposit to the Estate.

NOTICE

11. Notice of this Motion has been given to: (i) counsel to Hempstead, (ii) Hempstead, (iii) the United States Trustee, and (iv) counsel to the Oversight Committee. Entities who have filed a notice of appearance in accordance with Bankruptcy Rule 2002 shall receive notice through ECF.

NO PREVIOUS REQUEST

12. No previous request for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Plan Administrator respectfully requests that the Court enter an order, substantially in the form annexed hereto as Exhibit B, granting the relief requested herein and grant such other and further relief as the Court may deem just and proper.

Dated: Great Neck, New York
December 5, 2019

GARFUNKEL WILD, P.C.

Counsel for the Estate and the Plan Administrator

By: /s/ Burton S. Weston
Burton S. Weston, Esq.
Adam T. Berkowitz, Esq.
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Exhibit A

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:

FEDERATION EMPLOYMENT
AND GUIDANCE SERVICE, INC.

Chapter 11
Case No. 15-71074 (REG)

Debtor.

**STIPULATION AND ORDER REJECTING UNEXPIRED REAL ESTATE
LEASE WITH HEMPSTEAD PLAZA, LLC,
AND PROVIDING RELATED RELIEF**

This stipulation by and between Federation Employment and Guidance Service, Inc., d/b/a FECS, as debtor and debtor in possession (the “Debtor”), and Hempstead Plaza LLC (the “Landlord”), subject to the approval of the U. S. Bankruptcy Court in the Debtor’s case (the “Court”), is made as follows:

RECITALS

A. On March 18, 2015 (the “Petition Date”), the Debtor filed a voluntary petition for reorganization under chapter 11 of title 11, United States Code (the “Bankruptcy Code”) in this Court.

B. The Debtor has continued in the management of its business and the operation of its affairs as a debtor and debtor in possession pursuant to Bankruptcy Code §§1107(a) and 1108.

C. On March 31, 2015, an official committee of unsecured creditors was appointed by the Office of the U.S. Trustee.

D. As of the Petition Date, the Debtor operated certain mental health programs at the property located at 175 Fulton Street, 3rd and 5th Floors, Hempstead, New York 11201 (the “Premises”).

E. The Premises is owned by the Landlord, and the Debtor and Landlord are parties to a lease agreement, dated October 5, 1994 as amended on January 25, 2000, August 28, 2002, February 11, 2003 and January 6, 2006 (as amended, the "Lease"),

F. The term of the Lease expires on August 31, 2016, and the Lease provides for an option to extend the term of the Lease for an additional five (5) years.

G. As set forth in the Debtor's motion (the "BH Transfer Motion"), dated April 28, 2015 [ECF No. 185], the Debtor is seeking authority to transfer its behavioral portfolio of programs servicing and supporting people with mental illness (the "BH Programs") to Jewish Board of Family and Children's Services ("JBFCS").

H. In connection therewith, the Debtor intends to transfer the BH Programs operated from the Premises and license or sell the fixtures, furnishings and other personal property located at the Premises (the "Personal Property") to JBFCS,

I. The Landlord and JBFCS are in the process of negotiating a new lease for the Premises which would commence on June 1, 2015 (the "New Lease")

STIPULATION

NOW, THEREFORE, for good and valuable consideration, the Debtor and the Landlord agree and stipulate as follows:

1. Conditional upon approval of the BH Transfer Motion, the transfer of the BH Programs to JBFCS on June 1, 2015 and execution of the New Lease, effective as of May 31, 2015 or such later date as the New Lease is effective between Landlord and JBFCS (the "Effective Date"), the Lease will be rejected under Bankruptcy Code section 365(a). The Debtor will deliver possession of the Premises to the Landlord, or its agent, on the Effective Date.

2. As of the Effective Date, the Lease will be terminated.
3. Within five (5) days after the Effective Date, the Debtor shall pay to the Landlord all rent and other charges due under the Lease for the period through the Effective Date.
4. Except for the payments required to be made under this Stipulation, the Landlord waives all claims for rent and other charges under the Lease, including lease rejection damage claims under Bankruptcy Code section 502(b)(6). Landlord is holding a security deposit in the amount of \$47,223.00 ("Security Deposit Amount"). The parties acknowledge there is due and owing from the Debtor the sum of \$26,066.66 under the Lease ("Arrears"). The Debtor and the Landlord agree that on the Effective Date, the Landlord may offset the Arrears as against the Security Deposit Amount and shall promptly remit to the Debtor the balance in the amount of \$21,156.34.
5. After the Effective Date, the Personal Property will remain at the Premises, subject to any agreement reached between the Debtor and JBFCS. If the Debtor and JBFCS do not reach an agreement regarding the Personal Property, then Debtor will have thirty (30) days to remove the Personal Property from the Premises.
6. This Stipulation is subject to the approval of the Court, and its terms shall not be binding on the Debtor or the Landlord until it is approved by the Court.
7. The Court shall retain jurisdiction over the enforcement and interpretation of the provisions of this Stipulation.

8. After this Stipulation is approved by the Court, it will constitute an order of the Court which is binding upon the parties, their successors, assigns and any subsequent trustee appointed in the Debtor's bankruptcy case,

Dated: Great Neck, New York
May __, 2015

GARFUNKEL, WILD, P C
Attorneys for Federation Employment and
Guidance Service, Inc.

By:


Burton S. Weston

Afsheen A. Shah
Adam T. Berkowitz
111 Great Neck Road
Great Neck, New York 11021
(516) 393-2200

Dated: Long Island City, New York
May 29, 2015

VALIOTIS & NOVELLA PLLC
Attorneys for Hempstead Plaza LLC

By: /s/ Anju Abraham

Anju Abraham, Esq.
31-10 37th Avenue, Suite 500
Long Island City, New York 11101
(718) 267-0300

NO OBJECTION:

Dated: New York, New York
May __, 2015

PACHULSKI STANG ZIEHL
& JONES LLP
Proposed Attorneys for Official Committee of
Unsecured Creditors
By: /s/ Ilan D. Scharf
Robert J. Feinstein
Ilan D. Scharf
780 Third Avenue, 36th Floor New
York, New York 10017
(212) 561-7700

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Dated: Central Islip, New York
July 16, 2015



A handwritten signature in black ink, appearing to read "Robert E. Grossman".

Robert E. Grossman
United States Bankruptcy Judge

Exhibit B

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

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In re:

Chapter 11

FEDERATION EMPLOYMENT AND
GUIDANCE SERVICE, INC. d/b/a FECS¹,

Case No. 15-71074 (REG)

Debtor.

-----x

**ORDER GRANTING THE PLAN ADMINISTRATOR’S MOTION
TO COMPEL COMPLIANCE WITH STIPULATION**

This matter having come before the Court upon the motion (the “Motion”)² of Judith Pincus, as Plan Administrator (the “Plan Administrator”) for the Estate of Federation Employment and Guidance Service, Inc. d/b/a FECS (the “Estate”) seeking entry of an order compelling Hempstead Plaza LLC (“Hempstead”) to comply with the Stipulation and remit the Remainder of the Security Deposit to the Estate; and the Court having reviewed the Motion; and notice having been provided to: (i) counsel to Hempstead, (ii) Hempstead (iii) counsel for Oversight Committee, (iv) the Office of the United States Trustee, and (v) those parties who have entered a notice of appearance in this Case; and no objections or other responses having been filed; and a hearing having been held on February 10, 2020; and the Court having found that the relief requested in the Motion is in the best interest of the Debtor’s Estate, creditors and other parties in interest; and it appearing that sufficient notice of the Motion has been given, and the Court having determined that the legal and factual bases set forth in the Motion establish cause for the relief granted therein; and after due deliberation and consideration of the Motion having been had; and it appearing that good and sufficient cause exists for granting the Motion;

¹ The last four digits of the Debtor’s federal tax identification number are 4000.

² Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed to them in the Motion or in the Plan.

NOW, THEREFORE, it is hereby

ORDERED, that the Motion is granted; and it is further

ORDERED, that Hempstead is directed to comply with the terms of the Stipulation; and
it is further

ORDERED, that Hempstead is directed to pay to the Estate the sum of \$21,156.34,
representing the Remainder of the Security Deposit, with five (5) business days of the entry of
this order.

Hearing Date: February 10, 2020 at 1:30 p.m. (Prevailing Eastern Time)
Objection Deadline: February 3, 2020 at 4:00 p.m. (Prevailing Eastern Time)

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Burton S. Weston, Esq.
Adam T. Berkowitz, Esq.

Counsel for the Estate and the Plan Administrator

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

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In re:

Chapter 11

FEDERATION EMPLOYMENT AND
GUIDANCE SERVICE, INC. d/b/a FE¹GS,

Case No. 15-71074 (REG)

Debtor.

-----X

**NOTICE OF THE MOTION OF THE PLAN ADMINISTRATOR FOR ENTRY
OF AN ORDER TO COMPEL COMPLIANCE WITH THE STIPULATION
ENTERED INTO BETWEEN FE¹GS AND HEMPSTEAD PLAZA LLC**

PLEASE TAKE NOTICE, that Judith Pincus, as the Plan Administrator (the “Plan Administrator”) for the Estate of Federation Employment and Guidance Service, Inc. d/b/a FE¹GS (the “Estate”), by and through her counsel, Garfunkel Wild, P.C., filed a motion (the “Motion”) for entry of an order compelling Hempstead Plaza LLC to comply with the Stipulation entered into between FE¹GS and Hempstead Plaza LLC, dated May 29, 2015 and approved by the Court on July 16, 2015 [Docket No. 330].

PLEASE TAKE FURTHER NOTICE, that a hearing on the Motion will be held before the Honorable Robert E. Grossman, United States Bankruptcy Judge for the Eastern District of New York, at the Alfonse M. D’Amato U.S. Courthouse, 290 Federal Plaza, Courtroom 860, Central Islip, New York 11722 on the 10th day of February 2020 at 1:30 o’clock in the afternoon of that day, or as soon thereafter as counsel can be heard, to consider

¹ The last four digits of the Debtor’s federal tax identification number are 4000.

the entry of an Order approving the relief requested in the Motion and granting such other and further relief as is just and proper.

PLEASE TAKE FURTHER NOTICE, that objections, if any, to the relief requested in the Motion must be in writing, stating in detail the reasons therefor, and must be filed with the Clerk of the Bankruptcy Court, with a hard copy provided to the Clerk's Office at the Bankruptcy Court, Alfonse D'Amato U.S. Courthouse, 290 Federal Plaza, Central Islip, New York 11722 and shall be served upon (i) Garfunkel Wild, P.C., 111 Great Neck Road, Great Neck, New York 11021, attention Burton S. Weston, Esq. and Adam T. Berkowitz, Esq., counsel for Judith Pincus, as the Plan Administrator for for the Estate of Federation Employment and Guidance Service, Inc. d/b/a FEES; (ii), Pachulski, Stang, Ziehl and Jones, 780 Third Avenue, 34th Floor, New York, New York 10017, Attn: Robert J. Feinstein, Esq. and Ilan D. Sharf, Esq., counsel to the Oversight Committee; and (iii) the Office of the United States Trustee for the Eastern District of New York, Alfonse D'Amato Federal Courthouse, 560 Federal Plaza, Central Islip, New York 11722, Attn: Christine H. Black, Esq. and Stan Y. Yang, Esq., Assistant U.S. Trustees, so as to be received no later than February 3, 2020 at 4:00 p.m.

PLEASE TAKE FURTHER NOTICE, that if no objections are timely served and filed as set forth above, the relief requested in the Motion may be granted without further notice.

Dated: Great Neck, New York
December 5, 2019

GARFUNKEL WILD, P.C.

Counsel for the Estate and the Plan Administrator

By: /s/ Burton S. Weston
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