

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

MANOR OAK SKILLED NURSING
FACILITIES, INC.

Case No. 95-11373 K

Debtor

Before me is a request for a "comfort order." Neither the United States Trustee nor any party-in-interest has appeared in opposition (although a Mr. Conti protested the lack of information in the Notice). The Debtor nursing homes wish to change from one ordinary-course-of-business vendor of pharmaceuticals to another, lower-priced vendor, on a two-year requirements basis. The incumbent vendor is an "insider" of the Debtor -- a corporation owned by the owner of the Debtor corporation.

For purposes of full disclosure only, the Debtor advises that its owner -- Mrs. Becker -- intends to sell the incumbent vendor to the new vendor -- which is an otherwise disinterested third party -- if the Court approves the Debtor's change of suppliers.

The Court does not disapprove of the change. As the Court understands it, the incumbent vendor ("Doctors' Order") has been buying from the proposed new vendor ("Royal Care") all along, and has been reselling the pharmaceuticals to the Debtor at 20% higher cost to the Debtor. Thus, the Debtor's owner has been profiting regularly at the Debtor's expense from the fact that the Debtor wasn't already buying directly from Royal Care. Certainly that state of affairs should cease, if possible. (The Fact that Doctors' Order

was owned by the Debtor's owner and that more than \$400,000 in pharmaceuticals had been purchased from it during the year before bankruptcy was fully disclosed in the Debtor's schedules. What was not disclosed was that the Debtor could save 20% by cutting out the insider/middleperson.)

The Court would encourage the savings, though it does not know why a two year requirements contract is necessary. In any event, the Court will not approve the contract, for several reasons:

1. Approval is not required by law¹, but only by a provision of the contract by which Doctors' Orders' assets are being sold to Royal Care. This Court is not in the business of using its authority strictly to facilitate transactions among non-debtor entities.

2. Doctors' Order is scheduled as owing over a half-million dollars to the Debtor. Royal Care does not appear to be assuming that liability. The financial condition of Doctor's Order is not known. Why the Debtor's owner caused the Debtor to loan to Doctor's Order money without security is not known. Whether it is truly in the best interest of the Debtor to assist its owner in causing Doctors' Order to become an assetless shell is not known.

3. The sale of the assets of Doctors' Order to Royal Care may be a fraudulent transfer as to the creditors of Doctors' Order,

¹11 U.S.C. § 363 does not require Court approval for ordinary-course-of-business transactions.

which may include others besides the Debtor.

The Motion is denied.

SO ORDERED.

Dated: Buffalo, New York
January 26, 1996

/s/Michael J. Kaplan

U.S.B.J.