

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

C. Alan Walker, in his capacity as :
Secretary for the Department of :
Community and Economic :
Development, :
Petitioner :
v. : No. 569 M.D. 2011
City of Harrisburg, :
Respondent :

ORDER

AND NOW, this 22nd day of October, 2013, upon consideration of Daniel C. Miller's Objections to Plan of Recovery, filed October 1, 2013, the Response of the Receiver, in which the County of Dauphin, Ambac Assurance Corp., and Assured Guaranty Municipal Corp. join, and the Response of the City of Harrisburg, the Court finds that:

1. On August 26, 2013, the Receiver filed an application to approve a modified recovery plan, known as the Harrisburg Strong Plan ("Modified Plan"). Section 703(e) of the Municipalities Financial Recovery Act (Act 47),¹ 53 P.S. § 11701.703(e), directs that any hearing on modification to a plan of recovery be held within 30 days. On August 27, 2013, a hearing was scheduled for September 19, 2013.

2. Miller, as Controller of the City of Harrisburg, and in view of the news reports surrounding the Receiver's filing, had prompt

¹ Act of July 10, 1987, P.L. 246, as amended by the addition of Chapters 6 and 7 by the Act of October 20, 2011, P.L. 318.

knowledge of the Receiver's Application and the Modified Plan of Recovery. Indeed, attached to his Objections is a copy of a four page letter that he claims to have sent to the Harrisburg City Council on September 11, 2013, in which he asserted criticisms of the Modified Plan similar to those stated in his Objections. Nonetheless, he took no steps to seek intervention,² nor did he or any other entity seek a continuance or assert any objections to approval of the Modified Plan before the hearing on September 19, 2013.³ On September 19, 2013, Miller attended the hearing, accompanied by counsel. Although counsel entered a written appearance, he did not address the Court nor otherwise seek to participate in the proceeding.

3. At the hearing, substantial evidence was presented in support of the plan, and at the conclusion of the hearing the Court orally approved the Plan.⁴ Finally, the day *after* the hearing and the Court's approval from the bench, Miller made his first attempt to file Objections to the Modified Plan.⁵

² The Case Management Order, filed September 4, 2012, directs that: "A person or entity not named as a respondent on an application that has a direct and substantial interest in the particular matter put at issue by the filing may request leave to intervene by application as directed in paragraph 1 above." Paragraph 1 of the Order directs that requests for relief or approval be made by application pursuant to Pa. R.A.P. 123.

³ This Court, by Order of March 9, 2012, dismissed without prejudice the Objections to the Preliminary Plan for Recovery filed by counsel for Miller and several others on February 29, 2012.

⁴ A written Order confirming the Plan was filed September 23, 2013.

⁵ On September 20, 2013, while still represented by counsel, Miller delivered his *pro se* Objections to the filing office, which forwarded them to his attorney. On September 27, 2013, Miller's attorney filed an Application to Withdraw, which this Court granted by Order of September 30, 2013. Following counsel's withdrawal, this Court accepted Miller's *pro se* Objections for filing on October 1, 2013.

4. Miller failed to seek intervention or to assert his Objections by a timely filing within the fourteen day period specified in the Case Management Order, filed September 4, 2012, and Pa. R.A.P. 123. Besides disregarding Rules of Court and orders of this Court, Miller's action in asserting objections after the matter has been heard and decided is simply far too late.

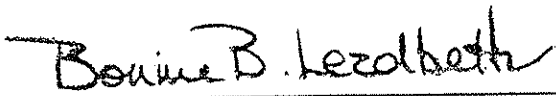
5. The governing body and chief executive officer of a city in receivership are recognized under Act 47 as interested parties. The city controller is not. *See* Section 703(a).⁶ Miller is not a party nor has he asserted any facts which would show that he, either as city controller or individually, has a direct, immediate and substantial interest that would establish standing.

6. The Receiver and the City of Harrisburg filed responses, joined by the major creditors listed above, to Miller's Objections, asking that the Objections be overruled based on the procedural irregularities noted above, and this Court ordered that any response to these requests for relief be filed by October 18, 2013. Miller has filed no response.

7. Substantial evidence was presented at the hearing establishing that prompt consummation of the Modified Plan is crucial to the success of the City's recovery. Further delay would pose a significant risk to the immediate and long range fiscal health of the City of Harrisburg.

⁶ *See also City of Erie v. Dep't of Env'tl. Prot.*, 844 A.2d 586, 590-91 (Pa. Cmwlth. 2004) and *In re City of Harrisburg*, 465 B.R. 744, 764-65 (Bankr.M.D. Pa. 2011) (authority vested solely in the mayor to initiate or respond to legal actions on behalf of the City, or under Act 47, with the concurrence of a majority of City Council).

Because they were untimely and because Miller lacks standing to assert them, the Objections filed by Daniel C. Miller to the Modified Plan are hereby DISMISSED.



BONNIE BRIGANCE LEADBETTER,
Judge

Certified from the Record

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And Order Exit