

ORDERED.

Dated: August 29, 2022


Caryl E. Delano
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

WILLIAM F. ROTH,

Debtor.

Case No: 8:22-bk-00453-MGW

Chapter 11

**ORDER (I) FINALLY APPROVING AMENDED
DISCLOSURE STATEMENT AND (II) CONFIRMING AMENDED PLAN
(Doc. Nos. 73 and 74)**

THIS CASE came before the Court for hearing on August 17, 2022 at 2:00 p.m. EST (the “**Confirmation Hearing**”) to consider (a) final approval of the *Amended Disclosure Statement in Connection with the Amended Chapter 11 Plan of William F. Roth* (Doc. No. 74) (the “**Disclosure Statement**”) and (b) confirmation of the *Amended Chapter 11 Plan of William F. Roth* (Doc. No. 73) (the “**Plan**”) filed by the debtor William F. Roth (the “**Debtor**”). Appearances were made at the Confirmation Hearing as reflected on the record.

After considering the (a) *Certificate of Service* (Doc. No. 42) (the “**Solicitation Package**”), (b) *Agreed Order Regarding Treatment of Claim in Chapter 11 Plan* (Doc. No. 69), (c) *Plan*, (d) *Disclosure Statement*, (e) *Notice of Filing Redlines* (Doc. No. 75), (f) *Hillsborough County Tax Collector’s Notice of Withdrawal of Limited Objection to Confirmation of Plan* (Doc. No. 78), (g) *Notice of Filing Ballot Tabulation* (Doc. No. 79) (the “**Ballot Tabulation**”), (h) *Declaration of*

William F. Roth in Support of Confirmation of the Amended Chapter 11 Plan of William F. Roth (Doc. No. 80) (the “**Debtor Declaration**”), (i) *Declaration of George and Dorothy Roth in Support of Confirmation of the Amended Chapter 11 Plan of William F. Roth* (Doc. No. 80) (the “**Roth Declaration**”), (j) *Ballot No. 6* (the “**AMB Ballot**”) filed by American Momentum Bank (“**AMB**”), (k) the agreements, arguments and proffers of counsel made at the Confirmation Hearing, and (l) the entire record in this chapter 11 case, and for the reasons stated orally and recorded in open court that shall constitute the rulings, findings of fact, and conclusions of law as if specifically incorporated by the Court, the Court finds and concludes that (i) the Disclosure Statement contains adequate information as contemplated under Section 1125 of the Bankruptcy Code and should be finally approved and (ii) the Plan has been proposed in good faith and meets all of the requirements of Sections 1126 and 1129 of the Bankruptcy Code¹, is fair and equitable, and does not discriminate unfairly with respect to each class of claims or interests and therefore should be confirmed. Pursuant to Rule 52 of the Federal Rules of Civil Procedure and Rules 7052 and 9014 of the Federal Rules of Bankruptcy Procedure, the Court makes the following findings of fact and conclusions of law.²

PLAN AMENDMENTS

1. Article 6 Class 3. The following language shall be included to Article 6 Class 3: Should the Debtor fail to timely pay AMB’s Allowed Secured Claim in full, and after a 5 day cure period following written notice by AMB, then AMB shall be entitled to immediate relief from the stay so that it may continue pursuit of the foreclosure action pending before the Circuit Court of Hillsborough County, Florida as Case Number 21-CA-005572.

¹ All capitalized terms not defined herein shall have the same meaning as ascribed to in the Plan.

² Pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure, findings of fact shall be construed as conclusions of law and conclusions of law construed as findings of fact when appropriate.

2. **Section 10.1.** Section 10.01 is hereby replaced in its entirety by the following language: **Presentation of Distributions Payments to Holders of Allowed Claims.** The time allowed for a Holder of an Allowed Claim to present and negotiate a Distribution payment under the Confirmed Plan will be 180 days from the date such check or Distribution payment was issued to the Holder of an Allowed Claim. The Reorganized Debtor will promptly deliver all Distribution payments to Holders of Allowed Claims at the last known address of the Holder of the Allowed Claim unless the Holder has provided wiring instructions or similar means to receive Distribution payments other than through physical mail service and delivery. Failure of a Holder of an Allowed Claim to timely present and negotiate a Distribution payment will render such fund to be unclaimed under 11 U.S.C. § 347(b), as more fully described below.

Were the Holder of an Allowed Claim to not negotiate a check for a Distribution issued to such Holder within 180 days of the date such check was issued, the amount of Cash attributable to such check shall be deemed to be unclaimed under 11 U.S.C. § 347(b). The Reorganized Debtor will stop payment on all other outstanding Distribution payments and promptly provide written notice to such Holder stating that, unless such Holder communicates with the Reorganized Debtor within 90 days of the date of such notice, and the Reorganized Debtor will seek to have the Allowed Claim disallowed. Until a court of competent jurisdiction rules on the allowance or disallowance of the Allowed Claim, no further Distributions will be issued to such Holder.

Were a check for a Distribution made pursuant to the Plan to any Holder of an Allowed Claim to be returned to the Reorganized Debtor due to an incorrect or incomplete address for the Holder of such Allowed Claim, the Reorganized Debtor will stop payment on all other outstanding Distribution payments to the Holder of the Allowed Claim. Were the Holder of the Allowed Claim to not communicate writing to the Reorganized Debtor as to such check within 180 days of the

date such Distribution was made, then the amount of Cash attributable to such check shall be deemed to be unclaimed under 11 U.S.C. § 347(b). The Reorganized Debtor will seek to have the Allowed Claim disallowed. Until a court of competent jurisdiction rules on the allowance or disallowance of the Allowed Claim, no further Distributions will be issued to such Holder.

All communications with Holders of Allowed Claims will be in writing at the last known address of the Holder of the Allowed Claim.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction and Venue. The Court has jurisdiction over this chapter 11 case under 28 U.S.C. §§ 157 and 1334. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue in this Court is proper under 28 U.S.C. §§ 1408 and 1409.

B. Notice. The Solicitation Package containing the **(a) Cover Letter**; **(b) Chapter 11 Plan of William F. Roth** (Doc. No. 37), **(c) Disclosure Statement in Connection with the Chapter 11 Plan of William F. Roth** (Doc. No. 38), **(d) Order Conditionally Approving Disclosure Statement, Fixing Time to File Objections to the Disclosure Statement, Fixing Time to File Applications for Administrative Expenses, Setting Hearing on Confirmation of the Plan, and Setting Deadlines with Respect to Confirmation** (Doc. No. 41) (the “**Scheduling Order**”) and **(e) Ballot** for accepting or rejecting the Plan was served on all creditors and parties-in-interest. The Court finds that **(i)** timely and proper notice of the Confirmation Hearing, the time fixed for filing objections to confirmation, and the time for submitting ballots on the Plan were provided to all creditors and all parties in interest, **(ii)** such notice was adequate and sufficient to notify all creditors and all parties in interest of the Confirmation Hearing and the objection and voting deadlines as to the Plan, **(iii)** such notice complied in all respects with the procedural orders of this Court, the Bankruptcy Code, the Bankruptcy Rules and otherwise satisfied due process, and **(iv)**

the announcements made in open court and modifications filed do not require additional disclosures nor re-solicitation of votes since they all inured to the benefit of creditors.

C. Solicitation. The Debtor and its attorneys have solicited votes to accept or reject the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Scheduling Order continued by Doc. No. 65, and are, therefore, entitled to the maximum protections afforded under the Bankruptcy Code.

D. Ballots. The Ballot Tabulation as filed on August 12, 2022 reflects Class 2 and 4 are unimpaired and therefore deemed to have accepted the Plan; and, Classes 1 and 5 are impaired but affirmatively voted for the Plan. Since filing the Ballot Tabulation the AMB Ballot reflects Class 3 is impaired but affirmatively voted for the Plan. Therefore, the Ballot Tabulation and AMB Ballot reflect the acceptance by creditors holding the required number and dollar amount of votes with respect to each impaired Class that voted on the Plan.

E. Satisfaction of 1129(a). The Plan satisfies all of the requirements of Sections 1129(a) of the Bankruptcy Code. The Court specifically finds that **(a)** the Plan rationally and properly classifies the claims, clearly delineates between impaired and unimpaired classes and similarly treats claims within a particular class to comply with Section 1129(a)(1); **(b)** the Debtor has complied with applicable provisions of the Bankruptcy Code as a debtor in possession, employment, property and monthly operating reports under Section 1129(a)(2); **(c)** the Plan was proposed in good faith as referenced under Section 1129(a)(3); **(d)** the Debtor has properly disclosed all payments made or to be made to its professionals under Section 1129(a)(4); **(e)** the Debtor has identified its management after confirmation of the Plan under Section 1129(a)(5); **(f)** the Plan does not contemplate any rate change with respect to any rate surcharge that is subject to the jurisdiction of any regulatory commissions under Section 1129(a)(6); **(g)** the Plan is in the best

interest of creditors as determined in part by the liquidation analysis attached to the Plan referenced under Section 1129(a)(7); **(h)** as discussed above, all classes who are impaired under the Plan have accepted the Plan under Section 1129(a)(8); **(i)** the Plan complies with the requirements under Section 1129(a)(9) including the requirements of 1129(a)(9)(A) with respect to claims of the kind specified in Section 507(a)(2) in that all such claims have been paid or will be paid on the Effective Date or the holder of such claim has otherwise agreed to different treatment; **(j)** at least one class of impaired claims has accepted the Plan determined without including any acceptance of the Plan by any insider under Section 1129(a)(10); **(k)** as supported by the Plan's exhibits, Debtor Declaration and Roth Declaration, the Plan is feasible as referenced under Section 1129(a)(11); **(l)** all fees assessed and payable under 28 U.S.C. § 1930 have been paid or will be paid upon the Effective Date under Section 1129(a)(12); **(m)** there are no retiree benefits to be paid after the Effective Date under Section 1129(a)(13); **(n)** the Debtor is not required to pay any domestic support obligations and therefore is compliant with Section 1129(a)(14); **(o)** no objections were lodged and therefore Section 1129(a)(15) does not apply, and, **(p)** the Plan does not contemplate the transfer of any property and therefore is compliant with Section 1129(a)(16).

F. Satisfaction of 1129(b). The Plan satisfies all of the requirements of Section 1129(b) of the Bankruptcy Code. The Court specifically finds that the Plan does not discriminate unfairly and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the Plan.

G. Satisfaction of 1129(c). The Plan satisfies all of the requirements of Section 1129(c) of the Bankruptcy Code. The Court specifically finds that the Plan is the only plan being confirmed by this Court under Section 1129(c).

H. Satisfaction of 1129(d). The Plan satisfies all of the requirements of Section 1129(d) of the Bankruptcy Code. The Court specifically finds that the principal purpose of the Plan is not for the avoidance of taxes or the avoidance of the application of Section 5 of the Securities Act of 1933 nor has there been any objection filed by any governmental unit asserting such avoidance.

I. Satisfaction of 1129(e). This is not a small business case and therefore Section 1129(e) does not apply.

J. Finding of Fact and Conclusions of Law. Where appropriate, a finding of fact shall be considered a conclusion of law and a conclusion of law shall be considered a finding of fact; all of which shall be incorporated into this Order's ruling.

ACCORDINGLY, BASED ON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND ON THE FULL RECORD OF THE BANKRUPTCY CASE, THE COURT HEREBY CONCLUDES, DECREES, FINDS AND ORDERS AS FOLLOWS:

1. Final Approval of Disclosure Statement. The Disclosure Statement is hereby **FINALLY APPROVED** as complying with Section 1125 of the Bankruptcy Code as containing adequate information – including but not limited to adequately detailing the risks involved – within the meaning of Section 1125.

2. Confirmation of Plan. The Plan is hereby **CONFIRMED** pursuant to Section 1129.

A. Binding Effect. All terms of the Plan as modified by this Order, and all necessary and relevant documents, are effective and binding upon the entry of this Order and the Effective Date. The failure to reference or discuss any particular provision of the Plan in this Order

shall have no effect on the Court's approval and authorization of, or the validity, binding effect and enforceability of such provision and each provision is authorized and approved and shall have the same validity, binding effect, and enforceability as every other provision of the Plan, whether or not mentioned in this Order.

B. Burden of Proof. The Debtor has met its burden of proving all of the elements of Sections 1129 of the Bankruptcy Code.

C. Discharge. The Debtor's discharge shall be governed by Sections 524 and 1141 of the Bankruptcy Code.

D. Effectuating Documents. The Debtor is authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement and further evidence the terms and conditions of the Plan as modified herein. The Effective Date is contingent upon all conditions identified in the Plan, or the, Debtor's waiver to the same.

E. Executory Contracts and Unexpired Leases. Except as otherwise provided by this Order or other orders entered regarding the assumption or rejection of executory contracts or unexpired leases, all other contracts not otherwise identified are deemed rejected as contemplated in Article 8 of the Plan. Any claims arising from the rejection of an unexpired lease or executory contract shall be filed within thirty (30) days from the date of this Order or be forever barred. To the extent necessary, the Debtor is assuming the executory contract or unexpired lease on the Honda.

F. Final Fee Applications. To the extent any professional, including but not limited to Jennis Morse Etlinger, seeks an award of compensation for services rendered or reimbursement of expenses incurred through and including the date of the Confirmation Hearing

in excess of any amounts estimated in any previously filed application, such professional shall file its respective application for allowance of compensation for services rendered and reimbursement of expenses incurred by the date that is twenty-one (21) days from the date of entry of this Order.

G. Jurisdiction and Venue. This Court has jurisdiction over the Debtor; the Debtor's chapter 11 case; all of the Debtor's property, contracts, and assets, wherever located; all claims against and equity interests in the Debtor; and all holders of claims against and equity interests in the Debtor pursuant to 28 U.S.C. § 1334. Confirmation of the Plan as modified herein is a "core proceeding" pursuant to, without limitation, 28 U.S.C. § 157(b)(2)(A), (L), and (O), and this Court has jurisdiction to enter a final order with respect to confirmation. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

H. Preservation of Causes of Action. All causes of action and objections to claims not specifically resolved or released through separate order of this Court are to be retained by the Debtor and preserved to the full extent provided in the Plan. The deadline for the Debtor to file any objections to claims or initiate any adversary proceedings shall be sixty (60) days from the entry of the Order.

I. Property of the Estate. Except as otherwise expressly provided in the Plan, on the Effective Date, the Debtor shall be vested with all of the assets and property of the Debtor, free and clear of all claims, liens encumbrances, charges, and/or other interests of holders of claims or equity interests, and shall operate its business henceforth.

J. Retention of Jurisdiction. The Court's retention of jurisdiction as set forth in Article 13 of the Plan comports with the parameters contained in 28 U.S.C. § 157 and is to be interpreted as broadly as possible.

K. Schedule of Payments. A schedule summarizing the timing and amounts of payments to be made to each class of creditors is attached hereto as **Exhibits A**. Unless the class description provides otherwise, the payments shall be made on the Effective Date. The Debtor shall make the payments to creditors under the Plan.

L. Effective Date. The Debtor shall file a notice of occurrence as to the Effective Date within seven (7) days of the occurrence.

M. Solicitation. The announcements made in open court and modifications filed do not require additional disclosures nor re-solicitation of votes since they all inured to the benefit of creditors.

N. AMB Ballot. The AMB Ballot shall be included in the ballot analysis and shall count as an accepting vote for Class 3.

O. BMO Treatment. The Class 2 Claim of BMO Harris Bank, N.A. shall be paid pursuant to the terms of the *Agreed Order Regarding Treatment of Claim in Chapter 11 Plan* (Doc. No. 69).

3. Status Conference. The Court will conduct a post confirmation status conference in this chapter 11 case on September 19, 2022 at 9:30 a.m. EST. Parties may attend the hearing in person, by Zoom, or by telephone. The Court will enter a separate Order Establishing Procedures for Video Hearing shortly before the hearing. Parties permitted to appear by telephone must arrange a telephonic appearance through Court Solutions (www.courtsolutions.com) no later than 5:00 p.m. the business day preceding the hearing. NOTE: All parties should proceed to the website and select “Sign Up”. For unrepresented parties only, before submitting the completed form, you must select “I am not an attorney” and “Certified Indigent”. Once the information is submitted you will receive an email with further instructions.

Attorney Daniel E. Etlinger is directed to serve a copy of this order on all interested parties who are non-CM/ECF users and to file a proof of service within 3 days of entry of the order.

EXHIBIT A**SCHEDULE OF PAYMENTS**

| Class Number | Class Description | Total Claim Amounts | Payment Intervals | Term |
|---------------------|------------------------------|----------------------------|---|---|
| N/A | Administrative Expense Claim | \$14,750.00 | Effective Date Or As Otherwise Agreed | Effective Date Or As Otherwise Agreed |
| N/A | Priority Taxes | \$18,663.75 | Effective Date | Effective Date |
| 1 | HCTC | \$10,462.58 | 30 Days of Effective Date | 30 Days of Effective Date |
| 2 | BMO | \$340,521.00 | Monthly | Contractual |
| 3 | AMB | \$249,772.32 | 30 Days of Effective Date | 30 Days of Effective Date |
| 4 | Ally | \$11,065.48 | Monthly | Contractual |
| 5 | General Unsecured Claims | \$48,528.75 | 30 Days of Effective Date | 30 Days of Effective Date |