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JAMES B. NICHOLSON

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

JAMES B. NICHOLSON,  
SUCCESSOR TRUSTEE,

Plaintiff,

v.

BOBBY N. HARMON,

Defendant.

) CIV. NO. CV05-00030 DAE/KSC  
)  
) **PLAINTIFF'S MEMORANDUM IN**  
) **OPPOSITION TO DEFENDANT'S**  
) **MOTION FOR ORDER TO**  
) **DISAPPROVE APPOINTMENT OF**  
) **JAMES B. NICHOLSON AS**  
) **SUCCESSOR TRUSTEE AND**  
) **REQUEST TO DISMISS MOTION;**  
) **DECLARATION OF STEVEN**  
) **GUTTMAN; EXHIBITS A AND B;**  
) **CERTIFICATE OF SERVICE**

) **HEARING:**

) Date:

) Time:

) Judge: The Honorable  
Kevin S.C. Chang

**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S  
MOTION FOR ORDER TO DISAPPROVE APPOINTMENT OF  
JAMES B. NICHOLSON AS SUCCESSOR TRUSTEE  
AND REQUEST TO DISMISS MOTION**

Plaintiff JAMES B. NICHOLSON, Successor-Trustee ("Plaintiff"), by and through his undersigned counsel, hereby submits this Memorandum in opposition to the Motion for Order to Disapprove Appointment of James B. Nicholson as Successor Trustee ("Motion"), filed herein by Defendant BOBBY N. HARMON ("Defendant"), on June 9, 2006. A hearing date on the Motion has not been set.

**I. BACKGROUND.**

The Motion is presenting an issue unrelated to the Application for Confirmation of Arbitration Award and for Entry of Judgment Against Bobby N. Harmon ("Application"), filed by the former Trustee, Mary Lou Woo. At the time the Application was filed in January, 2005, Ms. Woo was the duly appointed Bankruptcy Trustee in the Chapter 7 proceeding captioned In re Harmon, Case No. 99-4339, pending before the United States Bankruptcy Court for the District of Hawaii ("Chapter 7 Case"). Ms. Woo had also been the Petitioner in the arbitration matter entitled Mary Lou Woo v. Bobby N. Harmon, Case No. 74-166-00491-03 Jafa, which had been heard by the Employment Arbitration Tribunals of the American

Arbitration Association and which resulted in the Arbitration Award that was successfully confirmed in this proceeding.

On January 25, 2006, the Bankruptcy Court issued a Notice of Successor Trustee designating the Office of the United States Trustee ("OUST") as the Successor Trustee in the Chapter 7 Case. Thereafter, on May 12, 2006, the Bankruptcy Court issued a further Notice of Successor Trustee designating JAMES B. NICHOLSON to succeed OUST as the Successor Trustee in the Chapter 7 Case.

On June 9, 2006, Defendant filed with this Court a Motion for Order to Disapprove Appointment of James B. Nicholson as Successor Trustee.

## **II. ARGUMENT.**

Pursuant to 28 U.S.C. § 586 and 11 U.S.C. § 101, et seq., the United States Trustee Program ("UST Program"), a component of the U. S. Department of Justice, is the entity designated as having exclusive responsibility for overseeing the administration of bankruptcy cases and private bankruptcy trustees. The UST Program was established by the Bankruptcy Reform Act of 1978 for the purpose of promoting the efficiency and protecting the integrity of the Federal bankruptcy system. As noted at

the Department of Justice's website, [www.usdoj.gov/ust](http://www.usdoj.gov/ust), the specific responsibilities of the United States Trustee include:

“Appointing and supervising private trustees who administer Chapter 1, 12, and 13 bankruptcy estates  
...”

Any objection to the appointment of Plaintiff as Successor Trustee in the Chapter 7 Case should have been filed with the Bankruptcy Court, not the U.S. District Court. It appears the Defendant has realized the fact that his Motion should have been filed with the Bankruptcy Court. On June 19, 2006, Defendant filed a pleading identical to the subject Motion in the Chapter 7 Case. A true and correct copy of that pleading bearing the file stamp of the Bankruptcy Court is attached as Exhibit A to the Declaration of Steven Guttman (“Guttman Declaration”) filed concurrently herewith.

Following Defendant’s filing of the Motion in the Chapter 7 Case, the Bankruptcy Court took the initiative of setting a hearing on the Motion. The Motion is scheduled to be heard on July 19, 2006 before the Honorable Robert F. Faris, United States Bankruptcy Judge. A true and correct copy of the Notice of Hearing issued by the Bankruptcy Court is attached hereto as Exhibit B.

Despite filing an identical motion with the Bankruptcy Court, Defendant has not filed a withdrawal of the Motion filed with this Court.

**III. CONCLUSION.**

In light of the foregoing and the fact that Defendant's concerns regarding the appointment of James B. Nicholson as the Successor Trustee in the Chapter 7 Case will be heard by the Court of appropriate jurisdiction, Plaintiff hereby requests this Court to issue an Order denying Defendant's Motion for Order to Disapprove Appointment of James B. Nicholson as Successor Trustee based upon this Court not having jurisdiction to hear a motion addressing the appointment of a trustee in a bankruptcy case.

DATED: Honolulu, Hawaii, June 23, 2006.

*Steven Guttman*

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STEVEN GUTTMAN  
Attorney for Plaintiff  
JAMES B. NICHOLSON  
Successor Trustee

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

JAMES B. NICHOLSON, SUCCESSOR TRUSTEE,	)	CIV. NO. CV05-00030 DAE/KSC
	)	
Plaintiff,	)	<b>DECLARATION OF STEVEN</b>
	)	<b>GUTTMAN; EXHIBITS A AND B</b>
v.	)	<b>HEARING:</b>
	)	Date:
BOBBY N. HARMON,	)	Time:
	)	Judge: The Honorable
Defendant.	)	Kevin S.C. Chang
_____	)	

**DECLARATION OF STEVEN GUTTMAN**

Declarant STEVEN GUTTMAN ("Declarant"), declares under penalty of perjury that the statements made hereinbelow are true and correct to the best of his knowledge, information and belief.

1. Declarant is duly licensed to practice law before this court and the courts of the State of Hawaii, and is the attorney for Plaintiff-Successor Trustee JAMES B. NICHOLSON ("Plaintiff") in this proceeding.

2. Declarant has personal knowledge of the matters set forth below and if called upon to testify, would do so as to the facts stated herein.

3. This Declaration is submitted in support of Plaintiff's Memorandum in Opposition to the Motion for Order to Disapprove

Appointment of James B. Nicholson as Successor Trustee ("Motion"), filed herein on June 9, 2006 by Defendant BOBBY N. HARMON ("Defendant").

4. On June 19, 2006, Declarant received via electronic transmission from the U.S. Bankruptcy Court for the District of Hawaii a pleading entitled *Defendant Bobby N. Harmon's Objection to the Appointment of James B. Nicholson as Successor Trustee; Motion for Order to Disapprove this Appointment*. A true and correct copy of the pleading is attached hereto as Exhibit A.

5. On June 19, 2006, Declaration also received via electronic transmission from the U.S. Bankruptcy Court for the District of Hawaii a *Notice of Hearing* advising that the subject Motion will be heard by the Bankruptcy Judge on July 19, 2006, at 2:00 P.M. A true and correct copy of the Notice of Hearing is attached hereto as Exhibit B.

DATED: Honolulu, Hawaii, June 23, 2006.

  
\_\_\_\_\_  
STEVEN GUTTMAN

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Defendant, Pro Se

FILED  
U.S. BANKRUPTCY COURT  
DISTRICT OF HAWAII

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FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

JUN 19 2006

at 1 o'clock and 03 min. P.M.  
SUE BEITIA, CLERK

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

OFFICE OF THE U.S. TRUSTEE )

Plaintiff, )

vs. )

BOBBY N. HARMON, )

Defendant )

CASE NO. CV05-00030 DAE KSC

DEFENDANT BOBBY N. HARMON'S  
OBJECTION TO THE APPOINTMENT  
OF JAMES B. NICHOLSON AS  
SUCCESSOR TRUSTEE; MOTION  
FOR ORDER TO DISAPPROVE THIS  
APPOINTMENT

NON-HEARING MOTION

Trial Date: None

Judge: Hon. Kevin S. Chang

DEFENDANT BOBBY N. HARMON'S OBJECTION TO PLAINTIFF'S  
APPOINTMENT OF JAMES B. NICHOLSON AS  
SUCCESSOR TRUSTEE; MOTION FOR ORDER TO DISAPPROVE  
THIS APPOINTMENT

COMES NOW Defendant BOBBY N. HARMON and submits this OBJECTION TO PLAINTIFF'S APPOINTMENT OF JAMES B. NICHOLSON AS SUCCESSOR TRUSTEE for the following reasons:

1. On May 25, 2006, Defendant received a notice dated May 12, 2006, from the Office of the U.S. Trustee that they were appointing James B. Nicholson as successor trustee in this case. This notice was delayed in delivery as it was sent to my former address in Las Vegas, NV.

2. The Office of the U.S. Trustee did not provide to the Defendant any disclosures or biographical information regarding their successor trustee appointee, James B. Nicholson. It is well known to the Office of the U.S. Trustee that Defendant has challenged and objected to the appointment of previous trustees due to numerous and undisclosed personal, professional, political and financial connections with various entities involved in this case, including former trustee Mary Lou Woo. Also, due to the direct involvement of a number of insurance entities in this case, Defendant has previously requested that he be provided the identities of all insurance companies and brokers providing professional liability insurance and trustee bonds to any appointed trustees. This information has not yet been provided by the Office of the U.S. Trustee, James B. Nicholson, or by any other parties related to this case, including former trustee Mary Lou Woo and her attorney Steven Guttman.

3. Defendant, through his own independent research, has discovered that successor trustee appointee, James B. Nicholson, has a number of apparent conflicts-of-interest in this case which would cause him to be biased against Defendant. For example, reports state that James B. Nicholson played college football at Michigan State

University and pro-football for the Kansas City Chiefs. A teammate of Mr. Nicholson was reported to be Honolulu City Councilman, Arnold Morgado, who is, or was, the president of the Association of Parents and Teachers of Kamehameha Schools, and who has been in a position to affect legislation related to issues involving that entity. Another apparent connection is a Michigan businessman and community leader named James B. Nicholson, whom I believe to be closely related to this trustee appointee of the same name. This individual is, or was, an officer for the Michigan chapter of The Nature Conservancy - a non-profit organization with substantial financial ties to Kamehameha Schools, Peter Savio, Faye Kurren (wife of Judge Barry Kurren), Guido Giacometti, Nathan Aipa, Colleen Wong, Henry Paulson, Goldman Sachs, PricewaterhouseCoopers, Ben Benson, Mark McConaghy, and other parties directly related to this case.

**II. MOTION TO DISAPPROVE THE APPOINTMENT OF JAMES B. NICHOLSON AS SUCCESSOR TRUSTEE**

Based upon the facts and arguments presented herein, Defendant respectfully asks that the Court DISAPPROVE the appointment of James B. Nicholson as successor trustee.

DATED: Springfield, Kentucky, June 5, 2006



BOBBY NORRIS HARMON,

Debtor Pro Se

