

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

KEN ROSS, COMMISSIONER OF THE OFFICE
OF FINANCIAL AND INSURANCE
REGULATION,

Petitioner,

No. 10-397-CR

v

HON. WILLIAM E. COLLETTE

AMERICAN COMMUNITY MUTUAL
INSURANCE COMPANY,

Respondent.

**ORDER REGARDING PAYMENT OF SETTLEMENT AMOUNT RESOLVING
PRE-REHABILITATION CLAIM FOR SUPPLEMENTAL RETIREMENT BENEFIT**

At a session of said Court held in the
Circuit Courtrooms for the
County of Ingham, State of Michigan
on the 9th day of April, 2012.

PRESENT: HONORABLE WILLIAM E. COLLETTE, CIRCUIT COURT JUDGE

WHEREAS, on March 9, 2012, R. Kevin Clinton, the Commissioner of the Michigan Office of Financial and Insurance Regulation and duly appointed Rehabilitator of American Community Mutual Insurance Company (the "Rehabilitator"), filed a Petition for Approval of Settlement Resolving Pre-Rehabilitation Claim for Supplemental Retirement Benefit (the "Petition"). The Petition sought this Court's approval of the Settlement Agreement and Release entered into between American Community and its former executive, Donald Bonner, resolving Mr. Bonner's pre-Rehabilitation claim for benefits payable under a Supplemental Retirement Agreement; and

MIKE BRYANTON
CLERK OF THE 30TH
JUDICIAL CIRCUIT COURT
INGHAM COUNTY CLERK

2012 APR - 9 A 11: 58

FILED

WHEREAS, pursuant to the Settlement Agreement and Release between American Community and Donald Bonner, American Community agreed to pay Mr. Bonner the lump-sum amount of \$285,853.02 (the “Settlement Payment”), in exchange for which Mr. Bonner agreed to release any claims he may have against American Community relating to his Supplemental Retirement Agreement and his employment generally; and

WHEREAS, the Rehabilitator served the Petition, attached Exhibits (which included the proposed Order approving the settlement), and a Notice of Hearing via regular mail on American Community's two surplus note holders and their trustee, and on Mr. Bonner at his home address. To the Rehabilitator's knowledge, these were the parties having the strongest potential interest in the Petition. The Rehabilitator also provided notice to other potentially interested parties by posting electronic copies on the “American Community” section of OFIR's website; and

WHEREAS, the Court held a hearing on the Petition on Wednesday, March 21, 2012. No party filed a response or objection to the Petition, nor did any party other than the Rehabilitator's counsel appear at the hearing. Consequently, the Court entered the Rehabilitator's Order Approving Settlement Resolving Pre-Rehabilitation Claim for Supplemental Retirement Benefit following the hearing on March 21, 2012; and

WHEREAS, after entry of the Order on March 21, 2012, counsel for Donald Bonner's ex-wife, Doris Bonner, contacted the Rehabilitator's counsel to discuss Doris Bonner's entitlement to a portion of Mr. Bonner's retirement benefits. Prior to that time, the Rehabilitator had no knowledge of Doris Bonner's claimed interest in Donald Bonner's Supplemental Retirement Agreement; and

WHEREAS, following discussions and an exchange of information between Doris Bonner's counsel and the Rehabilitator's counsel, on March 30, 2012, Doris Bonner filed a

Motion for Reconsideration of the Court's March 21, 2012 Order approving the settlement resolving the pre-Rehabilitation claim of Donald Bonner related to his Supplemental Retirement Agreement; and

WHEREAS, Doris Bonner's Motion for Reconsideration requests the Court to condition its approval of the Settlement Agreement and Release between American Community and Donald Bonner on the Settlement Payment being divided and paid equally between Donald and Doris Bonner, with each party receiving a direct payment of fifty percent (50%) of the \$285,853.02 lump-sum settlement amount; and

WHEREAS, as explained in the Rehabilitator's Response to the Motion for Reconsideration, under the terms of Donald Bonner's Supplemental Retirement Agreement, Donald Bonner is prohibited from alienating, transferring, or assigning the benefits payable under this Agreement prior to his actual receipt of payment, while any attempt by Mr. Bonner to alienate, transfer, or assign his benefits pre-payment is void. Moreover, American Community is not liable for or subject to the debts, contracts, or liabilities of any person claiming an entitlement to the benefits payable under Mr. Bonner's Supplemental Retirement Agreement; and

WHEREAS, in recognition of the inalienability of the benefits payable to Mr. Bonner under his Supplemental Retirement Agreement, the Property Settlement Agreement resulting from Donald and Doris Bonner's divorce obligates Donald Bonner to directly pay Doris Bonner 50% of the benefits he receives under his Supplemental Retirement Agreement within 5 days of receiving such payment from American Community. The Property Settlement Agreement imposes no obligation on American Community to pay these benefits directly to Doris Bonner, nor could it given the inalienability provisions contained in the Supplemental Retirement

Agreement. Rather, American Community is obligated to pay Donald Bonner, who in turn is obligated to pay his ex-wife Doris Bonner; and

WHEREAS, although the Rehabilitator properly resolved and liquidated Donald Bonner's pre-Rehabilitation claim for benefits payable under his Supplemental Retirement Agreement without the involvement of Doris Bonner, and although the Rehabilitator's only legal obligation is to make the Settlement Payment directly to Donald Bonner, the Rehabilitator recognizes that resolving this matter without further Court involvement while ensuring Doris Bonner's actual receipt of the 50% payment to which she is entitled promotes the interests of expedience, justice, and fairness. Moreover, although American Community has no legal obligations to Doris Bonner, dividing the Settlement Payment equally between Donald and Doris Bonner avoids the potential risk to the rehabilitation estate, albeit remote, of multiple liability arising from the same Settlement Payment; and

WHEREAS, for these reasons, the Rehabilitator recommends that the Court authorize and direct the Rehabilitator to divide and pay equally between Donald and Doris Bonner the \$285,853.02 Settlement Payment resolving Mr. Bonner's Supplemental Retirement Agreement. Provided, however, that the amount payable (and the rehabilitation estate's total liability) is limited to the \$285,853.02 agreed to, and that upon payment, American Community, the Rehabilitator, and their representatives are released from any further liability to Donald and Doris Bonner;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Rehabilitator is authorized and directed to divide and pay equally between Donald Bonner and Doris Bonner the \$285,853.02 Settlement Payment resolving Mr. Bonner's Supplemental Retirement Agreement. Accordingly, the Rehabilitator shall make a direct payment to Donald Bonner, sent to his home

address, in the amount of fifty percent (50%) of the \$285,853.02 Settlement Payment, or \$142,926.51. Similarly, the Rehabilitator shall make a direct payment to Doris Bonner, sent to her attorney John Shureb, in the amount of fifty percent (50%) of the \$285,853.02 Settlement Payment, or \$142,926.51;

IT IS FURTHER ORDERED that upon receipt of the Rehabilitator's payment to Donald Bonner and Doris Bonner as set forth above, Donald Bonner, Doris Bonner, and all other persons acting on their behalf release and forever discharge American Community, its directors, officers, shareholders, representatives, employees, attorneys, agents, predecessors, successors, heirs, and assigns, together with the Rehabilitator, the Special Deputy Rehabilitators, the State of Michigan, Office of Financial and Insurance Regulation and their representatives, agents, attorneys, employees, predecessors, successors, heirs, and assigns, from all causes of action, debts, choses in action, claims, damages, and demands, in law or in equity, whether known or unknown, that Donald Bonner and Doris Bonner have or have ever had relating to or arising out of the Settlement Payment, Donald Bonner's employment with American Community, or Donald Bonner's resignation/termination from employment with American Community;

IT IS FURTHER ORDERED that upon receipt of the Rehabilitator's payment to Donald Bonner and Doris Bonner as set forth above, American Community, the Rehabilitator, and their representatives, employees, attorneys, agents, predecessors, successors, heirs, and assigns shall have no further liability to any other person or entity relating to or arising out of the Settlement Payment, Donald Bonner's employment with American Community, or Donald Bonner's resignation/termination from employment with American Community, and that any such claims are hereby discharged;

IT IS FURTHER ORDERED that, upon entry, the Court authorizes, approves, and/or ratifies the Rehabilitator's service of this Order via regular mail on Donald Bonner at his home address, and on Doris Bonner c/o her attorney, John Shureb;

IT IS FURTHER ORDERED that due to the difficulty and prohibitive cost associated with providing personalized notice to all other parties having an interest in the American Community rehabilitation, upon entry, the Court authorizes, approves, and/or ratifies the Rehabilitator's service of this Order on other potentially interested parties by posting electronic copies on the OFIR website, www.michigan.gov/ofir, under the section "Who We Regulate", and the subsection "American Community." The Court finds that service in this manner is reasonably calculated to give these other potentially interested parties actual notice of these proceedings and is otherwise reasonable under the circumstances.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'W. Collette', written over a horizontal line.

Honorable William E. Collette
Circuit Court Judge