

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE



Laurie Selber Silverstein
Judge

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October 22, 2024

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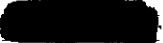
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VIA FIRST CLASS MAIL



Re: **Boy Scouts of America and Delaware BSA, LLC, 20-10343 (LSS)**

J.S.'s Motions Seeking to Change Expedited Distribution Election & Related Filings, ECF Nos. 11614 (sealed), 11615 (redacted), 11809 (sealed), 11810 (redacted), 12000 (sealed), 12001 (redacted), 12240 (sealed), 12241 (redacted), 12312 (sealed), 12313 (redacted), 12449 (sealed), 12450 (redacted)

Dear Counsel and :

This letter is my ruling on multiple motions filed by J.S. by which he seeks an order allowing him to change his Expedited Distribution¹ election and proceed under the standard Trust Distribution Procedures or Independent Review Option (collectively, "Motions").²

¹ All capitalized terms not defined herein shall have the meaning attributed to them in the Third Modified Fifth Amended Chapter 11 Plan of Reorganization (with Technical Modifications) for Boy Scouts of America and Delaware BSA, LLC, ECF No. 10316-1.

² ECF Nos. 11614 (sealed), 11615 (redacted), 11809 (sealed), 11810 (redacted), 12000 (sealed), 12001 (redacted), 12449 (sealed), 12450 (redacted). The latest motion, ECF Nos. 12449 (sealed) and

While J.S. filed these motions himself, he is represented by counsel.³ Accordingly, the Court in issuing its scheduling order, directed counsel “to coordinate with their client[] regarding [his] respective submissions.”⁴ The matter was heard at the omnibus hearing on July 10, 2024 where counsel for J.S. appeared and argued. The Trustee was also represented by counsel at the hearing and argued in support of her joint objection to the Motions.⁵

In support of the Motions, J.S. submitted his own declaration⁶ and that of Gary Jackson, his in-home caretaker.⁷ These declarations offer contradictory reasons why J.S. should not be bound by the Expedited Distribution election made on his ballot.⁸ In his initial filings, J.S. stated that he suffers from dementia, was confused when completing his ballot and did not understand what he was signing.⁹ After the Court issued the scheduling order, J.S. filed the affidavit of Mr. Jackson.¹⁰ Mr. Jackson asserted that he—not J.S.—elected the Expedited Distribution on J.S.’s ballot.¹¹ Mr. Jackson further stated that he was confused by the ballot “and thought [he] was doing the right thing.”¹²

12450 (redacted), was submitted after the others were argued and taken under advisement but addresses the same issue and presents no new evidence or substantive arguments. Accordingly, I include it in this letter ruling without additional oral argument.

³ At all times relevant to the Motions, including when the Motions were filed, Movant was represented by AVA Law Group, Inc.

⁴ Scheduling Order for Mots. / Letter Requests Filed by Individual Claimants, ECF No. 12091 (“Scheduling Order”).

⁵ Opp’n of the Hon. Barbara J. Houser (Ret.), in her Capacity as Trustee of the BSA Settlement Trust, to Movant J.S.’s Letter Regarding Ballot [D.I. 12000/12001], ECF No. 12200 (“Opp’n”).

⁶ J.S. Decl., ECF Nos. 11614 (sealed), 11615 (redacted), 11809 (sealed), 11810 (redacted), 12000 (sealed), 12001 (redacted), 12449 (sealed), 12450 (redacted).

⁷ Jackson Decl., ECF Nos. 12240 (sealed), 12241 (redacted), 12312 (sealed), 12313 (redacted), 12449 (sealed), 12450 (redacted).

⁸ For purposes of this decision, I do not credit one explanation over the other because they yield the same result.

⁹ J.S. Decl.

¹⁰ Scheduling Order 2.

¹¹ Jackson Decl.

¹² *Id.*

Trustee counters that although J.S. was not the subject of the Court's prior Opinion dated February 5, 2024,¹³ the Court is bound by the reasoning, which would mandate denial of the Motions.¹⁴

J.S.'s first argument—that he was confused when he completed his ballot—is squarely addressed by my prior Opinion.¹⁵ Assuming J.S. completed his own ballot and was confused, I see no facts that warrant distinguishing him from the other abuse survivors who are bound by their mistaken election. Therefore, to the extent he completed his own ballot, J.S. is bound by his mistaken election for the reasons stated in my Opinion.

J.S.'s second argument—that Mr. Jackson erroneously made the Expedited Distribution election on the ballot—is not squarely addressed in my Opinion. J.S.'s counsel argued at the hearing that this situation is analogous to a forged ballot and should put J.S. outside the scope of the February 5, 2024 Opinion.¹⁶ I have previously permitted claimants who proved by a preponderance of the evidence that their names were forged to have their claims processed under the standard Trust Distribution Procedures or the Independent Review Option notwithstanding the election made on the forged ballot.¹⁷

J.S. bears the burden of proof to establish that Mr. Jackson lacked authority to sign the ballot and elect the Expedited Distribution Option on J.S.'s behalf. At argument, J.S.'s counsel argued neither J.S. nor Mr. Jackson stated in their declarations that Mr. Jackson "had guardianship or power of attorney" over J.S.¹⁸ Counsel similarly argued that the supporting documents attached to J.S.'s filings lacked any suggestion that Mr. Jackson possessed authority to act for J.S.¹⁹ Absence of evidence, however, is not sufficient to meet J.S.'s burden of proof. Neither J.S. nor Mr. Jackson affirmatively stated that Mr. Jackson was not authorized to execute the ballot on J.S.'s behalf. Moreover, Mr. Jackson's Declaration suggests that he had considerable authority to act on J.S.'s behalf. Mr. Jackson states that in the course of his duties as J.S.'s in-home caretaker he has "to pay [J.S.'s] bills

¹³ *In re Boy Scouts of America and Delaware BSA, LLC*, Case No. 20-10343, ECF No. 11789, 2024 WL 459571 (Bankr. D. Del. Feb. 5, 2024) (slip opinion) *appeal docketed* 24-CV-00213 (D. Del. Feb. 16, 2024).

¹⁴ Opp'n 4-5.

¹⁵ *Boy Scouts*, 2024 WL 459571, at *12 ("Each of the Movants asserts he made a mistake in electing the Expedited Distribution on his Ballot and seeks relief in some form from the Solicitation Order.").

¹⁶ 7/10/2024 Hr'g Tr. 11:14-22.

¹⁷ Letter Ruling dated March 14, 2024, ECF No. 11903.

¹⁸ 7/10/2024 Hr'g Tr. 10:22-25, 11:8-13.

¹⁹ 7/10/2024 Hr'g Tr. 10:25-11:1.

and answer and write correspondence for him” and “read his emails and answer them for him.”²⁰

Considering the evidence presented, J.S. has not met his burden of proof to show Mr. Jackson was not authorized to sign and return the ballot. Therefore, consistent with the February 5, 2024 Opinion, J.S. is bound by the Expedited Distribution election made on his behalf regardless of any confusion on the part of Mr. Jackson.

As I stated in my Opinion, I acknowledge this is a harsh result. J.S.’s alleged claim could be worth substantially more if he were permitted to pursue another treatment option. I also recognize that J.S. has waited many years for acknowledgement and recompense. The circumstances that dictate this result are even more unfortunate because J.S. had counsel to advise him in completing the ballot and help avoid this type of mistake. J.S. states, however, his counsel did not do so.²¹ Nonetheless, the harsh outcome does not allow me to ignore the Court’s previous Opinion.

A separate order will enter consistent with this ruling.

Very truly yours,



Laurie Selber Silverstein

LSS/cmb

²⁰ Jackson Decl. (cleaned up).

²¹ J.S. Letter, ECF No. 12000 (sealed), 12001 (redacted). The Court makes no comment on any claim J.S. may have against AVA or whether AVA is entitled to any percentage of a distribution to J.S. under these circumstances.