

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

FILED

UNITED STATES DISTRICT COURT
DENVER, COLORADO

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHISHOLM SBIC, L.P.,

Defendant.

JUN 1 2009

GREGORY C. LANGHAM
CLERK

Civil Case No.

09-MC-0034

COMPLAINT FOR RECEIVERSHIP AND INJUNCTION

COMES NOW Plaintiff, the United States of America, on behalf of its agency, the United States Small Business Administration, and for its cause of action states that this is a civil action for receivership, which has been consented to by both parties as evidenced in the proposed order to be submitted upon the filing of this action.

PARTIES, JURISDICTION AND VENUE

1. This civil action for a receivership has been consented to by both Plaintiff and Defendant in this action. The Complaint is brought by the United States on behalf of its agency, the Small Business Administration (hereinafter, "SBA," "Agency" or "Plaintiff"), whose central office is located at 409 Third Street, S.W., Washington, DC 20416.

2. Jurisdiction is conferred on this Court by virtue of the Small Business Investment Act of 1958, as amended (hereinafter, the "Act"), Sections

308(d), 311, and 316; 15 U.S.C. §§687(d), 687c, 687h; the Small Business Act, 15 U.S.C. §634(b)(1); and 28 U.S.C. §1345.

3. Defendant, Chisholm SBIC, L.P. (hereinafter “Chisholm” or “Licensee”), is an Oklahoma limited partnership that maintains its principal place of business at 5401 N. Grand Blvd., Suite 225, Oklahoma City, OK 73112. Venue is therefore proper under 15 U.S.C. §§ 687(d), 687h and 28 U.S.C. §1391(b).

Statutory and Regulatory Framework

4. Chisholm was licensed by SBA as a Small Business Investment Company (“SBIC”) pursuant to Section 301(c) of the Act, 15 U.S.C. §681(c) on May 23, 2000, SBA License No. 06/76-0321, solely to do business under the provisions of the Act and the regulations promulgated thereunder.

5. Chisholm’s general partner is Chisholm SBIC, Inc. Chisholm is managed by Chisholm Management, LLC.

6. Chisholm’s License Application contains an acknowledgement by Chisholm that it would be operated in accordance with the Regulations and the Act at all times.

7. Section 308(c) of the Act, 15 U.S.C. §687(c), empowers SBA to prescribe regulations to carry out the provisions of the Act and to govern the operations of SBICs. SBA has duly promulgated such regulations, which are codified at Title 13 of the Code of Federal Regulations, Part 107 (the “Regulations”).

8. Section 303 of the Act, 15 U.S.C. §683, authorizes SBA to provide leverage to licensed SBICs.

9. Pursuant to Section 303 of the Act, 15 U.S.C. §683, SBA provided Leverage to Chisholm through the purchase and/or guaranty of Participating Securities, a form of Leverage, as those terms are defined under the Regulations, in the total principal amount of \$23,500,000, of which \$21,700,000 remains outstanding.

10. The Participating Securities referenced in paragraph 9, above, are subject to and incorporated by reference in the Regulations, including but not limited to the provision of 13 C.F.R. §§107.1820-1850 and §107.507.

11. Section 308(d) of the Act, 15 U.S.C. §687(d), provides that upon determination and adjudication of noncompliance or violation of the Act or the Regulations, all of the rights, privileges and franchises of a Licensee such as the Chisholm may be forfeited and the company may be declared dissolved.

12. Section 311 of the Act, 15 U.S.C. §687c, provides that if a determination by SBA that a Licensee such as the Chisholm, or any other person, has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of the Act or of any Rule or Regulation promulgated pursuant to the Act, or of any order issued under the Act, then SBA may make application for an injunction, and such Court shall have jurisdiction of such action and grant a permanent or temporary injunction, or other relief without bond, upon a showing that such Licensee has engaged in or is about to engage in any such acts

or practices. The Court is authorized to appoint SBA to act as receiver for such Licensee.

COUNT ONE

CAPITAL IMPAIRMENT

13. Paragraphs 1 through 12 are incorporated herein by reference.

14. Section §107.1830(c) of the Regulations requires that Chisholm not have a condition of Capital Impairment of greater than 60% (sixty percent) as defined under the Regulations.

15. Based on the SBA Form 468 submitted by Chisholm for the period ending September 30, 2005, SBA determined that Chisholm had a condition of Capital Impairment percentage, as Chisholm's capital impairment percentage was 69.86%, greater than the 60% allowed under the Regulations.

16. By letter dated January 23, 2006, SBA notified Chisholm that SBA was placing Chisholm into Restrictive Operations, pursuant to 13 C.F.R. § 107.1820(e)(3), and was imposing Restrictive Operation Remedies pursuant to 13 C.F.R. § 107.1820(f). SBA gave Chisholm fifteen (15) days to cure its condition of capital impairment.

17. Chisholm failed to cure its condition of capital impairment. Consequently, by letter dated April 25, 2006, Chisholm was notified that it was being transferred to liquidation status by SBA.

18. To date, Chisholm has failed to cure its condition of Capital Impairment and \$21,700,000 in Participating Securities Leverage purchased by SBA remains outstanding.

19. Chisholm's failure to cure its condition of Capital Impairment is a violation of §107.1830(b) of the Regulations.

20. Chisholm's non-compliance with its terms of Leverage under 13 C.F.R. §107.1830(b) is also a violation of Section 13 C.F.R. §107.507(a) of the Regulations for nonperformance of the terms of its Participating Securities and nonperformance of its Application for SBIC License, which is a written agreement with SBA.

21. SBA has determined that Chisholm is not in compliance with its terms of Leverage due to its uncured condition of Capital Impairment and is in violation of the Regulations, 13 C.F.R. §§107.1830(b) and 507(a).

22. As a consequence of Chisholm's violation of 13 C.F.R. §§107.1830(b) and 507(a) of the Regulations, SBA is entitled to the injunctive relief provided under the Act, 15 U.S.C. §687(d) and 687c, including the appointment of SBA as Receiver of Chisholm.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays as follows:

A. That injunctive relief, both preliminary and permanent in nature, be granted restraining Chisholm, its managers, general partners, directors, officers, agents, employees, and other persons acting in concert or participation therewith

from: (1) making any disbursements of any Chisholm assets; (2) using, investing, conveying, disposing, executing or encumbering in any fashion any Chisholm assets, wherever located; and (3) further violating the Act or the Regulations promulgated thereunder.

B. That this Court determine and adjudicate Chisholm's noncompliance with and violation of the Act and the Regulations promulgated thereunder.

C. That this Court, pursuant to 15 U.S.C. §687c enter the proposed Consent Order which has been stipulated to and executed to by both parties to this action, and (1) take exclusive jurisdiction of Chisholm and all of its assets, wherever located, (2) appoint SBA as receiver of Chisholm for the purpose of marshaling and liquidating the assets of Chisholm, satisfying the claims of creditors as determined by the Court and authorize SBA as Receiver to sell or transfer the interest of SBA and/or other limited partners in Chisholm provided the express written consent of the affected parties whose interest is to be sold or transferred is obtained; and (3) grant such other relief as contained in the Consent Order filed simultaneously herewith.

D. That this Court grant such other relief it deems just and proper.

Respectfully submitted,

s/ Arlene M. Embrey
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