

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
NEW ENGLAND PARTNERS)	
CAPITAL, L.P.,)	
)	
Defendant.)	
_____)	

COMPLAINT FOR RECEIVERSHIP AND INJUNCTION

COMES NOW Plaintiff, the United States of America, on behalf of its agency, the Small Business Administration, and for its cause of action states as follows:

PARTIES, JURISDICTION AND VENUE

1. This is a civil action 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, New England Partners Capital, L.P. (hereinafter "NEPC" or "Licensee"), is a Delaware limited partnership that maintains its principal place of business at 400 Crown Colony Drive, Quincy, Massachusetts 02169. Venue is therefore proper under 15 U.S.C. §§ 687(d), 687h and 28 U.S.C. §1391(b).

Statutory and Regulatory Framework

4. NEPC 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 February 26, 1998, SBA License No. 01/71-0368, solely to do business under the provisions of the Act and the regulations promulgated thereunder.

5. NEPC’s general partner is NEP Capital, LLC NEPC is managed by NEGF Advisory Company, Inc.

6. NEPC’s License Application contains an acknowledgement by NEPC 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 NEPC 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 \$47,205,000 of which \$39,205,000 is currently 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 NEPC 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 NEPC, 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 NEPC 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 NEPC for the period ending December 31, 2007, SBA determined that NEPC had a condition of Capital Impairment percentage, as NEPC's capital impairment percentage was 66.6%, greater than the 60% allowed under the Regulations.

16. By letter dated February 14, 2008, SBA notified NEPC that SBA was placing NEPC 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 NEPC fifteen (15) days to cure its condition of capital impairment.

17. NEPC failed to cure its condition of capital impairment. Consequently, by letter dated May 6, 2008, NEPC was notified that it was being transferred to liquidation status by SBA.

18. To date, NEPC has failed to cure its condition of Capital Impairment and \$39,205,000 in Participating Securities Leverage purchased by SBA remains outstanding.

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

20. NEPC'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 NEPC 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 NEPC'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 NEPC.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays as follows:

A. That injunctive relief, both preliminary and permanent in nature, be granted restraining NEPC, its managers, general partners, directors, officers, agents, employees, and other persons acting in concert or participation therewith from: (1) making any disbursements of any NEPC assets of the Fund; (2) using, investing, conveying, disposing, executing or encumbering in any fashion any NEPC or assets of the Fund, wherever located; and (3) further violating the Act or the Regulations promulgated thereunder.

B. That this Court determine and adjudicate NEPC'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 and (1) take exclusive jurisdiction of NEPC and all of its assets, wherever located, (2) appoint SBA as receiver of NEPC for the purpose of marshaling and liquidating the assets of NEPC, 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 NEPC 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.

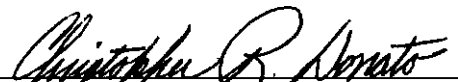
Respectfully submitted,

UNITED STATES OF AMERICA
By its attorney,

MICHAEL J. SULLIVAN
United States Attorney

Dated: June 8, 2009


By:


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U.S. SMALL BUSINESS ADMINISTRATION

Dated: June 8, 2009

By:

 ^{by CRD}
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