

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
(Eastern Division)

In re:

SW BOSTON HOTEL VENTURE, LLC, *et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 10-14535-JNF

(Jointly Administered)

MOTION BY DEBTORS TO APPROVE  
STIPULATION AND ORDER BY AND BETWEEN THE DEBTORS AND  
PRUDENTIAL INSURANCE COMPANY OF AMERICA REGARDING  
TRANSFER OF FUNDS TO DEBTOR-IN-POSSESSION ACCOUNT

SW Boston Hotel Venture, LLC (“SW Boston”), Auto Sales & Service, Inc., General Trading Company, Frank Sawyer Corporation, 100 Stuart Street, LLC, General Land Corporation, 131 Arlington Street Trust and 30-32 Oliver Street Corporation (collectively the “Debtors”), the debtors and debtors-in-possession in the above-captioned, jointly administered Chapter 11 cases, hereby moves for the entry, as an order of this Court, of the *Stipulation and Order by and between the Debtors and Prudential Insurance Company of America Regarding Transfer of Funds to Debtor-in-Possession Account*, filed contemporaneously with this motion. The Official Committee of Unsecured Creditors does not oppose the relief requested in this motion. In further support hereof, the Debtors respectfully state as follows:

**Jurisdiction**

1. This Court has jurisdiction to consider this motion pursuant to 28 U.S.C. §§ 157

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<sup>1</sup> The other debtors in the jointly administered cases are Auto Sales & Service, Inc. (Case No. 10-14528-JNF), General Trading Company (Case No. 10-14532-JNF), Frank Sawyer Corporation (Case No. 10-14533-JNF), 100 Stuart Street, LLC (Case No. 10-14534-JNF), 30-32 Oliver Street Corporation (Case No. 10-16173-JNF), General Land Corporation (Case No. 10-16174-JNF), and 131 Arlington Street Trust (Case No. 10-16177-JNF).

and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). Venue is proper in this District pursuant to 28 U.S.C. § 1408.

### **Background**

2. On April 28, 2010 (the “Petition Date”), SW Boston, Auto Sales & Service, Inc., General Trading Company, Frank Sawyer Corporation, and 100 Stuart Street, LLC filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code in this Court.

3. On June 4, 2010, General Land Corporation, 131 Arlington Street Trust and 30-32 Oliver Street Corporation filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code in the Court.

4. By orders of the Court dated May 3, 2010 and June 10, 2010, the Debtors’ cases are being jointly administered for procedural purposes only. The Debtors continue to operate as debtors and debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

5. On May 13, 2010, the Office of the United States Trustee appointed an Official Committee of Unsecured Creditors (the “Committee”). No trustee or examiner has been appointed in the Debtors’ cases.

6. On the Petition Date, the Debtors had a number of bank accounts, including two accounts at Sovereign Bank entitled (a) the “SW Boston Hotel Venture LLC Lockbox Account, for the Benefit of The Prudential Insurance Company of America,” Account No. 38704861525 (the “Lockbox Account”); and (b) the “SW Boston Hotel Venture LLC Project Closeout Lockbox Account, for the Benefit of The Prudential Insurance Company of America,” Account No. 38704861541 (the “Project Closeout Account,” and together with the Lockbox Account, the “Accounts”).

7. On or about April 20, 2010, SW Boston entered into two Limited Access Services Agreements with Prudential and Sovereign Bank relating to each of the Accounts, and on or about April 21, 2010, SW Boston transferred \$566,144.62 into the Lockbox Account and \$931,891.93 into the Project Closeout Account (collectively the “Funds”). Among other things, the Limited Access Services Agreements provide that unless and until Sovereign Bank receives Prudential’s written instructions to the contrary, SW Boston has no authority to transfer, withdraw, or otherwise disburse any of the Funds in the Accounts.

8. By orders of the Court dated May 5, 2010 and June 4, 2010 (collectively, the “Cash Collateral Orders”), the Debtors were granted the use of cash collateral, including the use of the Funds held in the Accounts, through August 31, 2010.

**Relief Requested and Basis for Relief**

9. Pursuant to the Office of the United States Trustee’s Operating Guidelines and Reporting Requirements for Chapter 11 Cases, the Debtors are required to establish debtor-in-possession bank accounts with certain authorized depositories. Consistent with this obligation, the Debtors desire to transfer the Funds held in the Accounts to a separate debtor-in-possession account.

10. As set forth in the Stipulation, the Debtors and Prudential have agreed, subject to the approval of this Court, to the terms and conditions by which the Debtors may transfer the Funds from the Accounts to a separate debtor-in-possession account to be established at Bank of America, N.A. (“BofA”), a depository authorized by the Office of the United States Trustee to maintain and establish such accounts. The principal terms of the Stipulation are as follows:<sup>1</sup>

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<sup>1</sup> The summary set forth in this motion is not intended to be a substitute for the Stipulation, which contains additional terms and provisions. In the event of any inconsistency between this motion and the Stipulation, the terms set forth in the Stipulation shall govern.

- (a) Immediately following the entry of this Order, Prudential shall instruct Sovereign Bank to release the Funds in the Accounts to the Debtors, and the Debtors shall deposit the Funds into a separate debtor-in-possession bank account at BofA.
- (b) In accordance with the Cash Collateral Orders, Prudential's Replacement Lien (as defined in the Cash Collateral Orders) on the Funds shall maintain the same priority, validity and enforceability as the lien held by Prudential on the Funds as of the Petition Date, subject to any and all rights, remedies, claims, defenses, and objections of the Debtors, the Committee, and/or the Debtors' estates.
- (c) The Debtors are authorized to use the Funds in accordance with the Cash Collateral Orders and such other and further cash collateral orders that may be entered in these cases.
- (d) In the event that the Debtors' Chapter 11 Cases are dismissed pursuant to an order of the Bankruptcy Court and such order does not provide for the disposition of the Funds, the Debtors agree that they shall not transfer or use any of the Funds unless the transfer or use of such Funds is consented to, in writing, by Prudential, or authorized by order entered by a court of competent jurisdiction.
- (e) Any action by the Debtors or the Committee to contest the perfection of the liens and security interests granted to Prudential under the Prudential Loan Agreement shall be made within the deadline set forth in Cash Collateral Order dated June 4, 2010 [Docket No. 114] or any order extending such deadline that may be entered in these cases, with all other rights, remedies, claims, defenses, and objections to Prudential's asserted claims, liens, and security interests being expressly reserved by the Debtors, the Committee, and/or the Debtors' estates.

11. The Stipulation provides for the orderly transfer of the Funds to a debtor-in-possession account with BofA and is consistent with the Debtors' obligation to establish bank accounts with depositories authorized by the Office of the United States Trustee. The Stipulation is also consistent with the terms of this Court's Cash Collateral Orders and enables the Debtors to utilize the Funds in accordance with the same during the administration of these cases. In the event that the Debtors' cases are dismissed, the Stipulation requires either the written consent of Prudential or an order of a court of competent jurisdiction before the Debtors can continue to

utilize or transfer the Funds, a provision that is substantially similar to the restrictions set forth in the Limited Access Services Accounts described above.

12. The transfer of the Funds contemplated by the Stipulation does not affect the deadline established in the Cash Collateral Order dated June 4, 2010 (or any order extending such deadline that might be entered in these cases) to contest perfection of the liens and security interests granted to Prudential under the Prudential Loan Agreement, and expressly reserves all other rights, remedies, claims, defenses, and objections to Prudential's asserted claims, liens, and security interests by the Debtors, the Committee, and/or the Debtors' estates.

13. The Committee does not oppose the relief requested in this motion.

14. Based upon the foregoing, no party in interest will be prejudiced by the relief requested in this motion, and the transfer of the Funds in the manner set forth in the Stipulation is in the best interests of the Debtors, their estates and creditors, and should be entered as an Order of this Court.

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**WHEREFORE**, the Debtors respectfully request that this Court (a) grant this motion, (b) enter the Stipulation as an Order of this Court; and (c) grant to the Debtors such other and further relief as the Court deems just and proper in the circumstances.

Respectfully submitted,

SW BOSTON HOTEL VENTURE, LLC,  
AUTO SALES & SERVICE, INC.,  
GENERAL TRADING COMPANY,  
FRANK SAWYER CORPORATION,  
100 STUART STREET, LLC,  
GENERAL LAND CORPORATION,  
131 ARLINGTON STREET TRUST, and  
30-32 OLIVER STREET CORPORATION,

By their counsel,

/s/ Harold B. Murphy

Harold B. Murphy (BBO #362610)

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