

## Why Giuliani's Creditors Say He Can't Run His Own Ch. 11

By Clara Geoghegan

*Law360 (May 29, 2024, 9:20 PM EDT)* -- The official committee of unsecured creditors in Rudy Giuliani's Chapter 11 has asked a New York bankruptcy judge to hand control of the Republican firebrand's estate to a trustee, bringing to a head months of creditor allegations that Giuliani has been skipping out on his bankruptcy obligations.

If an independent trustee takes the reins, it could reset the tone in the contentious Chapter 11 that has seen Giuliani and creditors lock horns over valuation of assets, the sale of his Miami condo and efforts to appeal a defamation verdict that led to the bankruptcy.

The committee said in its motion Tuesday that since the former New York City mayor filed for bankruptcy in December, he's turned in late and inaccurate financial disclosures, racked up steep bills and ignored requests for a budget. The group also alleged Giuliani has hidden income from his creditors using his business while pulling estate funds to pay the company's credit cards.

Seth Lieberman, chair of Pryor Cashman LLP's bankruptcy and reorganization practice group, said judges won't often appoint a trustee to take control of a debtor's estate unless there's overwhelming evidence that, without one, a Chapter 11 case will go south.

"In my experience, Chapter 11 trustees are most often appointed when the debtor's conduct has called into question its trustworthiness during the Chapter 11 case itself," said Lieberman. "Rather than the discretion typically afforded a typical debtor-in-possession, a Chapter 11 trustee severely limits the debtor's ability to control its own Chapter 11 case and its bankruptcy fate."

Giuliani filed for Chapter 11 bankruptcy in December, the day after a D.C. federal judge authorized two former Georgia poll workers, Ruby Freeman and Wandrea "Shaye" Moss, to collect on their \$148 million award from a defamation lawsuit against the Donald Trump ally.

Throughout the heated case, the creditors committee has accused Giuliani of pouring resources into appealing the verdict while casting aside requirements for Chapter 11 debtors and working against the interests of creditors.

Giuliani's attorneys, who did not respond to requests for comment Wednesday, have refuted the committee's characterizations and said that the former New York City mayor has made steps to advance the case.

U.S. Bankruptcy Judge Sean H. Lane earlier this month denied Giuliani's request to lift bankruptcy's automatic stay to build out his appeal, saying he needs to make progress on other parts of the bankruptcy and chiding Giuliani for repeating defamatory statements about Moss and Freeman, who are creditors in the case.

John Sparacino, a Houston-based bankruptcy attorney with McKool Smith, said that if an independent Chapter 11 trustee is appointed, they might be able to cool tensions with Giuliani's creditors and move the case forward.

"A Chapter 11 trustee should not be an adversary to the process or creditors, whereas it is plain that Giuliani is," said Sparacino. "Removing that will go to tremendous lengths to move this restructuring process forward."

### **Hidden Deals and Income**

In its motion, the committee said that, despite telling creditors and the court that he earned regular income from his former talk radio show with New York broadcaster WABC, which was canceled earlier this month, Giuliani has reported no income in his monthly disclosure reports. The committee said that money paid to the former mayor for his work on the radio show was sent to Giuliani Communications, not his bankruptcy estate.

The committee said it has also learned through media reports that Giuliani has kept them in the dark about other potential revenue sources, like a deal to endorse "Rudy Coffee," a brand of coffee beans with Giuliani's image on the bag, announced earlier this month, and a book titled "The Biden Crime Family" announced in February that is currently available for preorder.

Income from both deals, the committee said, is also paid to Giuliani Communications, effectively keeping the cash outside of creditors' reach.

"This revelation led to additional disturbing revelations: contrary to the debtor's representations to the committee and this court that he earned income personally, all of the debtor's known income is paid under arrangements structured in the same way. The debtor will do the work, and his wholly owned business will receive the income," wrote the committee in the motion.

### **Lofty Spending**

The committee also criticized Giuliani's "egregious spending habits" while in bankruptcy.

Monthly financial reports between January and March showed around \$3,965 in unauthorized payments for credit cards and plane tickets for his girlfriend Maria Ryan, the committee said, and over \$10,000 in authorized payments on credit cards owned by his company.

Giuliani's January report showed that his expenses outpaced his income by over \$50,000, the committee added, which included a more than \$28,000 payment to his now deceased former mother-in-law's nursing home. Subsequent operating reports also showed shortfalls between Giuliani's income and expenses, according to the motion, with the committee noting that in February, Giuliani was over \$16,000 in the red, \$9,900 behind in March and over \$20,000 in the negative in April.

The committee said Giuliani has ignored a proposed budget to curb his spending and credit card bills

and hasn't made efforts to recoup unauthorized payments from the estate.

### **Financial Disclosure Delays and Errors**

In its motion, the committee also flagged lingering delays and inaccuracies in Giuliani's monthly operating reports detailing his spending and income as a Chapter 11 debtor.

The reports, the committee said, show no income other than withdrawals from his IRA account and social security interest, despite Giuliani's previous reports that he was paid regularly before his radio show.

The committee said it has also flagged major accounting errors in the reports, noting that end-of-the-month and beginning-of-the-month cash balances listed for Giuliani's bank accounts have been off by between \$5,000 to over \$17,000 in every operating report since January.

The committee said that despite regular extensions, all but one report due in the Chapter 11 case has been filed late and all have had serious errors.

"His monthly operating reports, filed late and replete with errors and deficiencies, are worthless and raise questions of incompetence, at best, and fraud, at worst," wrote the committee.

### **Conduct in the Case**

The creditors also asked the court to look towards Giuliani's actions during and leading up to the case in support of its trustee request.

The financial disclosure issues, Giuliani's spending in bankruptcy and actions during the case, including repeating defamatory statements about the former Georgia poll workers that spurred new litigation, reflect a larger pattern of behavior that has stalled progress in the case, the committee argued.

"In what should come as a surprise to no one, the committee has no confidence in the debtor and his ability to serve as a debtor in possession," wrote the creditors. "The committee has made every effort to provide the debtor with an opportunity to prove otherwise. He has declined every invitation."

Sparacino with McKool Smith said that Giuliani's actions in the case so far will likely bolster the committee's request to appoint a trustee.

"Many times these [Chapter 11 trustee] motions get resolved before the court order comes down, but I can't imagine a resolution that leaves Giuliani in place without oversight, without very strict controls," said Sparacino.

Counsel for the committee did not respond to request for comment Wednesday.

Giuliani is represented by Heath S. Berger and Gary C. Fischhoff of Berger Fischhoff Shumer Wexler & Goodman LLP.

The official committee of unsecured creditors is represented by Ira S. Dizengoff, Philip C. Dublin, Abid Qureshi and Rachel Biblo Block of Akin Gump Strauss Hauer & Feld LLP.

The case is In re: Rudolph W. Giuliani, case number 1:23-bk-12055, in the U.S. Bankruptcy Court for the Southern District of New York.

--Additional reporting by Emily Johnson, Emlyn Cameron, Yun Park, Hilary Russ and Rick Archer. Editing by Dave Trumbore.

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