

6-12-08

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

IN RE:	:	CASE NO. G08-20355-REB
	:	
CORNERSTONE MINISTRIES	:	CHAPTER 11
INVESTMENTS, INC.,	:	
	:	
Debtor.	:	JUDGE BRIZENDINE

**ORDER DENYING MOTION OF UNITED STATES TRUSTEE
FOR APPOINTMENT OF AN EXAMINER**

This matter came before the Court on motion by the United States Trustee for the appointment of an examiner under 11 U.S.C. § 1104 on June 12, 2008, at which time the Court heard and considered the argument of counsel as stated at said hearing and in the briefs of record. Upon review of same, Court finds that insufficient grounds have been presented to support such relief. Appointment of an examiner is unnecessary at this time and further, same would result in efforts potentially duplicative of the effort of the Official Committee of Holders Unsecured Claims, which is active and well-represented in this case, as well as burdening this estate with added cost and expense. Furthermore, it appears that each and every concern raised by the Trustee, such as corporate interrelationships, alleged self-dealing, issues associated with Debtor's transition to a lender to for-profit entities, and examining certain bondholder claims are all being fully investigated by the Unsecured Creditors Committee.

The Court has carefully reviewed the statutory language, and agrees with the well-reasoned opinion of *In re Rutenberg*, 158 B.R. 230, 232 (Bankr. M.D.Fla. 1993), which also cites *In re GHR Companies, Inc.*, 43 B.R. 165 (Bankr. D.Mass. 1984), in concluding that use of the word "shall" in connection with the appointment of an examiner in Section 1104 "does not

always mean that the action is mandatory.” *See also In re Shelter Resources Corporation*, 35 B.R. 304 (Bankr. N.D.Ohio 1983). Notwithstanding the language of the statute, in some circumstances the court retains the discretion to deny the appointment of an examiner. Based on the presentations of counsel and a review of the record, the Court finds and concludes such circumstances exist at this time. Accordingly, it is

ORDERED that the motion of the United States Trustee for an order directing the appointment of an examiner in the above-styled case be, and the same hereby is, **denied** without prejudice to the Trustee to seek similar relief as appropriate at a later date.

The Clerk is directed to serve a copy of this Order and Notice upon counsel for Debtor, counsel for the Official Committee of Creditors Holding Unsecured Claims, counsel for First United Bank, counsel for Regions Bank, and the United States Trustee.

IT IS SO ORDERED.

At Atlanta, Georgia this 12th day of June, 2008.



ROBERT E. BRIZENDINE
UNITED STATES BANKRUPTCY JUDGE