

PORTAGE COUNTY  
PROBATE COURT  
FILED

AUG 18 2008

Thomas J. Carnes  
PROBATE JUDGE

IN THE PROBATE COURT  
PORTAGE COUNTY, OHIO

JACK N. ALPERN, SUCCESSOR  
TRUSTEE OF THE TONY D.  
RUBINO 1990 REVOCABLE TRUST  
AGREEMENT, et al.

Plaintiffs,

v.

JACK N. ALPERN, SUCCESSOR  
DEATH TRUSTEE OF THE TONY  
D. RUBINO 1990 LIVING TRUST, et al.

Defendants.

Case No. 2005 CV 023

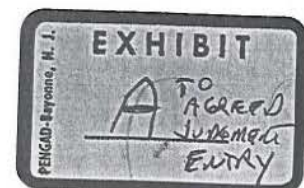
JUDGE THOMAS J. CARNES

MAGISTRATE AYLWARD

ORDER APPOINTING RECEIVER

This matter came on for hearing several times where Parties' discussed the environmental issues involving Windham Alloys site and the Rubino Trusts (copies of Windham Alloys site and the Rubino Trusts (attached herein as Exhibits A and B). Based upon the Motion for Appointment of a Receiver filed by Plaintiffs, Defendants (except for Catherine A. Feigert), and the State of Ohio, on behalf of the Ohio Environmental Protection Agency ("the Parties"), and finding the appointment of a receiver in the best interests of justice, the Court finds that the Motion is granted and issues this Order:

1. It is hereby ORDERED, ADJUDGED AND DECREED by the Court that the Rubino Trusts, the Windham Alloys site, which is owned by the Rubino Trusts, and all other assets of the Rubino Trusts, including but not limited to, all leases, buildings, structures,



materials, and all real and personal property and cash assets, be placed in the hands of a Receiver to be held in trust for the Ohio Environmental Protection Agency ("Ohio EPA") for the purpose of addressing the costs of past contamination at and migrating from the Windham Alloys site, as well as any future costs of environmental clean-up and/or remediation associated with the Windham Alloys site.

2. It is further ORDERED, ADJUGED and DECREED that attorney Deron Boring, Esq., 402 South Chestnut Street, Ravenna, Ohio 44266, 330.298.9003, FAX 330.298.9073, electronic mail dmboring@attydmb.com be appointed as the Receiver pursuant to Section 2735.01 of the Ohio Revised Code. Said Receiver shall be given the full authority permitted by law to carry out the duties of such Receiver.

3. It is further ORDERED that the Receiver shall conduct all the affairs of the Rubino Trusts so that all assets of the Rubino Trusts are used, upon the direction and approval of Ohio EPA, to address the contamination at and migrating from the Windham Alloys site in accordance with the requirements of R.C. Chapters 6111 and 3734, and the rules adopted thereunder, and the National Contingency Plan codified at 40 CFR Part 300.

4. It is further ORDERED that the Receiver will obtain direction and approval of Ohio EPA to hire contractors and agents used to implement the environmental response and remediation work at the Windham Alloys site. The specific response and remediation work will be performed as required and to the satisfaction of the Ohio EPA.

5. It is further ORDERED that in order to preserve the Rubino Trusts assets for the necessary response and remediation work, the Receiver shall conduct all the affairs of the Rubino Trusts including, entering into contracts, making collections, paying the debts and expenses, complying with any agreements entered into by the Rubino Trusts, including but not

limited to a settlement agreement between the Rubino Trusts and the United States Environmental Protection Agency, conducting all litigation in reference thereto, management, maintenance, executing conveyances of land and transferring title or possession of personal property and any other act that may be necessary to accomplish the requirements of this Order.

6. The Receiver shall maintain each record or transaction regarding its involvement with the Rubino Trusts and the Windham Alloys site for at least six (6) years.

7. It is further ORDERED that all persons having current records or property of any kind or interest therein belonging to the Rubino Trusts deliver same on demand to the Receiver.

8. It is further ORDERED that the Receiver has the authority, and is required to, maintain and ensure compliance with all state and federal regulations, including but not limited to Ohio's environmental laws and rules at the Windham Alloys site.

9. It is further ORDERED that the Receiver is granted control of the Windham Alloys site, and has full authority to allow or deny access to the Windham Alloys site including, but not limited to, taking precautions to protect the site and preventing trespassers from entering the site. The Receiver will permit unlimited access to the Windham Alloys site to the Ohio EPA and U.S. EPA and their contractors and/or agents, including providing keys and/or electronic access to the main gate.

10. It is further ORDERED that the assets of the Rubino Trusts are to be used to address the contamination at and migrating from the Windham Alloys site. The Receiver is authorized, upon the direction and approval of the Ohio EPA, to employ such help as may be necessary and beneficial for the preservation of the Rubino Trusts' assets and to inventory the assets so that all assets of the Rubino Trusts are used to address the contamination at and migrating from the Windham Alloys site. The Receiver is authorized to purchase, contract and



pay for such materials, supplies, utilities and services, as directed and approved by Ohio EPA, as may be necessary for the preservation of the Rubino Trusts' assets and to implement the necessary response and remediation work to address the contamination at and migrating from the Windham Alloys site.

12. It is further ORDERED that any expenditures individually or totaling over \$1,000 must be approved of in advance by the Ohio EPA.

13. It is further ORDERED that the sale or lease of any assets shall be approved by the Ohio EPA. The proceeds of sale or lease shall be transferred to the Ohio EPA. Any encumbrance of the asset shall be satisfied first from the sale or lease of the asset.

14. It is further ORDERED that the Receiver shall file a written report to the Court with a copy to the Ohio Attorney General's Office and the Ohio EPA, quarterly or upon request of this Court, regarding the status and accounting of this matter and the Receiver's ability to complete the tasks required by this Order.

15. To seek directions and approvals from the Ohio EPA as provided herein, the Receiver shall contact Andrew Kocher, the Ohio EPA Windham Alloys site coordinator, or his successor, Ohio EPA, North East District Office, 2110 East Aurora Road, Twinsburg, Ohio, 44087, telephone 330.425.9171.

16. All correspondence required to be submitted by the receiver as provided herein shall be mailed to the Windham Alloys site coordinator at the address set forth in paragraph 15 and Assistant Attorney General George Horvath, or his successor, at the Environmental Enforcement Section, State Office Tower, 30 E. Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio 43215.

17. The Receiver shall not be held liable for any past contamination at the Windham Alloys site.

18. The Receiver shall be paid from the assets of the trust on an hourly basis. The Receiver shall maintain a log sheet, in at least 1/10 hour segments, detailing work performed for identified periods of time. The Ohio EPA will be provided monthly statements including the time logs for their review and approval. The Receiver's hourly rate is: \$120.00 (One Hundred Twenty).

19. The Receiver shall post a bond of Fifty Thousand Dollars (\$ 50,000.00) per R.C. 2735.01(c) and provide a copy of the premium paid and bond coverage to the Ohio EPA.

IT IS SO ORDERED THIS 19th DAY OF August, 2008:

  
JUDGE CARNES

  
MAGISTRATE AYLWARD