

BOARD SUES ON BEHALF OF THE HIGHWAYS AND TRANSPORTATION AUTHORITY TO RECOVER FOR CONSTRUCTIVELY FRAUDULENT TRANSFERS OR PREFERENCES

Over the weekend, the Puerto Rico Oversight Board (O.B.) along with Unsecured Creditors' Committee and Special Claims Committee joint plaintiffs, filed suit against multiple entities that received monies from the Employees Retirement System of Puerto Rico (the "ERS") and Highways and Transportation Authority (HTA) during the past four (4) years. The O.B. acts pursuant to Federal Rule of Bankruptcy Procedure 7001(1) made applicable to these Title III cases by section 310 of the Puerto Rico Oversight, Management, and Economic Stability Act (48 U.S.C. § 2170) ("PROMESA").

The O.B. filed many adversary complaints in bankruptcy to avoid and recover constructive fraudulent transfers and preferences and to disallow claims pursuant to 11 U.S.C. §§ 502, 544, 547, 548, and 550 and Puerto Rico law.

Once again the O.B. is suing on monies paid by HTA in the 90 days as well as two (2) to four (4) years before the filing of the petition. The "Petition Date") that the Oversight Board initiated a Title III debt adjustment proceeding on behalf of HTA was May 21, 2017. In its complaint, the O.B. alleges that during the 90 days before the Petition Date (the "Preference Period"), HTA made certain transfers of interests in HTA's property, in the form of cash or other funds, to or for the defendant's benefit. The O.B. alleges that the HTA was insolvent at the time of the transfers or preferences were paid out.

Based on Puerto Rico law and jurisprudence, the O.B. alleges that at the time of the payments, HTA did not have a contract with the defendant, it was not registered with the Controller's office, transfers did not correspond to the amounts in the contract, monies paid were in excess of the value provided. See 2 L.P.R.A. § 297. See *Ocasio v. Alcalde Mun. de Maunabo*, R-84-356, 1988 WL 580831 (P.R. Apr. 19, 1988). 28. The Transfers were disbursements of public funds not authorized by law. 2 L.P.R.A. § 97; 3 L.P.R.A. § 283h(a); see also, e.g., 3 L.P.R.A. §§ 2301-05, 8613 (requiring documentation of contracts with HTA). The Transfers, being public monies disbursed unlawfully, may be recovered. See *Mun. de Quebradillas v. Corp. de Salud de Lares*, 180 D.P.R. 1003, 1015-16 (2011) (citing similar restrictions on municipal disbursements and noting that holding otherwise "would be leaving public funds in private hands that do not correspond to them" and citing "public policy. The O.B. requests the return of unlawful disbursements pursuant to 2 L.P.R.A. § 97, 3 L.P.R.A. § 283h), 31 L.P.R.A. §§ 3491-3500.

Adding insult to injury, the O.B. requests that any claims filed against the ERS or HTA for monies owed the defendant be disallowed pursuant to 11 U.S.C. § 502(d) and (j)) until the time all preference and transfers are paid back into the HTA bankruptcy estate.

There are defenses to these claims, which have been discussed in other related articles. Contact Indiano & Williams, P.S.C.