

IN THE MATTER OF:

Response to EOUST Notice of Removal of Hummingbird Credit Counseling and Education, Inc., Agency 1365, and Hummingbird Request for Review Pursuant to 28 CFR §58.36

AFFIDAVIT OF ANNETTE CONARD CHILTON

I, Annette Conard Chilton, being first duly sworn, state as follows:

1. I have a bachelor of arts from the University of North Carolina at Chapel Hill and a master of business administration from the University of Central Florida.
2. I am from Hubert, NC, but have lived in Florida since December, 2000
3. I worked for the University of Central Florida in both Executive Education and Continuing Education from 2002 – 2006. I worked for the University of South Florida in Academic Affairs, Administrative Services and Financial Affairs from 2006 – 2013.
4. I met Robert Brasco (hereinafter “Bob”) socially in 1997 while I was attending the University of North Carolina at Chapel Hill. We became close friends, but we were certainly never engaged. Bob was in my wedding on May 25, 2008, and served as my Man of Honor.
5. Prior to 2005, I was familiar with Bob’s work. He had a sole proprietorship called Kaizen Enterprises that offered business consulting and IT services to various businesses from law offices to sheet metal fabricators.
6. I knew that Bob became involved with Hummingbird because of the credit counseling program he and Joseph Kathan (“Joe”) had been tinkering with for several years while the Bankruptcy Reform law was pending passage. Bob knew Victoria Wright from the Brewer Law firm, and he had introduced her to me a few years before. Victoria wanted to do financial education and she agreed to help write content for Counselor-Soft and to incorporate Hummingbird at the urging of John Orcutt and others.
7. I agreed to serve as President and Chairman of the Board of Hummingbird because I believed in the power of continuing education. Working in this field proved that education was the key to advancement. When people know better they do better. I believed in the goals of quality financial education which was the mission in addition to the bankruptcy CC and DE and I felt that my education and experience in both business and in adult education gave me the background to be effective for Hummingbird.
8. Other than my travel and communications expenses for Hummingbird business, I never received any compensation for serving on Hummingbird’s Board of Directors, either from Hummingbird or from any of Hummingbird’s suppliers or vendors.

9. Hummingbird's Board discussed but decided against seeking tax-exempt status and Hummingbird always operated as a taxable corporation organized under North Carolina's non-profit corporate law.
10. When Hummingbird began, the Board members and the initial Hummingbird employees (Janet Swope and Victoria Wright) were all unwilling or unable personally to guarantee debt on behalf of the newly-formed nonprofit. None of us could know whether or not Hummingbird would be approved by the Bankruptcy Administrators or the United States Trustee, and even if approved, whether Hummingbird could attract enough business to stay afloat. Unfortunately, in order to be considered for approval by the United States Trustee, Hummingbird found that it would need a call center with significant office space, computers, telephone system and employees, things we initially had not anticipated.
11. No one associated with Hummingbird was willing to sign a lease on a commercial office space large enough for a call center and data processing, to purchase a telephone system suitable for a call center, to obtain office computers, desks, equipment and so on. Bob was willing to do all of these things, so he formed Conclave to provide services to Hummingbird as well as some of his other business clients from Kaizen.
12. It was soon discovered that obtaining an account to process credit card transactions for Hummingbird was going to be a large problem for a newly formed nonprofit with no assets, track record or guarantors. This is why Bob formed NIBRC. My understanding is that he was only able to obtain credit card processing authorization for NIBRC due to his long and good relationship with Wachovia. All of Bob's companies were owned 80% by Bob and 20% by Joe, until Joe's recent sale of his shares on 10/23/13.
13. The Board approved all contracts and terms with Conclave, NIBRC and any other companies in which Bob and Joe had ownership interests. Each of these companies had a somewhat different basis for computing charges to Hummingbird and the Board members were able to view all of Hummingbird's payments to each company each month. We generally examined these financials at our in-person meetings in January and July of each year, and later via email, telephone calls and visits to Raleigh.
14. From the time of Hummingbird's formation in 2005, it operated at a loss for a long time and accrued debts to Conclave, Counselor-Soft and the other vendors then owned by Bob and Joe. I do not remember the exact date, which would be in the records, but my recollection is that it took well over a year, perhaps even more than 2 years, for Hummingbird to retire all of its debt to these other companies. However, Bob and Joe's companies continued to support Hummingbird and never charged Hummingbird any interest or late fee.
15. At our Board meetings, pursuant to an advance agenda, the Board members received reports from the managers and directors of these vendor companies about their services to Hummingbird since our last meeting and they would put forward any proposals for us to consider. We questioned each person reporting at our Board meetings and we would then deliberate privately before announcing our decisions on the matters before us.

16. In addition to the services Hummingbird received from Bob and Joe's companies, Bob served as Hummingbird's unpaid Administrator from the start. In this role he would assist with Hummingbird's exhibitions and sponsorships at Bankruptcy conferences, direct Hummingbird website or telephone inquiries to the appropriate person or department and so on. Bob's role was always in a support capacity, he never had authority to direct Hummingbird's core operations of credit counseling and financial education and, to my knowledge, he has never overstepped his purely administrative role to Hummingbird.
17. Although each Board member had a 3-year term, we each agreed to continue our positions until any of us wanted to change the arrangement.
18. In my position as President and Chair of the Board of Directors for HB, I would listen to Bob's advice, but I frequently disagreed with him. I also had my own ideas for Hummingbird projects that Bob did not agree with. Whenever there were such disagreements, the Board made their decisions contrary to Bob's advice and always operated independently. The Board members did agree with Bob's advice on many items but it was always our own decision. It is preposterous for anyone to allege that any of Hummingbird's Board members acted as Bob's puppets or at his behest. We always exercised, and continue to exercise, our own judgment on Hummingbird matters.
19. I remember in particular that at one meeting the Board decided against giving a salary increase to Victoria Wright although Bob strongly urged us to do so.
20. In 2007 when Michael Paul was hired and then given the Staff Attorney position, the Board was not happy with Victoria Wright's performance. She had been filling the position of Staff Attorney, Compliance Officer and Executive Director of Financial Education since Hummingbird's start. She had also written most of the content for Hummingbird's website, and the Counselor-Soft credit counseling program Hummingbird used. But the Board saw Victoria promise to accomplish numerous tasks and fail to do so.
21. During this period of time, around 2007 -2008, I was personally frustrated with Victoria's performance and had her start making monthly reports to me. Michael appeared to the Board to be confident and capable. Victoria had already delegated her compliance officer duties to Michael and she and Bob both recommended that the Board promote him to replace Victoria as the Staff Attorney.
22. Conclave handled personnel matters and administrative duties for Hummingbird pursuant to Hummingbird's contract with Conclave. Only Hummingbird employees directed and carried out the content and procedure for its Credit Counseling and Financial Education, its website content, and its training, certification and supervision of Counseling duties. Conclave personnel provided support services only.
23. In addition to the services provided by Bob's companies, Hummingbird paid licensing fees to the Coalition for Consumer Debtor Bankruptcy Education in New York for our first 3 years of existence.

24. The duties of the Board that I dealt with included:
- a. Hiring and termination of HB Director-level employees (Victoria, Michael, and Janet). Salary increases and performance oversight of these employees. Approving contracts for vendors that included Bob's entities (NIBRC, Counselor-Soft, Core Internet, Conclave) as well as others (Hosted Solutions, the Coalition, etc.)
 - b. Policy decisions such as Hummingbird's linking policy, and keeping Hummingbird's website free of any sales or commercial influences, and offering a fee waiver policy that I understand was more generous than other Agencies offer;
 - c. Approving or rejecting proposed Hummingbird projects such as video productions and working with academics to provide Hummingbird data for study;
 - d. The Board did not make decisions about day to day operations, these items were handled by Conclave, whom the Board hired to provide customer service, office space, equipment, human resources and other support services to Hummingbird.
25. After the last in-person meeting in July of 2011, we conducted necessary HB business by discussing the matters by phone. The in-person meetings were temporarily discontinued because of Hummingbird's finances and because all three Board members now had young babies. Nevertheless, Joel Minton and I always visit Hummingbird's offices when we come to Raleigh, and Greg Frey is there monthly or more often.
26. Michael Paul was well aware of all aspects of Hummingbird's finances. He selected a CPA for Hummingbird, Chuck Averre. I spoke to Mr. Averre on a number of occasions.
27. Sometime after Hummingbird's formation and approval, I became aware that Bob had developed a substance abuse problem. (He has now been free of this substance abuse problem since his arrest on a drug-related charge in 2009). During the period that Bob was sometimes impaired, Michael Paul began to take over more and more control and decision-making for Bob and Joe's companies such as Conclave and NIBRC. Michael would call me and other Board members fairly often. Michael also served as Bob's initial attorney in the drug charge and it is my understanding that he continued to work with Bob and the criminal defense attorney Bob later hired.
28. Other key people who had previously informed the Board as needed were Courtney Lewellyn, the manager of Conclave, and Victoria Wright at Hummingbird. Over time, each of these women had some personal situations that took a great deal of their time; Courtney had a seriously ill child and Victoria was the only caregiver for her Mother and developed some health problems of her own. More and more, Michael Paul seemed to be in control, dealing with the Board, Hummingbird's CPA and all of the regulators. The Board saw no reason not to trust him.
29. After Bob's arrest, Michael Paul urged Bob to distance himself from the offices. It is my belief and recollection that due to Bob's embarrassment, his legal problems and Michael's advice, Bob had very little involvement and Michael Paul was more or less in charge during

this period which included 2009 and 2010. At the same time, in January of 2009, Michael Paul formed a new business with Bob called Grid Financial Services.

30. I have been friends with Bob for a long time, but the nature of the friendship has changed over the years. In recent years I would not characterize our relationship as a "close friendship." Since my move to Florida, my subsequent engagement, marriage, and parenthood, I have very little time to communicate with Bob other than for necessary Hummingbird business.
31. I would never sanction or allow any person working for Hummingbird to make dishonest or misleading statements to any regulatory authority. I had never seen the letter Michael Paul wrote to Ms. Sandra Cardone in 2010 prior to getting a copy of the Notice of Removal and its exhibits. I was very shocked and based upon the entire events with Michael Paul, the Board has resolved to implement safeguards to prevent any unauthorized legal or compliance communications in the future.
32. I am not a lawyer and do not fully understand the claims in the EOUST's Notice of Removal regarding Hummingbird's corporate governance under North Carolina non-profit corporate law. What I can say with certainty is that I and my fellow Hummingbird Board members always took our duties seriously, exercised our own independent judgment on behalf of Hummingbird, and were motivated in our duties by a genuine desire to provide quality financial education and help to the general public without charge.
33. Michael always came across as 100% sure of what he told the Board. Some of this later turned out to be incorrect, as in the case of "E-Verify." There, Michael assured the Board that the EOUST had approved Hummingbird to do credit counseling completely online, without a required telephone call with the Counselor. He was proud of "getting" this approval from the EOUST as he said it would vastly increase Hummingbird's profitability. Based on his assertions that this was approved, Counselor-Soft did substantial programming and Hummingbird spent a lot on re-training, new procedures and marketing. It later turned out that Michael had been mistaken, although I think he claimed that the EOUST simply "changed its mind."
34. In retrospect, and the wake of the EOUST's Notice of Removal of Hummingbird, I can say that the only mistake the Board made was in trusting Michael Paul too much and not implementing more oversight over him. Because we all realize this, we have instituted new procedures for Hummingbird's Staff Attorney and Compliance Officer going forward. Effective 11/15, Victoria Wright, who has re-assumed those two positions has committed to never sending any legal or compliance related email or communication on behalf of Hummingbird that is not also copied to Janet Swope. Janet will maintain a separate legal and compliance file for Board audit and review quarterly.
35. In this affidavit, I have tried to offer all the pertinent facts of which I have direct knowledge. Because I am out of state, I must overnight my affidavit to Hummingbird well in advance. I am extremely busy with a baby and hope that the EOUST will allow me, on behalf of Hummingbird, additional time to supply any further sworn statements if needed.

[Signature]
(signature)

Date: Jan 21. 14

-----To Be Completed By Notary Public-----

State of Florida

County of Polk

I, Connie Treviño, the notary public undersigned, duly attest, under penalty of
(name of notary)

perjury, that on January 21, 2014, Annette Marie Chilton, (1) appeared
(date) (name of affiant)
before me, (2) verified to my satisfaction his or her identity, (3) signed this document in my
presence, and (4) affirmed, under penalty of perjury, the truth and accuracy of the information
contained in this document.

[Signature]
(signature of notary)

My commission expires on 06/06/2016

AFFIX NOTARY STAMP OR SEAL

