

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

In re:	)	
	)	Chapter 11
USA GYMNASTICS,	)	
	)	Case No. 18-09108-RLM-11
Debtor	)	
	)	Bankr. Adv. Case No. 20-50055
<hr/>	)	
USA GYMNASTICS,	)	
	)	
Appellant,	)	
	)	
v.	)	No. 1:20-cv-01631-RLY-DLP
	)	
U.S. SMALL BUSINESS	)	
ADMINISTRATION, and	)	
JOVITA CARRANZA, in her official capacity	)	
as Administrator for the US Small Business	)	
Administration,	)	
	)	
Appellees.	)	

**ORDER ACCEPTING THE BANKRUPTCY COURT'S PROPOSED FINDINGS  
OF FACT AND CONCLUSIONS OF LAW**

On May 18, 2020, Plaintiff USA Gymnastics ("USAG"), as the debtor in a pending chapter 11 bankruptcy proceeding, filed an adversary proceeding against the U.S. Small Business Administration ("SBA") and Jovita Carranza, in her capacity as Administrator of the SBA, contending that the SBA's decision to deny Paycheck Protection Program ("PPP") applications to debtors in bankruptcy runs afoul of Bankruptcy Code §525(a) and the Administrative Procedures Act. The adversary complaint seeks declaratory and injunctive relief and a writ of mandamus, requiring the SBA to consider its application without regard to its pending bankruptcy case. On May

18, 2020, USAG also filed a Motion for Preliminary Injunction, requesting the Bankruptcy Court to issue an injunction prohibiting the SBA, Ms. Carranza, and any participating lender with notice of the requested preliminary injunction, from enforcing the SBA's no-debtor policy with respect to any application USAG submits for funding under the PPP, as authorized by the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136.

On June 9, 2020, the Bankruptcy Court held a hearing on USAG's Motion for Preliminary Injunction and, pursuant to Federal Rule of Civil Procedure 65(a)(2), consolidated the hearing with a trial on the merits. Three days later, the Bankruptcy Court issued an Order Denying USAG's Motion for Preliminary Injunction on § 525 Claim and Proposed Findings<sup>1</sup> on Plaintiff's Motion for Injunctive Relief on Noncore APA Claim ("Report and Recommendation"). In relevant part, the Bankruptcy Court recommends entry of: (i) a declaratory judgment that the Defendants' implementation of the PPP in a manner that causes USAG to be ineligible violates the APA; and (ii) permanent injunctive relief enjoining Defendants and any participating lender that processes USAG's PPP application from denying USAG a loan under the PPP based solely on USAG's status as a debtor. The Bankruptcy Court also recommends that the district court issue a writ of mandamus pursuant to 28 U.S.C. §1361 compelling Ms. Carranza, in her capacity as Administrator of the SBA, to consider Plaintiff's PPP

---

<sup>1</sup> The Bankruptcy Court concluded it did not have jurisdiction over the APA claim; therefore, it entered proposed findings and a recommendation on that claim.

application and fully implement all aspects of the PPP program with respect to USAG without any consideration of its bankruptcy.

The district court reviews *de novo* those portions of the bankruptcy court's proposed findings of fact and conclusions of law to which a party has specifically objected. 28 U.S.C. § 157(c)(1). The district court “may accept, reject, or modify the proposed findings of fact or conclusions of law, receive further evidence, or recommit the matter to the bankruptcy judge with instructions.” Fed. R. Bankr. P. 9033(d). Because time is of the essence—USAG's PPP loan application must be filed on or before June 30, 2020—the court determined it could reliably conduct its review based on the underlying briefs. Consequently, the court treats SBA's Opposition to USAG's Motion for Preliminary Injunction as its objection for purposes of the court's *de novo* review.

The court, having reviewed the parties' submissions, the Bankruptcy Court record, and the applicable law, **ACCEPTS** the Bankruptcy Court's Report and Recommendation and incorporates it herein.

Accordingly, the court hereby **GRANTS** the injunctive relief requested by USAG.

**IT IS THEREFORE ORDERED:**

1. As to Count Two of USAG's adversary complaint, the court **DECLARES** that the Defendants' implementation of the Paycheck Protection Program in a manner that causes USAG to be ineligible is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right" in violation of the APA, and accordingly **PERMANENTLY ENJOINS** Defendants and any participating lender that processes

USAG's PPP application from denying USAG a loan under the PPP based solely on USAG's status as a chapter 11 debtor.

2. As to Count Three of USAG's complaint, the court **DECLARES** that the Defendants' implementation of the PPP in a manner that causes USAG to be ineligible is "arbitrary, capricious, [or] an abuse of discretion" in violation of the APA, and accordingly **PERMANENTLY ENJOINS** Defendants and any participating lender that processes USAG's PPP application from denying USAG a loan under the PPP based solely on USAG's status as a chapter 11 debtor.

3. As to Count Four of USAG's complaint, the court issues a **WRIT OF MANDAMUS** pursuant to 28 U.S.C. § 1361 to compel Ms. Carranza, in her capacity as Administrator of the SBA, and all agents, servants, employees, and any parties acting in concert with any of the foregoing parties, including any participating lender that processes USAG's PPP application (the "Restrained Parties"), to consider USAG's PPP application and fully implement all aspects of the PPP program with respect to USAG without any consideration of USAG's involvement in any bankruptcy proceedings.

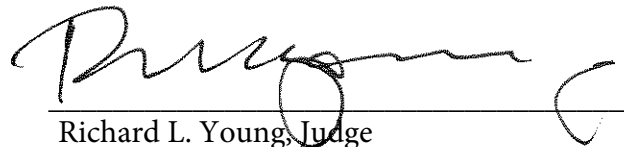
4. **IT IS FURTHER ORDERED** that to the extent any bank requires USAG to execute any forms, applications, or other documents for a PPP loan that include any language about whether USAG is involved in any bankruptcy proceedings, USAG is authorized to strike the portion of such language about involvement in any bankruptcy proceedings.

5. **IT IS FURTHER ORDERED** that that the Restrained Parties shall process USAG's forms, applications, or other documents without any consideration of the involvement of USAG in any bankruptcy proceedings.

6. **IT IS FURTHER ORDERED** that the Restrained Parties shall not make or condition the approval of any PPP loan guaranty to USAG contingent on USAG not being "presently involved in any bankruptcy." The Defendants are directed to, and shall, honor any right, guaranty, inducement, or other privilege extended to any participating lender in the Paycheck Protection Program that complies with this injunction.

7. No bond is required.

**SO ORDERED** this <sup>22</sup> day of June 2020.



Richard L. Young, Judge  
United States District Court  
Southern District of Indiana

Distributed Electronically to Registered Counsel of Record.