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New York City Opera Nearing Exit From Bankruptcy

By **Cara Salvatore**

Law360, New York (January 8, 2016, 5:33 PM EST) -- New York City Opera may finally exit bankruptcy this month with a plan that puts to bed a longtime struggle between two would-be owners but has drawn an objection from the New York Attorney General's Office.

The plan set to be considered at a hearing Tuesday would see architect and businessman Gene Kaufman yield to hedge fund founder Roy Niederhoffer in exchange for a \$300,000 claim and other things, filings say.

The new principal, Niederhoffer's NYCO Renaissance Ltd., said in December's plan submission it envisions a "dynamic, lean, entrepreneurial" reorganized New York City Opera that will start off with a \$5.5 million budget, increase the number of productions each year and continue to have affordable tickets.

"The plan is the prime option for continuing the debtor's mission," plan co-sponsors NYCO Renaissance and the unsecured creditors' committee said in the submission.

In the plan, unfunded pension liabilities of \$4.6 million would be replaced with a \$340,000 promissory note and see a recovery of up to 9.5 percent. Secured claims would be paid in full. General unsecured claims of up to \$25 million would be replaced with a \$1.59 million promissory note for a recovery of up to 9.76 percent.

But it's also hit a snag courtesy of New York's Attorney General's Office, whose Charities Bureau chief says potential long-term inviability could mean that charitable donations to the organization won't be used the right way. There are five pending bequests totaling \$8.1 million, according to court documents.

Earlier, it looked as if Kaufman might purchase the opera's assets and restart the business. He told the court in a 2014 filing that an asset sale — not a plan of reorganization — was the best way for the case to wrap up. The assets included the opera's valuable name, an endowment, and a thrift shop.

The sale took place, with NYCO Renaissance as the winner, and was contested by Kaufman's New Vision bidding entity. But ultimately it was undone altogether so that the debtor could sort out state-court litigation connected to a large bequest, according to plan documents.

Niederhoffer, founder of R.G. Niederhoffer Capital Management Inc., and Kaufman still could not come to terms after talks in August, and each filed his own proposed plan in October. After they finally reached a meeting of the minds, New Vision withdrew its plan in exchange for an allowed administrative claim of \$300,000 and an increase in the amount of two notes: the note for general unsecured claims from \$1.15 million to \$1.585 million and the note for unfunded pension liabilities from \$250,000 to \$340,000.

The plan "should be confirmed this month," Kenneth Rosen of Lowenstein Sandler LLC, an attorney for the debtor, told Law360 on Friday.

Known as "The People's Opera" due to its affordable prices, New York City Opera sank into Chapter 11 in October 2013 after failing to raise the \$7 million it needed to stay afloat following years of

declining ticket sales and donations. A Kickstarter campaign in September 2013 raised only \$286,000. The opera company earned only \$2.3 million from ticket sales in fiscal 2012, it said.

The opera's troubles had been on a slow build for a long time. They started with the opening of what it called a "structural deficit" in 2003 and were exacerbated by "an increasingly crowded entertainment market ... the general reduction in arts education, a nationwide decrease in arts journalism and the representation of art music and opera on public television and radio."

Underscoring just how heavily it depended on flagging donor support, the institution revealed that its endowment had shrunk from \$55 million several years ago to less than \$5 million. It went from 16 annual productions in 1998 to five in 2008, recent filings say. And it took \$24 million out of its endowment in the 2008-09 season.

The Chapter 11 petition listed \$6.7 million in assets and \$3.6 million in debt.

New York City Opera is represented by Kenneth Rosen and Nicole Stefanelli of Lowenstein Sandler LLC.

NYCO Renaissance Ltd. is represented by Gerard Catalanello and James Vincequerra of Duane Morris LLP. The unsecured creditors' committee is represented by Sean Southard, Fred Stevens and Maeghan McLoughlin of Klestadt Winters Jureller Southard & Stevens LLP.

Kaufman is represented by Arthur Steinberg of King & Spalding LLP.

New York Attorney General Eric Schneiderman is represented by Rose Firestein.

The case is In re: New York City Opera Inc., case number 1:13-bk-13240, in the U.S. Bankruptcy Court for the Southern District of New York.

--Additional reporting by Linda Chiem and Pete Brush. Editing by Brian Baresch.