

Theresa Rausch  
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U.S. BANKRUPTCY COURT  
DISTRICT OF DELAWARE

March 22, 2013

Office of the Clerk  
U. S. Bankruptcy Court for the District of Delaware  
824 North Market Street  
Wilmington, DE 19801  
302-252-2900

Caption: United States Bankruptcy Court  
For the District of Delaware

In re Advanta Corp., et al, Debtors  
Chapter 11  
Case No. 09-13931 (KJC)  
(Jointly Administered)

Response to: Ninth Omnibus Object to Claims: (I) No Liability Claims, (II) Disputed Amount Claims;  
and (III) Reclassification Claims (Substantive) (the "Ninth Omnibus Objection")

Name of Claimant: Theresa Rausch

Claim Number: 243

**Introduction:**

1. I have asserted a claim against the bankruptcy estate for severance owed to me by the Debtor for years of service to the Debtor and its subsidiaries (the "Employee Claim").
2. Claim #243 arises from two severance plans offered to Employees: (a) the Advanta Senior Management Change of Control Severance Plan or the Advanta Corp. Employee Change of Control Severance Plan; and (b) the Advanta Employees' Severance Pay Plan.
3. I was employed by Advanta Bank Corp. ("ABC") on November 9, 2009 and November 20, 2009, when Debtors in the above captioned cases filed for bankruptcy protection. ABC terminated me as an employee on March 19, 2010.

**Background:**

1. Advanta Corp. ("Advanta") was the direct parent company of ABC and ultimate parent company of approximately 33 other entities, including Advanta Bank, a Delaware State Chartered depository institution ("Advanta Bank")
2. Advanta was the ultimate holding company of the Advanta family of companies. Advanta's primary business emanated out of its ownership of ABC, which had been one of the nation's largest issuer of business purposes credit cards to small businesses and business professionals in the United States.
3. From 2007 through 2009, ABC experienced increasing delinquency and charge-offs. In or around May 2009, Advanta withdrew additional investment from ABC.
4. On November 8, 2009 (the "Petition Date"), Advanta and certain of its affiliates and subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On November 20, 2009, certain other affiliates of Advanta (collectively with Advanta and the Advanta affiliates that filed on November 8, 2009, the "Debtors") also filed voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The bankruptcy cases are Jointly Administered pursuant to orders entered by the Court on November 10, 2009 [Docket No. 21] and November 24, 2009 [Docket No. 87] (the "Chapter 11 Case"). ABC, Advanta Bank and approximately 18 other affiliates of Advanta are not Debtors in the Chapter 11 Case.
5. On March 19, 2010, the following events occurred:
  - The Utah Division of Financial Institutions closed ABC, and the Federal Deposit Insurance Corporation (the "FDIC") was appointed receiver of ABC (the "Receivership");
  - My employment with Advanta and/or ABC was terminated; and
  - Advanta filed a Motion for Authority to Implement Postpetition Severance Plan and Other Related Relief [Docket No. 346] (the "Postpetition Severance Motion"), seeking (i) authorization to implement and make payments under a new postpetition severance plan (the "Postpetition Severance Plan") to all full-time employees except Dennis Alter and William Rosoff, terminated after the Postpetition Severance Plan became effective for any reason other than "for cause" and (ii) terminating all of the Debtors' existing

severance and change of control plans for all employees employed as of the date the Postpetition Severance Plan became effective. The Postpetition Severance Plan did not become effective to replace the Prepetition Severance Plans until the June 15, 2010 order [Docket No. 620] was entered approving the Postpetition Severance Plan.

6. As of March 19, 2010, the following prepetition severance plans remained in effect: (a) an Advanta Employees' Severance Pay Plan (Amended and Restated, Effective as of April 2, 2007) (the "Severance Plan"); (b) an Advanta Corp. Employee Change of Control Severance Plan (Amended and Restated, Effective as of April 2, 2007) (the "Change of Control Severance Plan") and (c) an Advanta Senior Management Change of Control Severance Plan (Amended and Restated, Effective as of April 2, 2007) (the "Senior Management Change of Control Plan," and together with the Employee Change of Control Plan, the "Change of Control Plans". The Severance Plan and Change of Control Plans shall be referred to collectively as the "Plans").
7. Before the claims bar date, I filed the Claim seeking payment for severance due to me under the Plans.
8. On December 17, 2010, the Court entered an Order (I) Approving the Disclosure Statement, (II) Approving Notice and Object Procedures for the Disclosure Statement Hearing, (III) Establishing Solicitation and Voting Procedures, (IV) Scheduling a Confirmation Hearing, and (V) Establishing Notice and Objection Procedures for Confirmation of the Proposed Plan [Docket No. 1042].
9. On February 11, 2011, the Court entered an Order Confirming the Debtors' Plan [Docket No. 1173]. The effective date of the Plan was February 28, 2011.
10. The Trustee objects to the allowance of Claim #243 on three basis: (1) that no Change of Control occurred before March 19, 2010, and therefore no severance is owed under the Change of Control Plans; (2) that paying benefits would be "inappropriate"; and (3) that the Debtor is not responsible for payment of severance under the Change of Control Plans or the Severance Plan.

**Grounds for Response:**

This Court should deny the Ninth Omnibus Objection as to Claim No. 243 because: (1) a change of control occurred during my employment; (2) all conditions to receipt of severance payments under the Severance Plan have occurred; and (3) the Debtor, and not ABC, is responsible for the payment of amounts owed to me under the Severance Plan.

1. A "Change of Control" occurred when Advanta's Board of Directors voted to put the Debtors into bankruptcy. This "Change of Control" was consummated, and a "Closing Date" occurred when Advanta's counsel was instructed to file the bankruptcy cases, which were ultimately filed in November 2009. Alternatively, a "Change of Control" occurred when the Board of Directors of the Debtor resolved to liquidate the assets of the Debtors in December 2009, and a "Closing Date" occurred when the Debtors instructed their counsel to take all actions reasonably necessary to facilitate the liquidation of the Debtors' assets.
2. To be eligible to receive severance payments under the Change of Control Plans, I must have been: (a) employed by Advanta or a Subsidiary on the "Closing Date" or be employed by a Subsidiary at the time the Subsidiary undergoes Subsidiary Change of Control and the applicable closing date occurs; and (b) terminated within 12 months after the occurrence of the "Closing Date" Termination must not be a result of extended leave, willful misconduct or any reason other than "Good Reason."
3. I was employed by ABC on November 8, 2009, when the Resolutions were adopted and on November 8, 2009 and November 20, 2009, when the Debtors filed the Petitions. As such, ABC was my employer at the time that a "Change of Control" and a "Closing Date" occurred. ABC terminated my employment on March 19, 2010, less than 12 months after the Closing Date of November 8, 2009. Accordingly, I am eligible for severance payments under the applicable Change of Control Plan based upon the amounts set forth in Claim #243.
4. I am entitled to receive severance payments under the Change of Control Plans, despite the Postpetition Severance Plan and termination of the Change of Control Plans. Pursuant to the Senior Management Change of Control Plan, " [n]otwithstanding any amendment, modification

to receive said benefit under the terms and conditions of this Plan without regard to  
amendment, modification or termination." The Change of Control Plans were terminated as to  
employees of non-debtor affiliates of Debtors as of June 15, 2010. Thus, I am entitled to receive  
the disputed severance benefits on March 19, 2010, the date of my termination.

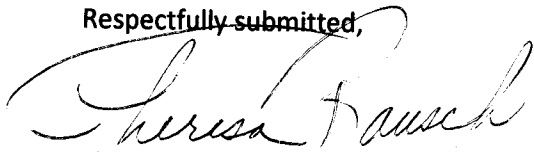
5. I have not executed a release; I am willing to comply with such condition in exchange for the  
payment of the severance due me. The Severance Plan contemplates a form of release from  
Advanta or ABC; however, I was never offered a severance pay or asked to execute any type of  
release. I cannot be expected to have created and submitted my own release, especially  
because Advanta has not offered to honor my severance claim in exchange for such a release.  
Without having been presented with a release or being asked to sign one, I am unaware of any  
timeframe within which to deliver such release. Under these circumstances, it would be unfair  
and unreasonable to conclude that the failure to execute a release justifies the disallowance of  
my severance claim under the Severance Plan.
6. I met all of the conditions necessary to receive benefits under the Severance Plan. Specifically,  
ABC (a Subsidiary) employed me on or after the Effective Date of the Severance Plan, which was  
April 2, 2007. My employment was involuntarily terminated without cause and within the  
meaning of Section 2.1(b) of the Severance Plan.
7. Advanta is liable for the severance payments to eligible employees under the Plans without  
regard to whether they were direct employees of Advanta or one of its Subsidiaries.

**Conclusion:**

1. For the reasons stated herein, I oppose the Trustee's Objection. I request that the Court allow  
Claim 243 under the Senior Management Change of Control Plan or Change of Control Plan, as  
applicable, on the basis that I was terminated and a Change of Control (and alternatively a  
Subsidiary Change of Control) and Closing Date occurred before such termination. To the extent  
I cannot recover under both a Change of Control Plan and the Severance Plan I seek alternative  
relief of an allowed Claim under the Severance Plan on the basis that I am eligible for severance  
under that plan; Advanta is responsible for the payment of severance benefits under such plan;

I respectfully request that the Bankruptcy Court (i) deny the Objection in its entirety to the extent that it  
seeks disallowance of Claim 243; (ii) allow Claim 243 under one or more of the Plans; and (iii) grant such  
order and further relief as may be just.

Respectfully submitted,



Theresa Rausch

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B10 (Official Form 10) (12/07)

UNITED STATES BANKRUPTCY COURT DISTRICT OF DELAWARE		PROOF OF CLAIM
Name of Debtor <b>Advanta Corp.</b>		Case Number <b>09-13931(KJC)</b>
NOTE This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property) <b>THERESA RAUSCH</b>		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim
Name and address where notices should be sent <b>1215 Oliver Rd Huntingdon Valley, PA 19006</b>		Court Claim Number _____ (if known)
Telephone number <b>215-938-1344</b>		Filed on _____
Name and address where payment should be sent (if different from above) <b>FILED - 00243 USBC FOR THE DISTRICT OF DELAWARE ADVANTA CORP., ETAL 09-13931 (KJC)</b>		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars
Telephone number _____		<input type="checkbox"/> Check this box if you are the debtor or trustee in this case
1 Amount of Claim as of Date Case Filed <b>\$ 92,743.32 - Exhibit A</b> If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4 <b>\$ 10,990.72 - Exhibit B</b> If all or part of your claim is entitled to priority, complete item 5		5 Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount
<input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges		Specify the priority of the claim
2 Basis for Claim: <b>Severance Payments pursuant to attached plans.</b> (See instruction #2 on reverse side)		<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B)
3 Last four digits of any number by which creditor identifies debtor _____ 3a Debtor may have scheduled account as _____ (See instruction #3a on reverse side)		<input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4)
4 Secured Claim (See instruction #4 on reverse side) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information Nature of property or right of setoff <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe _____ Value of Property \$ _____ Annual Interest Rate % _____ Amount of arrearage and other charges as of time case filed included in secured claim, if any \$ _____ Basis for perfection _____ Amount of Secured Claim \$ _____ Amount Unsecured \$ _____		<input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5)
6 Credits The amount of all payments on this claim has been credited for the purpose of making this proof of claim		<input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7)
7 Documents Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side)		<input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8)
DO NOT SEND ORIGINAL DOCUMENTS ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING		<input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)( )
If the documents are not available, please explain _____		Amount entitled to priority \$ _____
Date: <b>3/24/2010</b>	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number, if different from the notice address above. Attach copy of power of attorney, if any. <b>THERESA RAUSCH Theresa Rausch</b>	*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.



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