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5 *Counsel for Victoria L. Nelson, Chapter 7 Trustee*

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8 **UNITED STATES BANKRUPTCY COURT**
9 **DISTRICT OF NEVADA**

10 In re:
11 AMERI-DREAM REALTY, LLC,
12 Debtor.

Case No. BK-S-15-10110-LED
Chapter 7

**APPLICATION TO EMPLOY
SCHWARTZ FLANSBURG, PLLC, AS
SPECIAL BANKRUPTCY COUNSEL
FOR VICTORIA L. NELSON, CHAPTER
7 TRUSTEE PURSUANT TO 11 U.S.C.
§§ 327(a) AND 328(a) AND FEDERAL
RULE OF BANKRUPTCY PROCEDURE
2014**

Date of Hearing: May 5, 2015
Time of Hearing: 2:30 p.m.
Place: Courtroom No. 3, Third Floor
Foley Federal Building
300 Las Vegas Blvd., S.
Las Vegas, NV 89101

Judge: Honorable Laurel E. Davis

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21 Victoria L. Nelson, the duly appointed Chapter 7 Trustee in the above-captioned
22 bankruptcy case (the "Trustee"), by and through her counsel of record Jacob L. Houmand, Esq. of
23 the law firm of Nelson & Houmand, P.C., hereby submits this Application to Employ Schwartz
24 Flansburg, PLLC as Special Bankruptcy Counsel for Victoria L. Nelson, Chapter 7 Trustee
25 Pursuant to 11 U.S.C. §§ 327(a) and 328(a) and Federal Rule of Bankruptcy Procedure 2014 (the
26 "Application").

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1 This Application is filed pursuant to 11 U.S.C. §§ 327 and 328 and Federal Rule of
2 Bankruptcy Procedure 2014.¹ The Application is based on the following Memorandum of Points
3 and Authorities, the Declaration of Victoria L. Nelson In Support of the Application to Employ
4 Schwartz Flansburg, PLLC as Special Bankruptcy Counsel for Victoria L. Nelson, Chapter 7
5 Trustee Pursuant to 11 U.S.C. §§ 327(a) and 328(a) and Federal Rule of Bankruptcy Procedure
6 2014 (the “Nelson Declaration”), and the Declaration of Samuel A. Schwartz, Esq. In Support of
7 the Application to Employ Schwartz Flansburg, PLLC as Special Bankruptcy Counsel for
8 Victoria L. Nelson, Chapter 7 Trustee Pursuant to 11 U.S.C. §§ 327(a) and 328(a) and Federal
9 Rule of Bankruptcy Procedure 2014 (the “Schwartz Declaration”), both of which are filed
10 separately and concurrently with this Court pursuant to Local Rule 9014(c)(2). The Application
11 is also based on the pleadings and papers on file herein, and any argument that may be entertained
12 at the hearing on the Application.²

13 Dated this 3rd day of April, 2015.

14 **NELSON & HOUMAND, P.C.**

15 */s/ Jacob L. Houmand*

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21 *Counsel for Victoria L. Nelson, Chapter 7*
22 *Trustee*

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24 ¹ Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11
25 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The
26 Federal Rules of Civil Procedure will be referred to as “FRCP” and the Federal Rules of
27 Bankruptcy Procedure will be referred to as “FRBP.” The Local Rules of Practice for the United
28 States Bankruptcy Court for the District of Nevada shall be referred to as the “Local Rules”.

² The Trustee also requests that the Court take judicial notice of all pleadings filed in the above-
referred bankruptcy case, including adversary proceedings, pursuant to Rule of Evidence 201,
incorporated by reference by FRBP 9017.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

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3 1. On January 9, 2015, Ameri-Dream Realty, LLC (the “Debtor”) filed a voluntary
4 bankruptcy pursuant to Chapter 7 of Title 11 of the United States Code [ECF No. 1].³ See Nelson
5 Declaration.

6 2. On January 9, 2015, Victoria L. Nelson was appointed as the Chapter 7 Trustee in
7 the Debtor’s bankruptcy case [ECF No. 4]. See Nelson Declaration.

8 3. The Debtor was a real estate brokerage firm that represented clients in the purchase
9 and sale of real property throughout Clark County, Nevada. See Nelson Declaration.

10 4. The Debtor also had a property management division that managed over one
11 thousand rental properties for various landowners and tenants throughout Las Vegas, Nevada.
12 See Nelson Declaration.

13 5. Subsequent to the filing of the Debtor’s bankruptcy case, the Trustee was informed
14 that Elsie Peladas-Brown, the spouse of the Debtor’s principal, John Brown, allegedly embezzled
15 approximately One Million Two Hundred Thousand Dollars (\$1,200,000) from the Security
16 Deposits Trust Account and wired these monies to the Philippines. See Nelson Declaration.

17 6. Prior to the filing of the Debtor’s bankruptcy case, a claim was made under the
18 Debtor’s Errors and Omissions insurance policy with XL Select Professional Claims (the
19 “Claim”). See Nelson Declaration.

20 7. In order to assist the Trustee in pursuing the Claim, she now desires to employ the
21 law firm of Schwartz Flansburg, PLLC (the “Firm”), as special bankruptcy counsel in the
22 Debtor’s bankruptcy case to prosecute any and all actions related to the Claim. See Nelson
23 Declaration.

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27 ³ All references to “ECF No.” are to the numbers assigned to the documents filed in the case as
28 they appear on the docket maintained by the clerk of the court.

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1 **II. JURISDICTION AND VENUE**

2 8. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1134.
3 This is a core proceeding pursuant to 28 U.S.C. § 157(b) (2) (A). The statutory basis for the relief
4 sought is Section 327, 1104 and 1106 of the Bankruptcy Code and FRBP 2014. Venue of
5 Debtor’s Chapter 7 case in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

6 **III. THE FIRM**

7 9. The Trustee has selected the Firm as her special litigation counsel to investigate,
8 evaluate, and, if appropriate, prosecute the Claim on behalf of the Debtor. The Trustee has
9 concluded that the Firm is the best qualified and, in the Trustee’s judgment, is best able to provide
10 the required services and the Firm most likely to secure a favorable outcome in the best interests
11 of the estate. The Trustee’s conclusion is based on the firm’s extensive experience in the practice
12 of business, commercial and complex litigation, with expertise in areas of substantive law likely
13 to become relevant in prosecution of the Claim. *See* Nelson Declaration.

14 10. The attorneys of the Firm that will render services in relation to the above-
15 captioned bankruptcy case are familiar with the United States Bankruptcy Code, the Federal
16 Rules of Bankruptcy Procedure, the Federal Rules of Civil Procedure, and the Local Rules and
17 will comply with them, as well as the procedures set forth in the “Guide to Applications for
18 Professional Compensation,” promulgated by the Office of the United States Trustee (the “U.S.
19 Trustee”) with regard to compensation of professionals.

20 11. The attorneys employed by the Firm are duly admitted to practice before this
21 Court.

22 12. The Trustee desires to employ the Firm as her special counsel in this bankruptcy
23 case to render the following professional services: take the role of lead counsel with respect to
24 the evaluation and, if applicable, prosecute the Claim; continue the Trustee’s detailed
25 investigation into all matters related to the Claim, including any adversary proceeding which may
26 result following the Trustee’s investigation (the “Adversary Proceeding”); maintain and settle the
27 Claim, including the Adversary Proceeding; and perform such other legal services (including, but
28 not limited to, appearing before this Court, any other federal court, state court, or appellate courts)

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1 as may be required in connection with, and in furtherance of, the foregoing and which are in the
2 interests of the bankruptcy estate. *See* Nelson Declaration.

3 13. The Trustee has selected the Firm because its attorneys have experience in matters
4 of this character, are familiar with bankruptcy practice and are qualified to represent the Trustee
5 in this case. *See* Nelson Declaration.

6 14. Following the Trustee's request that the Firm represent her in this case as special
7 bankruptcy counsel, a conflicts check was undertaken, utilizing the Firm's client list. Based upon
8 the conflicts check the Firm and its associates are "disinterested persons" as defined by 11 U.S.C.
9 § 101 and do not hold or represent any interest adverse to the bankruptcy estate. *See* Schwartz
10 Declaration.

11 15. The conclusion that the Firm is a "disinterested" person within the meaning of 11
12 U.S.C. § 101(14) for purposes of 11 U.S.C. § 327(a) is based upon the fact neither the Firm nor
13 any of its attorneys:

- 14 (a) Are or were a creditor, equity security holder, or insider of
15 the Debtor;
- 16 (b) Are or were, within two (2) years before the date of the
17 filing the bankruptcy petition, a director, officer or
18 employee of Debtor as specified in subparagraph (c) of
19 Section 101(14);
- 20 (c) Hold, or have ever held, an interest materially adverse to the
21 interest of the estate or of any class of creditors, equity
22 holders, or parties in interest, by reason of any direct or
23 indirect relationship to, or interest in, the Debtor or for any
24 other reason except as stated herein;
- 25 (d) Represent, or have ever represented, the Debtor, insiders of
26 the Debtor, creditors of the Debtor, any other party in
27 interest, or their respective attorneys and accountants except
28 as set forth herein; and
- (e) Is a relative or employee of the U.S. Trustee or a
Bankruptcy Judge except as stated herein.

See Schwartz Declaration.

16 16. The Firm represents no interest that is adverse to the Trustee, to the Debtor's
17 estate, any creditor, any party in interest, the U.S. Trustee, or any attorney or accountant
18 employed by the foregoing, in matters upon which it will be engaged as counsel. *See* Schwartz

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1 Declaration.

2 17. Upon completion of a conflicts check and based upon information and belief, the
3 Firm's only connections with the Debtor are as follows: (a) that the ex-husband of a member of
4 the Firm's staff leased a residence through the Debtor as the property manager, and (b) Samuel
5 A. Schwartz, Esq., a principal of the Firm, is the broker of And Opportunities Real Estate, Inc., a
6 real estate brokerage which may have shared commissions related to sales of real property with
7 the Debtor.

8 18. The Trustee submits that the Firm is a disinterested person within the meaning of
9 11 U.S.C. § 101(14) for purposes of 11 U.S.C. § 327(a), as it pertains to representing the Trustee
10 as special bankruptcy counsel in the Debtor's Bankruptcy. See Nelson Declaration.

11 **IV. COMPENSATION**

12 19. The fees incurred by the Firm will be handled on a contingency fee basis with the
13 Firm's fees being dependent upon recovery through settlement or trial, except in the event of
14 discharge from representation as provided below. The Firm's fees, costs and expenses will be
15 paid as follows:

16 **Pre-litigation activity.** The Firm shall be entitled to a contingency fee
17 of 33 1/3% to be calculated on the gross amount of recovery (i.e., before
18 deducting for or seeking reimbursement of any expenses paid by the
19 Client to the Firm or otherwise) generated from **all** work performed
20 prior to filing a lawsuit or making a formal demand for arbitration. Such
21 work may include, but is not limited to, factual investigation, claims
investigation and analysis, document review, factual and legal research,
work with experts in preparation of a complaint and the requisite reports
that must be filed with a complaint, preparation of demand letters, pre-
suit settlement negotiations, preparation of a complaint and/or
arbitration demand, and pre-suit mediation(s), if any.

22 **Post-filing litigation activity.** Once any litigation is initiated, either
23 through the filing of a complaint or making a formal demand for
24 arbitration, the Firm shall be entitled to a 40% contingency fee
25 calculated on the gross amount of recovery (i.e., before deducting for or
26 seeking reimbursement of any expenses paid by the Client to the Firm or
27 otherwise). Any work performed in the context of an arbitration
28 following a demand for arbitration shall constitute "Post-filing litigation
activity."

Appellate activity. In the event that a notice of appeal is filed by any
party, the Firm shall be entitled to a 50% contingency fee calculated on
the gross amount of recovery (i.e., before deducting for or seeking
reimbursement of any expenses paid by the Client to the Firm or

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otherwise).

Payment of Contingency Fee. With respect to any recovery by the Client arising out of, pertaining to, or resulting from the pursuit of the claims in the Litigation, whether through any settlement, judgment, arbitration award, or otherwise, the Client shall pay the appropriate contingency fee to the Firm within fourteen (14) days of receipt of such recovery or within fourteen (14) days of court approval, if any is required.

A true and correct copy of the proposed Retainer Agreement with Trustee is attached to the Schwartz Declaration as **Exhibit "1"**.

20. The Firm understands that its compensation is subject to prior Court approval.

21. No promises have been received by the Firm or any attorney of the Firm, as to payment or compensation in connection with the above-referenced bankruptcy case in accordance with the provisions of the Bankruptcy Code, the FRBP, the Local Rules, and orders of the Court. The Firm has no agreement with any other entity to share with such entity any compensation received by the Firm, except as permitted under Section 504(b)(1). See Schwartz Declaration.

22. This Application will be submitted to the United States Trustee upon the filing of the same.

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V. CONCLUSION

WHEREFORE, the Trustee respectfully requests that she be authorized to employ the Firm as special counsel to represent her in this bankruptcy proceeding upon the terms set forth in this Application with payment of all fees and costs subject to notice and hearing and approval of this Court and for such other and further relief as is just and proper.

Dated this 3rd day of April, 2015.

NELSON & HOUMAND, P.C.

/s/ Jacob L. Houmand

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