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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:
Ameri-Dream Realty, LLC,
Debtor.

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

EX PARTE APPLICATION FOR ORDER
AUTHORIZING PURCHASE OF
ERRORS AND OMISSIONS TAIL
COVERAGE THROUGH PEARL
INSURANCE

Judge: Honorable Laurel E. Davis

Victoria L. Nelson, the duly appointed Chapter 7 Trustee in above-referenced bankruptcy case (the “Trustee”), pursuant to 11 U.S.C. § 327(a), hereby files this *Ex Parte Application for Order Authorizing Purchase of Errors and Omissions Tail Coverage Through Pearl Insurance* (the “Application”).¹

The Application is based upon the following memorandum of points and authorities, the *Declaration of Victoria L. Nelson In Support of Ex Parte Application for Order Authorizing Purchase of Errors and Omissions Tail Coverage Through Pearl Insurance* (the “Nelson Declaration”), which is filed separately and concurrently with this Application pursuant to Rule 9014(c)(2) of the Local Rules of Bankruptcy Procedure for the United States Bankruptcy Court

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

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1 for the District of Nevada (the “Local Rules”). Attached hereto and marked as **Exhibit “1”** is a
2 copy of the proposed Order approving the Application. The Application is also based upon the
3 pleadings and records on file herein.²

4 Dated this 11th day of June, 2015.

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

6 */s/ Jacob L. Houmand*

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27 ² Trustee also requests that the Court take judicial notice of all pleadings filed in the above-
28 referenced bankruptcy case pursuant Rule of Evidence 201, incorporated by reference by FRBP
9017.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On May 21, 2015, the Trustee commenced the adversary proceeding titled *Nelson v. Elsie*
 4 *Peladas-Brown* (Case Number BK-S-15-01087-LED) (the “Brown Adversary Proceeding”) by
 5 filing a complaint alleging the following claims for relief: (1) Breach of Fiduciary Duty and (2)
 6 Common Law Misrepresentation. The Brown Adversary Proceeding is related to the alleged
 7 embezzlement by Elsie Pelada-Brown (“E. Brown”), the spouse of the Debtor’s principal, of
 8 approximately \$1,200,000 in security deposits held in trust by Ameri-Dream Realty, LLC (the
 9 “Debtor”). Prior to the filing of the Debtor’s bankruptcy case, a claim was made under the
 10 Debtor’s Errors and Omissions insurance policy with XL Select Professional Claims via Pearl
 11 Insurance (the “Claim”) relating to the alleged embezzlement by E. Brown. The Trustee has been
 12 informed that the Debtor’s Errors and Omissions insurance policy with XL Select Professional
 13 Claims expires on June 14, 2015. Special litigation counsel for the bankruptcy estate has also
 14 informed the Trustee that it is in the best interests of creditors of the bankruptcy estate to purchase
 15 tail coverage through Pearl Insurance (“Tail Coverage”) for up to a two (2) year period.
 16 Accordingly, the Trustee now files this Application seeking to purchase Tail Coverage for up to a
 17 two (2) year period in order to preserve any and all claims relating to the Claim, including, but not
 18 limited to, the claims for relief alleged in the Brown Adversary Proceeding.

19 **II. STATEMENT OF FACTS**

20 1. On January 9, 2015, the Debtor filed a voluntary bankruptcy pursuant to Chapter 7
 21 of Title 11 of the United States Code [ECF No. 1]³. *See* Nelson Declaration.

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

24 3. The Debtor was a real estate brokerage firm that represented clients in the purchase
 25 and sale of real property throughout Las Vegas, Nevada. *See* Nelson Declaration.

26 _____
 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 4. The Debtor also had a property management division that managed thousands of
2 rental properties for various landowners and tenants throughout Las Vegas, Nevada. As part of its
3 property management division, the Debtor has executed property management agreements with
4 landowners whereby the Debtor agreed to perform the following services: (a) the monthly
5 collection of rents from tenants, (b) payment of Homeowner Association (“HOA”) fees, (c) the
6 general repair and maintenance of the properties at issue, and (d) the segregation of security
7 deposits (the “Security Deposits”) pursuant to Nevada Revised Statute (“N.R.S.”) Chapter 645.
8 *See* Nelson Declaration.

9 5. At the time of the Debtor’s bankruptcy filing it was a party to several hundred
10 property management agreements. *See* Nelson Declaration.

11 6. After the filing of the Debtor’s bankruptcy case, the Trustee was informed that the
12 spouse of the Debtor’s principal improperly transferred approximately \$1,200,000 from the
13 Security Deposits to the Philippines. These actions have resulted in a significant deficiency in the
14 amount of Security Deposits that the Debtor was required to hold in trust pursuant to the various
15 property management agreements and N.R.S. Chapter 645. *See* Nelson Declaration.

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

19 8. Following the Debtor’s bankruptcy filing, Pearl Insurance sent a notice to the
20 Debtor that the Policy was cancelled for non-payment (the “Cancellation Notice”). *See* Nelson
21 Declaration.

22 9. On April 3, 2015, the Trustee filed the *Application to Employ Schwartz Flansburg,*
23 *PLLC As Special Bankruptcy Counsel for Victoria L. Nelson, Chapter 7 Trustee Pursuant to 11*
24 *U.S.C. §§ 327(a) and 328(a) and Federal Rule of Bankruptcy Procedure 2014* [ECF No. 150] (the
25 “Schwartz Employment Application”). *See* Nelson Declaration.

26 10. On April 7, 2015, the Trustee and Pearl Insurance entered into the *Stipulation to*
27 *Reinstate Errors and Omissions Insurance Policy Issued By Pearl Insurance* [ECF No. 156] (the
28 “Reinstatement Stipulation”). Pursuant to the terms of the Reinstatement Stipulation, Pearl

1 Insurance agreed to reinstate the Policy. *See* Nelson Declaration.

2 11. On April 8, 2015, the Court entered an *Order Approving Stipulation to Reinstate*
3 *Errors and Omissions Insurance Policy Issued By Pearl Insurance* [ECF No. 157]. *See* Nelson
4 Declaration.

5 12. On May 7, 2015, an *Order Granting Application to Employ Schwartz Flansburg,*
6 *PLLC as Special Bankruptcy Counsel for Victoria L. Nelson, Chapter 7 Trustee Pursuant to 11*
7 *U.S.C. §§ 327(a) and 328(a) and Federal Rule of Bankruptcy Procedure 2014* [ECF No. 164] to
8 bring action to recover under the Claim. *See* Nelson Declaration.

9 13. On May 21, 2015, the Trustee commenced the Brown Adversary Proceeding by
10 filing a complaint alleging the following claims for relief: (1) Breach of Fiduciary Duty and (2)
11 Common Law Misrepresentation. *See* Nelson Declaration.

12 14. The Trustee was recently informed that the errors and omissions insurance policy
13 for the Debtor is due to expire on June 14, 2015, and it is necessary to obtain tail coverage for the
14 policy prior to the expiration deadline. *See* Nelson Declaration.

15 15. The Trustee was also informed that the cost for the tail coverage for a one year
16 period of time is Twelve Thousand Seven Hundred Seventy-Seven Dollars (\$12,777) and for a
17 two year period the cost would be Nineteen Thousand One Hundred Sixty-Six Dollars (\$19,166).
18 *See* Nelson Declaration.

19 16. The Trustee was informed by special counsel that it is necessary to obtain tail
20 coverage to make a claim under the errors and omission insurance policy. Special counsel,
21 however, believes that the coverage should be for approximately one and a half years. *See* Nelson
22 Declaration.

23 17. The Trustee is currently in discussions with Pearl Insurance as to whether the
24 bankruptcy estate can seek a refund for the unused portion of the tail coverage. *See* Nelson
25 Declaration.

26 18. The Trustee believes it would be in the best interest of the bankruptcy estate to
27 obtain the 2-year tail coverage to preserve any and all causes of action relating to the Claim. *See*
28 Nelson Declaration.

1 19. The balance of the trust account in the Debtor’s bankruptcy case is Two Hundred
2 Nine Thousand Four Hundred Fifty-Two and 80/100 (\$209,452.80). See Nelson Declaration.

3 **III. LEGAL STANDARD**

4 Section 105 generally allows this Court to issue such orders as are necessary to carry out
5 the provisions of the United States Bankruptcy Code:

6 The court may issue any order, process, or judgment that is
7 necessary or appropriate to carry out the provisions of this title. No
8 provision of this title providing for the raising of an issue by a party
9 in interest shall be construed to preclude the court from, sua sponte,
10 taking any action or making any determination necessary or
11 appropriate to enforce or implement court orders or rules, or to
12 prevent an abuse of process.

11 11 U.S.C. §105(a).

12 Here, the purchase of Tail Coverage through Pearl Insurance is in the best interests of the
13 bankruptcy estate because it will preserve any and all causes of actions relating to the Claim. The
14 current policy limits of the Errors and Omissions Insurance Policy are \$1,000,000 and special
15 counsel believes that the purchase of Tail Coverage will benefit creditors by preserving the
16 possibility of a significant recovery for the Debtor’s creditors. Moreover, the Trustee has
17 provided a copy of this Application and the proposed order to the United States Trustee and they
18 have approved of the same. Accordingly, the Trustee should be permitted to purchase Tail
19 Coverage through Pearl Insurance in order to preserve any and all causes of action relating to the
20 Claim.

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IV. CONCLUSION

For the foregoing reasons, the Trustee respectfully requests authority to purchase Tail Coverage through Pearl Insurance for a period up to two (2) calendar years on the terms set forth in this Application.

Dated this 11th day of June, 2015.

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Approved As to Form and Content

OFFICE OF THE UNITED STATES TRUSTEE

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