

1 Kathy Bazoian Phelps, Esq. (CA Bar No. 155564)
Email: kphelps@diamondmccarthy.com
2 DIAMOND MCCARTHY LLP
1999 Avenue of the Stars, Suite 1100
3 Los Angeles, California 90067
Telephone: 310/651-2997
4 *Pro Hac Vice Application Pending*

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5 Jacob L. Houmand, Esq. (NV Bar No. 12781)
Email: jhoumand@nelsonhoumand.com
6 Kyle J. Ortiz, Esq. (NV Bar No. 14252)
Email: kortiz@nelsonhoumand.com
7 NELSON & HOUMAND, P.C.
3900 Paradise Road, Suite U
8 Las Vegas, Nevada 89169-0903
Telephone: 702/720-3370
9 Facsimile: 702/720-3371

10 *[Proposed] Counsel for Chapter 7 Trustee*

NELSON & HOUMAND, P.C.
3900 Paradise Road, Suite U, Las Vegas, Nevada 89169
Telephone: (702) 720-3370 Facsimile: (702) 720-3371

11
12 UNITED STATES BANKRUPTCY COURT

13 DISTRICT OF NEVADA

14 In re:
15 ROBERT C. GRAHAM, LTD. fdba ROB
16 GRAHAM & ASSOCIATES fdba
LAWYERSWEST,

17 Debtor.

Case No. BK-S-16655-BTB
Chapter 7

DECLARATION OF VICTORIA L. NELSON IN SUPPORT OF EX PARTE APPLICATION TO EMPLOY DIAMOND MCCARTHY LLP, NUNC PRO TUNC TO DECEMBER 28, 2016, AS SPECIAL LITIGATION COUNSEL FOR VICTORIA L. NELSON, CHAPTER 7 TRUSTEE PURSUANT TO 11 U.S.C. § 327(a) AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014

Date of Hearing: N/A
Time of Hearing: N/A

Judge: Honorable Bruce T. Beesley

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25 I, VICTORIA L. NELSON, declare as follows:

26 1. I am over the age of 18 years and I am competent to make this declaration. I have
27 personal knowledge of the facts set forth herein, except for those facts stated on information and
28 belief and, as to those facts, I am informed and believe them to be true. If called as a witness, I

1 could and would testify as to the matters set forth below based upon my personal knowledge.

2 2. I am the appointed Chapter 7 Trustee in the above-captioned bankruptcy case.

3 3. I make this declaration in support of the *Ex Parte Application to Employ Diamond*
4 *McCarthy LLP, Nunc Pro Tunc to December 28, 2016, as Special Litigation Counsel for Victoria*
5 *L. Nelson, Chapter 7 Trustee Pursuant to 11 U.S.C. § 327(a) and Federal Rule of Bankruptcy*
6 *Procedure 2014* (the "Application").¹

7 4. On December 15, 2016, an *Involuntary Bankruptcy Petition* [ECF No. 1]² (the
8 "Involuntary Petition") was filed against ROBERT C. GRAHAM, LTD., fdba ROB GRAHAM &
9 ASSOCIATES fdba LAWYERSWEST (the "Debtor") pursuant to 11 U.S.C. § 303. The
10 Involuntary Petition was filed by the Estate of Michael B. Macknin, the Sharona Dagani Trust,
11 and the Margueritte Owens Revocable Trust (collectively, the "Petitioning Creditors").

12 5. The filing of the Involuntary Petition against the Debtor followed numerous
13 reports that the Debtor had neglected its clients and that its principal, Robert C. Graham, Esq.
14 ("Mr. Graham"), had misappropriated funds from the Debtor's IOLTA Account.

15 6. Specifically, on December 9, 2016, the Nevada State Bar filed an *Emergency*
16 *Petition for Temporary Suspension Pursuant to Supreme Court Rule 102(4)* (the "Emergency
17 Petition") with the Supreme Court of the State of Nevada (Case No. 71849). The Emergency
18 Petition sought a temporary suspension of Mr. Graham based upon his misappropriation of
19 millions of dollars from more than fifty clients, guardianships, special needs trusts and estates.
20 The Emergency Petition further details that Mr. Graham abruptly closed his practice and
21 abandoned more than one hundred clients without providing them with any advance notice.

22 ...

23 _____
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." Unless otherwise expressly stated herein,
all undefined, capitalized terms shall have the meaning ascribed to them in the Application.

28 ² All references to "ECF No." are to the numbers assigned to the documents filed in the above-
referenced case as they appear on the docket maintained by the clerk of the court.

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1 7. On December 16, 2016, the Petitioning Creditors filed a *Motion to Appoint Interim*
2 *Trustee in Involuntary Case* [ECF No. 3] (the “Interim Trustee Motion”), which sought authority
3 to appoint an interim trustee to take possession of property and to manage the business operations
4 and assets of the Debtor.

5 8. On December 21, 2016, the Bankruptcy Court entered an *Order on Trustee Motion*
6 *and Order for Relief Under Chapter 7* [ECF No. 21] (the “Order for Relief”). The Order for
7 Relief provided that the Debtor had consented to the filing of a bankruptcy petition and that the
8 filing of the bankruptcy case was effective as of December 15, 2016 (the “Petition Date”). The
9 Order for Relief further required that the Office of the United States Trustee (the “U.S. Trustee”)
10 appoint an Interim Chapter 7 Trustee pursuant to 11 U.S.C. § 701.

11 9. On December 22, 2016, I was appointed as the Chapter 7 Trustee in the Debtor’s
12 bankruptcy case [ECF No. 22].

13 10. Following my appointment, I have contacted counsel for the Nevada State Bar,
14 counsel for the Petitioning Creditors, and numerous former clients of the Debtor.

15 11. I have determined that I will require assistance in administering the Debtor’s
16 bankruptcy estate for the benefit of creditors.

17 12. I now desire to employ the law firm of Diamond McCarthy LLP as special
18 litigation counsel to assist with anticipated litigation arising from the Debtor’s bankruptcy case
19 and to provide advice concerning causes of action that can be commenced on behalf of the
20 bankruptcy estate.

21 13. Based upon information provided by counsel for the Petitioning Creditors and
22 counsel for the Nevada State Bar, I believe that there may be a significant amount of litigation
23 arising from the Debtor’s treatment and misappropriation of funds from its IOLTA Account.

24 14. Diamond McCarthy LLP (the “Firm”) is a national litigation boutique that
25 practices complex and high-stakes business cases. The Firm represents corporations, creditors’
26 committees, receivers, shareholders, trustees, secured and unsecured creditors, court-appointed
27 trustees and others in bankruptcy litigation as well as parties involved in disputes arising from
28 business dissolutions or restructurings. The Firm has developed a specialty in representing

1 bankruptcy trustees and receivers in litigation involving fraudulent activities and has been lead
2 counsel in large-scale litigation involving recovery of assets in Ponzi scheme cases.

3 15. The Firm has also served as lead counsel in three of the largest law firm
4 bankruptcies in U.S. history.

5 16. The Application seeks authority to employ the Firm effective as of December 28,
6 2016, to account for time expended reviewing the docket in the Debtor's bankruptcy case,
7 conducting legal research, and participating in conference calls with me to discuss case strategy.

8 17. I believe that the Court should approve the Firm's request for *nunc pro tunc*
9 employment because it only covers a seven (7) day period of time from when the Firm first began
10 working on issues related to the Debtor's bankruptcy case and the filing of the Application.

11 18. Pursuant to Section 327, I desire to employ the Firm to render the following
12 professional services:

- 13 (a) To investigate the financial affairs of the Debtor and
14 determine if there are any preferential transfers, fraudulent
15 conveyances, or turnover actions that may be filed on behalf
16 of the bankruptcy estate pursuant to 11 U.S.C. §§ 542, 544,
17 547, and 548, or other litigation claims owned by the estate
18 against third parties.
- 19 (b) To prosecute any and all preferential transfers, fraudulent
20 conveyances, or turnover actions that may be filed on behalf
21 of the bankruptcy estate pursuant to 11 U.S.C. §§ 542, 544,
22 547, and 548, or other litigation claims owned by the estate
23 against third parties.
- 24 (c) To assist the Trustee in developing legal positions and
25 strategies with respect to litigation matters in these
26 proceedings

27 19. I have selected the Firm because of the Firm's experience in in complex and high-
28 stakes business cases, including serving as lead counsel for three of the largest law firm
bankruptcies in U.S. history, and its attorneys are well-qualified to represent the Trustee in this
case.

20. Subject to Court approval, in accordance with 11 U.S.C. § 330, I seek to retain the
Firm on an hourly basis at the customary and standard rates that the Firm charges for similar

1 representation, plus reimbursement of actual and necessary expenses incurred by the Firm in
2 performing its duties.

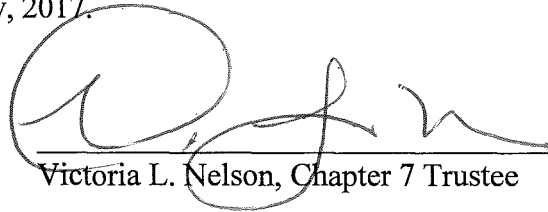
3 21. The Firm proposes the compensation of attorneys be at varying rates currently
4 ranging from \$380 per hour to \$750 per hour for the services of partners of the Firm and at
5 varying rates currently ranging from \$270 per hour to \$320 per hour for the services of associates
6 of the Firm, subject to change from time to time, and all subject to application to, and approval
7 by, this Court pursuant to Sections 330 and 331 of the Bankruptcy Code.

8 22. The Firm proposes the compensation of paraprofessionals be at varying rates
9 currently ranging from \$145 per hour to \$220 per hour for paraprofessionals, subject to change
10 from time to time, and all subject to application to, and approval by, this Court pursuant to
11 Sections 330 and 331 of the Bankruptcy Code. A true and correct copy of the proposed Retainer
12 Agreement between the Trustee and the Firm is attached to the Phelps Declaration as **Exhibit**
13 **"1"**.

14 23. Inasmuch as the Firm will likely be handling numerous fraudulent transfer actions,
15 it is my belief that it would be in the best interest of the creditors that the compensation be on an
16 hourly basis as opposed to a contingency fee basis. Further, once a determination has been made
17 as to what cases the Firm will be prosecuting, I will seek a budget from the Firm in relation to
18 each matter the Firm is handling.

19 I declare under penalty of perjury under the laws of the United States that the foregoing is
20 true and correct.

21 Dated this 4th day of January, 2017.

22
23 
24 Victoria L. Nelson, Chapter 7 Trustee

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