

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

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8 Jacob L. Houmand, Esq. (NV Bar No. 12781)
9 Email: jhoumand@nelsonhoumand.com
10 Kyle J. Ortiz, Esq. (NV Bar No. 14252)
11 Email: kortiz@nelsonhoumand.com
12 NELSON & HOUMAND, P.C.
13 3900 Paradise Road, Suite U
14 Las Vegas, Nevada 89169-0903
15 Telephone: 702/720-3370
16 Facsimile: 702/720-3371

17 *[Proposed] Counsel for Chapter 7 Trustee*

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

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

Debtor.

Case No. BK-S-16-16655-BTB
Chapter 7

**EX PARTE APPLICATION TO EMPLOY
PAUL M. HEALEY & SONS CPAS, LTD.
AS ACCOUNTANT 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: N/A
Time of Hearing: N/A

Judge: Honorable Bruce T. Beesley¹

VICTORIA L. NELSON, the duly appointed Chapter 7 Trustee in the above-captioned
bankruptcy case (the “Trustee”), by and through her proposed counsel of record, Kathy Bazoian
Phelps, Esq. of the law firm of Diamond McCarthy, LLP and Jacob L. Houmand, Esq. and Kyle J.

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”.

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

1 Ortiz, Esq. of the law firm of Nelson & Houmand, P.C., hereby submits this *Ex Parte Application*
 2 *to Employ Paul M. Healey & Sons CPAs, Ltd. As Accountant for Victoria L. Nelson, Chapter 7*
 3 *Trustee Pursuant to 11 U.S.C. §§ 327(a) and 328(a) and Federal Rule of Bankruptcy Procedure*
 4 *2014* (the “Application”).

5 This Application is filed pursuant to 11 U.S.C. §§ 327 and 328 and Federal Rule of
 6 Bankruptcy Procedure 2014. The Application is based on the following Memorandum of Points
 7 and Authorities, the *Declaration of Victoria L. Nelson In Support of Application to Employ Paul*
 8 *M. Healey & Sons CPAs, Ltd. As Accountant for Victoria L. Nelson, Chapter 7 Trustee Pursuant*
 9 *to 11 U.S.C. §§ 327(a) and 328(a) and Federal Rule of Bankruptcy Procedure 2014* (the “Nelson
 10 Declaration”), and the *Declaration of Paul M. Healey, C.P.A. In Support of Ex Parte Application*
 11 *to Employ Paul M. Healey & Sons CPAs, Ltd. As Accountant for Victoria L. Nelson, Chapter 7*
 12 *Trustee, Pursuant to 11 U.S.C. §§ 327(a) and 328(a) and Federal Rule of Bankruptcy Procedure*
 13 *2014* (the “Healey Declaration”), both of which are filed separately and concurrently with this
 14 Court pursuant to Local Rule 9014(c)(2). The Application is also based on the pleadings and
 15 papers on file herein.² A true and correct copy of the proposed order granting the relief requested
 16 in this Application is attached hereto as **Exhibit “1”**.

17 MEMORANDUM OF POINTS AND AUTHORITIES

18 I. STATEMENT OF FACTS

19 1. On December 15, 2016, an *Involuntary Bankruptcy Petition* [ECF No. 1]³ (the
 20 “Involuntary Petition”) was filed against ROBERT C. GRAHAM, LTD., fdba ROB GRAHAM &
 21 ASSOCIATES fdba LAWYERSWEST (the “Debtor”) pursuant to 11 U.S.C. § 303. The
 22 Involuntary Petition was filed by the Estate of Michael B. Macknin, the Sharona Dagoni Trust,
 23 and the Margueritte Owens Revocable Trust (collectively, the “Petitioning Creditors”). *See*
 24 *Nelson Declaration*.

25
 26 ² The Trustee also requests that the Court take judicial notice of all pleadings filed in the above-
 27 referenced bankruptcy case, including adversary proceedings, pursuant to Rule of Evidence 201,
 incorporated by reference by FRBP 9017.

28 ³ 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 2. The filing of the Involuntary Petition against the Debtor followed numerous
2 reports that the Debtor had neglected its clients and that its principal, Robert C. Graham, Esq.
3 (“Mr. Graham”), had misappropriated funds from the Debtor’s IOLTA Account. *See* Nelson
4 Declaration.

5 3. Specifically, on December 9, 2016, the Nevada State Bar filed an *Emergency*
6 *Petition for Temporary Suspension Pursuant to Supreme Court Rule 102(4)* (the “Emergency
7 Petition”) with the Supreme Court of the State of Nevada (Case No. 71849). The Emergency
8 Petition sought a temporary suspension of Mr. Graham based upon his misappropriation of
9 millions of dollars from more than fifty clients, guardianships, special needs trusts and estates.
10 The Emergency Petition further details that Mr. Graham abruptly closed his practice and
11 abandoned more than one hundred clients without providing them with any advance notice. *See*
12 Nelson Declaration.

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

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

23 6. On December 22, 2016, the Trustee was appointed as the Chapter 7 Trustee in the
24 Debtor’s bankruptcy case [ECF No. 22]. *See* Nelson Declaration.

25 7. Following her appointment, the Trustee has contacted counsel for the Nevada State
26 Bar, counsel for the Petitioning Creditors, and numerous former clients of the Debtor. *See* Nelson
27 Declaration.

28 . . .

1 8. The Trustee has determined that she will require the assistance of an accountant to
2 prepare tax returns on behalf of the Debtor’s bankruptcy estate and otherwise assist the Trustee in
3 fulfilling her statutory obligations under Section 704. Accordingly, the Trustee seeks to employ
4 the accounting firm of Paul M. Healey & Sons CPAs, Ltd. (the “Firm”). *See* Nelson Declaration.

5 9. The Trustee is also in the process of interviewing accounting firms that specialize
6 in forensic accounting that will analyze bank statements that are obtained through subpoenas
7 issued pursuant to FRBP 2004. Any request to employ such an accounting firm will be requested
8 via a separate application to employ filed with the Court.

9 **II. JURISDICTION AND VENUE**

10 10. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1134.
11 This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue of Debtor’s Chapter 7
12 case in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory basis for the
13 relief sought are Sections 327 and 328 and FRBP 2014.

14 **III. THE FIRM**

15 11. The Firm is well suited for the type of representation required by the Trustee. The
16 Firm is an accounting firm that has specialized knowledge regarding accounting and bankruptcy
17 matters. Accordingly, the Trustee has determined that the Firm has the resources and experience
18 necessary to represent her interests in the Debtor’s bankruptcy case. *See* Nelson Declaration; *see*
19 *also* Healey Declaration.

20 12. The Trustee desires to employ the Firm as her accountant to analyze the Debtor’s
21 financial transactions and prepare tax returns on behalf of the Debtor’s bankruptcy estate.

22 13. The Trustee has selected the Firm because its accountants have experience in
23 matters of this character and will be able to competently represent the Trustee’s interests in the
24 Debtor’s bankruptcy case. *See* Nelson Declaration.

25 14. Following the Trustee’s request that the Firm represent her in this case as
26 accountant, a conflicts check was undertaken, utilizing the Firm’s client list. Based upon the
27 conflicts check the Firm and its associates are “disinterested persons” as defined by 11 U.S.C. §
28 101 and do not hold or represent any interest adverse to the bankruptcy estate. *See* Healey

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1 Declaration.

2 15. The conclusion that the Firm is a “disinterested” person within the meaning of 11
3 U.S.C. § 101(14) for purposes of 11 U.S.C. § 327(a) is based upon the fact neither the Firm nor
4 any of its accountants:

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

22 16. The Trustee has employed the Firm in other bankruptcy cases unrelated to the
23 above-captioned bankruptcy case in which she is a Trustee. *See* Healey Declaration.

24 17. The Firm has been employed by other Chapter 7 Panel Trustees as accountant in
25 other bankruptcy cases unrelated to the above-referenced bankruptcy case. *See* Healey
26 Declaration.

27 18. Except as stated herein, the Firm has no connections with the Debtor, creditors of
28 the Debtor, any party-in-interest, their respective attorneys and accountants, the United States
Trustee, or any person employed in the office of the United States Trustee. *See* Healey
Declaration.

19. The Firm represents no interest that is adverse to the Trustee, to the Debtor’s
estate, any creditor, any party in interest, the U.S. Trustee, or any attorney or accountant

1 employed by the foregoing, in matters upon which it will be engaged as accountant. *See* Healey
2 Declaration.

3 20. The Trustee submits that the Firm is a disinterested person within the meaning of
4 Section 101(14) for purposes of Section 327(a), as it pertains to representing the Trustee as
5 accountant in the Debtor's bankruptcy case.

6 21. Accordingly, the Trustee submits that the Firm is a disinterested person within the
7 meaning of 11 U.S.C. § 101(14) for purposes of 11 U.S.C. § 327(a), as it pertains to representing
8 the Trustee as accountant in the Debtor's bankruptcy case.

9 **IV. COMPENSATION**

10 22. Subject to Court approval, in accordance with 11 U.S.C. § 330, the Trustee seeks
11 to retain the Firm on an hourly fee basis. Specifically, the Firm shall be entitled to compensation
12 on an hourly basis at the customary and standard rates that the Firm charges for similar
13 representation, plus reimbursement of actual and necessary expenses incurred by the Firm in
14 performing its duties. *See* Healey Declaration.

15 23. The Firm proposes the compensation of accountants be at the rate of \$185 an hour
16 for the services of accountants, subject to change from time to time, and all subject to application
17 to, and approval by, this Court pursuant to Sections 330 and 331 of the Bankruptcy Code. *See*
18 Healey Declaration.

19 24. The Firm contemplates that it may seek interim compensation during this case as
20 permitted by 11 U.S.C. § 331 and Federal Rule of Bankruptcy Procedure 2016. The Firm
21 understands that its compensation is subject to prior Court approval. *See* Healey Declaration.

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

27 26. This Application was submitted to the United States Trustee prior to the filing of
28 the same. *See* Nelson Declaration.

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V. CONCLUSION

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

Dated this 1st day of February, 2017.

NELSON & HOUMAND, P.C.

By: /s/ Jacob L. Houmand
Jacob L. Houmand, Esq. (NV Bar # 12781)
Kyle J. Ortiz, Esq. (NV Bar # 14252)
3900 Paradise Road, Suite U
Las Vegas, Nevada 89169-0903
Telephone: 702/720-3370
Facsimile: 702/720-3371

—and—

DIAMOND MCCARTHY LLP

Kathy Bazoian Phelps, Esq. (CA Bar # 155564)
Email: kphelps@diamondmccarthy.com
1999 Avenue of the Stars, Suite 1100
Los Angeles, California 90067
Telephone: 310/651-2997

[Proposed] Counsel for Chapter 7 Trustee

**Approved As to Form and Content
OFFICE OF THE UNITED STATES TRUSTEE**

By: /s/ J. Michal Bloom
Trial Attorney
United States Department of Justice
Office of the United States Trustee
Region 17; Las Vegas Field Office
300 Las Vegas Blvd. South, Suite 4300
Las Vegas, NV 89101

Counsel for Tracy Hope Davis, Region 17 United States Trustee