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18 **UNITED STATES BANKRUPTCY COURT**

19 **DISTRICT OF NEVADA**

20 In re:

21 ROBERT C. GRAHAM, LTD. fdba ROB
22 GRAHAM & ASSOCIATES fdba
23 LAWYERSWEST,

24 Debtor.

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

27 **MOTION TO APPROVE SALE OF**
28 **PERSONAL PROPERTY TO KEN**
CHUPINSKY PURSUANT TO 11 U.S.C. §
363

Date of Hearing: March 16, 2017
Time of Hearing: 11:00 a.m.
Place: Courtroom No. 4, Second Floor
Foley Federal Building
300 Las Vegas Blvd., S.
Las Vegas, NV 89101

Judge: Honorable Bruce T. Beesley¹

29 VICTORIA L. NELSON, the duly appointed Chapter 7 Trustee in the above-captioned
30 bankruptcy case (the "Trustee"), by and through her proposed counsel of record, Kathy Bazoian

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

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1 Phelps, Esq. of the law firm of Diamond McCarthy, LLP and Jacob L. Houmand, Esq. and Kyle J.
 2 Ortiz, Esq. of the law firm of Nelson & Houmand, P.C. files this *Motion to Approve Sale of*
 3 *Personal Property to Ken Chupinsky Pursuant to 11 U.S.C. § 363* (the “Motion”).

4 The Motion is based on the following Memorandum of Points and Authorities and the
 5 *Declaration of Victoria L. Nelson In Support of the Motion to Approve Sale of Personal Property*
 6 *to Ken Chupinsky Pursuant to 11 U.S.C. § 363* (the “Nelson Declaration”), both of which are filed
 7 separately and concurrently with this Court pursuant to Local Rule 9014(c)(2). The Motion is
 8 further based on the papers and pleadings on file in this case, and such other evidence that may be
 9 presented to the Court at the hearing on the Motion. Pursuant to Local Rule 6004(b)(3), a true
 10 and correct copy of the proposed order approving the Motion is attached hereto as **Exhibit “1”**.²

11 MEMORANDUM OF POINTS AND AUTHORITIES

12 I. JURISDICTION AND VENUE

13 The Court has jurisdiction over the bankruptcy case and the subject matter of this Motion
 14 pursuant to 28 U.S.C. §§ 157 and 1334. The Motion is a core proceeding under 28 U.S.C. §
 15 157(b)(2). Pursuant to Local Rule 9014.2, if the Court determines that absent consent of the
 16 parties the Court cannot enter final orders or judgment regarding the Motion consistent with
 17 Article III of the United States Constitution, the Trustee consents to entry of final orders and
 18 judgment by this Court. Venue before this Court is appropriate under 28 U.S.C. §§ 1408 and
 19 1409. The statutory predicates for the relief requested in the Motion herein are Section 363 and
 20 FRBP 6004.

21 II. STATEMENT OF FACTS

22 1. On December 15, 2016, an *Involuntary Bankruptcy Petition* [ECF No. 1]³ (the
 23 “Involuntary Petition”) was filed against ROBERT C. GRAHAM, LTD., fdba ROB GRAHAM &
 24 ASSOCIATES fdba LAWYERSWEST (the “Debtor”) pursuant to 11 U.S.C. § 303. The
 25

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

1 Involuntary Petition was filed by the Estate of Michael B. Macknin, the Sharona Dagani Trust,
2 and the Margueritte Owens Revocable Trust (collectively, the “Petitioning Creditors”). *See*
3 Nelson Declaration.

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

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

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

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

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

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1 7. Since her appointment, the Trustee has visited the law offices of Mr. Graham
2 located at 10000 W. Charleston Boulevard, Suite 140, Las Vegas, NV 89135 (the “Office”), and
3 viewed various office furniture and equipment and various other related items (the “Personal
4 Property”) left on the premises. *See* Nelson Declaration.

5 8. The Trustee has determined that the Personal Property is in fact property of the
6 above-referenced bankruptcy estate and, based on information and belief, that there are no liens
7 against the Personal Property. *See* Nelson Declaration.

8 9. The landlord is unwilling to permit an internet auction to be conducted at the
9 Office and has demanded that the Personal Property be removed as soon as possible. *See* Nelson
10 Declaration.

11 10. Nellis Auction has indicated that they do not believe it is economical to be forced
12 to remove the Personal Property and schedule an auction on premises. *See* Nelson Declaration.

13 11. Under the circumstances, the Trustee seeks to sell the Personal Property to Ken
14 Chupinsky (the “Purchaser”) in exchange for the payment of Two Thousand Five Hundred
15 Dollars (\$2,500.00). *See* Nelson Declaration.

16 12. Accordingly, the Trustee believes that the sale of the Property to the Purchaser is
17 in the best interests of creditors because it will result in a significant recovery for the bankruptcy
18 estate and should be approved pursuant to Section 363. *See* Nelson Declaration.

19 **IV. LEGAL ARGUMENT**

20 The Bankruptcy Code provides the authority for the Trustee to sell the Property free and
21 clear of all liens, claims, encumbrances and interests. *See generally* 11 U.S.C. § 363. Section
22 363(b)(1) provides that a Trustee, after notice and a hearing, may use, sell, or lease, other than in
23 the ordinary course of business, property of the estate. This provision generally allows a trustee
24 (subject to Court approval) to sell property of the estate outside the ordinary course of business
25 where the proposed sale is a sound exercise of the trustee’s business judgment and the sale is
26 proposed in good faith and for fair value. *Committee of Equity Security Holders v. Lionel*
27 *Corporation (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *In re Ernst Home Center,*
28 *Inc.*, 209 B.R. 974, 980 (Bankr. W.D. Wash. 1997). When a trustee articulates a reasonable basis

1 for its business decisions, “courts will generally not entertain objections to the [trustee’s]
2 conduct.” *Comm. Of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville*
3 *Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1987).

4 Section 363(f) further states that the trustee may sell property under subsection (b) of this
5 section free and clear of any interest in such property or an entity other than the estate, only if (1)
6 applicable non-bankruptcy law permits sale of such property free and clear of such interest; (2)
7 such entity consents; (3) such interest is a lien and the price at which such property is to be sold is
8 greater than the aggregate value of all liens on such property; (4) such interest is in bona fide
9 dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a
10 money satisfaction of such interest. 11 U.S.C. § 363(f).

11 In the instant matter, the landlord is demanding that the Personal Property be removed as
12 soon as possible and Nellis Auction does not want to transport the Personal Property back to their
13 warehouse. If not for the Two Thousand Five Hundred Dollar (\$2,500) offer to purchase the
14 Trustee would be forced to abandon the Personal Property. For these reasons the sale of the
15 Personal Property is in the best interests of creditors because it will bring monies into the
16 bankruptcy estate.

17 In addition to the other sale-related relief sought herein, the Trustee requests that the Court
18 specifically find inapplicable any stays that might otherwise inhibit the Trustee’s ability to close
19 the proposed transaction for the sale of the Property immediately after the Court enters an order
20 approving the transaction, including, without limitation, those arising under FRBP 6004.

21 Finally, the Trustee requests that the Court deem the Purchaser as good faith purchaser
22 pursuant to Section 363(m). *In re Onouli-Kona Land Co.*, 846 F.2d 1170 (9th Cir. 1988). The
23 Trustee is further informed and believes that the Purchaser does not have any relationship or
24 connections with the Debtor that would suggest that their offer to purchase the Property is not in
25 good faith.

26 The Motion and supporting declarations have been served on (a) the Office of the United
27 States Trustee, (b) the Debtors and their counsel, and (c) all parties requesting special notice.
28 Notice of the Motion has also been served on all creditors and parties in interest. The Trustee

1 submits that no further notice is required.

2 **V. CONCLUSION**

3 For the foregoing reasons, the Trustee respectfully requests that the Court enter an Order
4 Approving the Sale of the Personal Property free and clear of liens to Purchaser pursuant to
5 Section 363; (2) waiving the application of any stays under FRBP 6004; and (3) for such other
6 relied as the Court deems just and proper under the circumstances.

7 Dated this 7th day of February, 2017.

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

9
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17 —and—

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