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6 *Counsel for Shelley D. Krohn, Chapter 7 Trustee*

7
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-GS
Chapter 7

**EX PARTE APPLICATION TO EMPLOY
HOUMAND LAW FIRM, LTD., NUNC
PRO TUNC, AS GENERAL
BANKRUPTCY COUNSEL FOR
SHELLEY D. KROHN, SUCCESSOR
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 Gary Spraker¹

19
20 Shelley D. Krohn, the duly appointed Successor Chapter 7 Trustee in the above-captioned
21 bankruptcy case (the “Trustee”), by and through her counsel, Jacob L. Houmand, Esq. and Kyle J.
22 Ortiz, Esq. of the Houmand Law Firm, Ltd., hereby submits this *Ex Parte Application to Employ*
23 *Houmand Law Firm, Ltd., Nunc Pro Tunc, As General Bankruptcy Counsel for Shelley D. Krohn,*
24 *Successor Chapter 7 Trustee Pursuant to 11 U.S.C. §§ 327(a) and 328(a) and Federal Rule of*

25
26 ¹ Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11
27 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The
28 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 *Bankruptcy Procedure 2014* (the “Application”).

2 This Application is filed pursuant to 11 U.S.C. §§ 327 and 328 and Federal Rule of
3 Bankruptcy Procedure 2014. The Application is based on the following Memorandum of Points
4 and Authorities, the *Declaration of Shelley D. Krohn In Support of the Ex Parte Application to*
5 *Employ Houmand Law Firm, Ltd., Nunc Pro Tunc, As General Bankruptcy Counsel for Shelley D.*
6 *Krohn, Successor Chapter 7 Trustee Pursuant to 11 U.S.C. §§ 327(a) and 328(a) and Federal*
7 *Rule of Bankruptcy Procedure 2014* (the “Trustee Declaration”), and the *Declaration of Jacob L.*
8 *Houmand, Esq. In Support of Ex Parte Application to Employ Houmand Law Firm, Ltd., Nunc*
9 *Pro Tunc, As General Bankruptcy Counsel for Shelley D. Krohn, Successor Chapter 7 Trustee*
10 *Pursuant to 11 U.S.C. §§ 327(a) and 328(a) and Federal Rule of Bankruptcy Procedure 2014* (the
11 “Houmand Declaration”), both of which are filed separately and concurrently with this Court
12 pursuant to Local Rule 9014(c)(2). The Application is also based on the pleadings and papers on
13 file herein, and any argument that may be entertained at a hearing on the Application.² A true and
14 correct copy of the proposed order granting the relief requested in this Application is attached
15 hereto as **Exhibit “1”**.

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I. STATEMENT OF FACTS**

18 1. On January 9, 2015, AMERI-DREAM REALTY, LLC (the “Debtor”) filed a
19 voluntary bankruptcy pursuant to Chapter 7 of Title 11 of the United States Code [ECF No. 1].³
20 *See* Trustee Declaration.

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

23 ...

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

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

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1 3. On February 2, 2015, Trustee Nelson filed an *Application to Employ Nelson &*
2 *Houmand, P.C., Nunc Pro Tunc, As General Bankruptcy Counsel for Victoria L. Nelson, Chapter*
3 *7 Trustee Pursuant to 11 U.S.C. §§ 327(a) and 328(a) and Federal Rule of Bankruptcy Procedure*
4 *2014 [ECF No. 16] (the “Employment Application”), which sought to employ Nelson &*
5 *Houmand, P.C. (the “Firm”) as general bankruptcy counsel. See Trustee Declaration.*

6 4. On April 2, 2015, the Court entered an *Order Granting Application to Employ*
7 *Nelson & Houmand, P.C., Nunc Pro Tunc, As General Bankruptcy Counsel for Victoria L.*
8 *Nelson, Chapter 7 Trustee Pursuant to 11 U.S.C. §§ 327(a) and 328(a) and Federal Rule of*
9 *Bankruptcy Procedure 2014 [ECF No. 148]. See Trustee Declaration.*

10 5. On October 17, 2017, the Firm filed a *Notice of (1) Change of Firm Name and (2)*
11 *Change of Address [ECF No. 264], which stated that the name of the Firm had been changed from*
12 *“Nelson & Houmand, P.C.” to the “Houmand Law Firm, Ltd.” See Trustee Declaration.*

13 6. On January 13, 2018, Trustee Nelson died. *See Trustee Declaration.*

14 7. On January 19, 2018, the Trustee was appointed as the successor Chapter 7 Trustee
15 in the Debtor’s bankruptcy case. *See Trustee Declaration.*

16 8. The Trustee desires to continue to have the Firm represent the bankruptcy estate on
17 the same terms as set forth in the Employment Application. *See Trustee Declaration.*

18 **II. JURISDICTION AND VENUE**

19 9. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1134.
20 This is a core proceeding pursuant to 28 U.S.C. § 157(b) (2) (A). The statutory basis for the relief
21 sought is Section 327 and FRBP 2014. Venue of Debtor’s Chapter 7 case in this District is proper
22 pursuant to 28 U.S.C. §§ 1408 and 1409.

23 10. Pursuant to Local Rule 9014.2, if the Court determines that absent consent of the
24 parties the Court cannot enter final orders or judgment regarding the Application consistent with
25 Article III of the United States Constitution, the Trustee consents to entry of final orders and
26 judgment by this Court.

27 ...
28 ...

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III. THE FIRM

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2 11. The Firm is well suited for the type of representation required by the Trustee. The
3 Firm specializes in insolvency and reorganization matters, particularly the representation of
4 Chapter 7 Trustees in bankruptcy cases. Attorneys associated with the Firm have represented
5 debtors, Chapter 7 Trustees, creditors, and other parties-in-interest, and is qualified to act as
6 attorneys for the Trustee. Accordingly, the Trustee has determined that the Firm has the resources
7 and experience necessary to represent it in this case.

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

14 13. The attorneys employed by the Firm are duly admitted to practice before this
15 Court.

16 14. The Trustee desires to employ the Firm as her general counsel in this bankruptcy
17 case to render the following professional services:

- 18 (a) To investigate the financial affairs of the Debtor and
19 determine if there are any 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.
- 23 (b) To prosecute any and all preferential transfers, fraudulent
24 conveyances, or turnover actions that may be filed on behalf
25 of the bankruptcy estate pursuant to 11 U.S.C. §§ 542, 544,
26 547, and 548.
- 27 (c) To advise the Trustee of her rights and obligations and
28 performance of her duties during the administration of this
bankruptcy case;
- (d) To represent the Trustee in all proceedings before this Court
and any other court which assumes jurisdiction of a matter
related to or arising in this bankruptcy case;
- (e) To assist the Trustee in the performance of her duties as set

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1 forth in 11 U.S.C. § 704;

2 (f) To assist the Trustee in developing legal positions and
3 strategies with respect to all facets of these proceedings; and

4 (g) To provide such other counsel and advice as the Trustee
5 may require in connection with this bankruptcy case.

6 15. The Trustee has selected the Firm because its attorneys have experience in matters
7 of this character, are familiar with bankruptcy practice and are qualified to represent the Trustee
8 in this case.

9 16. Following the Trustee’s request that the Firm represent her in this case as general
10 bankruptcy counsel, a conflicts check was undertaken, utilizing the Firm’s client list. Based upon
11 the conflicts check the Firm and its associates are “disinterested persons” as defined by 11 U.S.C.
12 § 101 and do not hold or represent any interest adverse to the bankruptcy estate.

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

16 (a) Are or were a creditor, equity security holder, or insider of
17 the Debtor;

18 (b) Are or were, within two (2) years before the date of the
19 filing the bankruptcy petition, a director, officer or
20 employee of Debtor as specified in subparagraph (c) of
Section 101(14);

21 (c) Hold, or have ever held, an interest materially adverse to the
22 interest of the estate or of any class of creditors, equity
23 holders, or parties in interest, by reason of any direct or
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
interest, or their respective attorneys and accountants except
27 as set forth herein; and
28

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(e) Is a relative or employee of the U.S. Trustee or a Bankruptcy Judge except as stated herein.

18. 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 employed by the foregoing, in matters upon which it will be engaged as counsel.

19. Except as set forth herein, neither the Firm nor any of its attorneys has any connection with the Debtor, the creditors, any other parties in interest, their respective attorneys and accountants, the Office of the United States Trustee, or any person employed in the Office of the United States Trustee and that the Firm and each of its attorneys are all disinterested persons pursuant to 11 U.S.C. § 101(14).

20. The Firm was counsel of record for Trustee Nelson, the Chapter 7 Trustee that was initially appointed in the Debtor's bankruptcy case.

21. Trustee Nelson was also previously a member of the Firm.

22. The Firm also represents Chapter 7 Trustees in unrelated bankruptcy cases pending before the United States Bankruptcy Court for the District of Nevada.

23. The Trustee has employed the Firm in other bankruptcy cases unrelated to the above-referenced bankruptcy case in which he is a Trustee.

24. The Trustee submits that the Firm is a disinterested person within the meaning of 11 U.S.C. § 101(14) for purposes of 11 U.S.C. § 327(a), as it pertains to representing the Trustee as general bankruptcy counsel in the Debtor's bankruptcy case.

IV. COMPENSATION

25. Subject to Court approval, in accordance with 11 U.S.C. § 330, the Trustee seeks to retain the Firm on an hourly basis at the customary and standard rates that the Firm charges for similar representation, plus reimbursement of actual and necessary expenses incurred by the Firm in performing its duties.

26. The Firm proposes the compensation of attorneys be at varying rates currently ranging from \$275 per hour to \$350 per hour for the services of attorneys, subject to change from time to time, and all subject to application to, and approval by, this Court pursuant to Sections

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1 330 and 331 of the Bankruptcy Code.

2 27. The Firm proposes the compensation of paraprofessionals be at varying rates
3 currently ranging from \$175 per hour for paraprofessionals, subject to change from time to time,
4 and all subject to application to, and approval by, this Court pursuant to Sections 330 and 331 of
5 the Bankruptcy Code. A true and correct copy of the proposed Retainer Agreement between the
6 Trustee and the Firm is attached to the Houmand Declaration as **Exhibit "1"**.

7 28. The Firm contemplates that it may seek interim compensation during this case as
8 permitted by 11 U.S.C. § 331 and Federal Rule of Bankruptcy Procedure 2016. The Firm
9 understands that its compensation is subject to prior Court approval.

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

15 **V. REQUEST FOR NUNC PRO TUNC EMPLOYMENT**

16 30. Section 327(a) provides authority for a Chapter 7 Trustee to employ certain
17 professionals following court approval:

18 Except as otherwise provided in this section, the trustee, with the
19 court's approval, may employ one or more attorneys, accountants,
20 appraisers, auctioneers, or other professional persons, that do not
21 hold or represent an interest adverse to the estate, and that are
disinterested persons, to represent or assist the trustee in carrying
out the trustee's duties under this title.

22 11 U.S.C. § 327(a); *see also* FED. R. BANKR. P. 2014(a).

23 31. In bankruptcy proceedings, professionals who perform services for a debtor-in-
24 possession or Chapter 7 Trustee cannot recover fees for services rendered for the bankruptcy
25 estate unless those services have been previously authorized by a court order. *Id.*

26 32. In the Ninth Circuit, however, "bankruptcy courts have the power to issue *nunc*
27 *pro tunc* (i.e. retroactive) orders authorizing employment in limited circumstances." *In re Cook*,
28 79 B.R. 475, 477 (B.A.P. 9th Cir. 1987) (citing *In re Laurent Watch Co.*, 539 F.2d 1231 (9th Cir.

1 1976)). In order to establish the appropriateness of an employment application that seeks *nunc*
 2 *pro tunc* approval, the Ninth Circuit Court of Appeals (the “Ninth Circuit”) has held that two
 3 general requirements must be satisfied: (1) the professional must satisfactorily explain their
 4 failure to receive prior judicial approval; and (2) the professional must demonstrate that their
 5 services benefitted the bankruptcy estate in a significant manner. *In re Atkins*, 69 F.3d 970, 974
 6 (9th Cir. 1995) (citing *In re Occidental Fin. Group, Inc.*, 40 F.3d 1059, 1062 (9th Cir. 1994).

7 33. The Ninth Circuit has held that bankruptcy courts can also consider the following
 8 nine (9) factors identified by the court in the case *In re Twinton Properties Partnership*, 27 B.R.
 9 817, 819-20 (M. Tenn. 1983) in evaluating whether an employment application seeking *nunc pro*
 10 *tunc* approval should be approved: (1) the debtor, trustee or committee expressly contracted with
 11 the professional person to perform the services which were thereafter rendered; (2) the party for
 12 whom the work was performed approves the entry of the *nunc pro tunc* order; (3) the applicant
 13 has provided notice of the application to creditors and parties in interest and has provided an
 14 opportunity for filing objections; (4) no creditor or party in interest offers reasonable objection to
 15 the entry of the *nunc pro tunc* order; (5) the professional satisfied all the criteria for employment
 16 pursuant to Section 327 and FRBP 2014 at or before the time services were actually commenced
 17 and remained qualified during the period for which services were provided; (6) the work was
 18 performed properly, efficiently, and to a high standard of quality; (7) no actual or potential
 19 prejudice will inure to the estate or other parties in interest; (8) the applicant's failure to seek pre-
 20 employment approval is satisfactorily explained; and (9) the applicant exhibits no pattern of
 21 inattention or negligence in soliciting judicial approval for the employment of professionals. *Id.*
 22 at 974.

23 34. While the Ninth Circuit held that an applicant seeking *nunc pro tunc* employment
 24 must satisfactorily explain their failure to receive prior judicial approval and demonstrate that the
 25 services benefitted the bankruptcy estate, it also found that the nine (9) factors identified in
 26 *Twinton Properties* may be, but need not be, considered by the bankruptcy court in making such a
 27 determination. *Id.* at 976.

28 . . .

1 35. In the instant case, the Court should exercise its discretion in approving the *nunc*
2 *pro tunc* employment of the Firm effective as of the appointment of the Trustee.

3 **VI. CONCLUSION**

4 WHEREFORE, the Trustee respectfully requests that the Court enter an Order: (i)
5 approving the employment of the Firm, *Nunc Pro Tunc* to the appointment of the Trustee, as
6 general bankruptcy counsel to represent the Trustee in this bankruptcy proceeding upon the terms
7 set forth in this Application with payment of all fees and costs by the estate subject to notice and
8 hearing and approval of this Court; and (ii) for such other and further relief as is just and proper.

9 Dated this 19th day of March, 2018.

10 **HOUAND LAW FIRM, LTD.**

11 By: /s/ Jacob L. Houmand
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