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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 ROBERT C. GRAHAM, LTD. fdba ROB
12 GRAHAM & ASSOCIATES fdba
13 LAWYERSWEST,
14 Debtor.

Case No. BK-S-16-16655-BTB
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 Bruce T. Beesley¹

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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*

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26 _____
27 ¹ Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11
28 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 *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 December 15, 2016, an *Involuntary Bankruptcy Petition* [ECF No. 1]³ (the
19 “Involuntary Petition”) was filed against ROBERT C. GRAHAM, LTD., fdba ROB GRAHAM &
20 ASSOCIATES fdba LAWYERSWEST (the “Debtor”) pursuant to 11 U.S.C. § 303. The
21 Involuntary Petition was filed by the Estate of Michael B. Macknin, the Sharona Dagani Trust,
22 and the Margueritte Owens Revocable Trust (collectively, the “Petitioning Creditors”). *See*
23 *Trustee Declaration*.

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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 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* Trustee
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 Trustee Declaration.

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

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

25 7. On January 4, 2017, Trustee Nelson filed an *Application to Employ Nelson &*
26 *Houmand, P.C., Nunc Pro Tunc, As General Bankruptcy Counsel for Victoria L. Nelson, Chapter*
27 *7 Trustee Pursuant to 11 U.S.C. §§ 327(a) and 328(a) and Federal Rule of Bankruptcy Procedure*
28 *2014* [ECF No. 35] (the “Employment Application”), which sought to employ Nelson &

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1 Houmand, P.C. (the “Firm”) as general bankruptcy counsel. *See* Trustee Declaration.

2 8. On March 23, 2017, the Court entered an *Order Granting Application to Employ*
3 *Nelson & Houmand, P.C., Nunc Pro Tunc, As General Bankruptcy Counsel for Victoria L.*
4 *Nelson, Chapter 7 Trustee Pursuant to 11 U.S.C. §§ 327(a) and 328(a) and Federal Rule of*
5 *Bankruptcy Procedure 2014* [ECF No. 219]. *See* Trustee Declaration.

6 9. On October 17, 2017, the Firm filed a *Notice of (1) Change of Firm Name and (2)*
7 *Change of Address* [ECF No. 263], which stated that the name of the Firm had been changed from
8 “Nelson & Houmand, P.C.” to the “Houmand Law Firm, Ltd.” *See* Trustee Declaration.

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

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

12 12. The Trustee desires to continue to have the Firm represent the bankruptcy estate on
13 the same terms as set forth in the Employment Application.

14 **II. JURISDICTION AND VENUE**

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

19 14. Pursuant to Local Rule 9014.2, if the Court determines that absent consent of the
20 parties the Court cannot enter final orders or judgment regarding the Application consistent with
21 Article III of the United States Constitution, the Trustee consents to entry of final orders and
22 judgment by this Court.

23 **III. THE FIRM**

24 15. The Firm is well suited for the type of representation required by the Trustee. The
25 Firm specializes in insolvency and reorganization matters, particularly the representation of
26 Chapter 7 Trustees in bankruptcy cases. Attorneys associated with the Firm have represented
27 debtors, Chapter 7 Trustees, creditors, and other parties-in-interest, and is qualified to act as
28 attorneys for the Trustee. Accordingly, the Trustee has determined that the Firm has the resources

1 and experience necessary to represent it in this case.

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

8 17. The attorneys employed by the Firm are duly admitted to practice before this
9 Court.

10 18. The Trustee desires to employ the Firm as her general counsel in this bankruptcy
11 case to render the following professional services:

- 12 (a) To investigate the financial affairs of the Debtor and
13 determine if there are any preferential transfers, fraudulent
14 conveyances, or turnover actions that may be filed on behalf
15 of the bankruptcy estate pursuant to 11 U.S.C. §§ 542, 544,
16 547, and 548.
- 17 (b) To prosecute any and all preferential transfers, fraudulent
18 conveyances, or turnover actions that may be filed on behalf
19 of the bankruptcy estate pursuant to 11 U.S.C. §§ 542, 544,
20 547, and 548.
- 21 (c) To advise the Trustee of her rights and obligations and
22 performance of her duties during the administration of this
23 bankruptcy case;
- 24 (d) To represent the Trustee in all proceedings before this Court
25 and any other court which assumes jurisdiction of a matter
26 related to or arising in this bankruptcy case;
- 27 (e) To assist the Trustee in the performance of her duties as set
28 forth in 11 U.S.C. § 704;
- (f) To assist the Trustee in developing legal positions and
strategies with respect to all facets of these proceedings; and
- (g) To provide such other counsel and advice as the Trustee
may require in connection with this bankruptcy case.

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1 19. The Trustee has selected the Firm because its attorneys have experience in matters
2 of this character, are familiar with bankruptcy practice and are qualified to represent the Trustee
3 in this case.

4 20. Following the Trustee’s request that the Firm represent her in this case as general
5 bankruptcy counsel, a conflicts check was undertaken, utilizing the Firm’s client list. Based upon
6 the conflicts check the Firm and its associates are “disinterested persons” as defined by 11 U.S.C.
7 § 101 and do not hold or represent any interest adverse to the bankruptcy estate.

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

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

28 22. 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.

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1 Trustee and the Firm is attached to the Houmand Declaration as **Exhibit “1”**.

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

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

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

11 34. Section 327(a) provides authority for a Chapter 7 Trustee to employ certain
12 professionals following court approval:

13 Except as otherwise provided in this section, the trustee, with the
14 court's approval, may employ one or more attorneys, accountants,
15 appraisers, auctioneers, or other professional persons, that do not
16 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.

17 11 U.S.C. § 327(a); *see also* FED. R. BANKR. P. 2014(a).

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

21 36. In the Ninth Circuit, however, “bankruptcy courts have the power to issue *nunc*
22 *pro tunc* (i.e. retroactive) orders authorizing employment in limited circumstances.” *In re Cook*,
23 79 B.R. 475, 477 (B.A.P. 9th Cir. 1987) (citing *In re Laurent Watch Co.*, 539 F.2d 1231 (9th Cir.
24 1976)). In order to establish the appropriateness of an employment application that seeks *nunc*
25 *pro tunc* approval, the Ninth Circuit Court of Appeals (the “Ninth Circuit”) has held that two
26 general requirements must be satisfied: (1) the professional must satisfactorily explain their
27 failure to receive prior judicial approval; and (2) the professional must demonstrate that their
28 services benefitted the bankruptcy estate in a significant manner. *In re Atkins*, 69 F.3d 970, 974

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1 (9th Cir. 1995) (citing *In re Occidental Fin. Group, Inc.*, 40 F.3d 1059, 1062 (9th Cir. 1994).

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

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

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

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VI. CONCLUSION

WHEREFORE, the Trustee respectfully requests that the Court enter an Order: (i) approving the employment of the Firm, *Nunc Pro Tunc* to the appointment of the Trustee, as general bankruptcy counsel 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 notice and hearing and approval of this Court; and (ii) for such other and further relief as is just and proper.

Dated this 19th day of March, 2018.

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