

HOUAMAND LAW FIRM, LTD.
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Electronically Filed On: April 6, 2018

6 *General Bankruptcy 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

**DECLARATION OF KATHY BAZOIAN
PHELPS, ESQ. IN SUPPORT OF EX
PARTE APPLICATION TO EMPLOY
DIAMOND MCCARTHY LLP, NUNC
PRO TUNC, AS SPECIAL LITIGATION
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. Beesley

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20 I, KATHY BAZOIAN PHELPS, Esq., hereby declare as follows:

21 1. I am over the age of 18 and mentally competent. Except where stated on
22 information and belief, I have personal knowledge of the facts in this matter and if called upon to
23 testify, could and would do so.

24 2. I make this declaration to support the *Ex Parte Application to Employ Diamond*
25 *McCarthy LLP, Nunc Pro Tunc, As Special Litigation Counsel for Shelley D. Krohn, Successor*
26 *Chapter 7 Trustee Pursuant to 11 U.S.C. §§ 327(a) and 328(a) and Federal Rule of Bankruptcy*
27 *Procedure 2014 (the “Application”).*

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1 3. I am an attorney licensed to practice law in the State of California. I am a
2 shareholder with the law firm of Diamond McCarthy LLP (the “Firm”). The Firm maintains
3 offices at 1999 Avenue of the Stars, Suite 1100, Los Angeles, California 90067.

4 4. This Declaration is made pursuant to 11 U.S.C. § 329 and Federal Rule of
5 Bankruptcy Procedure 2014(b) and is in support of the Application.¹

6 5. The Firm is well suited for the type of representation required by Shelley D.
7 Krohn, the successor Chapter 7 Trustee (the “Trustee”). The Firm has extensive experience in the
8 practice of business, commercial and complex litigation, with expertise in areas of substantive law
9 likely to become relevant in prosecution of claims in adversary proceedings. Accordingly, the
10 Trustee has determined that the Firm has the resources and experience necessary to represent her
11 in this case.

12 6. The Firm’s professionals specialize in representing bankruptcy trustees in large
13 and complex bankruptcy and litigation cases around the country. The Firm served as lead trial
14 counsel for various parties having significant roles in the Enron/LJM2, Parmalat, Livent, Bayou
15 Funds, Dreier, LLP, USA Commercial Mortgage, Diversified Lending Group, Inc., Equipment
16 Acquisition Resources, Inc., Bank United, and the Syntax-Brilliant cases, among many others,
17 involving complex fraud, Ponzi schemes, accounting, legal and other malpractice and bankruptcy
18 related claims for which the Firm recovered millions and millions of dollars for its clients.

19 7. The Firm also has extensive experience in financial institution litigation and has
20 represented hedge funds, private equity, global banks, regional and community banks, mutual
21 funds, real estate trusts, trustees of failed banks, liquidators, creditors’ committees and other
22 financial institutions.

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24 _____
25 ¹ Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11
26 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The
27 Federal Rules of Civil Procedure will be referred to as “FRCP” and the Federal Rules of
28 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”. All
defined terms shall have the same meaning ascribed to them in the Application unless otherwise
set forth herein.

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1 8. It is anticipated that Michael Yoder and I, both partners of the Firm, will serve as
2 primary counsel in this matter. I have more than 26 years of experience as a lawyer in bankruptcy
3 law, fiduciary representation and fraud litigation, as well as serving as a fiduciary herself. My
4 practice includes representing trustees and receivers, serving as a Chapter 11 trustee,
5 representation of litigants and parties in interest in bankruptcy and receivership cases and other
6 insolvency proceedings. I am particularly knowledgeable about the administration of Ponzi
7 scheme cases and have extensive litigation experience in claims arising in these types of cases,
8 including fraudulent transfer litigation. I have lectured widely and written on bankruptcy and
9 receivership matters, with a focus on Ponzi schemes. I am the co-author of *The Ponzi Book: A*
10 *Legal Resource for Unraveling Ponzi Schemes*.

11 9. Michael Yoder has extensive experience in complex litigation involving
12 bankruptcy, third party and professional liability. This experience includes spearheading a number
13 of forensic fraud investigations, serving as lead or co-lead investigative attorney in connection
14 with: (a) a \$600 million hard money lender in Las Vegas; (b) a \$350+ million international fraud
15 involving a television importer formerly listed on NASDAQ; (c) a \$400 million fraud involving
16 real estate investment funds in Oakland, California; and (d) a \$150 million Ponzi scheme in
17 Sacramento, California.

18 10. The attorneys of the Firm that will render services in relation to the above-
19 captioned bankruptcy case are familiar with the United States Bankruptcy Code, the Federal
20 Rules of Bankruptcy Procedure, the Federal Rules of Civil Procedure, and the Local Rules of
21 Practice for the United States Bankruptcy Court for the District of Nevada (the “Local Rules”)
22 and will comply with them, as well as the procedures set forth in the “Guide to Applications for
23 Professional Compensation,” promulgated by the Office of the United States Trustee (the “U.S.
24 Trustee”) with regard to compensation of professionals.

25 11. Following the Trustee’s request that the Firm represent her in this case as special
26 litigation counsel, a conflicts check was undertaken, utilizing the Firm’s client list. Based upon
27 the conflicts check and my information and belief, I believe that the Firm and its attorneys are
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1 “disinterested persons” as defined by 11 U.S.C. § 101 and do not hold or represent any interest
2 adverse to the bankruptcy estate.

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

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

23 13. The Firm was special litigation counsel for Victoria L. Nelson (“Trustee Nelson”),
24 the Chapter 7 Trustee that was initially appointed in the Debtor’s bankruptcy case.

25 14. The Trustee has employed the Firm as special litigation counsel in an unrelated
26 bankruptcy case in which she is the chapter 7 trustee.

27 15. To the best of my knowledge and belief, the Firm represents no interest that is
28 adverse to the Trustee, Trustee Nelson, 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.

16. Except as set forth herein, to the best of my information and belief, neither the
Firm nor any of its attorneys has any connection with the Debtor, the creditors, any other parties

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1 in interest, their respective attorneys and accountants, the Office of the United States Trustee, or
2 any person employed in the Office of the United States Trustee and that the Firm and each of its
3 attorneys are all disinterested persons pursuant to 11 U.S.C. § 101(14).

4 17. The Trustee desires to employ the Firm as her special litigation counsel in the
5 above-captioned case to render the following professional services:

- 6 (a) To investigate the financial affairs of the Debtor and
7 determine if there are any preferential transfers, fraudulent
8 conveyances, or turnover actions that may be filed on behalf
9 of the bankruptcy estate pursuant to 11 U.S.C. §§ 542, 544,
10 547, and 548, or other litigation claims owned by the estate
11 against third parties.
12 (b) To prosecute any and all preferential transfers, fraudulent
13 conveyances, or turnover actions that may be filed on behalf
14 of the bankruptcy estate pursuant to 11 U.S.C. §§ 542, 544,
15 547, and 548, or other litigation claims owned by the estate
16 against third parties.
17 (c) To assist the Trustee in developing legal positions and
18 strategies with respect to litigation matters in these
19 proceedings.

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

24 19. The Firm proposes the compensation of attorneys be at varying rates currently
25 ranging from \$380 per hour to \$750 per hour for the services of partners of the Firm and at
26 varying rates currently ranging from \$270 per hour to \$320 per hour for the services of associates
27 of the Firm, subject to change from time to time, and all subject to application to, and approval
28 by, this Court pursuant to Sections 330 and 331 of the Bankruptcy Code.

20. The Firm proposes the compensation of paraprofessionals be at varying rates
currently ranging from \$145 per hour to \$220 per hour for paraprofessionals, subject to change
from time to time, and all subject to application to, and approval by, this Court pursuant to
Sections 330 and 331 of the Bankruptcy Code.

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

22. The Firm further requests that its employment be approved *nunc pro tunc* as of the appointment of the Trustee.

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

24. The Firm has not shared, or agreed to share, with any other individual or entity, other than with members of the Firm, any compensation paid or to be paid.

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

Dated this 2nd day of April, 2018.



Kathy Bazoian Phelps, Esq.