

Electronically Filed On: April 6, 2018

Jacob L. Houmand, Esq. (NV Bar No. 12781)
Email: jhoumand@houmandlaw.com
Kyle J. Ortiz, Esq. (NV Bar No. 14252)
Email: kortiz@houmandlaw.com
HOUMAND LAW FIRM, LTD.
9205 West Russell Road, Building 3, Suite 240
Las Vegas, NV 89148
Telephone: 702/720-3370
Facsimile: 702/720-3371

General Bankruptcy Counsel for Shelley D. Krohn, Chapter 7 Trustee

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
EISNERAMPER LLP AS FORENSIC
ACCOUNTANT, NUNC PRO TUNC, 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

Shelley D. Krohn, the duly appointed Successor Chapter 7 Trustee in the above-captioned bankruptcy case (the “Trustee”), by and through her general bankruptcy counsel of record, Jacob L. Houmand, Esq. and Kyle J. Ortiz, Esq. of the Houmand Law Firm, Ltd., hereby submits this *Ex Parte Application to Employ EisnerAmper LLP As Forensic Accountant, Nunc Pro Tunc 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* (the “Application”).

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”.

HOUMAND LAW FIRM, LTD.
9205 West Russell Road, Building 3, Suite 240 Las Vegas, NV 89148
Telephone: (702) 720-3370 Facsimile: (702) 720-3371

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

14
 15
 16 1. On December 15, 2016, an Involuntary Bankruptcy Petition [ECF No. 1] (the
 17 “Involuntary Petition”) was filed against ROBERT C. GRAHAM, LTD., fdba ROB GRAHAM &
 18 ASSOCIATES fdba LAWYERSWEST (the “Debtor”) pursuant to 11 U.S.C. § 303. The
 19 Involuntary Petition was filed by the Estate of Michael B. Macknin, the Sharona Dagoni Trust,
 20 and the Margueritte Owens Revocable Trust (collectively, the “Petitioning Creditors”). *See*
 21 *Trustee Declaration.*

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

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

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

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

9 5. On March 22, 2017, Trustee Nelson filed an *Application to Employ EisnerAmper*
 10 *LLP as Forensic Accountant, Nunc Pro Tunc to March 17, 2017, for Victoria L. Nelson, Chapter*
 11 *7 Trustee, Pursuant to 11 U.S.C. 327(a) and 328(a) and Federal Rule of Bankruptcy Procedure*
 12 *2014* [ECF No. 213] (the “Employment Application”), which sought to employ EisnerAmper
 13 LLP (the “EisnerAmper”) as forensic accountant to provide expert accounting and financial
 14 services to the bankruptcy estate. See Trustee Declaration.

15 6. On May 4, 2017, the Court entered an *Order Granting Application to Employ*
 16 *EisnerAmper LLP as Forensic Accountant, Nunc Pro Tunc to March 17, 2017, for Victoria L.*
 17 *Nelson, Chapter 7 Trustee, Pursuant to 11 U.S.C. 327(a) and 328(a) and Federal Rule of*
 18 *Bankruptcy Procedure 2014* [ECF No. 247]. See Trustee Declaration.

19 7. On January 13, 2018, Trustee Nelson died. See Trustee Declaration.

20 8. On January 19, 2018, the Trustee was appointed as the successor Chapter 7 Trustee
 21 in the Debtor’s bankruptcy case. See Trustee Declaration.

22 9. The Trustee desires to continue to have EisnerAmper represent the bankruptcy
 23 estate on the same terms as set forth in the Employment Application.

24 II. JURISDICTION AND VENUE

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

1 11. Pursuant to Local Rule 9014.2, if the Court determines that absent consent of the
2 parties the Court cannot enter final orders or judgment regarding the Application consistent with
3 Article III of the United States Constitution, the Trustee consents to entry of final orders and
4 judgment by this Court.

5 **III. EISNERAMPER**

6 12. The Trustee seeks to employ EisnerAmper as forensic accountants in connection
7 with her administration of the Debtor's bankruptcy case to perform the following services:
8 tracing cash flows and other transfers; analyzing materials obtained through the discovery
9 process; locating bank accounts; identifying the location and disposition of recoverable assets;
10 assisting in identifying potential avoidable transfers such as preferences and fraudulent
11 conveyances and other recoverable transfers; offering testimony; and performing other forensic
12 accounting analysis. *See* Trustee Declaration.

13 13. EisnerAmper is experienced in accounting issues and forensic accounting and is
14 qualified to provide the accounting consulting and testimonial expertise required by the Trustee in
15 connection with Trustee's administration of the Debtor's bankruptcy estate. *See* Klein
16 Declaration.

17 14. The Trustee submits that the ability to draw on this broad and extensive experience
18 makes EisnerAmper particularly qualified to provide the expert accounting services required by
19 the complexities of the Debtor's bankruptcy case. *See* Trustee Declaration.

20 15. EisnerAmper will provide expert accounting and financial services to the
21 bankruptcy estate. Such services will include accounting, consulting, and expert witness
22 testimony and related issues raised in prosecution of contested matters and adversary proceedings,
23 including the Debtor's solvency, financial condition, and ultimately with assisting in the tracking
24 and recovery of funds.

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

HOUAMAND LAW FIRM, LTD.
9205 West Russell Road, Building 3, Suite 240 Las Vegas, NV 89148
Telephone: (702) 720-3370 Facsimile: (702) 720-3371

1 Klein Declaration.

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

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

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);

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 18. EisnerAmper represents no interest that is adverse to the Trustee, Trustee Nelson,
23 to the Debtor’s estate, any creditor, any party in interest, the U.S. Trustee, or any attorney or
24 accountant employed by the foregoing, in matters upon which it will be engaged as counsel.

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

20. EisnerAmper was employed as the forensenic accountant for Trustee Nelson, the
Chapter 7 Trustee that was initially appointed in the Debtor’s bankruptcy case.

HOUAMAND LAW FIRM, LTD.
9205 West Russell Road, Building 3, Suite 240 Las Vegas, NV 89148
Telephone: (702) 720-3370 Facsimile: (702) 720-3371

1 21. Trustee Nelson previously employed EisnerAmper in unrelated bankruptcy cases
2 in which she was appointed as Chapter 7 Trustee.

3 22. The Trustee submits that EisnerAmper is a disinterested person within the meaning
4 of 11 U.S.C. § 101(14) for purposes of 11 U.S.C. § 327(a), as it pertains to representing the
5 Trustee as forensic accountant in the Debtor's bankruptcy case.

6 **IV. COMPENSATION**

7 23. The Trustee desires to employ EisnerAmper and its professionals on an hourly
8 basis. EisnerAmper has agreed to provide accounting services to the Debtor's bankruptcy estate
9 at a blended hourly rate of \$375.

10 24. EisnerAmper understands that its compensation is subject to prior Court approval.
11 *See* Klein Declaration.

12 25. No promises have been received by EisnerAmper or any employee of
13 EisnerAmper, as to payment or compensation in connection with the above-referenced
14 bankruptcy case in accordance with the provisions of the Bankruptcy Code, the FRBP, the Local
15 Rules, and orders of the Court.

16 26. EisnerAmper has no agreement with any other entity to share with such entity any
17 compensation received by EisnerAmper, except as permitted under Section 504(b)(1). *See* Klein
18 Declaration.

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

20 27. Section 327(a) provides authority for a Chapter 7 Trustee to employ certain
21 professionals following court approval:

22 Except as otherwise provided in this section, the trustee,
23 with the court's approval, may employ one or more
24 attorneys, accountants, appraisers, auctioneers, or other
25 professional persons, that do not hold or represent an
26 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.

27 11 U.S.C. § 327(a); *see also* FED. R. BANKR. P. 2014(a).

28 28. In bankruptcy proceedings, professionals who perform services for a debtor-in-

1 possession or Chapter 7 Trustee cannot recover fees for services rendered for the bankruptcy
2 estate unless those services have been previously authorized by a court order. *Id.*

3 29. In the Ninth Circuit, however, “bankruptcy courts have the power to issue *nunc*
4 *pro tunc* (i.e. retroactive) orders authorizing employment in limited circumstances.” *In re Cook*,
5 79 B.R. 475, 477 (B.A.P. 9th Cir. 1987) (citing *In re Laurent Watch Co.*, 539 F.2d 1231 (9th Cir.
6 1976)). In order to establish the appropriateness of an employment application that seeks *nunc*
7 *pro tunc* approval, the Ninth Circuit Court of Appeals (the “Ninth Circuit”) has held that two
8 general requirements must be satisfied: (1) the professional must satisfactorily explain their
9 failure to receive prior judicial approval; and (2) the professional must demonstrate that their
10 services benefitted the bankruptcy estate in a significant manner. *In re Atkins*, 69 F.3d 970, 974
11 (9th Cir. 1995) (citing *In re Occidental Fin. Group, Inc.*, 40 F.3d 1059, 1062 (9th Cir. 1994).

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

28 31. While the Ninth Circuit held that an applicant seeking *nunc pro tunc* employment

1 must satisfactorily explain their failure to receive prior judicial approval and demonstrate that the
2 services benefitted the bankruptcy estate, it also found that the nine (9) factors identified in
3 *Twinton Properties* may be, but need not be, considered by the bankruptcy court in making such a
4 determination. *Id.* at 976.

5 32. In the instant case, the Court should exercise its discretion in approving the *nunc*
6 *pro tunc* employment of the EisnerAmper effective as of the appointment of the Trustee.

7 **VI. CONCLUSION**

8 WHEREFORE, the Trustee respectfully requests that the Court enter an Order: (i)
9 approving the employment of EisnerAmper, *Nunc Pro Tunc* to the appointment of the Trustee, as
10 forensic accountant pursuant to the terms set forth in this Application with payment of all fees and
11 costs by the estate subject to notice and hearing and approval of this Court; and (ii) for such other
12 and further relief as is just and proper.

13 Dated this 6th day of April, 2018.

14 **HOUAMAND LAW FIRM, LTD.**

15 By: /s/ Kyle J. Ortiz

16 Jacob L. Houmand, Esq. (NV Bar No. 12781)

17 Kyle J. Ortiz, Esq. (NV Bar No. 14252)

18 9205 West Russell Road, Building 3, Suite 240

19 Las Vegas, NV 89148

20 Telephone: 702/720-3370

21 Facsimile: 702/720-3371

22 *General Bankruptcy Counsel for*
23 *Shelley D. Krohn, Chapter 7 Trustee*
24
25
26
27
28