

Electronically Filed On: July 31, 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

Counsel for Shelley D. Krohn, Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:
AMERI-DREAM REALTY, LLC,

Debtor.

Case No. BK-S-15-10110-GS
Chapter 7

**TRUSTEE’S OBJECTION TO PROOF OF
CLAIM NUMBER 31-1 FILED BY
MATTHEW KUYKENDALL AND DANA
KUYKENDALL PURSUANT TO 11 U.S.C.
§ 502(b)(1) AND FEDERAL RULE OF
BANKRUPTCY PROCEDURE 3007**

Date of Hearing: August 30, 2018
Time of Hearing: 9:30 a.m.
Place: Courtroom No. To Be Determined
Foley Federal Building
300 Las Vegas Blvd., S.
Las Vegas, NV 89101

Judge: Honorable Gary Spraker ¹

Shelley D. Krohn, the duly appointed Chapter 7 Trustee in the above-captioned bankruptcy case (the “Trustee”), by and through her counsel of record, Jacob L. Houmand, Esq. and Kyle J. Ortiz, Esq. of the Houmand Law Firm, Ltd., hereby submits the *Trustee’s Objection to Proof of Claim Number 31-1 Filed by Matthew Kuykendall and Dana Kuykendall Pursuant to*

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 *11 U.S.C. § 502(b)(1) and Federal Rule of Bankruptcy Procedure 3007* (the “Objection”). The
 2 Objection is based on the following Memorandum of Points and Authorities and the *Declaration*
 3 *of Shelley D. Krohn In Support of Trustee’s Objection to Proof of Claim Number 31-1 Filed by*
 4 *Matthew Kuykendall and Dana Kuykendall Pursuant to 11 U.S.C. § 502(b)(1) and Federal Rule*
 5 *of Bankruptcy Procedure 3007* (the “Trustee Declaration”), which is filed separately and
 6 concurrently with this Court pursuant to Local Rule 9014(c)(2). The Objection is also based on
 7 the pleadings and papers on file herein, and any argument that may be entertained at the hearing
 8 on the Objection.²

9 MEMORANDUM OF POINTS AND AUTHORITIES

10 I. INTRODUCTION

11 Ameri-Dream Realty, LLC (the “Debtor”) was a real estate brokerage firm that
 12 represented clients in the purchase and sale of real property throughout Clark County, Nevada.
 13 The Debtor also had a property management division that managed over one thousand real
 14 properties located throughout the valley. As part of its property management division, the Debtor
 15 executed real property management agreements (collectively, the “Property Management
 16 Agreements”) with landowners whereby the Debtor agreed to perform various services including:
 17 (a) the monthly collection of rents from tenants, (b) payment of Homeowner Association fees, (c)
 18 the general repair and maintenance of the properties at issue, and (d) the segregation of security
 19 deposits (the “Security Deposits”) pursuant to Nevada Revised Statute (“N.R.S.”) Chapter 645.
 20 Despite the fact that the Debtor was required to maintain the Security Deposits in a segregated
 21 trust account for the benefit of the various landowners and tenants (the “Security Deposit Trust
 22 Account”), the Trustee is informed and believes that the spouse of the Debtor’s principal, John
 23 Brown, embezzled approximately One Million One Hundred Thousand Dollars (\$1,100,000) of
 24 the Security Deposits. As a result, there was an insufficient balance in the Security Deposit trust
 25 account at the time of the Debtor’s bankruptcy filing to cover the full amount of the Security
 26 _____

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

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 Deposits that are required to be segregated pursuant to the Property Management Agreements.
2 Since the Debtor’s bankruptcy case was classified as a “mega case” due to the number of
3 creditors, the Trustee employed Garden City Group, LLC (“GCG”) to act as claims administrator.
4 Since its employment, GCG has been maintaining providing notice to creditors and parties-in-
5 interest when required by the notice procedures under FRBP 2002, as modified by this Court³,
6 and collecting and maintaining the proofs of claim that have been filed in the Debtor’s bankruptcy
7 case. After conducting a thorough review of the approximately 970 proofs of claim that have been
8 filed, the Trustee has determined that numerous proofs of claim have been filed by landlords and
9 tenants that relate to the same unpaid security deposit.

10 This Objection relates to Proof of Claim Number 31-1 filed by Matthew Kuykendall and
11 Dana Kuykendall (the “Tenants”) on February 17, 2015 (“Claim 31”). Claim 31 asserts priority
12 under Section 507(a)(7) in the amount of \$1,900.00. The basis of Claim 31 is the security deposit
13 (the “Security Deposit”) paid by the tenants relating to the real property located at 2000 Hollywell
14 Street, Las Vegas, NV 89135 (the “Hollywell Property”). On May 13, 2015, Mei-Penh Khuu (the
15 “Landlord”) filed Proof of Claim Number 780-1 (“Claim 780”) that claims priority under Section
16 507(a)(7) in the amount of \$1,900. The basis of Claim 780 is the same Security Deposit claimed
17 by the Tenants. The Trustee now seeks an order disallowing Claim 31 as a duplicate of Claim
18 780. ⁴

19 ...
20 ...
21 ...

22 _____
23 ³ On February 20, 2015, the Court entered an *Order Granting Application for Order Limiting*
24 *Notice and Memorandum of Points and Authorities In Support Thereof* [ECF No. 121], which
25 allowed the Trustee to only serve the parties on an “Official Service List” when notice was
otherwise required to be given to all creditors, including under FRBP 2002(a), (b), and (f).

26 ⁴ At the same time of the filing of this Objection, the Trustee will be filing a separate objection to
27 Claim 780 on the grounds that the Landlord is not entitled to priority under Section 507(a)(7) (the
28 “Landlord Objection”). The Landlord Objection is being filed separately due to the limitations
imposed under FRBP 3007(c), which does not permit objections to more than one claim in a
single objection, unless provided for under FRBP 3007(d).

1 **II. JURISDICTION AND VENUE**

2 This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1134. This
3 is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue before this Court is appropriate
4 under 28 U.S.C. §§ 1408 and 1409. This matter constitutes a core proceeding under 28 U.S.C. §
5 157(b)(2). Pursuant to Local Rule 9014.2, if the Court determines that absent consent of the
6 parties the Court cannot enter final orders or judgment regarding the Objection consistent with
7 Article III of the United States Constitution, the Firm consents to entry of final orders and
8 judgment by this Court. The statutory basis for the relief sought herein are Section 502(b)(1) and
9 FRBP 3007.

10 **III. STATEMENT OF FACTS**

11 **THE DEBTOR’S BANKRUPTCY FILING AND TURNOVER OF SECURITY DEPOSITS**

12 1. On January 9, 2015 (the “Petition Date”), the Debtor filed a voluntary bankruptcy
13 pursuant to Chapter 7 of Title 11 of the United States Code [ECF No. 1]⁵. See Trustee
14 Declaration.

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

17 3. On January 28, 2015, the Court entered an *Amended Notice of Chapter 7*
18 *Bankruptcy Case* [ECF No. 12] that established May 14, 2015, as the deadline for creditors to file
19 proofs of claim. See Trustee Declaration.

20 4. On February 9, 2015, Trustee Nelson filed an *Application for Order Authorizing*
21 *Employment of the Garden City Group, LLC As Claims and Noticing Agent* [ECF No. 88]. See
22 Trustee Declaration.

23 5. On February 27, 2015, the Court entered an *Order Granting Application for Order*
24 *Authorizing Employment of the Garden City Group, LLC As Claims and Noticing Agent* [ECF No.
25 128]. See Trustee Declaration.

26 ...

27 _____
28 ⁵ 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.

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

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 6. Since its employment, GCG has been maintaining the Proofs of Claim that have
2 been submitted by creditors. *See* Trustee Declaration.

3 7. On September 30, 2015, Trustee Nelson filed a *Motion for (1) Turnover of Security*
4 *Deposits Held In Trust Account of McDonald Carano Wilson Pursuant to 11 U.S.C. § 542 and (2)*
5 *Authority to Administer Security Deposits Through the Debtor’s Bankruptcy Estate Pursuant to*
6 *11 U.S.C. § 105(a)* [ECF No. 181] (the “Turnover Motion”). *See* Trustee Declaration.

7 8. The Turnover Motion sought authority for approximately \$707,567.29 – the
8 balance of the Security Deposits that were in the Debtor’s possession as of the Petition Date –
9 held in the IOLTA Account of counsel for the Debtor to be transferred to Trustee Nelson so that
10 the funds could be administered for the benefit of creditors. *See* Trustee Declaration.

11 9. The Turnover Motion was supported by counsel for the Debtor, an accountant
12 employed by the Debtor prior to the Petition Date, and the Nevada Real Estate Division. *See*
13 Trustee Declaration.

14 10. On November 6, 2015, the Court entered an *Order Granting Motion for (1)*
15 *Turnover of Security Deposits Held In Trust Account of McDonald Carano Wilson Pursuant to 11*
16 *U.S.C. § 542 and (2) Authority to Administer Security Deposits Through the Debtor’s Bankruptcy*
17 *Estate Pursuant to 11 U.S.C. § 105(a)* [ECF No. 196] (the “Turnover Order”). *See* Trustee
18 Declaration.

19 11. The Turnover Order provided that the security deposits held in the IOLTA
20 Account of counsel for the Debtor would be transferred to the Debtor’s bankruptcy estate and
21 administered pursuant to Section 726. *See* Trustee Declaration.

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

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

25 **PROOFS OF CLAIM NUMBERS 31 AND 780**

26 14. On February 17, 2015, the Tenants timely filed Claim 31 that claims priority under
27 Section 507(a)(7) in the amount of \$1,900. A true and correct copy of Claim 31 is attached to the
28 Trustee Declaration as **Exhibit “1”**.

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 15. The basis of Claim 31 is the Security Deposit related to the Hollywell Property.

2 16. On May 13, 2015, the Landlord timely filed Claim 780 claiming priority under
3 Section 507(a)(7) in the amount of \$1,900.00. A true and correct copy of Claim 780 is attached to
4 the Trustee Declaration as **Exhibit “2”**.

5 17. The basis of Claim 780 is the same Security Deposit claimed by the Tenants
6 related to the Hollywell Property.

7 18. The Trustee now seeks an order disallowing Claim 31 as it is duplicative of
8 Landlord’s Claim 780 that also seeks the recovery of the Security Deposit.

9 **IV. LEGAL ARGUMENT**

10 **A. The Standard For Disallowance of Proofs of Claim**

11 Pursuant to section 502, a filed proof of claim is deemed allowed, unless a party in interest
12 objects thereto. *See* 11 U.S.C. § 502(a). The United States Court of Appeals for the Ninth Circuit
13 has described the obligations of a creditor in establishing their claim and the burdens relating to
14 proofs of claim objections:

15 Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or
16 interest as to which proof is filed is "deemed allowed," the burden
17 of initially going forward with the evidence as to the validity and
18 the amount of the claim is that of the objector to that claim. In short,
19 the allegations of the proof of claim are taken as true. **If those**
20 **allegations set forth all the necessary facts to establish a claim**
21 **and are not self-contradictory, they prima facie establish the**
22 **claim.** Should objection be taken, the objector is then called upon to
produce evidence and show facts tending to defeat the claim by
probative force equal to that of the allegations of the proofs of claim
themselves. **But the ultimate burden of persuasion is always on**
the claimant. Thus, it may be said that the proof of claim is some
evidence as to its validity and amount.

23 *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, COLLIER ON
24 BANKRUPTCY § 502.02, at 502-22 (15th ed. 1991)) (emphasis removed) (emphasis added); *see*
25 *also Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1040 (9th Cir. 2000) (holding that
26 the bankruptcy court correctly understood that the ultimate burden of persuasion was on the
27 creditor); *Spencer v. Pugh (In re Pugh)*, 157 B.R. 898, 901 (B.A.P. 9th Cir. 1993) (holding
28 claimant bears ultimate burden of persuasion as to validity and amount of the claim by a

1 preponderance of the evidence). Accordingly, to be entitled to prima facie validity of a claim, a
 2 proof of claim must set forth all necessary facts to establish the claim. *Wright*, 931 F.2d at 623.
 3 Furthermore, the ultimate burden is always on the claimant, and a claim must be denied if the
 4 claimant cannot carry this burden after an objection showing facts tending to defeat the claim. *Id.*
 5 If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof
 6 of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance
 7 of the evidence. *See Lundell*, 223 F.3d at 1039 (citations omitted).

8 In accordance with Section 502(b), the validity and amount of the claim shall be
 9 determined as of the date of the filing of the bankruptcy petition. Section 502(b)(1) requires
 10 disallowance of a claim if “such claim is unenforceable against the debtor and property of the
 11 debtor, under any agreement or applicable law for a reason other than because such claim is
 12 contingent or unmatured . . .” 11 U.S.C. § 502(b)(1). The “applicable law” referenced in Section
 13 502(b)(1) includes bankruptcy law as well as other federal and state laws. A trustee is therefore
 14 allowed to raise any federal or state law defenses to a claim. *See In re G.I. Indus., Inc.*, 204 F.3d
 15 1276, 1281 (9th Cir. 2000) (stating that a claim cannot be allowed under Section 502(b)(1) if it is
 16 unenforceable under nonbankruptcy law); *Johnson v. Righetti*, 756 F.2d 738, 741 (9th Cir. 1985)
 17 (finding that the validity of the claim may be determined under state law); *In re Eastview Estates*
 18 *II*, 713 F.2d 443, 447 (9th Cir. 1983) (applying California law).

19 **B. Claim 31 Should Be Disallowed As It Is Duplicative of Landlord’s Claim 780**

20 Section 502(b) provides several grounds upon which a party can object to a proof of
 21 claim, including if “such claim is unenforceable against the debtor and property of the debtor,
 22 under any agreement or applicable law for a reason other than because such claim is contingent or
 23 unmatured.” *See* 11 U.S.C. § 502(b)(1). Here, Tenant’s Claim 31 should be disallowed in its
 24 entirety because it is a duplicate of Landlord’s Claim 780.

25 Nevada law defines “Security” as follows:

26 Any payment, deposit, fee or charge that is to be used for any of
 27 the following purposes is “security” and is governed by the
 28 provisions of this section and NRS 118A.242 and 118A.244:

1 (a) Remedying any default of the tenant in the payments of
2 rent.

3 (b) Repairing damages to the premises other than normal wear
4 caused by the tenant.

5 (c) Cleaning the dwelling unit.

6 N.R.S. 118A.240

7 N.R.S. § 118A.242(4) provides in pertinent part, “Upon termination of the tenancy by
8 either party for any reason, the landlord may claim of the security . . . only such amounts as are
9 reasonably necessary to remedy any default of the tenant in the payment of rent, to repair
10 damages to the premises caused by the tenant other than normal wear and to pay the reasonable
11 costs of cleaning the premises. The landlord shall provide the tenant with an itemized written
12 accounting of the disposition of the security . . . and return any remaining portion of the security
13 to the tenant no later than 30 days after the termination of the tenancy by handing it to the tenant
14 personally at the place where the rent is paid, or by mailing it to the tenant at the tenant’s present
15 address or, if that address is unknown, at the tenant’s last known address.” In the event a landlord
16 fails to return any remainder of a security deposit within 30 days after the tenancy has ended the
17 landlord is liable for damages. *See* N.R.S § 118A.242(6). These damages include an amount equal
18 to the entire deposit and a sum that is to be fixed by the court of not more than the amount of the
19 entire deposit. *Id.*

20 The Debtor filed for bankruptcy protection over three years ago and presumably a number
21 of leases have expired with tenants having relocated. Although the alleged embezzlement of
22 approximately One Million One Hundred Thousand Dollars (\$1,100,000) of the Security Deposits
23 was not the fault of the various homeowners and landlords, they are still liable to their tenants for
24 the return of the security deposits in accordance with Nevada law. *See* N.R.S § 118A.242. For this
25 reason, in the event a landlord and tenant have both filed a proof of claim relating to the same
26 security deposit, the Trustee believes that it would be equitable to allow the claim of the landlord
27 and disallow the claim of the tenant who has recourse against a landlord that fails to return a
28

1 security deposit as required under Nevada law. Accordingly, the Trustee now seeks an order
2 disallowing Tenant’s Claim 31 as it is a duplicate of Landlord’s Claim 780.⁶

3 **V. CONCLUSION**

4 For the foregoing reasons, the Trustee respectfully requests that the Court enter an order
5 (i) sustaining the Objection and (ii) for such other and further relief as is just and proper.

6 Dated this 31st day of July, 2018.

7 **HOUMAND LAW FIRM, LTD.**

8
9 By: /s/ Kyle J. Ortiz
10 Jacob L. Houmand, Esq. (NV Bar No. 12781)
11 Kyle J. Ortiz, Esq. (NV Bar No. 14252)
12 9205 West Russell Road, Building 3, Suite 240
13 Las Vegas, NV 89148
14 Telephone: 702/720-3370
15 Facsimile: 702/720-3371

16
17 *Counsel for Shelley D. Krohn, Chapter 7 Trustee*
18
19
20
21
22
23
24
25
26

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

27 _____
28 ⁶ The Trustee anticipates the filing of omnibus objections to proofs of claim based upon the Court’s ruling on the Objection.