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Attorneys for the Receiver

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

State of Arizona,
Plaintiff,
v.
Sherman Eugene Unkefer, III, *et al*,
In Personam Defendants.

Cause No. CV2014-006765

PETITION NO. 5
PETITION FOR APPROVAL OF
PROCEDURES FOR THE SALE OF
PERSONAL PROPERTY

(Assigned to the Honorable Colleen French)

Michael J. FitzGibbons, as the court appointed Receiver, respectfully petitions the
Court as follows:

1. On April 16, 2014, this Court entered its *Order Appointing Receiver*, which
appointed Michael J. FitzGibbons as Receiver of Mango Trust; X-1, LLC fka X-1, Inc.;
Magic Wand Services, LLC; Occidental Resources Group, LP; Occidental Management
Group; E.A.P. Trust; International Marketing Systems; G.M.S. LLC; Catshaker Family Trust,
Inc.; SLADUR; Black Rock, Inc.; and X-1 Global, LLC ("Receivership Entities").

1 2. Pursuant to the Receivership Order, the Receiver has located and taken
2 possession of certain personal property, some of which is described in the Receiver's *Petition*
3 *No. 3, Receiver's Preliminary Report and Petition for Order Approving Same* ("Preliminary
4 Report"). As of the date of filing this petition the Receiver has identified and taken
5 possession of the personal property described in the attached Exhibit "A". The Receiver
6 anticipates that he may in the future acquire additional personal property. All of the personal
7 property of the receivership estate currently in the possession of the Receiver or hereafter
8 acquired, is referred to collectively hereafter as the "Personal Property".

9 3. The Receiver has incurred and will continue to incur storage and maintenance
10 costs for the Personal Property in the possession and control of the Receiver, and in order to
11 eliminate these costs and therefore maximize the recovery to the receivership estate, the
12 Receiver recommends that all Personal Property currently in his possession or hereafter
13 acquired, be sold in accordance with the procedures set forth herein. The Receiver is also
14 concerned about the delay and expense borne by the receivership estate if the Receiver is
15 required to file a petition with this Court each time the Receiver seeks to sell an item of
16 personal property. In addition, the Receiver does not wish to burden this Court with routine
17 and ministerial receivership matters if an acceptable procedure for disposition of the Personal
18 Property can be established.

19 4. The Receiver proposes that Personal Property be disposed of by public sale,
20 public auction, abandonment, or surrender as set forth in the proposed order submitted with
21 this Petition. The order permits the Receiver to utilize a public sale or a public auction to

1 dispose of the Personal Property of the estate. No such sale can take place, however, until a
2 Notice describing the time, date, place, and type of sale is first provided to interested persons
3 who have requested such notice.

4 5. If the Receiver is unable to dispose of an item of Personal Property by public
5 sale or public auction, or if the Receiver determines that the property has a value of less than
6 \$100.00, the proposed order permits the Receiver to:

- 7 a. Dispose of the property by a negotiated sale;
8 b. Abandon the property to anyone entitled to purchase the property or
9 donate the property to a charity;
10 c. Destroy the property; or
11 d. Surrender it to a lessor or secured lien holder.

12 6. By way of example and without limiting the Receiver's choices to the
13 following, the following auctioneers have experience in auctioning personal property of a
14 receivership or bankruptcy estate:

- 15 a. Arizona Auctioneers, Inc. of Phoenix, Arizona ("Arizona Auctioneers")
16 and Cunningham & Associates, Inc. of Phoenix, Arizona ("Cunningham &
17 Associates") are firms that specialize in the auctioning and disposition of various types
18 of personal property. Generally for their services, these firms receive a commission of
19 approximately 10% of the sale price, together with reimbursement for the costs of
20 storing, maintaining and marketing the items. Since these firms sell to both wholesale
21 and retail buyers, with respect to motor vehicles they can in some cases obtain a

1 greater price for vehicles than an auto auctioneer, however, the costs of sale are
2 usually greater.

3 b. ADESA Auto Auction, also known as Southwest Auto Auction, of
4 Chandler, Arizona ("ADESA"), is a firm that specializes in selling motor vehicles
5 from a receivership or bankruptcy estate. Because ADESA sells only to wholesale
6 buyers (licensed dealers) in some cases it will receive a lower price for the vehicle.
7 However, the typical costs of sale by ADESA are considerably less, generally a flat fee
8 of approximately \$100.00 per vehicle and in some cases a charge for detailing the
9 motor vehicle in preparation for sale.

10 c. eBay.com ("EBay") together with its affiliated websites is the largest
11 internet marketplace for the sale of property, with over 47 million registered users.
12 Generally for its services EBay requires an insertion fee based on the item's appraised
13 sale price, which in the past could be as much as \$3.30 per item. In addition, EBay has
14 charged a commission of up to 1.5% of the final sale price.

15 d. There are no assurances that the Receiver will be able to negotiate
16 comparable fees from these or other established auctioneers in the case of future
17 auctions.

18 7. Any of the parties to this lawsuit are free to bid on and purchase any of the
19 Personal Property sold under the approved procedures, except that neither the Receiver nor
20 any of his employees or agents will be allowed to purchase or receive such property.
21

1 8. In the Receiver's experience, property sold under the procedures set forth in the
2 proposed order sells for a fair and reasonable price although it is impossible to predict
3 whether the proceeds generated will be greater than the proceeds that would have been
4 generated by the sale of the items under other procedures. The Notice procedures provide a
5 process by which interested parties can object to specific proposals put forth by the Receiver,
6 although in his experience, such objections are rarely raised due in part to the reasonableness
7 of the procedures proposed herein.

8 WHEREFORE, the Receiver respectfully requests that the Court enter an order:

9 1. Approving the procedures set forth in the propose order filed herewith and
10 summarized in this Petition and authorizing the Receiver to sell Personal Property of the
11 estate in accordance with those procedures;

12 2. Authorizing the Receiver to execute certificates of title and other documents as
13 may be necessary to effectuate the transfer of title to personal property sold pursuant to the
14 approved procedures.

15 Respectfully submitted this 16th day of July, 2014.

16 GUTTILLA MURPHY ANDERSON, P.C.

17 /s/Patrick M. Murphy
18 Patrick M. Murphy
19 Attorneys for the Receiver
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FILED
9/19/2014 4:30pm
MICHAEL K. JEANES, Clerk
By K. Ballard
K. Ballard, Deputy

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9 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
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11 IN AND FOR THE COUNTY OF MARICOPA

12 State of Arizona,)
13)
14 Plaintiff,)
15)
16 v.)
17 Sherman Eugene Unkefer, III, *et al*,)
18 *In Personam* Defendants.)

Cause No. CV2014-006765

ORDER APPROVING PROCEDURES
FOR THE SALE OF PERSONAL
PROPERTY

RE: PETITION NO. 5

(Assigned to the Honorable Colleen French)

14 The Receiver having filed *Petition No. 5*, and the Court having considered same, and it
15 appearing to the Court that the matters requested by *Petition No. 5* are reasonable, just and
16 appropriate:

17 NOW, THEREFORE, IT IS HEREBY ORDERED that the Receiver is authorized to
18 sell, abandon, or surrender the personal property of this receivership estate ("Personal
19 Property") in accordance with the following procedures:
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21

Public Sale

1. The Receiver may sell at a public sale the Personal Property in accordance with the following procedures:

a. The Receiver may sell the Personal Property at a public sale conducted by the Receiver or his staff or agents.

b. The Personal Property may be offered for sale at a specific Asking Price, established by the Receiver and the Receiver or his agent may, as deemed necessary, reduce the Asking Price in order to dispose of the property.

c. The Receiver may also set a reserve price below which the Personal Property will not be sold.

d. The Receiver shall conduct the public sale in a location and provide such advertising as in the opinion of the Receiver is appropriate given the nature, condition and value of the property to be sold.

e. The Receiver shall pay from the sale proceeds or other Receivership Assets all reasonable and customary costs incurred in connection with the sale.

Public Auction

2. In lieu of or in addition to a public sale, the Receiver may liquidate at a public auction the Personal Property in accordance with the following procedures:

a. The Receiver may sell the Personal Property to the highest bidder at a public auction conducted by an established auctioneer, including an established internet auction site.

1 b. The Receiver may also set a reserve price which may, in the Receiver's
2 sole discretion, be made public by the Receiver.

3 c. The Receiver shall pay from the sale proceeds or other Receivership
4 Assets all reasonable and customary costs incurred in connection with the auction.

5 **Direct Sale, Abandonment or Surrender**

6 3. In the event the Receiver is unable to sell an item of Personal Property under
7 the procedures described herein, or he determines that an item of Personal Property has an
8 appraised or estimated value of less than \$100.00, the Receiver may dispose of the item by
9 either a direct negotiated sale, donation to charity, abandonment or destruction.

10 4. If the Personal Property is encumbered by a secured debt and the Receiver
11 determines that the interest of the estate is insubstantial so as to not justify further efforts by
12 the Receiver to sell the property as provided herein, the Receiver may surrender the property
13 to the secured interest holder.

14 5. If the interest held by the Receiver is that of a lessee, the Receiver may
15 surrender the Personal Property to the lessor in exchange for the return of any deposits or
16 other consideration for the value, if any, of the interest held by the Receiver.

17 **Limitations on Persons Who Can Purchase Property**

18 6. Any of the parties to this lawsuit are free to bid on and purchase any of the
19 Personal Property sold under the approved procedures, except that neither the Receiver nor
20 any of his employees or agents will be allowed to purchase or receive such property.
21

Notice of Intended Sale or Abandonment

7. No personal property shall be sold or abandoned or otherwise disposed of under this order unless the Receiver first provides notice of the proposed sale or abandonment in accordance with the following procedures:

a. At least ten days prior to any sale or abandonment, the Receiver shall mail to every person entitled to receive such notice, a written Notice of the intended sale or abandonment describing the property to be sold or abandoned and the manner in which it will be sold or abandoned.

b. Every person who has made a request in writing to the Receiver shall receive the written Notice as provided in this paragraph addressed to the address provided to the Receiver. The Receiver may in his discretion provide additional notice as he deems appropriate.

c. Any person who wishes to object to the proposed sale or abandonment, shall file a written petition with this Court setting forth the objection and shall file and serve the petition on the Receiver not more than five days after mailing of the Notice by the Receiver.

d. If no objection is timely filed and served, the Receiver may sell or abandon the property without further order of the Court in accordance with these procedures and as described in the Notice.

1 e. If an objection is timely filed and served, the proposed sale or
2 abandonment shall not be completed until the petition setting forth the objection has
3 been decided by the Court as provided in the Court's *Order Re: Petition No. 2*.

4 8. The sale of personal property in accordance with this order does not require
5 further confirmation or approval by the Court.

6 IT IS FURTHER ORDERED that the Receiver is authorized to execute certificates of
7 title and other documents as may be necessary to effectuate the transfer of title to Personal
8 Property sold, abandoned or surrendered in accordance with this order.

9 Dated this 9 day of Sept., 2014.

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11 _____
12 Judge of the Superior Court
13 Randall H. Warner
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