

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS

_____))
In re) Chapter 7, No. 09-21945-JNF
))
ROBERT N. LUPO))
))
))
Debtor))
_____)

**FINAL APPLICATION FOR ALLOWANCE OF FEES AND EXPENSES BY
AARON POSNIK & COMPANY, INC., AS AUCTIONEER**

To the HONORABLE JOAN N. FEENEY, Bankruptcy Judge:

Now comes your Applicant, AARON POSNIK & COMPANY, INC., of 83 State Street, Springfield, Massachusetts ("Posnik") and, pursuant to 11 U.S.C. §§ 327 and 330, Rule 2016(a) of the Federal Rules of Bankruptcy Procedure, and MLBR 2016-1 and 6004-1, respectfully requests a final allowance of fees for professional services in the amount of \$12,268.80 and associated out-of-pocket expenses in the amount of \$20,275.89, in connection with services rendered to the Trustee as auctioneer in the above-captioned case. In support of this Application, Posnik respectfully represents as follows:

1. On December 10, 2009, Robert N. Lupo ("Debtor") filed a Voluntary Petition pursuant to the provisions of Chapter 11 of the United States Bankruptcy Code ("Code") with the United States Bankruptcy Court for the District of Massachusetts ("Court").

2. On or about September 18, 2010, Joseph B. Collins ("Trustee") accepted an appointment as Trustee of the Debtor's

Chapter 7 Bankruptcy Estate, and he continues to serve in that capacity.

3. On October 8, 2010, the Trustee filed an Application to Employ Aaron Posnik & Co., Inc. as Auctioneer and Request for Expedited Determination ("Application to Employ"), in which the Trustee sought authority to employ Posnik for the purpose of marketing and selling certain personal property of the Bankruptcy Estate and The Piano Man Incorporated at public auction (the property sold at auction is collectively referred to as the "Assets").¹

4. On October 12, 2010, the Court entered an Order allowing the Application to Employ. A copy of the Order authorizing Posnik's employment is annexed hereto as Exhibit "A".

5. On October 13, 2010, the Trustee filed a Motion seeking, inter alia, authority to sell the Assets by public auction, which Motion was granted by an Order of the Court entered on October 27, 2010.

6. On October 29, 2010, the Trustee filed a Motion for Authority to Conduct Internet Auction and Request for Pre-Approval of Auctioneer Expenses in Connection with Public Sale of Assets and Request for Expedited Determination ("Expense Motion").

¹ The Bankruptcy Estate owns 100% of the stock of The Piano Man Incorporated and is also owed an account receivable from The Piano Man Incorporated secured by an all-asset security interest.

7. On November 11, 2010, the Court entered an Order allowing the Expense Motion, which, inter alia, pre-approved the following anticipated expenses associated with the sale of the Assets:

(a) Up to \$100.00 per motor vehicle auctioned to employ a mechanic to insure all motorized equipment was operating properly and to clean and wash each vehicle;

(b) \$1,000.00 to make certain that each motor vehicle had fuel, oil, and necessary fluids;

(c) \$25.00 per day per vehicle for storage of vehicles;

(d) \$75.00 per vehicle to have each motor vehicle auctioned brought to the auction location;

(e) \$1,000.00 to prepare musical instruments, musical instrument accessories, sheet music, fixtures, and equipment for auction, including, without limitation, cleaning, inventorying, and photographing;

(f) \$1,000.00 to supervise the removal of motor vehicles from the towing site and to supervise removal of musical instruments and other personal property from the auction site;

(g) \$6,500.00 for advertising and marketing expenses; and

(h) \$350.00 for the base fee and \$50.00 per hour for the administration fee associated with the use of Bidspotter for the online portion of the auction.

A copy of the Order approving the Expense Motion is annexed hereto as Exhibit "B".

8. Posnik engaged in the following marketing activities in an attempt to maximize the value of the Assets for the Bankruptcy Estate:

(a) The auction sale was advertised in the Boston Globe newspaper on November 7, 2010 and November 14, 2010;

(b) The auction sale was advertised in the Springfield Republican newspaper on November 7, 2010 and November 14, 2010;

(c) The auction sale was advertised in the Manchester Union Leader newspaper on November 11, 2010;

(d) Posnik circulated approximately 2,500 auction notices via direct mail to individuals known to purchase assets at auction sales and individuals in industries relating to motor vehicles and musical instruments; and

(e) The auction sale was advertised on Posnik's website and on Bidspotter's Website.

9. In addition to marketing efforts undertaken by Posnik, the following additional tasks were performed by Posnik in an effort to maximize the value of the Assets for the Bankruptcy Estate:

(a) Posnik commissioned Bidspotter to host the internet webcast of the auction sale;

(b) Posnik ensured that each motor vehicle auction was cleaned, had proper fluids, and had working keys;

(c) Posnik oversaw the recovery of each of the motor vehicles auctioned and ensured that they were properly secured;

(d) Posnik cleaned, photographed, catalogued, and assigned lots for each of the 296 lots auctioned; and

(e) Subsequent to the auction sale, Posnik oversaw the removal of the Assets from the auction locations by successful purchasers.

10. On November 16, 2010, Posnik conducted the auction sale of the Assets at two separate locations in Waltham, Massachusetts. The auction was attended by 216 registered attendees, both in person and online. The auction of the Assets realized a gross sale price of \$224,376.00 (excluding the 3% commission to be paid to Bidspotter relating to successful bids by internet bidders, which totaled \$491.07).

11. Attached hereto as Exhibit "C" is a detailed explanation of labor costs associated with the preparation of the Assets and conducting the auction sale. In addition, the licensed auctioneer, Paul Scheer, spent approximately 60 hours supervising the marketing and preparation of Assets, addressing inquiries from potential buyers, working with the Trustee's counsel with respect to disclosures to be made at the sale and various concerns with respect to the Estate's title to the Assets, and attending and conducting the auction sale.

12. The work completed by Posnik has benefited the Estate by maximizing the amount recovered on behalf of the Estate. A final invoice for fees associated with Posnik's services rendered and expenses incurred (including copies of advertisements and receipts for expenses) is annexed hereto as Exhibit "D". A brief biography describing the background and experience of the professionals who performed services for the Estate is annexed hereto as Exhibit "E".

13. The actual expenses incurred in connection with this matter, as detailed in the attached Exhibit "D",² totaled \$20,275.89 (including the 3% commission due to Bidspotter on account of successful internet bids).

14. The sale of the Assets realized a total sale price of 224,376.00. Utilizing the formula set forth in MLBR 6004-1(d)(8)(B), your applicant is entitled to a total commission of \$12,268.80 calculated as follows:

10% of the first	\$ 10,000.00:	\$ 1,000.00
7% of the next	\$ 10,000.00:	\$ 700.00
6% of the next	\$ 35,000.00:	\$ 2,100.00
5% of the balance	\$169,376.00:	<u>\$ 8,468.80</u>
TOTAL COMMISSION DUE		\$12,268.80

15. All compensation and reimbursement of expenses sought hereunder are solely on account of services performed and

² The labor costs associated with the auction sale exceeded the amount pre-approved by the Court. Notwithstanding the actual labor costs set forth in Exhibit "C", Posnik has limited its request for reimbursement to the amount pre-approved by the Court.

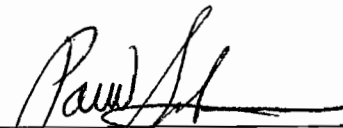
expenses incurred by Posnik, and such compensation will not be shared with any other party.

16. Posnik does not anticipate that further services to the Estate will be required.

WHEREFORE, Posnik respectfully requests the final allowance of fees in the amount of \$12,268.80 and expenses in the amount of \$20,275.89, all in connection with services rendered in this case through the date of this Application, and such other and further relief as the Court may deem just and proper.

Respectfully submitted,
AARON POSNIK & COMPANY, INC.

Dated: January 28, 2011



PAUL SCHEER, PRESIDENT
For AARON POSNIK & COMPANY, INC.
83 State Street
Springfield, MA 01103
Tel. (413) 733-5238
Fax (413) 731-5946