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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re
ROBERT M. KADJEVICH,
Debtor.

Case No. 587-05259-MM
Chapter 7

**ORDER APPORTIONING REAL
ESTATE BROKER'S COMMISSION ON
SALE OF 1450-1480 HALFORD
AVENUE, SANTA CLARA**

The Court having considered the statements of position by the parties; and it appearing that:

1. The parties entered into a settlement on April 27, 1995 globally resolving pending motions and numerous mutual claims by the parties and entered the terms of the settlement into the record.

2. Among the terms of the global settlement is that Nicholas Kadjevich, the brother of the debtor, would be given an opportunity to arrange financing so that he could purchase the probate estate's undivided one-half interest in 1450-1480 Halford Avenue, Santa Clara, California (Halford II). Nicholas Kadjevich and his assigns own the other one-half interest in the property. The bankruptcy estate of the debtor, Robert Kadjevich, has, at a minimum, a one-half interest in the assets of the the probate estate of Angela Kadjevich, the debtor's mother. That one-half interest is subject to a credit from Nicholas' share in the probate estate based on misfeasance by Nicholas.

3. The settlement provides that if Nicholas were able to close escrow on a sale of the probate estate's one-half interest in the property within sixty days of April 27, 1995, the real estate broker would reduce the customary six percent (6%) commission to three percent (3%).

4. A dispute arose whether the seller, the probate estate of Angela Kadjevich, would pay

1 the real estate commission or whether the commission would be apportioned between the probate
2 estate and the buyer, Nicholas Kadjevich. The parties reserved the issue of apportionment of liability
3 for the real estate's broker's commission and submitted the matter to the Court for determination
4 based upon equitable factors.

5 The Court further finds that:

6 1. David Austin, a licensed real estate broker of CB Commercial, was duly appointed as
7 real estate broker for the estate by order of the Court dated September 29, 1994 to list for sale,
8 market and to sell Halford II. The appointment is not subject to a time limitation, although the order
9 provides that the commission would be reduced to three percent (3%) if the property is sold to
10 Nicholas Kadjevich within 60 days.

11 2. The Trustee filed a Motion to Sell Halford II on January 5, 1995. Both Robert
12 Kadjevich and Nicholas Kadjevich objected to the Trustee's motion to sell Halford II.

13 3. Under the terms of the settlement, the sale of the one-half undivided interest in
14 Halford II to Nicholas shall proceed based on the highest bid of \$1,010,000.00. Heretofore, Nicholas
15 has asserted that the value of Halford II is \$875,000.

16 Based on the foregoing facts, the Court concludes as follows:

17 1. David Austin was duly appointed as real estate broker for the estate pursuant to the
18 Court's usual procedure for the appointment of professionals under 11 U.S.C. § 327 and Bankruptcy
19 Rule 2014.

20 2. In view of the practice that is customary in the community and the factors set forth in
21 In re Begun, 162 B.R. 168, 176 (Bankr. N.D. Ill. 1993), the broker's commission charged by David
22 Austin is reasonable.

23 2. The Trustee is duly charged with the duty of liquidating the assets of the bankruptcy
24 estate, and the manner and timing of disposition of those assets is largely a matter subject to the
25 Trustee's discretion and business judgment. See In re Grablowsky, 180 B.R. 134, 137 (Bankr. E.D.
26 Va. 1995).

27 3. Nicholas' delay in making a firm offer to the bankruptcy estate for the purchase of the
28 balance of the interests in Halford II was avoidable. The determination to await a judgment in the

1 San Mateo fraud litigation in order to bid that claim as an offset against the purchase price for the
2 remaining interests in Halford II was a strategic decision subject solely to Nicholas' discretion and
3 upon representation by counsel. Nicholas was not precluded from seeking to refinance the property
4 at an earlier point in time to facilitate an expedient disposition of the probate assets.

5 4. The Court must consider whether the benefit to the estate of a sale outweighs the
6 detriment to the co-owners in determining the propriety of a sale of a co-owner's interest under §
7 363(h). The benefits from the substantial equity generated from a sale may outweigh the detriment to
8 a co-owner. See In re Harris, 155 B.R. 948, 950-51 (Bankr. E.D. Va. 1993). Because determination
9 of whether the benefit outweighs the detriment of a sale necessarily requires the Court to review the
10 proposed sales price, the motion to sell the property becomes necessary to initiate the bidding
11 process. Only after the Court reviews the substance of the motion and the factors related thereto can
12 the determination be made that a sale would be premature.

13 Good cause appearing, it is ORDERED as follows:

14 1. The six percent (6%) real estate commission on the sales price of the one-half interest
15 of Halford II shall be apportioned equally between the probate estate of Angela Kadjevich and
16 Nicholas Kadjevich.

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