IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

In re:

PANTHERA ENTERPRISES, LLC | BK No. 2:19-bk-00787

Debtor | Chapter 7

MOTION TO COMPROMISE AND SELL ESTATE'S INTEREST IN AN UNSECURED PROMISSORY NOTE TO PANTHERA TRAINING, LLC FOR $100,000.00

Comes now Aaron A. Amore, Trustee ("Trustee") in the above referenced case and moves the Court for approval of a compromise to liquidate the Bankruptcy Estate's sole remaining asset, an unsecured promissory note payable by Panthera Training, LLC, for One Hundred Thousand Dollars and Zero Cents ($100,000.00) pursuant to 11 U.S.C. §§ 105, 541, 704, and Fed. R. Bankr. P. 2002, and 9019. The Trustee desires to liquidate this remaining asset in order to fully administer this case and foster its closure. In support of this motion, the Trustee states as follows:

1. The Debtor filed its voluntary petition under Chapter 11 of the Bankruptcy Code on September 13, 2019, the Friday before a foreclosure sale of the Debtor's real property was to take place on Monday, September 16, 2019.

2. The bankruptcy proceeding was converted to a Chapter 7 by Order of the Court entered July 21, 2020, and Aaron C. Amore was appointed the Chapter 7 Trustee ("Trustee").

3. Administration of the case was challenging given that multiple Adversary Proceedings were filed with secured and unsecured lienholders asserting claims on the Debtor's assets, which primarily consisted of the Debtor's real property known as 2506 Fishpond Road, Old Field, Mineral County, West Virginia.

4. The Trustee filed a motion to sell the Debtor's real property, fixtures and improvements on March 29, 2021 which led to multiple objections and further negotiation by the Trustee with various parties. A motion to compromise/settle the adversary proceedings and resolve objections to the Trustee's original motion to sell was filed on or about June 2, 2021.

5. The Court held a hearing on said motion to compromise on June 22, 2021 and ultimately entered an order on June 25, 2021 approving the sale, compromise/settling the adversary proceeding and resolving objections to the Trustee's motion to sell.

6. Pursuant to the Court's order, the sale took place July 20, 2021 at which time the purchaser, Panthera Training, LLC, signed a Promissory Note ("Note") for Two Hundred and Seventy-Five Thousand Dollars ($275,000.00). **See Exhibit A**.

7. Under the terms of the Note, Panthera Training, LLC was to make payments to the Trustee as fees from certain government contracts for training at the facility were earned, until such time as the contracts were fully novated.

8. From the period beginning July, 2021 and ending February of 2023, Panthera Training, LLC did make periodic payments to the Trustee as trainings were conducted and fees earned, reducing the outstanding amount of the note to Two Hundred Thousand Seventeen Four Hundred Four Dollars and Seventy-Two Cents ($217,404.72). The amount and dates of payment are recorded on the spreadsheet attached as **Exhibit B**.

9. The remaining outstanding balance on the note is due and payable in full on or before September 30, 2024.

10. Since February of 2023 the contracts have been fully novated, and no payments have been made on the Note.

11. Robert Starer, one of the principals of Panthera Training, LLC, became increasingly ill in 2023 and passed away in February of 2024.

12. Just prior to and following his death, Merle Starer "Starer," the remaining principal of Panther Training, LLC, subsequently marketed the property for sale at a price designed to sufficiently cover the secured and unsecured debt, including the Note held by the Bankruptcy Estate. Starer provided periodic updates on prospective purchasers and status of offers, many of which seemed promising.

13. On or around June 28, 2024, Starer contacted the Trustee indicating that Panthera Training, LLC has been unable to attract a buyer who has both the technical capability of operating the facility and the financial resources to complete

the transaction and offered to purchase the note for One Hundred Thousand Dollars and Zero Cents ($100,000.00).

14. The Buyer is not an insider of the Debtor, and the sale represents an arms-length transaction between the parties, made without fraud, collusion, and no attempt has been made by either party to take any unfair advantage of the other.

15. The Trustee solicited bids from companies known to purchase Bankruptcy Estate assets with an original deadline to submit of July 10, 2024 which was later extended to July 15, 2024. To date, no bids to purchase the Note have been received by the Trustee.

LEGAL STANDARD

A decision to compromise a claim is also reviewed under the business judgment test. E.g., *In re OptInRealBig.com, LLC*, 345 B.R. 277, 292 (Bankr. D. Colo. 2006) ("Where an application under Rule 9019 is appropriate, the Court's job is to determine whether a given settlement is fair and equitable to the estate. In making its determination, the Court gives some deference to the business judgment of the debtor-in-possession."). A review of that business judgment generally turns on the outcome of four factors: (1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors. *Fry's Metals, Inc. v. Gibbons* (*In re RFE Industries, Inc.*), 283 F.3d 159, 165 (3rd Cir. 2003). See also *Protective Committee for Independent*

Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-25 (1968) (same); *Drexel v. Loomis,* 35 F.2d 800, 806 (8th Cir. 1929) (same). A compromise of claims under Rule 9019 serves the purpose of binding the bankruptcy estate and the creditor to the terms of the bargain struck by the parties. *OptInRealBig.com*, 345 B.R. at 291.

Consideration of *Fry* factors:

(1) the probability of success in litigation-The note is in default and will be due and payable on or before September 30, 2024. There is little impairment to action on the note, as maker "waives presentment, demand, protest and notice of dishonor…"

(2) the likely difficulties in collection- The Trustee sees little, if any ability to secure the note to assets of Panthera Training, LLC as the terms of the note make it subject to the debt owed to the WVEDA and limits enforceability by the holder of the note and any subsequent holder of the note. The note was part of the larger motion to compromise and was limited in its nature in order to secure the acceptance of WVEDA.

(3) the complexity of the litigation involved- The issues surrounding the default on the note do not involve complex litigation and would not significantly increase the costs to the Estate. It would delay the overall case if enforcement efforts were sought in comparison to the compromise offered in this motion. If the

Court approves this motion, the Trustee will be able to conclude this matter in the 2024 tax year sufficient so no additional tax return is due which will reduce the expenses to the Estate.

(4) the paramount interest of the creditors- The compromise would reduce recovery to the priority creditors. The compromise would pay the claims of the Trustee for his expenses, the balance of his compensation due from the original motion to compromise, the attorney for the Trustee, the claim of the U.S. Trustee and then pay a little over Twenty (20%) of the administrative priority claim of Bernstein-Burkley. Even assuming full payment on the note, there would be a very small recovery to the administrative priority claims after Bernstein-Burkley's claim.

The Trustee asserts the Note has severely limited marketability as it is unsecured with no collateral available to create security to increase the value of the Note. Any transfer or assignment of the Note also requires the written acceptance of WVEDA and limits ability to both secure the note and receive payment, depending on the status of payments to the WVEDA.

The Trustee believes that the sale of the Note to Panthera Training, LLC is in the best interest of the Estate and will result in funds being available to administer. Additionally, as this case has been pending since September of 2019, approval of the compromise and sale of the note will expedite the final administration and closure of this case. The Trustee believes that said offer is fair and reasonable and that accepting the compromise and approving the sale will result in a benefit to the estate by expediting its administration, especially given the limited marketability of the Note and the length of time this case has remained open.

The Trustee has not included normal upset bid language as any assignment and/or transfer of the note would require the written acceptance of the WVEDA. If such an objection to the motion is filed and request to bid, the Trustee can request written consent from the WVEDA and further relief from this Court.

WHEREFORE, the Trustee moves the Court for authority to compromise the estate's interest in the Promissory Note and Sell the Note for One Hundred Thousand Dollars ($100,000.00) to Panthera Training, LLC.

Respectfully submitted,

/s/ Aaron C. Amore
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