

PENACHIO MALARA, LLP  
Anne Penachio, Esq.  
245 Main Street - Suite 450  
White Plains, New York 10601  
T: (914) 946-2889  
F: (914) 206-4884

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

**HEARING DATE and TIME:  
FEBRUARY 16, 2022 at 10:00**

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In re :

CHAPTER 11

ANTHONY J. MONTARULI, :

Debtor. :

CASE NO.: 21-22443-shl

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**NOTICE OF HEARING ON THE DEBTOR’S APPLICATION FOR (I) APPROVAL OF THE SALE OF REAL PROPERTY AT 99 ROCKLEDGE ROAD, BRONXVILLE, NEW YORK 10708 TO IBRAHIM RABADI AND SUHEIR RABADI FREE AND CLEAR OF ALL CLAIMS PURSUANT TO 11 U.S.C. §§363 (b) AND (f); (II) APPROVING DISTRIBUTION OF PROCEEDS OF THE SALE PURSUANT TO 11 U.S.C. §506(a) AND 506(c); (III) AUTHORIZING RETURN OF EARNEST MONEY DEPOSIT HELD IN ESCROW IN CONNECTION WITH A PRIOR PROPOSED SALE; (IV) ADJUSTING THE REAL ESTATE BROKER’S COMMISSION TO CONFORM TO THE PURCHASE PRICE; (V) AND GRANTING SUCH OTHER RELIEF AS IS APPROPRIATE**

**PLEASE TAKE NOTICE**, that a hearing on the application of **ANTHONY J. MONTARULI**, the above-referenced debtor (the “Debtor”), for approval of (i) the sale of real property located at 99 Rockledge Road, Bronxville, NY 10708 (the “Home”) to Ibrahim Rabadi and Suheir Rabadi (the “Buyers”) free and clear of all claims pursuant to 11 U.S.C. §§363(b) and (f); and (ii) approving the distribution of proceeds pursuant to 11 U.S.C. §506(a) and (c); and (iii) granting such other and further relief as is just and proper will be held before the Honorable Sean H. Lane, United States Bankruptcy Judge, remotely by Court Solutions or other service provider at 10:00 am on February 16, 2022.

**PLEASE TAKE FURTHER NOTICE**, that information as to appearances

before the Court are available on the Court's website [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov). Please refer to same and/or contact the undersigned for guidance.

**PLEASE TAKE FURTHER NOTICE**, that the terms of the sale are fully set forth in detail in the application and consist of the following material terms:

1. The assets transferred consist of the Home.
2. The purchase price is \$880,000.00.
3. The down payment is \$88,000.00.
4. The sale is not subject to a financing contingency as it is an “all cash” deal.
5. The sale is “as is”.

**PLEASE TAKE FURTHER NOTICE** that the sale is subject to higher and better offers.

**PLEASE TAKE FURTHER NOTICE** that the sale must be consummated on or before March 31, 2022;

**PLEASE TAKE FURTHER NOTICE** that the Home will be transferred free and clear of all liens, claims and encumbrances, which will attach to the proceeds.

**PLEASE TAKE FURTHER NOTICE** that the Debtor seeks to pay Village Realty, the real estate broker, an adjusted commission based upon the new purchase price.

**PLEASE TAKE FURTEHR NOTICE** that the Debtor seek authority to return the earnest money deposit to the prior purchaser.

**PLEASE TAKE FURTHER NOTICE** that a copy of the Application can be obtained from the Bankruptcy Court website, [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov) or from the undersigned upon request.

**PLEASE TAKE FURTHER NOTICE** objections, if any, to the relief sought in

the application, must comply with applicable law and be served upon and received by the undersigned, with a copy to the Bankruptcy Judge and the Office of the United States Trustee.

**PLEASE TAKE FURTHER NOTICE** that, unless objections are interposed, the relief sought in the application may be granted.

Dated: White Plains, New York  
January 30, 2022

/s/ Anne Penachio  
Anne Penachio  
PENACHIO MALARA, LLP  
Counsel for the Debtor  
245 Main Street - Suite 450  
White Plains, New York 10601  
T: (914) 946-2889  
F: (914) 206-4884

PENACHIO MALARA LLP  
Anne Penachio, Esq.  
Counsel for the Debtor  
245 Main Street, Suite 450  
White Plains, NY 10601  
(914) 946-2889

**HEARING DATE AND TIME:  
FEBRUARY 16, 2022 at 10:00 AM**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re

ANTHONY J. MONTARULI,

CHAPTER 11

Case No.: 21-22443-shl

Debtor.

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**THE DEBTOR’S APPLICATION FOR (I) APPROVAL OF THE SALE OF REAL PROPERTY AT 99 ROCKLEDGE ROAD, BRONXVILLE, NEW YORK 10708 TO IBRAHIM RABADI AND SUHEIR RABADI FREE AND CLEAR OF ALL CLAIMS PURSUANT TO 11 U.S.C. §§363 (b) AND (f); (II) APPROVING DISTRIBUTION OF PROCEEDS OF THE SALE PURSUANT TO 11 U.S.C. §506(a) AND 506(c); (III) AUTHORIZING RETURN OF EARNEST MONEY DEPOSIT HELD IN ESCROW IN CONNECTION WITH A PRIOR PROPOSED SALE; (IV) ADJUSTING THE REAL ESTATE BROKER’S COMMISSION TO CONFORM TO THE PURCHASE PRICE; (V) AND GRANTING SUCH OTHER RELIEF AS IS APPROPRIATE**

**TO: THE HONORABLE SEAN H. LANE,  
UNITED STATES BANKRUPTCY JUDGE:**

The application of **ANTHONY J. MONTARULI**, (the “Debtor”), through his counsel, **PENACHIO MALARA LLP**, for (i) approval of the sale of real property located at 99 Rockledge Road, Bronxville, New York 10708 (the “Home”) to **IBRAHIM RABADI** and **SUHEIR RABADI** (together the “Buyers”) free and clear of all claims pursuant to 11 U.S.C. §§363(b) and (f); and (ii) approving the distribution of proceeds pursuant to 11 U.S.C. §506(a) and (c); and (iii) authorizing the return of the earnest money deposit held in escrow by counsel in

connection with a prior sale; (iv) adjusting the real estate broker's Commission granted by order dated January 6, 2022 (Dkt. No. 44); and granting such other and further relief as is just and proper, respectfully sets forth and alleges as follows:

### INTRODUCTION

1. The Debtor seeks approval of the sale of the Home to the Buyers. The Court already approved the sale of the Home to a different buyer, Afrim Kullashi and Vlora Kullashi (together, the "Prior Purchaser"). The purchase price was \$850,000.00 and there was a mortgage contingency. A copy of the order approving the sale to the Prior Purchaser is annexed hereto as Exhibit A (the "Prior Order"). It was entered on November 23, 2022 as Dkt. No. 39.

2. In connection with the transaction, the Prior Purchaser placed \$40,000.00 in escrow as an earnest money deposit (the "Deposit").

3. The Prior Order imposed January 21, 2022 as the deadline for closing. The Prior Purchaser was unable to perform their obligations in connection with the sale. Specifically, the Prior Purchaser repudiated the contract on the grounds that it did not obtain financing, a contingency of the contract.

4. Shortly thereafter, the Debtor relisted the Home. The Broker conducted several showings and scheduled an "open house." The Broker received multiple offers. The Debtor accepted the Buyers' offer as the "highest and best." The purchase price is \$880,000.00 "all cash" with no contingencies.

5. The Debtor, through counsel, communicated the foregoing to counsel for Select Portfolio Servicing ("SPS") which holds or services the mortgage on the Home. SPS agreed to extend the deadlines for payment subject to revised conditions (i.e. no financing contingency). SPS agreed to the form of an order subject to the Court's approval. A copy of the proposed Order is annexed hereto as Exhibit B.

6. The Debtor entered in a contract with the Buyers (the "Contract").

7. The Debtor seeks to return the Deposit to the Prior Purchaser. The Debtor has doubts about whether the Prior Purchaser is entitled to the return of the Deposit which constitute liquidated damages. However, because the Contract with the Buyers is on better terms with a higher purchase price, the Debtor seeks to return the Deposit to the Prior Purchaser subject to Court approval. It is submitted that it does not make sense for the Debtor to engage in what could be protracted and uncertain litigation when his actual damages should be negligible.

8. The Debtor also seeks to modify the commission payable to the real estate broker retained in the case (the "Broker"). The Broker is entitled to a 5% commission pursuant to the terms of her retention which were approved by the Court. See Exhibit C. The Broker agreed to reduce the amount due in the prior deal because there was not enough to satisfy the amount due to SPS as reduced. With the increased purchase price, a reduction of the Broker's commission is no longer necessary. It is submitted that the Broker, who worked diligently, is entitled the commission provided for her retention agreement.

### **BACKGROUND**

9. On August 2, 2021, the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, as amended (the "Bankruptcy Code") with the Clerk of this Court and the case was referred to the Bankruptcy Judge herein. The Debtor elected to be treated as a small business Subchapter V.

10. Since the filing, the Debtor has remained in the possession and control of his property in accordance with 11 U.S.C. §§1107 and 1108. No committee, trustee or examiner has been appointed.

11. The Debtor initially elected to be treated as a debtor under Sub Chapter V of Chapter 11. However, after the Debtor's eligibility was questioned by the Office of the United

States Trustee, the Debtor withdrew the election. The Debtor did not believe that it made sense to expend time and effort in challenging the UST on this matter.

12. The Debtor has been experiencing financial reverses for several years. As explained briefly below, such reverses were caused by a combination of factors including the death of his wife, difficulties involving the ownership and operations of his Kumon tutoring franchise after his wife's death, reduction in income and the downturn in the real estate market.

13. For years, the Debtor was employed in the management and inventory analysis field of a curtain company. He also assisted his wife, who had a teaching background, in the operations of a Kumon tutoring franchise.

14. After his wife's death, because, in part, the Debtor lacked a formal teaching background, Kumon required him to transfer a 51% controlling interest in the franchise to another partner who met Kumon's standards. The Debtor remained involved in the franchise's operations. In addition to working at Kumon, the Debtor was employed in the management and inventory field at a curtain company.

15. The Debtor operated the franchise successfully for a number of years after his wife's death. It was a significant source of income for him.

16. At the end of 2020, as a result of mounting losses caused by the global COVID-19 pandemic, the Debtor surrendered ownership of his Kumon franchise to Kumon North America (i.e., Kumon's U.S. corporate office). Since the filing, the Debtor has been in the process of "winding down" the LLC that operated the Kumon franchise (i.e. collecting amounts due, paying final bills, preparing final tax returns and making final distributions).

17. The Debtor presently continues working for Kumon as an employee. In addition to working for Kumon, the Debtor also provides independent bookkeeping services. He no longer works for the curtain company, his position having been eliminated after approximately

30 years of service. The Debtor receives social security benefits and reduced unemployment benefits.

18. The Debtor's primary asset is the Home. Until 2019, the Debtor's in-laws (his late wife's parents) resided with him.

19. The Home was encumbered by senior and junior mortgages both of which were held or serviced by SPS. Upon information and belief, the proceeds of the junior mortgage were invested in the Kumon franchise.

20. Although the Debtor was able to make "interest-only" payments to SPS during the early stages of the loan, once the loans became "fully amortized" and principal became due, the payments became overwhelming. The Debtor sought modification of the mortgage but, after a lengthy process with no end in sight, he decided to sell the Home instead. Pre-petition, the Debtor listed the house for sale with the Broker.

21. In the context of his application for loan modifications, SPS released the junior mortgage on the Home and issued a satisfaction. However, it did not relieve the Debtor of his obligations under the attendant note for which the Debtor may remain liable.

22. After a protracted marketing process, the Debtor finally entered into a contract to sell the Home with the Prior Purchasers who placed the Deposit in escrow with the undersigned.

23. SPS consented to same subject to, in sum and substance, it receiving \$800,000.00 plus certain real property tax credits on or before January 21, 2022. As noted above, this Court approved the sale (See Order annexed here to as Exhibit A).

24. The Prior Purchaser was not able to procure the necessary financing to close on the contract and, as such, repudiated the transaction and requested return of the Deposit. Although the Prior Purchaser requested an extension of time, the Debtor, in exercising his



business judgment, did not believe that it was prudent given the denial which was supposedly based upon the lack of substantiation of income.

25. The Broker immediately undertook efforts to place the Home back on the market and held an open house. According to the Broker, there were multiple offers. The Debtor accepted the offer from the Buyers which he believes is the "highest and best" offer.

26. On or about January 27, 2022, the Debtor entered into a contract to sell the Home to the Buyers. A copy of the Contract is annexed hereto as Exhibit D.

### **THE CONTRACT**

27. The Contract is fairly standard and contains the following principal terms:

- (1) The purchase price is \$880,000.00.
- (2) The down payment - \$88,000.00
- (3) There is no mortgage contingency as it will be an "all cash" deal.
- (4) The sale of the Home is "as is".

28. Upon information and belief, the purchase price is slightly less than the amount due to SPS which has agreed to limit its recover to \$800,000.00 plus an adjustment for accrued real property taxes.

### **RELIEF REQUESTED HEREIN**

29. By the Application, the Debtor seeks an order from this Court (i) approving the sale of his right, title and interest in the Home under 11 U.S.C. §§363 (b) and (f) with any and all liens to attach to proceeds; (ii) approving the distribution of proceeds pursuant to 11 U.S.C. §506(a); (iii) approving the return of the Deposit to the Prior Purchaser; (iv) awarding the Broker an additional commission based upon the increased purchase price; ; (v) granting such other and further relief as is just and proper.

**JURISDICTION AND STATUTORY PREDICATES FOR RELIEF**

30. This Court has jurisdiction over the Application pursuant to 28 U.S.C. §§157 and 134 and the “Standing Order of Referral of Cases to Bankruptcy Judges” dated July 10, 1984 (Ward, Acting C.J.). The statutory predicates for the relief sought herein are Sections 105 and 363 of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Local Rules for the United States Bankruptcy Court for the Southern District of New York.

**THE SALE OF THE ASSETS SHOULD BE APPROVED UNDER 11 U.S.C. §363(b)**

31. Pursuant to Section 541(a) of the Bankruptcy Code, upon the filing of the Debtor’s Chapter 11 petition, the Home became property of his estate in bankruptcy.

32. Section 363(b)(1) of the Bankruptcy Code provides that, after notice and a hearing, a debtor may sell property of the estate other than in the ordinary course of business.

33. The standard for determining whether a sale outside the ordinary course of business should be approved is whether the sale is in the best interests of the estate. *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983); *In re Ionosphere Clubs*, 100 B.R. 670, 674-75 (Bankr. S.D.N.Y. 1989). Indeed, there must be some articulated business justification for the sale. *Lionel* at 1070. *See In re Boston Generating, LLC*, 440 B.R. 302, 321 (Bankr. S.D.N.Y. 2010);

34. In determining whether a sale is in the best interests of the estate, the following factors (the “Lionel Factors”) are considered: (i) the proportionate value of the asset to be sold to the estate as a whole; (ii) the effect of the proposed disposition to the debtor’s plan of reorganization; (iii) which of the alternatives of use, sale or lease of the proposal envisions; (iv) the likelihood that a plan of re- organization will be confirmed in the near future. (v) The amount of time that has elapsed since the filing; (vi) the proceeds to be obtained in relationship to any valuations of the property to be sold; and (vii) whether the assets are decreasing or increasing in

value.

35. Courts have also considered the following questions: (i) Does the estate have the liquidity to survive until confirmation of a plan?; (ii) Will the sale opportunity exist at the time of confirmation and, if not, will there be an alternative sale opportunity?; and (iii) Is there a material risk that by deferring a sale, the debtor will not survive? *See In re General Motors Corp.*, 407 B.R. 463, 490 (Bankr. S.D.N.Y. 2009) (the “GM Factors”).

36. In applying the pertinent Lionel Factors to the instant case, it is clear that the proposed sale is in the best interests of the Debtor’s estate and the creditors therein. First, the asset to be sold at this juncture constitutes the Debtor’s assets.

37. Second, the Debtor’s creditors will receive a distribution from the proceeds of the sale.

38. Third, the Debtor is hopeful that he can confirm a plan of reorganization or develop an exit strategy within the next six months. The sale of the Property is an essential component of the Debtor’s plan to emerge from Chapter 11.

39. Fifth, it is submitted that the purchase price is fair and reasonable. In fact, it exceeds the sales price in the contract with the Prior Purchaser.

40. Sixth, the asset which the Debtor is seeking to transfer is probably not increasing in value and may be depreciating in value as it continues to withstand wear and tear and age thereby potentially causing the Debtor and his creditors further losses.

41. The GM Factors also support approval of the sale. The sale is the most viable and expeditious way for the Debtor to emerge from Chapter 11.

**SALE SHOULD BE FREE AND CLEAR OF LIENS UNDER 11 U.S.C. §363(f)**

42. Section 363(f) of the Bankruptcy Code permits a debtor to sell property of the bankruptcy estate free and clear of all liens and encumbrances, only if:

- a. Applicable non-bankruptcy law would permit such a sale;
- b. The entity holding the lien consents;
- c. The interest is a lien and the sales price exceeds the aggregate value of all liens;
- d. The interest is in bona fide dispute; and
- e. The entity holding the lien could be compelled in a legal or equitable proceeding to accept money in satisfaction of its interest.

43. In the instant case, the sale meets the requirements set forth in 11 U.S.C. §363(f). The purchase price is equal to the determined value of the liens on the Home by reference to 11 §506(a). See *In re Boston Generating, LLC*, 440 B.R. 302, 316-19 (Bankr. S.D.N.Y. 2010).

44. Moreover, SPS, the secured creditor that holds a mortgage on the Home, has consented to the sale subject to the following conditions:

- A. SPS must be paid \$800,000.00 plus an adjustment for real property taxes in full satisfaction of its claim against the Debtor;
- B. SPS must receive the foregoing payment by March 31, 2022;
- C. In the event that SPS does not receive the said payment on or before March 31, 2022, it may seek to enforce its lien on the Home; and
- D. In the event that SPS does not receive the payment as agreed to, it may seek the entire amount due from the Debtor.

45. Given that the sale is to the Buyer is "all cash" and "as is", with no material contingencies, the Debtor is comfortable with the foregoing conditions imposed by SPS.

**THE BROKER'S COMMISSION SHOULD BE INCREASED**

46. The Broker's agreement, which was approved by the Court, calls for a commission of 5% (See Ex. D). The Broker agreed to reduce the commission in connection with the contract with the Prior Purchasers and the Court approved its compensation on that basis. The Order approving the Broker's commission reflects a reduced amount. A copy of the Order is annexed hereto as Exhibit E.

47. Under the current contract, the purchase price is \$880,000.00. The commission due on such price is \$44,000.00. It is submitted that the Broker, who worked diligently in this matter, should receive the commission agreed to.

**THE PROCEEDS OF THE SALE**

48. Following the sale, the following approximate amounts should be paid pursuant to 11 U.S.C. §506(a) and (c):

A. First Mortgage held by SPS or its successor-the balance after costs associated with the sale in the amount of approximately \$800,000.00.

B. Transfer Tax and Title Charges-Transfer taxes (estimated to total \$5,000.00) and ordinary title charges will be paid at the closing.

C. Broker's commission and legal fees, subject to Court approval, will be paid at the closing in the amount approved by the Court. The real estate broker is entitled to 5% of the selling price or approximately \$44,000.

D. The Subchapter V trustee fees which were approved by the Court in the amount of \$2,567.5. A copy of the order approving same is annexed hereto as Exhibit F.

E. Counsel's compensation which were approved by this Court in the amount of \$19,763.49.

F. Any outstanding US Trustee fees.

Any remaining funds (which are estimated to total in the range of \$10,000.00) will be held by the Debtor in the Debtor-in-Possession account to fund a plan.

49. Based upon the foregoing, it is submitted that all creditors are sufficiently protected. Moreover, the Buyers will receive clear title to the Property under 11 U.S.C. §363(f). The Debtor will no longer have the burden of upkeep.

**THE DEBTOR MAY RETURN THE DEPOSIT**

50. It is submitted that given that the contract with the Buyers is on better terms than the contract with the Prior Purchaser, the Debtor requests permission to return the Deposit to the Prior Purchaser. While the Debtor believes that he may be entitled to retain the Deposit as liquidated damages, given the fact that there are little if any actual damages, it is appropriate to return the Deposit.

**NOTICE AND WAIVER OF MEMO OF LAW**

51. Notice of the Application which contains the salient provisions of the proposed relief will be served, in accordance with the anticipated direction of this Court, on all parties in interest, secured creditors, all other known creditors, and their attorneys, if known, the Office of the United States Trustee, the former Subchapter V Trustee and the Buyers. It is respectfully submitted that such service is appropriate under the circumstances.

52. Because the facts and circumstances set forth herein do not present novel issues of law, it is respectfully requested that this Court waive the requirement of the filing of a memorandum of law.

**WHEREFORE**, it is respectfully requested that this Court grant the relief requested herein  
and all other relief that it deems necessary.

Dated: White Plains, New York  
January 30, 2022

**PENACHIO MALARA, LLP**

/s/ Anne Penachio

Anne Penachio  
Counsel to the Debtor  
245 Main Street-Suite 450  
White Plains, NY 10601  
(914) 946-2889