

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re) CHAPTER 11
)
YOUNGSTOWN OSTEOPATHIC) Judge William T. Bodoh
HOSPITAL ASSOCIATION)
) Case No. 99-40663
Debtor)

CERTIFICATE OF SERVICE

A copy of the foregoing *Order (A) Prescribing the Form and Manner of Notice of Hearing and Scheduling Hearing on Motion to Sell Debtor's Hospital Facility and of Auction Sale in Connection Therewith and (B) Approving Competitive Bidding Procedures Respecting Auction Sale of the Hospital Facility*, along with a copy of this Certificate of Service, was sent by regular U.S. Mail, postage prepaid, to all parties listed on the annexed Service List on the 16th day of October, 2001.

Nadler Nadler & Burdman Co., L.P.A.
20 Federal Plaza West, Suite 600
Youngstown, Ohio 44503

By: Trina L. Pape
Trina L. Pape, Secretary

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Cleveland, OH 44114

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Boardman, OH 44512

Mahoning, County of
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National City Bank
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Ohio Bureau of Employment Services
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Revenue Recovery Section
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City Planning Commission and Board of
Zoning Appeals
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Youngstown, OH 44503

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Attention: William Kutlick
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National City Bank-Bond Trustee
Attn: Catherine Frug, Administrator
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United States of America
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Attn: Stuart A. Treby, Esq., Asst. General
Counsel for Rulemaking & Fuel Cycle
Washington, D.C. 20555-0001

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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NORTHERN DISTRICT
YOUNGSTOWN

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In re : CHAPTER 11
: :
YOUNGSTOWN OSTEOPATHIC : JUDGE WILLIAM T. BODOH
HOSPITAL ASSOCIATION, : :
: :
Debtor. : CASE NO. 99-40663
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ORDER (A) PRESCRIBING THE FORM AND MANNER OF NOTICE OF HEARING AND SCHEDULING HEARING ON MOTION TO SELL DEBTOR'S HOSPITAL FACILITY AND OF AUCTION SALE IN CONNECTION THEREWITH AND (B) APPROVING COMPETITIVE BIDDING PROCEDURES RESPECTING AUCTION SALE OF THE HOSPITAL FACILITY

On October ~~16~~¹⁶ 2001, Youngstown Osteopathic Hospital Association (the "Debtor"), debtor and debtor in possession, pursuant to sections 102, 105(a) and 363(b) and 363(f) of Title 11 (the "Bankruptcy Code") of the United States Code and Bankruptcy Rules 2002(a)(2), (c)(1), (k), and (m) and 6004, filed (i) its motion (the "Competitive Bidding Motion") for an order (a) prescribing the form and manner of notice of hearing and scheduling the hearing on the Debtor's motion to sell its hospital facility (the "Premises") and of the auction sale (the "Auction Sale") to be conducted in connection therewith and (b) approving Competitive Bidding Procedures (as defined in the Competitive Bidding Motion) respecting the Auction Sale of the Premises and (ii) simultaneous therewith, its motion (the "Sale Motion") for an order (a) authorizing Debtor to enter into and perform under the CMD Agreement (as defined in the Competitive Bidding Motion) with CMD Realty Group, LLC (the "Purchaser"), and (b) approving the sale of the Premises to the Purchaser or Successful Competitive Bidder (as defined in the Competitive Bidding Motion), free and clear of liens, claims, and encumbrances.

Upon consideration of the Competitive Bidding Motion and the statements of counsel, the Court finds that it is appropriate to commence an orderly process for the receipt of upset or competitive bids by third parties to purchase the Premises; that the Competitive Bidding

Procedures (as set forth below) are fair and reasonable that, in April 2001, the Court approved notice and sale procedures similar to and consistent with those in the Competitive Bidding Motion in connection with the Debtor's proposed sale of the Premises to Mahoning County Chemical Dependency Programs, Inc.; and that due and sufficient notice of the Court's consideration of the Competitive Bidding Motion was duly served upon all requisite parties in interest. Therefore, the Court being fully advised, and for good cause shown, it is

ORDERED that, upon the terms as hereinafter set forth, the Competitive Bidding Motion is hereby granted; and it is further

ORDERED that the following Competitive Bidding Procedures are hereby approved:

Third parties may submit competing or upset bids to purchase the Premises in accordance with the following Competitive Bidding Procedures:

(a) Only pre-qualified bidders and PNC Bank, which is entitled to make a credit bid (a "Qualified Bidder" or collectively, "Qualified Bidders"), shall be entitled to bid and submit a competitive bid to purchase the Premises at the Auction Sale, which shall be conducted in the Bankruptcy Court immediately prior to the hearing (the "Sale Hearing") on approval of the sale of the Premises to Purchaser. To be a Qualified Bidder, a competitive bidder must comply with all of the following procedures and, on or before 5:00 p.m. (Eastern) on November , 2001:

- (i) submit to the Debtor's counsel a written competing offer to purchase the Premises for a cash purchase price that is an amount at least \$20,000 (the "Minimum Overbid") greater than the Purchase Price (as defined in the CMD Agreement), and stating that the offeror is prepared to execute, upon the entry of an order approving the sale (the "Sale Approval Order"), an agreement substantially in the form as executed by Purchaser, except for the aggregate amount of the Purchase Price. This agreement is to be executed by the Debtor and will be filed with the Court thereafter;
- (ii) submit to the Debtor's counsel a deposit (the "Bidder Deposit"), by cashier's check or wire transfer, in an amount equal to ten percent (10%) of the aggregate purchase price offered by the Qualified Bidder, to be deposited in a segregated interest earning account maintained by PNC

Bank, with such deposit to be non-refundable, unless the competing offer of such Qualified Bidder is not approved by the Court; and

- (iii) provide evidence satisfactory to the Debtor, PNC Bank and the Debtor's Unsecured Creditors' Committee (the "Committee"), of its financial ability to consummate its acquisition of the Premises under and upon the terms and conditions of an agreement substantially in the form of the CMD Agreement (also known as the "CMD Agreement").

(b) No prospective bidder will be permitted to bid unless such prospective bidder is a Qualified Bidder. A copy of all written competing offers received by the Debtor's counsel shall be immediately provided to respective counsel for Purchaser, PNC Bank and the Committee;

(c) The Auction Sale of the Premises shall be on an "as is" and "where is" basis and without representations or warranties of any kind or nature whatsoever, except as contained in the CMD Agreement. Each Qualified Bidder will be deemed to have conducted its own due diligence in connection with the Auction Sale and purchase of the Premises and to be relying on its own review and independent investigations, or to have waived its right to conduct due diligence, whether or not such Qualified Bidder did, in fact, conduct any due diligence;

(d) Except for PNC Bank making a credit bid (which credit bid is subject to these Competitive Bidding Procedures, exclusive of the obligation to make a Bidder Deposit), the terms of the Auction Sale shall be for "cash" in accordance with the terms of the CMD Agreement. Further, the competing bid of any Qualified Bidder shall not be subject to any due diligence or any other contingency whatsoever, except for Court approval, and any such competing offer must be fully financed and may not have a financing contingency. All competing offers must include a detailed description of the sources and relevant amounts of equity or debt financing. If financing will be provided by external sources, a competing offer must include copies of relevant commitment letters and identify the individuals (and their phone numbers) at the institutions involved so the Debtor may contact them;

(e) A competing offer must state that (i) it constitutes a binding offer and will remain in effect through 5:00 p.m. (Eastern) on the fifteenth (15th) day following the date of entry of the Sale Approval Order and (ii) the Qualified Bidder is prepared to conclude the Closing (as defined in the CMD Agreement) within eleven (11) days after the entry of the Sale Approval Order approving the competing offer;

(f) In the event that one or more competing offers acceptable to the Debtor are timely submitted, the Debtor (under the direction and supervision of the Court) will conduct an auction (the "Auction Sale") immediately prior to the Sale

Hearing. The Auction Sale shall take place by open bidding and will be presided over by the Debtor's counsel pursuant to these Competitive Bidding Procedures. Bidding at the Auction Sale will be limited to those persons or entities who constitute a Qualified Bidder. Commencing with the highest competitive bid submitted by a Qualified Bidder to purchase the Premises (i.e., the Purchase Price plus Minimum Overbid and any additional amount bid in addition thereto) as determined by the Debtor, PNC Bank and the Committee, competitive bidding among Purchaser and any Qualified Bidder(s) shall proceed in minimum increments of \$5,000 in excess of the highest competitive bid, with such competitive bidding to continue until the highest and best bid to purchase the Premises in accordance with the CMD Agreement is received by the Debtor and recommended to the Court for approval;

(g) At the conclusion of the Auction Sale, the Debtor, in consultation with PNC Bank and the Committee, shall determine the highest and best offer and shall announce the name of the successful Qualified Bidder (as such, the "Successful Competing Bidder"). Thereafter, subject to the Court's docket, the Sale Hearing will commence, at which the Debtor will seek approval of the sale of the Premises to, as the case may be, the Purchaser or other Successful Competing Bidder;

(h) The Bidder Deposit submitted by a Qualified Bidder that is not the Successful Competing Bidder will be returned to such Qualified Bidder within two (2) days after the date of the closing of the sale of the Premises to the Successful Competing Bidder. In the event the Successful Competing Bidder whose competitive bid is approved by the Court fails to close its purchase of the Premises as required by the CMD Agreement and the Sale Approval Order, the Bidder Deposit of such Successful Competing Bidder shall immediately thereafter become property of the Debtor's estate;

(i) In the event the Successful Competing Bidder as approved by the Court fails to close its purchase of the Premises as required by the CMD Agreement and the Sale Approval Order, the Qualifying Bidder submitting the second highest competing bid at the Auction Sale, as approved by the Debtor, PNC Bank and the Committee, shall be deemed to be the Successful Competing Bidder and shall close its proposed purchase of the Premises at its last bid;

(j) The closing of the sale of the Premises to the Purchaser or the Successful Competing Bidder shall take place on the eleventh (11th) day after entry of the Sale Approval Order. If a timely appeal is filed, the Successful Competing Bidder, in its discretion, may proceed with the closing as authorized by section 363(m) of the Bankruptcy Code;

(k) All prospective bidders may contact Kutlick Platz Realty, L.L.C., 100 DeBartolo Place, Ste. 303, Youngstown, Ohio 44513, Phone: (330) 965-6700 Fax: (330) 965-6900 to obtain information respecting the Premises and the CMD Agreement. All prospective bidders shall have an opportunity prior to the Auction Sale to inspect the Premises at mutually convenient times and places

upon request to Mr. William Kutlick. In addition, prospective bidders shall be given access to the Premises for the purpose of investigation and conducting such tests and studies as the prospective bidder shall reasonably deem necessary. The Debtor will provide all prospective bidders with other appropriate and pertinent information they may request regarding the Debtor;

- (l) Pursuant to section 363(f) of the Bankruptcy Code, the Auction Sale of the Premises to the Purchaser or to the Successful Competing Bidder shall be free and clear of all liens, encumbrances, charges, and other similar adverse rights, liabilities, interests, and claims of every nature and description, including, without limitation, federal, state, or local taxes of any kind or nature, including workers' compensation or unemployment taxes, assessments, or charges (collectively, the "Interests"), except as otherwise provided in the CMD Agreement. All Interests shall attach to the proceeds of the sale of the Premises to the same extent, and having the same validity, perfection, priority and enforceability as such Interests had with respect to the Premises immediately prior to the Auction Sale. Any disputes regarding the extent, validity, perfection, priority or enforceability of such Interests with respect to the proceeds of the Premises shall be determined by the Court or a court of competent jurisdiction upon appropriate motion or other request therefor; and
- (m) The reversal or modification on appeal of the Sale Approval Order and the sale of the Premises to the Purchaser or the Successful Competing Bidder shall not affect the validity of the sale of the Premises to the Purchaser or the Successful Competing Bidder that purchased the Premises in good faith, whether or not such entity knew of the pendency of the appeal, unless the Sale Approval Order is stayed pending an appeal.

ORDERED that, pursuant to the Sale Motion and section 363(f) of the Bankruptcy Code, the Debtor will request at the Sale Hearing that the Auction Sale of the Premises to the Purchaser or to the Successful Competing Bidder shall be free and clear of any interests other than those of the estate, with all liens, claims, and encumbrances to attach to the proceeds of such sale, in the order of priority as that order existed immediately prior to the Auction Sale. Any disputes regarding the extent, validity, perfection, priority or enforceability of any such lien, claim, or encumbrance with respect to the proceeds of the Premises shall be determined by the Court or a court of competent jurisdiction upon appropriate motion or other request therefor. Nothing set forth in this Order or the Sale Order shall bind or affect the rights of any party in interest with respect to the distribution of the proceeds of the Premises or the terms of any plan of reorganization or liquidation confirmed in this chapter 11 case; and it is further

ORDERED that, pursuant to the Sale Motion, the Debtor will request at the Sale Hearing that the reversal or modification on appeal of the Sale Order and the sale of the Premises to the Purchaser or Successful Competing Bidder shall not affect the validity of the sale of the Premises to such Purchaser or Successful Competing Bidder that purchased the Premises in good faith, whether or not such entity knew of the pendency of the appeal, unless the Sale Order is stayed pending an appeal; and it is further

ORDERED that all parties submitting a bid to purchase the Premises shall comply fully with the Competitive Bidding Procedures; and it is further

ORDERED that, in the event one or more competing bids acceptable to the Debtor, PNC Bank and the Committee are timely received in accordance with the Competitive Bidding Procedures, the Auction Sale of the Premises shall take place by open bidding presided over by Debtor's counsel, and with the Premises to be sold to the Purchaser or to the Qualified Bidder submitting the highest and best competitive bid pursuant to the Competitive Bidding Procedures as approved by this Court, subject to the entry of an order approving the Sale Motion, pursuant to section 363(f) of the Bankruptcy Code; and it is further

ORDERED that the Auction Sale, if necessary, shall commence on NOVEMBER 2, 2001, at 9:00 o'clock A.M. (Eastern), in the Bankruptcy Judge's usual courtroom in the United States Bankruptcy Courthouse, 125 Market Street, Youngstown, OH 44503 and shall continue until concluded; and it is further

ORDERED that the Sale Hearing shall commence on NOVEMBER 2, 2001 at 11:00 o'clock A.M. (Eastern) in the Bankruptcy Court or immediately following the Auction Sale, whichever occurs later; and it is further

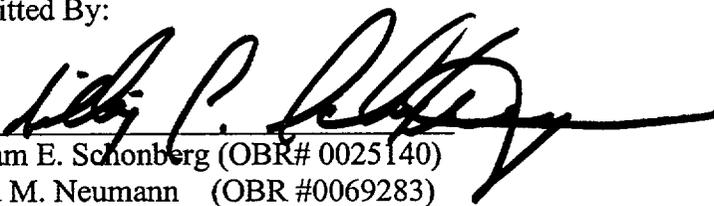
ORDERED that, pursuant to sections 102(1), 363(b) and (f) of the Bankruptcy Code and Bankruptcy Rules 2002(a)(2) and (m) and 6004, the Sale Notice (as defined in the Competitive Bidding Motion) in the form as annexed to the Competitive Bidding Motion, is hereby approved; and it is further

ORDERED that notice of the Auction Sale, the Sale Hearing, and the Competitive Bidding Procedures shall be deemed adequate and sufficient if on or before ten (10) days after the date hereof the Sale Notice is served by U.S. regular mail, postage prepaid, upon all parties responding to advertising and the marketing efforts of KPR, the United States Trustee, CMD, respective counsel for PNC and the Unsecured Creditors' Committee, all parties with a recorded interest in the Premises and all parties who have requested notice in this case.

Date October 16, 2001


UNITED STATES BANKRUPTCY JUDGE

Submitted By:


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David M. Neumann (OBR #0069283)
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**Attorneys for Youngstown Osteopathic Hospital
Association, Debtor and Debtor in Possession.**

Approved:

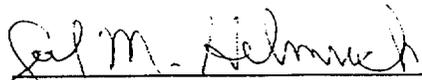

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