

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

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In re :
: Chapter 11
HOSPITAL AUDIENCES, INC. :
d/b/a Healing Arts Initiative, et al., : Case No. 16-42119 (CEC)
: :
Debtors. : (Jointly administered)
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DECLARATION OF JOHN KEEFE, INTERIM EXECUTIVE DIRECTOR OF THE DEBTORS, IN SUPPORT OF DEBTORS’ MOTION PURSUANT TO 11 U.S.C. §§ 105(a) AND 363 OF THE BANKRUPTCY CODE AND FED. R. BANKR. P. 2002 AND 6004 FOR AN ORDER APPROVING SALE AGREEMENT AND AUTHORIZING SALE OF PROPERTY FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES

JOHN KEEFE hereby declares and states, under penalties of perjury, as follows:

1. I am the Interim Executive Director (the “ED”) of Hospital Audiences, Inc., d/b/a Healing Arts Initiative (“HAI,” collectively with HAI Ventures, LLC (“HAI Ventures”), the “Debtors”). On May 20, 2016, the Executive Committee of the Board of Directors of HAI (the “Board”)¹ elected to employ me as Interim Executive Director given my experience in crisis management and restructuring.

2. I submit this declaration (the “Declaration”) in support of the Debtors’ motion (the “Motion”) pursuant to Sections 105(a) and 363 of Title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedures (the “Bankruptcy Rules”) for an order (the “Sale Order”), substantially in the form annexed to the Motion as Exhibit A, approving the agreement between HAI and Young Adult Institute, Inc., a New York not-for-profit corporation (the “Buyer” or “YAI”), substantially in the form annexed to the Motion as Exhibit B (the “Sale Agreement”), and authorizing the sale of certain property

¹ The members of the Board at that time were D. Leslie Winter, Chairman, Alan Gettner, Greg Libertiny, Richard Gomes, Laura Ann Walker and Jonathan Pearlroth. The Executive Committee of the Board was comprised of D. Leslie Winter, Alan Gettner and Greg Libertiny.

of HAI defined in the Sale Agreement as the Acquired Assets (collectively, the “Property”) to the Buyer, free and clear of all liens, claims and encumbrances, subject to any higher or better offers for the purchase of the Property as may be timely and properly received by the Debtors on or before May 2, 2017 at 4:00 p.m. (Prevailing Eastern Time).

I. The Chapter 11 Cases

3. HAI was founded in 1969 by a pianist named Michael Jon Spencer, after he played to an audience at the Manhattan State Psychiatric Center. HAI is a New York not-for-profit corporation that has provided an array of arts, education and wellness programs to culturally underserved populations throughout New York City for over 45 years. HAI has provided access to Broadway shows, the Metropolitan Opera, world class museums and other cultural experiences to audience members in hospitals, shelters, nursing homes, New York City public schools, social services agencies and other public forums.

4. On or about May 13, 2016, the Debtors ceased day-to-day operations and terminated their remaining employees other than their acting interim executive director, whose role was assumed by the existing Interim Executive Director. The Buyer represents the only party to date who has responded with interest in acquiring HAI’s assets and continuing its charitable programs.

5. On May 16, 2016 and May 24, 2016 (as applicable, the “Petition Date”), HAI and HAI Ventures, respectively, filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of New York (the “Court”).

6. Prior to the Petition Date, there were significant public disputes between the executive committee of the Board and HAI’s former executive director, Rev. D. Alexandra Dyer.

Those disputes culminated in the board's termination of Rev. Dyer² and the decision to file a voluntary chapter 11 petition for HAI as part of a proper and public liquidation process. After significant discussions with HAI's major creditors, it was determined that HAI would try to reorganize so that it could attempt to restore some or all of the vital services that it provided to in-need New Yorkers.

7. On May 25, 2016, the United States Trustee appointed an official committee of unsecured creditors in HAI's case (the "Committee"). No trustee or examiner has been appointed in these chapter 11 cases. The Debtors continue to operate their business and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

8. On July 22, 2016, Alan Gettner, Richard Gomes, Greg Libertiny, Jonathan Pearlroth, Laura Anne Walker and D. Leslie Winter resigned from the Board and Jennifer Geiling, Jenny A. Hourihan, John MacIntosh and Gregory Pressman were simultaneously elected to the Board. Ms. Geiling was subsequently employed by the Mayor's Office of Charitable Services and resigned due to a perceived conflict of interest. HAI's current Board is comprised of Ms. Hourihan and Messers. MacIntosh and Pressman.

9. On or around September 15, 2016, HAI received approximately \$626,996 from Travelers on account of a theft insurance claim on account of funds stolen from HAI by former employee Kim Williams. As discussed with all major case constituents, HAI used those funds to pay secured creditors Contact Fund LLC³ and BOC Capital Corp. and to make a partial payment of the allowed fees of the Debtors' and Committee's professionals, and then used the remaining funds along with a grant from SeaChange Capital Partners to attempt a relaunch.

² It should be noted that Rev. Dyer aggressively disputes all the stated bases for her termination.

³ At the inception of the case, Capital One Bank NA was HAI's primary secured lender. During the pendency of the case, Contact Fund LLC acquired Capital One Bank NA's loan and secured position.

10. HAI was able to get back up and running with my and the Board's efforts along with the tireless work of key personnel like Patty Reitkopf, Ulrike Fenninger, Rev. Rhonda McLean-Nur and Quimetta Perle.

11. Together with the Board, I made serious efforts to find donations to keep HAI running. Among other efforts, we requested the Board members, creditors, and all other stakeholders to recommend potential donors we might approach. We prepared a Funding Request to explain the opportunity to potential donors and request the needed funding. However, we received a very lukewarm response from the donor community. We had face-to-face meetings with four (4) potential donors, all of whom declined to provide funding.

12. Unfortunately, the Debtors were unable to raise sufficient funds to continue their operations and were forced to once again close their doors and cease operations as of end of year 2016.

II. The Proposed Sale⁴

13. Once HAI was forced to close again, we changed our efforts from trying to raise money for HAI to trying to find some synergy that would allow HAI's charitable mission to continue. To that end, we met with several nonprofit agencies which we believed had a synergistic relationship between their existing programs and HAI's with the goal of merging the two organizations in some fashion. In addition to YAI, the proposed acquiror, we met with the following organizations:

- Big Apple Circus: we met with the Executive Director of Big Apple Circus to explore the idea of combining their "Clown Care" program (lending clowns to hospitals) with HAI's artist-based programs. While management was enthusiastic about the idea, it was unable to

⁴ In the event of any discrepancy between the contents of this Declaration and the provisions of the Sale Agreement, the provisions of the Sale Agreement shall control.

proceed for several reasons. First, Big Apple Circus had itself filed for bankruptcy, complicating any potential combination. Second, the BAC donors who might have supported the combination in order to save Clown Care were ‘burned out’, having provided substantial funding to try to avoid bankruptcy. Finally, several of the clowns had spun off into a separate nonprofit, Healthy Humor.

- Healthy Humor (the spin off from Big Apple Circus): We met with the founders of Healthy Humor, who found the idea intriguing. However, as an underfunded startup, they thought it imprudent to take on additional programs at this time.
- CAMBA (a nonprofit based in Brooklyn): The HAI staff met with the CAMBA management and staff for a substantive discussion of how a combination might be accomplished. CAMBA initially was very interested, but ultimately declined to move forward.

14. Ultimately, YAI, the proposed acquirer, was the only party that made a proposal to assume the HAI programs and had the right platform to take on HAI’s services and continue its mission. YAI is itself a New York not-for-profit organization. YAI works with individuals, families, governments, corporate partners, donors and foundations to ensure that people with disabilities are recognized for their abilities, achieve the goals that are important to them and are integrated into their communities. Through its staff of more than 4,500 people, YAI creates new opportunities for individuals of all ages with intellectual and developmental disabilities to live, love, work, learn and otherwise achieve the fullest life possible.

15. Pursuant to the Sale Agreement, YAI will purchase certain of HAI’s assets, as further detailed and defined in the Sale Agreement as the Acquired Assets, including, but not limited to, HAI’s right, title and interest in and to its corporate legal names, trademarks, copyrights, trade secrets and other intellectual property, domain name registrations, e-mail

addresses, internet websites and social media sites and accounts, work-product, marketing records, vendor lists, employee records, originals or copies of expired contracts, permits, if any, and goodwill.

16. Certain of HAI's assets are excluded from the sale, including, but not limited to, all of HAI's right, title and interest in and to its cash, accounts receivable, bank accounts, owned or leased real property, owned or leased computer software and hardware, tax benefits or claims (except to the extent attributable to the Property), unacquired books and records, unexpired contracts, policies and procedures, telephone and facsimile numbers, amounts or claims payable under any insurance policy of HAI's business, including, without limitation, any directors and officers liability insurance, arising prior to the closing, all artwork owned by HAI or related to its business, litigation claims against any third parties arising prior to the closing and not specifically related to the Property (including any claims under Chapter 5 of the Bankruptcy Code) and HAI's 34-passenger bus.

17. In exchange for the Property, YAI will deliver to HAI at closing a purchase price of \$25,000 (the "Purchase Price"). As a condition to closing and YAI's payment of the Purchase Price, a grant of funds in the amount of \$100,000 will be made by SeaChange Capital Partners to YAI in furtherance of YAI's charitable mission. Such funds will be deposited with a third party escrow agent subject to release immediately following the closing. The Debtors will utilize the Purchase Price to pay outstanding fees to the United States Trustee, pay back amounts due the Interim Executive Director and pay outstanding storage fees incurred in connection with storing certain artwork and records. The Debtors anticipate that the Purchase Price will be insufficient, after payment of the transaction expenses, to fund any distributions to creditors of the Debtors' estate.

18. I believe that the sale to YAI is in the best interests of the Debtors and their estate, as well as the communities served by HAI and YAI. The proposed sale represents the only offer the Debtors have received to date for the purchase of their assets and therefore the best opportunity for the Debtors to maximize the value of the Property. The proposed sale will allow the Property to be utilized in the spirit of HAI's charitable mission and in furtherance of YAI's charitable work, without any appreciable cost to the estate.

19. In order to ensure that the sale is the estate's best opportunity to maximize value for the benefit of the Debtors' creditors, the Debtors proposed to consider any higher or better offer than the offer of the Buyer set forth in the Sale Agreement (any such offer, a "Competing Bid") if such Competing Bid was timely and properly received by the Debtors on or before May 2, 2017 (the "Objection Deadline") and served in accordance with the procedures set forth in the Notice of Motion filed concurrently with the Motion.

20. No Competing Bids were received by the Objection Deadline.

III. Extraordinary Provisions

21. In accordance with Administrative Order 557, In re: Adoption of Sale Guidelines, dated March 29, 2010, the Debtors disclose the following Extraordinary Provisions provided for in the Sale Agreement:

(i) Requested Findings as to Successor Liability. Pursuant to the Sale Agreement, the Buyer shall not assume or be obligated to pay or assume any claims, interests, encumbrances or other liabilities of HAI currently existing or hereafter arising, or otherwise, whether or not disclosed to the Buyer, and HAI shall retain and remain exclusively liable for such excluded liabilities. The intent and objective of HAI and the Buyer is that the Buyer shall not assume, and no transferee liability will attach to the Buyer pertaining to, any such excluded liabilities. The Sale Order shall provide that the sale is to the Buyer with no successor liability.

(ii) Access to Records. The Buyer is acquiring employee records, contract records, marketing records, vendor list records and employee records, provided that HAI is entitled, at its sole cost and expense, upon reasonable notice, during regular business hours and at mutually agreeable times, to receive copies of such acquired records for a period of two (2) years after closing. HAI is maintaining all other original books and records, including HAI's corporate, financial and tax books and records and any other books and records HAI is required by law to maintain, provided that Buyer shall be entitled, at its sole cost and expense, to receive copies of such excluded records.

(iii) Relief from Bankruptcy Rule 6004(h). A material inducement to the Buyer's willingness to enter into the Sale Agreement is the condition that Bankruptcy Rule 6004(h) is waived and there will be no stay of execution of the Sale Order under Bankruptcy Rule 7062. The Buyer is a third party with no relationship to the Debtors or any members of the Board. I know of no reason why the Buyer should not be afforded the protections of a good faith purchaser.

IV. Abandonment of Certain Property

22. Contemporaneously with the service of the Sale Motion, HAI served two separate notices of intent to abandon property including: (i) the specially handicapped equipped 2014 Starcraft Bus registered with the New York State DMV under VIN No. 5WEASAAN3DH417213 (the "Bus"), and (ii) various pieces of artwork (the "Artwork").

23. The Bus is encumbered by a valid, duly perfected lien of the Contact Fund, which had made a special use loan for the acquisition and build out of the Bus. The current amount owed to Contact Fund is approximately \$102,000. The Bus is a special use vehicle and is somewhat difficult to value. Based upon a review of the value of similar buses that have not

been specifically outfitted and testing the market with YAI, among others, I do not believe that the Bus would get more than \$75,000 if sold on the open market. Accordingly, the Bus has no value to HAI's estate and the Debtor is abandoning it to the secured lender, Contact Fund.

24. HAI also has a significant collection of Artwork that has been contributed over the years by various artists. The arrangement that HAI had with the artists is that HAI has the exclusive right to use and display the Artwork, but that if HAI ever sells the Artwork, it must remit fifty (50%) percent of the proceeds to the contributing artist if living. If the contributing artist is deceased, then HAI may keep all of the sale proceeds. HAI believes that HAI has good and valid title to the Artwork despite the arrangement. However, there is no indication that the Artwork has any significant value if sold. Based upon discussions with various artists, galleries and former employees of HAI, I do not believe that a sale of the Artwork would obtain more than \$15,000. The commissions, expenses and efforts would cost far more than that. Accordingly, HAI intends to abandon the Artwork to the artists if they claim them. If the artists do not claim their Artwork, HAI will abandon it to a gallery that is willing to facilitate the return to the artists.

25. YAI did not want to obtain the Bus at or above the amount owed to Contact Fund, and did not want the Artwork. Nor did any other party that I spoke to. Accordingly, I believe that the abandonment of the Bus and Artwork is in the best interest of HAI and its bankruptcy estate.

V. **Conclusion**

26. For all the foregoing reasons, I respectfully submit, on behalf of the Debtors and the Board, that the terms of the Sale Agreement and proposed Sale Order are fair and appropriate and are in the best interests of the Debtors and their estate. The Debtors respectfully request that they be authorized to consummate the terms of the Sale Agreement.

Pursuant to 28 U.S.C. § 1746, I hereby declare under penalties of perjury that the foregoing is true and correct.

Executed on May 4, 2017

John Keefe 