

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:

FAIR FINANCE COMPANY,

Debtor.

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Case No. 10-50494

Chapter 7

Judge Jessica E. Price Smith

**APPLICATION FOR AN ORDER AUTHORIZING THE EMPLOYMENT
AND RETENTION *NUNC PRO TUNC* OF DAVID SARVER OF BERKSHIRE
HATHAWAY HOME SERVICES FOR REAL PROPERTY VALUATION SERVICES**

Brian A. Bash (the “**Trustee**”), the duly appointed chapter 7 trustee for Fair Finance Company (the “**Debtor**”) in the above-captioned case, hereby applies for entry of an order, *nunc pro tunc* effective January 18, 2019, of David Sarver of Berkshire Hathaway Home Services Professional Realty (“**BHHS**”) to provide real property valuation services for the Trustee. In support of this Application, the Trustee submits the Verified Statement of David Sarver attached hereto as Exhibit A (the “**Verified Statement**”) and further states as follows:

JURISDICTION

1. The Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2). Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are 11 U.S.C. §§ 327(a) and 328(a).

BACKGROUND

3. On February 8, 2010 (the “Petition Date”), creditor-investors filed a petition for involuntary bankruptcy against the Debtor.



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4. On the Petition Date, the creditor-investors also filed an “Emergency Motion to Appoint Interim Trustee” (Dkt. No. 2) alleging that a trustee was needed to oversee the operations of the Debtor because (i) the Debtor had failed to make timely payments on its debts, including failing to redeem matured certificates and failing to pay interest on unmatured certificates, (ii) the Debtor and several affiliated companies had been raided by the Federal Bureau of Investigation in November of 2009, (iii) the Debtor had not been open to the public since the raid, and (iv) public records revealed that the Debtor had made “unusually large” loans to insiders.

5. On February 19, 2010, this Court entered an order directing the United States Trustee to appoint an interim trustee. Attorney Bash is the duly appointed, qualified and acting interim trustee in the within proceedings.

6. On February 24, 2010, the Debtor filed notice that it consented to the entry of an order for relief in this proceeding (Dkt. No. 35). On March 2, 2010, the Court entered an order granting the relief sought by the petitioning creditor-investors *nunc pro tunc* as of February 24, 2010 (Dkt. No. 40).

7. On March 2, 2010, the United States Trustee filed the Notice of Appointment of Interim Chapter 7 Trustee *nunc pro tunc* effective February 24, 2010 (Dkt. No. 41). Brian A. Bash is the duly appointed, qualified and acting Trustee in the within proceedings.

8. The Debtor owns real property located at 815 E. Market Street, Akron, Ohio, consisting of two parcels aggregating approximately .7285 acres of real estate (the “**Property**”). The Property formerly served as the Debtor’s main business office, and a parking lot. The building has been vacant since this case commenced, and has been used by the Trustee and his accountant to review records stored at the Property.

9. As part of his duty to administer and liquidate the estate for the benefit of creditors, the Trustee requires the assistance of a qualified real estate professional to assist with the valuation and sale of the Property.

10. The Trustee wishes to engage an experienced realtor to obtain an opinion of the value of the Property. The Trustee seeks to retain Mr. Sarver because he is experienced and well-qualified to evaluate the Property.

RELIEF REQUESTED

11. The Trustee seeks the entry of an order pursuant to 11 U.S.C. §§ 327 and 328(a) authorizing the Trustee to employ and retain Mr. Sarver to provide real property valuation services in connection with the sale of the Property, and granting such other and further relief as is just and proper.

BASIS FOR RELIEF

A. Retaining Mr. Sarver is in the Best Interest of the Estate and the Debtor's Creditors.

12. The Trustee believes that Mr. Sarver is well-qualified to provide valuation services regarding the Property. Mr. Sarver has extensive experience in the real estate industry and in appraising the value of real property. Mr. Sarver has been involved in the real estate industry since the 1980's. He and his team have evaluated tens of thousands of properties in Northeast Ohio, and he has provided hundreds of property evaluations for the trustees in bankruptcy proceedings, probate attorneys, and divorce attorneys and has been summoned to provide expert testimony to the various courts. Mr. Sarver has provided his services to the Trustee numerous times in other matters resulting in successful sales of real property.

13. As more fully set forth in the Verified Statement, Mr. Sarver is disinterested within the meaning of 11 U.S.C. § 101(14) in that the Mr. Sarver (a) is not a creditor, equity security holder, or insider of the Debtor, (b) is not and was not, within two (2) years before the date of filing

of the Debtor's Chapter 7 Case, a director, officer, or employee of the Debtor, and (c) does not have an interest materially adverse to the interests of the Debtor's estate or any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtor.

14. Further, neither Mr. Sarver, nor anyone associated with BHHS, is a relative by blood or marriage of any Bankruptcy Judge or United States Trustee for the Northern District of Ohio, and neither is now, nor have they ever been, so connected with any such Bankruptcy Judge or United States Trustee so as to render the appointment or the Court's approval under 11 U.S.C. § 327 employment in the above-captioned matter improper.

B. Mr. Sarver's Proposed Compensation is Reasonable.

15. The Trustee proposes that Mr. Sarver be compensated for his services at a flat rate of \$350.00. All fees and expenses will be subject to Court approval upon proper application, which Mr. Sarver has agreed to submit, and will be approved on a final basis only upon Court order.

16. Mr. Sarver will be the only person from Sarver Realty that will provide any services.

17. Mr. Sarver has agreed that, absent consent of the Trustee, his compensation for all services performed pursuant to this engagement will be \$350.00.

C. Nunc Pro Tunc Relief is Merited.

18. During a visit to the Property, the Trustee was approached by a potential purchaser and wished to proceed without delay with discussions regarding a potential sale and disposition of the Property. Mr. Sarver agreed to provide his valuation services immediately in order to facilitate the Trustee's efforts in negotiating a sale of the Property without delay, and the Trustee agreed to seek approval of Mr. Sarver's retention effective *nunc pro tunc*.

WHEREFORE, the Trustee respectfully requests the entry of an order, substantially in the form attached hereto as **Exhibit B**, (i) *nunc pro tunc* effective January 18, 2019 authorizing the Trustee to employ and retain Mr. Sarver in connection with the valuation of the Property for sale, and (ii) for such other and further relief as the Court deems just and proper.

Dated: March 12, 2019

Respectfully submitted,

/s/ Kelly S. Burgan

Brian A. Bash, Trustee (0000134)

Kelly S. Burgan (0073649)

Alexis C. Beachdell (0083642)

BAKER & HOSTETLER LLP

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Counsel for the Trustee

EXHIBIT A

VERIFIED STATEMENT OF DAVID SARVER

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:

FAIR FINANCE COMPANY,
Debtor.

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Case No. 10-50494

Chapter 7

Judge Jessica E. Price Smith

**AFFIDAVIT AND VERIFIED STATEMENT OF DAVID SARVER PURSUANT TO
RULES 5002 AND 2014 OF THE BANKRUPTCY RULES**

The undersigned being first duly sworn and according to law, deposes and says that:

1. This Verified Statement is made pursuant to the provisions of 11 U.S.C. Sections 327(a) and (c) of the Bankruptcy Code regarding employment of professional persons by the Trustee, and in light of the restrictions and requirements imposed thereon by Bankruptcy Rules 2014(a) and 5002.

2. Neither I nor Berkshire Hathaway Home Services Professional Realty (“BHHS”) have received a retainer.

3. This Verified Statement is to affirm to this Court that neither Affiant nor any person with whom he is associated at BHHS is a relative by blood or marriage of any Bankruptcy Judge of the Northern District of Ohio or the United States Trustee for Region 9, and not now nor has ever been so connected with any such Judge or the United States Trustee for Region 9 as to render their appointment or the Court’s approval of such employment in the above-captioned matter improper.

4. This Verified Statement is to further affirm to this Court that neither Affiant, nor any person with whom he is associated at BHHS, is connected with the debtor, creditors or any other party in interest or their respective attorneys and accountants. BHHS will not represent any creditor or other party in interest (other than the Chapter 7 Trustee) in connection with this case.

5. This Verified Statement is to fully disclose to the Court that to the best of Affiant's knowledge, there are no matters that might be considered by any party to create any issue or claim of conflict or lack of being a disinterested party, as related to him or BHHS as a realtor assisting with the evaluation of real property in this case. Neither the Affiant nor BHHS represents or holds an interest adverse to the estate or any class of creditors or equity security holders.

6. This Verified Statement is to fully disclose to the Court that there are no connections as relates to the debtor, creditors, or any person in interest, their respective attorneys and accountants, and to disclose to the Court that the only fees and expenses to be paid to Applicant shall be those allowed pursuant to order of this Court

7. This Verified Statement is to further affirm that BHHS is a "disinterested person" under 11 U.S.C. §101(14).

- (a) BHHS has not represented the Debtor.
- (b) No professional with BHHS is a creditor of the Debtor, or an insider of the Debtor, or holds a direct or indirect equity interest in the Debtor, including stock, stock warrants or a partnership interest in a debtor partnership, or has a right to acquire such an interest.
- (c) No professional with BHHS is or has served as an officer, director or employee of the Debtor within two years before the filing of the petition.
- (d) No professional with BHHS is in control of the Debtor or is a relative of a general partner, director, officer or person in control of the Debtor.
- (e) No professional with BHHS is or has served as an officer, director, or employee of a financial advisor which has been engaged by the Debtor in connection with the offer, sale, or issuance of a security of the Debtor within two years before the filing

of the petition.

- (f) Neither Affiant nor any professional with BHHS has represented a financial advisor of the Debtor in connection with the offer, sale, or issuance of a security of the Debtor within three years before the filing of the petition.
- (g) Neither Affiant nor any professional with BHHS represents in this bankruptcy case a creditor, a holder of any equity securities of the Debtor, a general partner, a lessor, a lessee, a party to an executory contract of the Debtor, or a person otherwise adverse or potentially adverse to the Debtor or the estate.
- (h) Neither Affiant nor any professional with BHHS represents an insider of the Debtor or the Debtor's parent, subsidiary, or other affiliate.
- (i) Neither Affiant nor any professional with BHHS has been paid fees prepetition or holds a security interest, guaranty or other assurance of compensation for services performed or to be performed in this case.
- (j) There is no agreement of any nature as to the sharing of any compensation to be paid to BHHS.
- (k) Neither Affiant nor any professional with BHHS has any other connection with the Debtor, creditors, the United States Trustee or any employee of that office, or any other party in interest that is materially adverse to the Debtor or the estate.

8. Further, this Verified Statement is to fully disclose to the Court that Affiant will charge a flat rate of \$350.00 for its engagement in this matter.

9. I will abide by Local Rule 2016-1 relating to the Guidelines for Compensation and Expense Reimbursement for Professionals.

10. I verify under penalty of perjury that the foregoing is true and correct.



David Sarver
Berkshire Hathaway Home Services Professional Realty
34555 Chagrin Blvd.
Moreland Hills, Ohio 44022

SWORN TO BEFORE ME, and subscribed in my presence, this ^{7th} 11 day of March, 2019.



Notary Public ATTORNEY - NO EXPIRATION

EXHIBIT B

PROPOSED ORDER

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:

FAIR FINANCE COMPANY,

Debtor.

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Case No. 10-50494

Chapter 7

Judge Jessica E. Price Smith

**ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION
OF DAVID SARVER OF BERKSHIRE HATHAWAY HOME SERVICES FOR REAL
PROPERTY VALUATION SERVICES**

This matter came before the Court on the Trustee’s Application for an Order Authorizing the Employment and Retention of David Sarver of Berkshire Hathaway Home Services for Real Property Valuation Services.² The Court has reviewed the Application and concluded that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) this is a core proceeding, (iii) notice of the Application was sufficient under the circumstances, (iv) Mr. Sarver

¹Hereafter, the “Application”. Capitalized terms used but not otherwise defined in this order shall have the meanings given to them in the Application.

is disinterested and qualified to provide the requested services, (v) Mr. Sarver's compensation arrangement is reasonable, and (vi) the legal and factual bases set forth in the Application establish just cause for the relief; and this Court having determined that granting the relief requested in the Application is in the best interests of the Debtor, the estate and the creditors; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Application is GRANTED in its entirety, *nunc pro tunc* effective January 18, 2019.
2. The Trustee and his counsel are authorized to retain and employ David Sarver. Mr. Sarver is authorized to provide services for the valuation of real property for the estate in connection with sale of the Property.
3. All fees and expenses of Mr. Sarver shall be subject to approval of this Court upon appropriate application.

IT IS SO ORDERED.

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Respectfully submitted,

/s/ Kelly S. Burgan

Brian A. Bash, Trustee (0000134)

Kelly S. Burgan (0073649)

Alexis C. Beachdell (0083642)

BAKER & HOSTETLER LLP

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Counsel for the Trustee

CERTIFICATE OF SERVICE

A copy of the foregoing has been served via ECF or regular, U.S. Mail, on March 12, 2019, on the attached service list.

/s/ Kelly S. Burgan

Kelly S. Burgan

Counsel for the Trustee

SERVICE LIST

Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive e-mail notice/service for this case.

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