

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

In re:

AMSTERDAM HOUSE CONTINUING CARE
RETIREMENT COMMUNITY, INC.,¹

Debtor.

Chapter 11

Case No. 21-71095-AST

**ORDER APPOINTING KURTZMAN CARSON
CONSULTANTS LLC AS CLAIMS AND NOTICING AGENT
FOR THE DEBTOR EFFECTIVE AS OF THE PETITION DATE**

Upon the emergency application (the “Application”)² of the Debtor and Debtor-in-possession in the above-captioned chapter 11 cases (collectively, the “Debtor”) for entry of an order (this “Order”) appointing and authorizing the retention of Kurtzman Carson Consultants LLC (“KCC”) as the Claims and Noticing Agent in this chapter 11 case, effective as of the Petition Date, pursuant to 156(c) of the Judicial Code, section 503(b) of the Bankruptcy Code, and Bankruptcy Rule 2002, and the Protocols, to, among other things, (i) distribute required notices to parties in interest, (ii) receive, maintain, docket, and otherwise administer the proofs of claim filed in this chapter 11 case, and (iii) provide such other administrative services as required by the Debtor that would fall within the purview of services to be provided by the Clerk’s office; and upon consideration of the First Day Declaration and the Jordan Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and the Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of this proceeding

¹ The last four digits of the Debtor’s federal tax identification number are 1764. The Debtor’s mailing address is 300 East Overlook, Port Washington, New York 11050.

² Capitalized terms used but not otherwise defined herein shall have the meaning given to them in the Application.



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and the Application in this District being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and appropriate notice of and opportunity for a hearing on the Application having been given; and the relief requested in the Application being in the best interests of the Debtor's estate, its creditors, and other parties in interest; and this Court having determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Application is GRANTED as set forth herein.
2. Notwithstanding the terms of the Retention Agreement attached to the Application, the Application is granted solely as set forth in this Order.
3. The Debtor is authorized to retain KCC as the Claims and Noticing Agent, effective as of the Petition Date, to perform the Claims and Noticing Services set forth in the Application and under the terms of the Retention Agreement relating to such services, and KCC is authorized to perform such services.
4. KCC shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in this chapter 11 case and is authorized and directed to maintain the official claims register for the Debtor, to provide public access to every proof of claim unless otherwise ordered by the Court, and to provide the Clerk with a certified duplicate thereof upon request of the Clerk.
5. KCC is authorized to provide an electronic interface for filing proofs of claim and to obtain a post office box or address for the receipt of proofs of claim.
6. KCC is authorized to take such other actions to comply with all duties set forth in the Application and this Order.

7. KCC shall comply with all requests of the Clerk and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 156(c) of the Judicial Code.

8. Without further order of this Court, the Debtor is authorized to compensate KCC on a monthly basis in accordance with the terms and conditions of the Retention Agreement for the Claims and Noticing Services upon KCC's submission of reasonably detailed monthly invoices setting forth the services provided by KCC and the rates charged for each, and the appropriately documented reasonable expenses incurred therewith, without the need for KCC to file fee applications or otherwise seek court approval for the compensation of its services and reimbursement of its expenses, provided that any payments shall be subject to any interim or final order entered by the Court governing the Debtor's right to use the 2014 Bond Trustee's cash collateral, including the budget attached thereto.

9. KCC shall maintain records of all services showing dates, categories of services, fees charged, and expenses incurred, and shall serve monthly invoices on the Debtor, the Office of the United States Trustee, counsel for the 2014 Bond Trustee, counsel for the Debtor, counsel for any official committee monitoring the expenses of the Debtor, and any party in interest that specifically requests service of the monthly invoices.

10. The parties shall meet and confer in an attempt to resolve any dispute that may arise relating to the Retention Agreement or monthly invoices, and the parties may seek resolution of the matter from the Court if consensual resolution is not achieved.

11. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, KCC's fees and expenses incurred in connection with the Claims and Noticing Services shall be administrative expenses of the Debtor's chapter 11 estate.

12. KCC may apply its retainer to all pre-petition invoices, which retainer shall be replenished to the original retainer amount, and thereafter, KCC may hold its retainer as security for payment of KCC's invoices for services rendered and expenses incurred in performing the Claims and Noticing Services.

13. Except to the extent set forth below, the Debtor is authorized to indemnify KCC under the terms of the Retention Agreement:

- a. KCC shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Retention Agreement for services other than the Claims and Noticing Services provided under the Retention Agreement, unless such services and the indemnification, contribution, or reimbursement therefor are approved by the Court;
- b. Notwithstanding anything to the contrary in the Retention Agreement, the Debtor shall have no obligation to indemnify KCC, or provide contribution or reimbursement to KCC, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from KCC's gross negligence, or willful misconduct; (ii) for a contractual dispute in which the Debtor alleges the breach of KCC's contractual obligations if the Court determines that indemnification, contribution, or reimbursement would not be permissible; or (iii) settled prior to a judicial determination under (i) or (ii), but determined by this Court, after notice and a hearing, to be a claim or expense for which the Claims and Noticing Agent should not receive indemnity, contribution, or reimbursement under the terms of the Retention Agreement as modified by this Order; and
- c. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in this chapter 11 case (that order having become a final order no longer subject to appeal) or (ii) the entry of an order closing this chapter 11 case, KCC believes that it is entitled to the payment of any amounts by the Debtor on account of the Debtor's indemnification, contribution, and/or reimbursement obligations under the Retention Agreement (as modified by this Order), including without limitation the advancement of defense costs, KCC must file an application therefor in this Court, and the Debtor may not pay any such amounts to KCC before the entry of an order by this Court approving the payment. This paragraph is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by KCC for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtor's obligation to indemnify KCC. All parties in interest shall retain the right to

object to any demand by KCC for indemnification, contribution, or reimbursement.

14. In the event that KCC is unable to continue to provide the Claims and Noticing Services, KCC will immediately notify the Clerk and Debtor's counsel and cause all original proofs of claim and computer information to be turned over to another claims and noticing agent with the advice and consent of the Clerk and Debtor's counsel.

15. The Debtor shall submit a separate retention application, pursuant to section 327 of the Bankruptcy Code and/or any applicable law, for work that is to be performed by KCC but is not specifically authorized by this Order.

16. KCC shall not cease providing Claims and Noticing Services during this chapter 11 case for any reason, including nonpayment, without an order of the Court.


17. Upon the termination of KCC's services, the Debtor must obtain an order with the Court that discharges KCC from service and responsibility in this chapter 11 case.

18. The Debtor and KCC are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

19. In the event of any inconsistency between the Retention Agreement, the Application, and this Order, this Order shall govern.

Dated: June 17, 2021
Central Islip, New York





Alan S. Trust
Chief United States Bankruptcy Judge