

**UNITED STATES BANKRUPTCY COURT
Northern District of Florida
Pensacola Division**

IN RE: SANTA ROSA ANIMAL HOSPITAL,
P.A.,

Debtor.

Bankruptcy Case No. 16-31051-JCO

Chapter: 11

Judge: Jerry C. Oldshue, Jr.

**AGREED FINAL ORDER AUTHORIZING USE OF CASH COLLATERAL AND
GRANTING ADEQUATE PROTECTION TO BANK OF AMERICA (Doc. No. 17)**

This Matter came before the Court for final hearing on January 6, 2017 upon the Debtor's *Emergency Motion for an Order (1) Authorizing Use of Cash Collateral on an Interim Basis and (2) Setting a Hearing on Final Use of Cash Collateral (the "Motion")* (Doc. 17).

The Court previously held an expedited hearing on the Debtor's Motion on November 17, 2016, granted interim relief pursuant, thereto and set the final hearing in the matter for January 6, 2017. The Debtor's twenty largest unsecured creditors, and the Office of the United States Trustee were served with a copy of the Motion and Notice of the Expedited Hearing on the Motion, and creditor Bank of America was served via email to the office of its state court counsel, and the Court hereby finds that such service and notice is sufficient under the circumstances. The only creditor appearing at the expedited hearing or at the final hearing was Bank of America.

After a hearing and due deliberation thereon and the court noting the agreement of the parties and finding that good and sufficient cause exists for the granting of the relief as set forth herein, it is hereby

ORDERED that:

1. The Motion is GRANTED pursuant to the terms set forth herein.

2. Use of Cash Collateral. The Debtor is authorized to use cash collateral as defined in Section 363(a) of the Bankruptcy Code to pay in the ordinary course of its business for the purposes contained in the budget attached to the Motion as Exhibit “B” (the “**Budget**”) through and including the confirmation of a Chapter 11 Plan to be filed by the Debtor, provided that the Debtor timely tenders the required monthly payments to Bank of America as set forth herein. Notwithstanding the above however, the total expenses shall not exceed the total expenses set forth on the Budget by an amount exceeding to ten percent (10%). Upon notice by the Debtor, Bank of America shall have three (3) business days within which to provide written consent or object to a request from the Debtor to make aggregate payments in excess of ten percent (10%) of the total expenses set forth in the Budget. In the event that Bank of America does not provide written consent, it shall be presumed that Bank of America objects, and the Court shall consider the matter upon Motion. Notwithstanding anything to the Contrary in this Order, no Debtor’s Professionals’ Carveout payments (including but not limited to Debtor’s attorneys’ fees and Debtor’s accountant fees) shall be made unless separately ordered by the Court. Further, in the event there is a Creditors’ Committee appointed in this bankruptcy case, such Creditors’ Committee shall negotiate any Professional Fees’ Carveout with Bank of America directly, as such fees are not included in the Debtor’s Professionals’ Carveout.

3. Post-Petition Collateral and Replacement Liens as Adequate Protection to Secured Creditor: The Debtor and Bank of America agree that Bank of America has a lien on the cash collateral described in the Motion and/or to the same to the same priority, validity and extent as provided in the Loan Documents executed between the Debtor and Bank of America. Notwithstanding the provisions of Section 552(a) of the Bankruptcy Code, and in addition to the security interests preserved by Section 552(b) of the Bankruptcy Code, the Debtor grants in favor of Bank of America, as security for all indebtedness that is owed by the Debtor to Bank of

America, under its loan documentation, but only to the extent that Bank of America's cash collateral is used by the Debtor, a first priority post-petition security interest and lien in, to and against all of the Debtor's assets, to the same priority, validity and extent that Bank of America held a properly perfected pre-petition security interest in such assets, which are or have been acquired, generated or received by the Debtor subsequent to the Petition Date (the ***"Post-Petition Collateral"***). Under no circumstance shall Bank of America have a lien on any of the Debtor's assets upon which it did not have a right to pre-petition. The security interests granted in this Order are deemed perfected without the necessity for filing or execution of documents which might otherwise be required under non-bankruptcy law for the perfection of said security interests. The Post-Petition Collateral excludes all proceeds of property recovered or transfers avoided by or on behalf of the Debtor, its estate or any subsequently appointed trustee, pursuant to sections 544 through 550, inclusive, of the Bankruptcy Code.

4. Bank of America is deemed to be adequately protected by the granting of a replacement lien and administrative expense claim as set forth in this Order, in addition to any additional security it may have with respect to the indebtedness owed to it; however to the extent that the foregoing is not sufficient to adequately protect Bank of America, it is entitled to a priority claim for such shortfall in accordance with Section 507(b).

5. Notwithstanding the above or anything to the contrary in this Order, the finding that Bank of America's interest is adequately protected is without prejudice to the rights of Bank of America to seek modification of the adequate protection provided in this Order and without prejudice to the rights of the Debtor or any party in interest to contest any such modification, and shall not prejudice, alter, affect or waive any rights and/or remedies of the Debtor or Bank of America (with respect to liens, claims, value determinations) under the Bankruptcy Code or

applicable non-bankruptcy law (but not limited to, all matters pertaining to cash and other collateral) and does not bind any subsequently appointed trustee or committee.

6. Administrative Expense Claim: Bank of America shall be granted an administrative expense claim pursuant to Sections 507 and 503 of the Bankruptcy Code to the extent of the diminution, if any, the value of its interest in the Cash Collateral as of the Petition Date.

7. Creditor Not Deemed Owner or Operator: Solely by agreeing to the use of cash collateral by the Debtor, Bank of America shall not be deemed to have assumed any liability to any third person, and shall not be deemed to be in control of the operations of the Debtor or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtor or of its assets

8. No Novation: This Order shall not cause a novation of any of Bank of America’s secured documentation.

9. Other than the cash collateral, which consists of funds in the Debtors bank accounts as of the filing date in the amount of \$8,332.04 (the “Cash Collateral”) this Order renders no finding as to the valuation of any other asset of the Debtor and makes no finding as to the secured portion of Bank of America's claim which the parties agree shall be determined at a later date.

10. The Debtor is authorized to use the funds in the Debtor’s DIP account during the time period prior to any order of confirmation of a plan of reorganization as follows:

a) The Debtor may utilize the gross receipts generated by the Debtor and funds in the Debtor’s DIP account for payment of the reasonable and necessary operating expenses of the Debtor in substantial accordance with the “Interim Budget” attached as Exhibit B to the Motion.

b) The Debtor shall make adequate protection payments to Bank of America in the amount of \$250.00 per month (the “Adequate Protection Payment”) on account of Bank of America’s secured claim. The application of such Adequate Protection Payments shall be determined at a later point by further order of this Court.

c) To the extent that the revenues of the Debtor are insufficient to pay all expenses as set forth in the Interim Budget as well as the Adequate Protection Payment, the Debtor shall reduce the compensation to the Debtor’s principal in an amount sufficient to allow payment of the Adequate Protection Payment to Bank of America.

d) The Debtor is further authorized to pay the US Trustee Fees from the DIP account from funds derived from the gross proceeds of the Debtor.

11. Non-Waiver of Rights and Remedies: This Order is not intended to and shall not prejudice, alter, affect or waive any rights and/or remedies of the Debtor or Bank of America (with respect to liens, claims, value determinations) under the Bankruptcy Code or applicable non-bankruptcy law (but not limited to, all matters pertaining to cash and other collateral) and does not bind any subsequently appointed trustee or committee.

12. Any payment to an accountant or CPA shall be subject to Debtor filing an application to retain such professional and upon entry of an order authorizing such retention.

13. Any valid pre-petition lien on the Debtor’s property shall remain in effect in the same priority position held prepetition and this Order makes no finding as to the validity and extent of any prepetition lien.

14. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

15. The Debtor shall serve this Order upon the Debtor's twenty largest unsecured creditors, and the U.S. Trustee's office, within three days of the entry of this Order.

Dated: January 9, 2017



JERRY C. OLDSHUE, JR.
U.S. BANKRUPTCY JUDGE

Attorney Natasha Revell is directed to serve a copy of this order on the Debtor's twenty largest unsecured creditors and the U.S. Trustee's office within three days of the date of this order.

Order Prepared by:

Natasha Z. Revell, Esq.
Counsel for Debtor-in-Possession