

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

LEVITZ HOME FURNISHINGS, INC.,

Debtors.

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Chapter 11

Case No. 05-45189 (BRL)

Jointly Administered

ORDER PURSUANT TO SECTIONS 105, 363, 365 AND 554 OF THE BANKRUPTCY CODE (A) AUTHORIZING AND APPROVING THE CONDUCT OF GOING OUT OF BUSINESS, STORE CLOSING, BANKRUPTCY LIQUIDATION OR SIMILAR THEMED SALES, WITH SUCH SALES TO BE FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES, (B) APPROVING AN AGENCY AGREEMENT FOR THE CONDUCT OF THE SUBJECT STORE CLOSING SALES, AND APPOINTING THE JOINT VENTURE FORMED BY THE PRIDE CAPITAL GROUP, LLC, D/B/A GREAT AMERICAN GROUP, ZIMMER-HESTER FURNITURE LIQUIDATIONS, INC. HILCO MERCHANT RESOURCES, LLC, THE NASSI GROUP, LLC, SB CAPITAL GROUP, LLC, AND PLVTZ, LLC AS DEBTOR'S EXCLUSIVE AGENT THEREFOR, (C) APPROVING PROCEDURES FOR ABANDONMENT OF CERTAIN ASSETS, AND (D) GRANTING OTHER AND FURTHER RELIEF

This matter is before the Court on the motion (the "Motion") of Levitz Home Furnishings, Inc., *et al.*, debtors and debtors in possession herein (collectively, the "Debtor"), seeking entry of an order under Sections 105(a), 363(b), 363(f), 363(m), 364(d) and 554 of the Bankruptcy Code, authorizing the Debtor to close certain retail store locations and related support operations, conduct "going out of business", "store closing", "bankruptcy liquidation" or similar themed sales (collectively, the "Sale"), and approving an agency agreement dated as of November 30, 2005 (the "Agency Agreement") between the Debtor and the joint venture formed by The Pride Capital Group, LLC, d/b/a Great American Group, Zimmer-Hester Furniture Liquidations, Inc.,

Hilco Merchant Resources, LLC, The Nassi Group, LLC, SB Capital Group, LLC and PLVTZ, LLC (collectively, the “Agent”) pursuant to which the Agent shall conduct the Sale at the Designated Closing Locations (as defined herein); and consideration of the Motion and the relief requested therein being a “core” proceeding pursuant to 28 U.S.C. §157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided (i) all entities who have filed a notice of appearance and request for service of papers in these cases including the parties listed on the Debtor’s Special Service List and General Service List; (ii) the state attorneys general for states where the Closing Locations are located; (iii) each third-party known to the Debtor that asserts a lien in any of the Merchandise or Equipment at the Closing Locations; (iv) Debtor’s landlords for each of the Closing Locations; (v) those parties that expressed an interest in either becoming Debtor’s agent in conducting the Sale or to purchase the Debtor’s assets; (vi) the county consumer protection agency (or if none, the local District Attorney(s)) for each county where a Closing Location is located; (vii) the division of consumer protection, if any, for each state where a Closing Location is located; and (viii) the relevant taxing and environmental authorities and agencies; and it appearing that no other notice need be given; and the appearances of all interested parties and all responses and objections to the Motion having been duly noted in the record of the Sale Hearing; and a hearing on the Motion having been held before the Court on December 6, 2005 and 7, 2005, (the “Sale Hearing”); and upon the record of the Sale Hearing; and it appearing that the relief requested in the Motion is in the best interest of the Debtor, its estate and creditors; and any objections filed to the motion having been resolved, withdrawn, or otherwise overruled by this

Order; and after due deliberation, and sufficient cause appearing therefor, it is hereby further found and determined, as follows:

A. Notice of the Motion, and of the Sale Hearing was given in accordance with the directive of the Court and as otherwise required by applicable law, as evidenced by the affidavits of service on file with the Clerk of the Court.

B. The notice provided of the Motion and of the Sale Hearing was adequate and sufficient under the circumstances, and any otherwise applicable requirement for notice is hereby waived and dispensed with.

C. Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Agency Agreement.

D. The Agency Agreement was negotiated and proposed, and has been entered into by the parties in good faith within the meaning of §363(m) of the Bankruptcy Code, at arm's length bargaining positions, and without collusion; and the Court having determined that the legal and factual bases set forth in the Motion establishes just cause for the relief granted herein; and the Court having determined that the relief granted herein is in the best interests of the Debtor and its estate.

E. Conduct of the Sale at the Closing Locations set forth on Exhibit "A" attached to this Order together with such other Closing Locations designated by the Purchaser from time to time in accordance with the Purchase Agreement (collectively, the "Designated Closing Locations") will provide an efficient means for the Debtor to dispose of the Merchandise and other assets located at the Designated Closing Locations in accordance with the terms of the Agency Agreement.

NOW, THEREFORE, it is hereby Ordered as follows:

1. The Motion be, and it hereby is granted to the extent provided herein.
2. The Agency Agreement (substantially in the form annexed hereto as Exhibit “B” and incorporated herein by reference), the terms and conditions of the Agency Agreement and each of the transactions contemplated by the Agency Agreement shall be, and are hereby, approved and it is further ordered that all amounts payable to the Agent under the Agency Agreement shall be payable to the Agent without the need for a further order of the Court. The failure specifically to include any particular provision of the Agency Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Agency Agreement and the terms thereof be authorized and approved in their entirety.
3. The Debtor is hereby authorized, pursuant to §§105(a) and 363(b)(1) of the Bankruptcy Code to conduct the Sale at the Designated Closing Locations in accordance with the Agency Agreement, and to sell or otherwise dispose of the Equipment at the Designated Closing Locations.
4. The Debtor and the Agent be, and they hereby are, authorized to take such actions necessary and appropriate to implement the Agency Agreement and to conduct the Sale at the Designated Closing Locations in accordance with the Agency Agreement without the necessity of a further order of this Court, including, but not limited to, posting signs (including the use of exterior banners in non-enclosed malls) and street signage, using sign-walkers and advertising such Sales in accordance with the Agency Agreement and as otherwise provided in the sale guidelines (the “Sale Guidelines”), which Sale Guidelines are hereby approved in the form annexed hereto as Exhibit “C”.

5. Pursuant to §363(f) of the Bankruptcy Code, all Merchandise and Equipment sold pursuant to the Agency Agreement shall be sold free and clear of any and all mortgages, security interests, conditional sales or title retention agreements, pledges, hypothecations, liens, judgments, encumbrances or claims of any kind or nature (including, without limitation, any and all “claims” as defined in §101(5) of the Bankruptcy Code), including, without limitation, the liens of the Debtor’s secured pre-petition and post-petition lenders, whether arising by agreement, any statute or otherwise and whether arising before, on or after the date on which these chapter 11 cases were commenced (collectively, the “Liens”), with such Liens if any, to attach to the Purchase Agreement Consideration and any other amounts payable to the Debtor under the Purchase Agreement, with the same validity, force and effect as the same had with respect to the assets at issue, subject to any and all defenses, claims and/or counterclaims or setoffs that may exist.

6. All sales of Debtor’s Merchandise and Equipment by the Agent shall be protected by §363(m) of the Bankruptcy Code in the event that this Order is reversed or modified on appeal.

7. The provisions of this Order shall be self-executing, and notwithstanding any restrictions in the Agency Agreement on the Agent’s ability to conduct the Sale in compliance with applicable laws or store leases. Each and every federal, state or local agency, department or governmental unit with regulatory authority over the Sale, newspapers and other advertising media in which the Sale may be advertised, and landlords of the Designated Closing Locations are directed to accept this Order as binding authority so as to authorize the Debtor and the Agent to consummate the Agency

Agreement and to conduct the Sale at the Designated Closing Locations, including, without limitation, the conducting and advertising of the Sale in accordance with the Agency Agreement, the Sale Guidelines and this Order; and no further approval, license or permits of any governmental authority shall be required; provided, however, that the Debtor and/or the Agent continue to be bound by and comply with state and local public health and safety laws (“Safety Laws”), and tax, labor, employment, environmental laws and laws regulating deceptive practices and false advertising (collectively, “General Laws”), to the extent applicable.

8. If any parties or persons, including but not limited to landlords, subtenants, utility companies, governmental agencies (except to the extent provided otherwise in this Order), sheriffs, marshals or other public officers, creditors and all those acting for or on their behalf, believe that cause exists to: (a) prohibit the Agent from advertising the Sales, to the extent same is consistent with the Agency Agreement; (b) in any way interfere with or otherwise impede the conduct of the Sales or other liquidation or auction sales at the Closing Stores or the use or maintenance of the Merchandise or the Equipment thereat; or (c) institute any action or proceeding in any court or other administrative body having as its objective the obtaining of an order or judgment which might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of Sale or other liquidation sales at the Designated Closing Locations and/or seek to recover damages for breach(es) of covenants or provisions in any lease, over-leases or sublease, or parties to any such lease, over-lease or sub-lease, based upon any relief authorized herein, then this Court shall retain exclusive jurisdiction to resolve such dispute, and such parties or persons shall take no action against the Debtor, the

Agent or the Sale until this Court has resolved such dispute. This Court shall hear the request of such persons or parties with respect to any such disputes on an expedited basis, as may be appropriate under the circumstances.

9. The Sale at the Designated Closing Locations shall be conducted by the Debtor and the Agent without the necessity of compliance with any federal, state or local statute or ordinance or licensing requirement affecting “store closing”, “going out of business”, “liquidation” or “auction” sales thereat, or affecting advertising, including signs, banners, and posting of signage.

10. The Sale at the Designated Closing Locations shall be conducted by the Debtor and the Agent notwithstanding any restrictive provision of any lease (including any over-lease for a Designated Closing Location sub-leased by the Debtor) affecting or purporting to restrict the conduct of the Sale, the rejection of leases, abandonment of assets or “going dark” provisions. The Sale at the Designated Closing Locations does not constitute an enforceable default under any leases, over –leases and/or sub-leases of the Designated Closing Locations. The Agent shall have the right to close the Designated Closing Locations to the public for up to a five week period commencing on the Sale Commencement Date for such Designated Closing Location, for the purposes of preparing the Designated Closing Locations for the Sale.

11. The Debtor and/or the Agent (as the case may be), are authorized and empowered to transfer Merchandise and Equipment among the Designated Closing Locations, and from the Debtor’s other stores to the Designated Closing Locations.

12. The Agent be, and it hereby is, granted a limited license and right to use until the Sale Termination Date, the trade names, logos and customer lists relating to and

used in connection with the operation of the Designated Closing Locations, solely for the purpose of advertising and conducting the Sale in accordance with the terms of the Agency Agreement, the Sale Guidelines and this Order.

13. Provided that the Sale is conducted in accordance with the terms of this Order, the Agency Agreement and the Sale Guidelines, the Debtor and the Agent are presumed to be in compliance with the requirements of any applicable “going out of business”, “store closing”, “bankruptcy liquidation” or similar inventory liquidation sales, or bulk sale laws (each a “GOB Law,” and together, the “GOB Laws”). To the extent there is a dispute arising from or relating to the Sales, this Order, the Agency Agreement, or the Sale Guidelines, which dispute relates to any GOB Law (a “Reserved Dispute”), the Court shall retain exclusive jurisdiction to resolve the Reserved Dispute.

14. Within two (2) business days of entry of this Order, the Debtor shall serve copies of this Order, the Agency Agreement and the Sale Guidelines via e-mail, facsimile or overnight courier, on: (i) the Attorney General’s office for each state where a Sale will be held, (ii) the city and/or county consumer protection agency or similar agency for each city and/or county where a Sale will be held, and (iii) the division of consumer protection for each state where a Sale will be held. If, at any time within seven (7) days following service of the entry of this Order, any governmental authority wishes to assert that a Sale conducted pursuant to this Order, the Agency Agreement and/or the Sale Guidelines is in violation of a GOB Law, it shall send written notice of such Reserved Dispute to counsel for the Debtor so as to ensure delivery thereof within one (1) business day hereafter. If the Debtor and the governmental authority are unable to resolve the Reserved Dispute within fifteen (15) days of service of the notice, the aggrieved party may file a motion

with this Court requesting that this Court resolve the Reserved Dispute. In the event such a motion is filed, nothing in this Order shall preclude the Debtor or the other interested party from asserting (i) that the provisions of any GOB Law are preempted by the Bankruptcy Code or (ii) that neither the terms of this Order, nor the Debtor's conduct pursuant to this Order, violates such GOB Law. Filing a motion as set forth in this paragraph shall not be deemed to affect the finality of this Order or to limit or interfere with the Debtor's or Agent's ability to conduct or to continue to conduct the Sale pursuant to this Order and the Agency Agreement, absent further order of this Court. The Court grants authority for the Debtor and the Agent to conduct the Sale pursuant to the terms of this Order, the Agency Agreement, and/or the Sale Guidelines annexed hereto and to take all actions reasonably related thereto or arising in connection therewith.

15. The terms "GOB Law" and "GOB Laws" shall be deemed not to include any Safety Laws or General Laws. Notwithstanding any other provision in this Order, nothing herein shall exempt the Debtor and/or the Agent from compliance with any Safety Laws or General Laws or preclude any governmental entity from enforcing any Safety Laws or General Laws in the appropriate non-bankruptcy forum; provided, however, except for extenuating circumstances, the affected governmental unit shall provide the Debtor and the Agent with reasonable notice of any such alleged violation of any Safety Laws or General Laws as they pertain to the conduct of the Sale.

16. Except as otherwise set forth in this Order, this Court shall retain exclusive jurisdiction with regard to all issues or disputes in connection with this Order and the relief provided for herein, including, without limitation, to protect the Debtor

and/or the Agent from interference with the Sales, and to resolve any disputes related to the Sale or arising under the Agency Agreement or the implementation thereof.

17. The Agent shall not be liable for any claims against the Debtor other than as expressly provided for in the Agency Agreement and the Agent shall not have any successor liabilities.

18. The Debtor and the Agent are hereby authorized to conduct the Sale pursuant to the Agency Agreement and the Sale Guidelines, and take all actions reasonably related thereto or arising in connection therewith, including, without limitation, advertising the Sales as “going out of business”, “store closing,” “bankruptcy liquidation” or similar themed sale in media advertisements, and on interior and exterior banners and other signage, including street signage and sign-walkers, the Agent deems appropriate, notwithstanding any prohibitions in any statutes or ordinances affecting advertising, signs, banners, the posting of signage, sign walkers, and the requirements of any otherwise applicable bulk sales laws, all of which are hereby waived.

19. All utilities, landlords, creditors and all persons acting for or on their behalf shall not interfere with or otherwise impede the conduct of the Sale.

20. The Debtor, the Agent and each of their respective officers, employees and agents be, and they hereby are, authorized to execute such documents and to do such acts as are necessary or desirable to carry out the Sale and effectuate the Agency Agreement and the related actions set forth therein.

21. The Agent is not required to file or serve financing statements, notices of lien or similar instruments which otherwise may be required under federal or state law in any jurisdiction, or take any action, including taking possession, to validate and perfect

its liens. If, however, the Agent in its sole discretion determines to file any such financing statements, notices of lien or similar instruments, or to otherwise confirm perfection of such liens, the Debtor shall cooperate reasonably in such process. The stay imposed by §362(a) of the Bankruptcy Code is lifted by this Order in favor of the Agent to allow the filing and recording of a certified copy of this Order or any such financing statements, notice of lien or similar instruments, and all such documents are deemed to have been filed or recorded at the time of and on the date of this Order.

22. The provisions of this Order and the Agency Agreement and any actions taken pursuant hereto or thereto shall survive entry of any order which may be entered confirming or consummating any plan of reorganization of the Debtor, or which may be entered converting Debtor's case from Chapter 11 to Chapter 7, and the terms and provisions of the Agency Agreement as well as the rights and interests granted pursuant to this Order and the Agency Agreement shall continue in this or any superseding case and shall be binding upon Debtor, the Agent and their respective successors and permitted assigns, including any trustee or other fiduciary hereafter appointed as a legal representative of the Debtor under Chapter 7 or 11 of the Bankruptcy Code.

23. Any Debtor-owned Equipment remaining in the Designated Closing Locations as of the effective date of the rejection of the underlying lease for such premises by the Debtor shall, unless the affected lessor has been previously notified in writing by the Debtor to the contrary at least three (3) days prior to the effective date of such lease rejection, be deemed abandoned by the Debtor and/or the Agent; provided however, the Debtor shall provide any known third party holding or asserting a lien, security interest, or other interest in such Equipment with five (5) days' prior notice of

such abandonment and if such third party fails to remove such Equipment or to make arrangements to remove such Equipment within such time as is deemed acceptable to the affected landlord prior to the expiration of such five (5) day notice period, such Equipment shall be deemed abandoned by such third party and shall be deemed to be the property of the affected landlord.

24. As of the Sale Commencement Date, the Agent shall indicate that all sales of Merchandise will be “final sales” and “as is” and the Agent need not accept exchanges or returns of purchased Merchandise, nor accept checks as payment for Merchandise.

25. Notwithstanding Rule 6004(g) of the Federal Rules of Bankruptcy Procedure, this Order shall take effect immediately upon entry thereof.

26. This Order is the “Approval Order” described in the Agency Agreement.

27. Pursuant to and in accordance with the terms of the Agency Agreement and the Sale Guidelines, the Agent may, at its expense, supplement Merchandise in the Designated Closing Locations only with additional goods procured by Agent which is of no lesser quality to the Merchandise located in the Designated Closing Stores, including, without limitation, furniture, rugs, wall coverings, lighting, bedding and accessories (the “Additional Agent Merchandise”). In order to distinguish the Additional Agent Merchandise from the Merchandise located in the Designated Closing Locations, Agent shall affix distinctive tags and/or other identifying markings on all items of Additional Agent Merchandise, which shall enable Debtor, Agent and customers to distinguish the sales of the Additional Agent Merchandise from the sale of the Merchandise presently included in the Sale at the Designated Closing Locations. Additionally, Agent shall

provide signage in the Designated Closing Locations notifying customers that the Additional Agent Merchandise has been included in the Sale.

28. This Order constitutes an authorization of conduct by the Debtor and nothing contained herein shall be deemed to constitute a ruling with regard to the sovereign immunity of any state, and the failure of any state to object to the entry of this Order shall not operate as a waiver with respect thereto.

29. To the extent, if any, anything contained in this Order conflicts with a provision in the Agency Agreement or the Sale Guidelines, this Order shall govern and control. The Court shall retain jurisdiction with respect to any matters, claims, rights, or disputes arising from or related to the implementation of this Order.

30. Gift certificates, gift cards, merchandise credits, rain checks or the like issued by the Debtor shall not be accepted nor honored by the Agent.

31. Pursuant to Section 5.2 of the Agency Agreement, Agent shall cooperate with Purchaser to facilitate the delivery of Merchandise subject to Customer Orders (as such term is defined in the Purchase Agreement). Purchaser shall assume responsibility for the processing and delivery of such merchandise to customers, including retaining responsibility for the costs and expenses of processing, handling and delivery of such goods in accordance with the Purchase Agreement. Agent shall provide Purchaser with access to the Designated Closing Locations for purposes of processing Merchandise subject to Customer Orders.

32. Neither the inclusion of some or all of the Stores covered by that certain Unitary Lease dated as of June 8, 1999 by and between the Debtor and various entities related to Levitz SL, L.L.C. as landlord (collectively, the "Unitary Landlord") as

amended (the “Unitary Lease”) as Designated Closing Locations, nor the conduct of the Sale at the Designated Closing Locations subject to the Unitary Lease shall be construed as evidence that the Unitary Lease is severable in this proceeding or any other judicial proceeding. The right of the Debtor to request that this Court sever the Unitary Lease and the right of the Unitary Landlord to oppose such request are preserved in their entirety and not impacted by entry of this Order.

33. A Retained Employee that is terminated after the Sale Commencement Date but prior to January 31, 2006, if any, shall be entitled to receive from the Debtor, severance in an amount equal to the amount of wages such Retained Employee would have earned had his or her employment not been terminated until January 31, 2006.

34. Nothing in this Order shall alter or affect the Debtor’s obligation to comply with §365(d)(3) of the Bankruptcy Code.

35. The provisions of Bankruptcy Rule 6004(g) staying the effectiveness of this Order for ten (10) days are hereby waived, and this Order shall be effective immediately upon entry thereof.

Dated: December 14, 2005
New York, New York

/s/Burton R. Lifland
UNITED STATES BANKRUPTCY JUDGE