

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

Hello Newman, Inc.,

Case No. 16-12910 (SCC)

Debtor.

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**ORDER AUTHORIZING TRUSTEE TO OBTAIN  
POST-PETITION FINANCING AND GRANTING RELATED RELIEF**

Upon the application (the “Application”) of Albert Togut (the “Trustee”), not individually but solely in his capacity as Chapter 11 Trustee of the Hello Newman, Inc. (the “Debtor”), by his attorneys, Togut, Segal & Segal LLP (the “Togut Firm”), seeking entry of an Order, pursuant to §§ 105(a) and 364(c) of title 11 of the United States Code (the “Bankruptcy Code”), authorizing him to obtain post-petition financing on behalf of the Debtor’s estate up to the amount of \$300,000.00 (the “Financing”) from Admar Investments LLC (the “Lender”) upon the terms set forth in those certain loan documents, which include, but are not limited to that certain *Secured Promissory Note* (the “Note”) and that certain *Mortgage, Assignment of Leases and Rents and Security Agreement* (the “Mortgage” and together with the Note, the “Loan Documents”) <sup>1</sup> (as were annexed to the Application as Exhibit “A”), and it appearing that such financing is necessary and in the best interests of the Debtor’s estate; and it appearing that notice of the Application was good and sufficient and that no other notice is required; and upon the record of the hearing held on September

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<sup>1</sup> Capitalized terms which are not defined herein shall have the meanings ascribed in the Application and the Loan Documents.

18, 2017 in connection with the Application (the "Hearing"), and the Court having heard the Trustee and his attorneys, Doris Kornish ("Kornish"), and other parties in attendance, and having considered the sworn testimony of Neil Berger of the Togut Firm during the cross-examination of him by Kornish; and based upon the record of the Hearing and all of the prior pleadings and proceedings in this case, the Court having concluded that Advances (defined below) may not be made directly to Kornish, and that the best interests of the Debtor's estate and of Kornish will be best served by having such Advances be made to one of Kornish's family members on her behalf; and due deliberation having been had thereon; and sufficient cause appearing therefor, and upon all of the other pleadings and proceedings had herein this Court hereby makes the following findings of facts and conclusions of law:

A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334.

B. The statutory predicates for the relief sought in the Application and the basis for the approvals and authorizations contained in this Order are §§ 105(a) and 364 of the Bankruptcy Code.

C. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (D), (M) and (O).

D. Venue of this case and the Application in this district is proper under 28 U.S.C. §§ 1408 and 1409.

E. The Application contains sufficient information to satisfy the requirements

contained in Bankruptcy Rule 4001 and LBR 4001-2.

F. Sufficient notice of the relief sought in the Application has been given, and no further notice is required. The Trustee has adequately disclosed all material facts necessary to permit the Court, the Debtor and the Debtor's creditors to evaluate the merits of the Application and the terms of the Financing. A reasonable opportunity to object or be heard regarding the relief requested in the Application has been afforded to interested persons and entities.

G. The Trustee has advanced sound business reasons for the Financing from the Lender upon the terms and conditions set forth in the Loan Documents, and it is a sound exercise of the Trustee's business judgment to obtain the Financing on the grounds set forth in the Application, the Loan Documents and the record made during the Hearing.

H. The Loan Documents and any documents memorializing the provisions thereof were negotiated and entered into in good faith and pursuant to arms' length bargaining positions by and between the Trustee and the Lender.

Based upon the forgoing, and after due consideration and good cause appearing therefor, it is hereby **ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

1. The Trustee is authorized to enter into, execute and deliver to the Lender, any and all documents, agreements and instruments contemplated by, related to or to be delivered pursuant to or in connection with the Financing from the Lender, and which have or may reasonably be requested by the Lender to evidence or effectuate any of

the transactions or other matters contemplated by or set forth in the Loan Documents or this Order, each as may be amended hereafter from time to time (the documents, instruments and agreements contemplated by the Term Sheet) without further order of this Court.

2. The Trustee is further authorized to perform his obligations under the Loan Documents, and to take all actions, and he and his retained attorneys are authorized to execute all documents necessary or appropriate to consummate the transactions contemplated in the Loan Documents as may be necessary to (i) pay taxes, insurance premiums, governmental charges, and other costs and expenses to maintain, secure, repair, and safeguard the Debtor's real property located at 113 E. 2<sup>nd</sup> Street, New York, New York (Block:429, Lot 9) (the "Real Property") in accordance with the Loan Documents and this Order, and (ii) make an advance(s) of funds (each, an "Advance") to Leon Hartman, Kornish's son, and not directly to Kornish, utilizing a bank account that Leon Hartman, and Odetta Hartman, and Camellia Hartman, Kornish's daughters (Leon Hartman, Odetta Hartman and Camellia Hartman, together "Leon Hartman"), have established at Citibank, N.A., Account No. xxx4466 (the "Account"), to receive the Advances that may be made for the benefit of Kornish to be used by Leon Hartman to facilitate Kornish's move from the Real Property to another residence, all as may be consistent with this Order, which when consummated, shall constitute legal, valid, and binding obligations of the Debtor, that are enforceable against the Debtor, its successors and/or assigns (including, without limitation, any trustee or other estate representative in any Chapter 11 case, or subsequent Chapter 7

or Chapter 11 case) in accordance with its terms, and the Trustee is authorized to pay and advance all sums which are necessary or appropriate to the consummation of the transactions contemplated under the Loan Documents and this Order including, without limitation, interest fees, expenses and any other amounts required or allowed to be paid in accordance with the Loan Documents, or which may arise therefrom.

3. With exception solely to the rights and claims in favor of the Lender under the Loan Documents and the Trustee's obligations thereunder, neither the Trustee nor the Togut Firm (nor any of its members and employees), shall have any responsibility, obligation or liability whatsoever to any person (as defined in Bankruptcy Code section 101(41)), governmental unit (as defined in Bankruptcy Code section 101(27)) and any other party in connection with the Advances that are made pursuant to the Loan Documents and this Order.

4. With exception solely to their obligations hereunder, none of Leon Hartman, Odetta Hartman, or Camellia Hartman shall have any responsibility, obligation or liability whatsoever to any person (as defined in Bankruptcy Code section 101(41)), governmental unit (as defined in Bankruptcy Code section 101(27)) or any other party in connection with the Advances that are made pursuant to, and for the purposes stated in, this Order.

5. Notwithstanding anything to the contrary contained herein, the Lender's obligation to provide Financing shall terminate upon the earliest to occur of (the "Termination Date") (i) the date of final indefeasible payment and satisfaction in full in

cash of the Financing, and termination of the Debtor's obligations under the Loan Documents (ii) the consummation of the sale or other disposition of all or substantially all of the Real Property, and upon an uncured Event of Default under the terms of the Loan Documents. For the avoidance of doubt, in the event of an uncured Event of Default, the Lender, its successors and/or assigns, may declare the entire Debt to be immediately due and payable and may seek an order of this Court upon five (5) business days prior written notice to the Trustee and other parties in interest in the above-captioned case to obtain relief from the automatic stay for authority to enforce of its state law rights and remedies against the Real Property.

6. The Financing to be provided by the Lender to the estate of the Debtor, as contemplated in the Loan Documents, shall be, and is hereby granted the status of an allowed superpriority administrative expense claim of the estate pursuant to 11 U.S.C. § 364(c)(1), which shall not at anytime be made subject or subordinate to, or made *pari passu* with, any other lien, security interest or claim against the Property, existing as of the date that the Financing under the Loan Documents is consummated, or created under 11 U.S.C. § 364(d) or otherwise as set forth in the Loan Documents, and shall be secured by the Real Property as provided for in the Loan Documents; provided, however, that such superpriority administrative expense claim is (i) subject to the allowed fees and expenses of the Trustee and his retained professionals, which shall be fixed and allowed by the Bankruptcy Court upon written application(s), notice and a hearing, subject to all of the Lender's rights to object and be heard in connection with those applications; and (ii) shall

exclude any right, lien, claim or interest in any causes of action or rights arising under Chapter 5 of the Bankruptcy Code or any similar state or Federal law in favor of the Trustee or the Debtor's estate; provided further, that all reasonable fees and expenses incurred by Lender's counsel in connection with preparing and negotiating the Loan Documents and the transactions contemplated thereby shall be paid as part of the Principal Sum under the Loan Documents

7. To the extent there is any inconsistency between the Loan Documents and this Order, this Order shall control.

8. The automatic stay imposed under 11 U.S.C. § 362(a) shall be, and is hereby modified as to the Lender to allow implementation of the provisions of this Order without further notice or order of the Bankruptcy Court.

9. The rights, remedies, powers, privileges, liens, and priorities of the Lender as contemplated herein, shall not be modified, altered or impaired by any subsequent order (including, but not limited to any confirmation order), by any plan or reorganization or liquidation in this case, or any successor case, without the express consent of the Lender, unless the Financing has been indefeasibly paid in full in cash and completely satisfied, and the commitments of the Debtor as set forth in the Loan Documents have been terminated.

10. The Court shall retain jurisdiction to enforce the provisions of this Order and the Loan Documents and to resolve any disputes concerning this Order, the Loan Documents, the distribution of the loan proceeds or the rights and duties of the

parties thereunder.

11. This Order may be recorded in the land records in which title to any property of the Debtor pledged as security in connection with the Financing is registered or recorded. Each and every federal, state and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Exit Financing Documents and this Order.

12. The Trustee is authorized and directed to pay, disburse, advance or reserve, as the case may be, the distributions and Advances provided for under the Loan Documents and this Order from the proceeds of the Financing at and after the closing on the Loan Documents, together with the costs and expenses, if any, of closing payable by the Debtor's estate.

13. The Trustee shall hold the balance, if any, of the proceeds of the Financing not paid or disbursed at the closing in the estate account that he maintains for the Debtor's estate and he may distribute and advance said proceeds only in accordance with the terms of the Loan Documents and this Order.

14. Prior to making any Advance under the Loan Documents and this Order to Leon Hartman on behalf of Kornish, (a) Kornish must have vacated the Real Property; (b) Leon Hartman must have designated and disclosed to the Trustee in writing the Account that he maintains for the benefit of Kornish and into which the Trustee may disburse such Advance; and (c) Leon Hartman and/or Kornish must provide such other



documents as may be reasonably requested by the Trustee to ensure that the Advance will facilitate Kornish's move from the Real Property to another residence.

15. Each and every Advance made to Kornish shall constitute, and shall be credited as, an advance of any distribution from the Debtor's estate to which Kornish may be entitled.

16. Nothing herein shall impair the ability of this Court, the United States Trustee or the Trustee from enforcing orders entered in this case, all of which continue in full force and effect including, without limitation, the Findings of Fact and Conclusions of Law [Dkt. No. 96, Adv. Pro. Dkt. No. 33] and the Order Granting Judgment [Dkt. No 97, Adv. Pro. No. 34].

Dated: New York, New York  
September 27, 2017

/S/ Shelley C. Chapman  
HONORABLE SHELLEY C. CHAPMAN  
UNITED STATES BANKRUPTCY JUDGE