

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

IN RE:	§	Chapter 11
	§	
BABCOCK QUARTER HORSES, INC.	§	Case No. 09-42232
	§	Hearing Requested:
Debtor.	§	September 30, 2010 at 9:30 a.m.

**EXPEDITED MOTION OF THE CHAPTER 11 TRUSTEE
OF BABCOCK QUARTER HORSES, INC. TO SELL CERTAIN
ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES
AND OTHER ASSETS SUBJECT TO LIENS, CLAIMS AND ENCUMBRANCES**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Christopher J. Moser, the Chapter 11 Trustee of Babcock Quarter Horses, Inc. (the “Chapter 11 Trustee”), hereby files this expedited motion requesting the entry of an order authorizing the sale of certain assets of BQH (the “Expedited Sale Motion”), and respectfully states as follows:

I. BACKGROUND

1. On July 13, 2009, Babcock Quarter Horses, Inc. filed a voluntary Chapter 11 petition in bankruptcy. Christopher Moser became the duly appointed Chapter 11 Trustee on September 13, 2010.

2. The Chapter 11 Trustee files this Expedited Sale Motion requesting immediate authorization to sell certain assets of BQH’s bankruptcy estate to the Fellowship of Christian Upreach Services, Inc., an Oklahoma non-for-profit corporation (“FOCUS”) or a higher bidder as set forth below. BQH’s monthly operating reports (the “MORs”) reflected no cash in its bank accounts and accordingly, the Chapter 11 Trustee has inherited a case with no funds. It is thus essential that the Chapter 11 Trustee finalize a sale immediately because over two hundred (200)

horses currently live on the Gainesville Ranch and the Valley View Ranch formerly owned by Jim Babcock (the “Ranches”)¹. These horses need immediate care, medical attention and feeding. The Chapter 11 Trustee therefore requests authorization to sell the horses (subject to adjustment) and the equipment as described below for \$325,000.00.

3. The Trustee has been appointed for 10 days and both individually and through his counsel, has worked diligently to come up to speed in this matter. It was determined quickly that a sale of the horses must take place on an expedited basis.

4. The Trustee proposes to sell certain horses and equipment to FOCUS on an expedited basis pursuant to the offer letter attached as **Exhibit “1.”** While the Trustee would direct any party-in-interest to read the terms of the offer letter carefully, the major points are as follows:

- a. The horses will be purchased for \$225,000.00, which amount is subject to a price adjustment for, *inter alia*, horses previously sold or any horse taken off the inventory list. This case is moving rapidly. The Trustee is currently gathering information to determine if any horses have liens and/or may not be property of the BQH estate. In that case, the Trustee would endeavor to gather permission from the lienholder and/or, if the ownership in dispute, to transfer the horse to the new purchaser subject to any claims of the party claiming ownership or the recorded lien.
- b. Because FOCUS is or will probably be the new owner of the Valley View Ranch, it refuses to purchase the horses without purchasing the equipment on the two ranches. The Trustee and FOCUS have reached an agreement where FOCUS will pay \$100,000.00 for the equipment described in the offer letter subject to any valid and existing liens on the equipment. At this point, the Trustee believes that Sanger Bank may have a \$200,000 lien on certain trailers that are part of the purchase. Additionally, Kubota has an approximate \$2,000 lien on a tractor. FOCUS has agreed to pay a 20% deposit of \$65,000 and would receive its deposit back should there be another winning bidder at the anticipated hearing date of September 30, 2010 at 9:30 a.m. FOCUS would also be requesting an administrative claim for any out-of-pocket expenses it has incurred in the care of the horses should it not be the winning bidder. The estate cannot afford to

¹ These properties have been foreclosed on and FOCUS is finalizing its purchase of the Valley View Ranch.

care for these horses. FOCUS has offered cash and is willing to take the equipment subject to the liens.

- c. The estate also possess frozen semen and while the stallions (except Smart Chickalena) will ultimately be transferred to FOCUS or the winning bidder, such winning bidder will have to wait for the ultimate delivery of the title on these stallions until the Trustee has disposed of the semen or otherwise made arrangements thereto. Currently, the frozen semen and embryos are not part of this sale.
- d. The principal of FOCUS is named James Bond and he has known Mr. Babcock for many years. Over the last six years he has engaged in several transactions with Mr. Babcock but states he has never been a partner of Mr. Babcock in any deal.
- e. Also, by this motion, the Trustee would be asking the Court for authority to execute any and all necessary documents to effectuate the sale with the purchaser and the American Quarter Horse Association.
- f. In order to control any unauthorized dispositions of the assets by the debtor or its agents or representatives, the Trustee is also seeking an order enjoining Jim Babcock, on behalf of himself or as agent or representative of any entity, from executing any document required by or requested to be executed by the American Quarter Horse Association (“AQHA”) in connection with the registration, re-registration and/or transfer of registered ownership of any horse, or its foals or related semen or embryos, that are or may be part of either the bankruptcy estate of this Chapter 11 proceeding or Jim Babcock’s Chapter 7 bankruptcy estate.
- g. In order to control unauthorized dispositions of the assets by third parties, the Trustee is also seeking an order directing the AQHA to notify the Trustee if it receives any document purporting to effect a transfer, registration or re-registration of any horse that is currently registered with the AQHA in the name of Jim Babcock, Babcock Quarter Horses, Inc., or any entity for which Jim Babcock is agent or representative, and to withhold processing such transaction pending written authorization by the Trustee.

5. Concurrently with the filing of this motion, the Chapter 11 Trustee has filed a motion seeking to retain Professional Auction Services, Inc. (“PAS”) to market the horses in an attempt to locate a higher and better offer. PAS has been engaging in a marketing blitzkrieg since September 15, 2010 to find a better and higher offer. The Trustee is hopeful that PAS will entice other bidders to the hearing where the Court will entertain higher bids. PAS has informed

the Trustee that in its expert opinion, the current offer is well within the range of reasonableness. This is because of the extreme downturn in the market for these types of horses, the large amount of current dispersal sales of horses set around the country and the high cost of caring for the horses pending a sale. In the event FOCUS' current bid holds, the Trustee would seek approval to reimburse PAS for its reasonable marketing costs. Should PAS entice bidders to the auction, the Trustee would propose to pay PAS pursuant to the terms of its retention motion.

II. JURISDICTION AND VENUE

6. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This matter is a core proceeding pursuant to 28 U.S.C. § 157.

7. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

III. PROCEDURAL AND FACTUAL BACKGROUND

A. Bankruptcy Filings of Jim Babcock and Babcock Quarter Horses, Inc.

8. On July 13, 2009, BQH filed a voluntary petition under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). On September 13, 2010, Christopher Moser became the duly appointed Chapter 11 Trustee.

9. On August 3, 2009, Jim Babcock filed his voluntary petition for relief under chapter 11 of the Bankruptcy Code. The case converted to Chapter 7 on September 13, 2010.

B. Committee Formation in the Case of Babcock Quarter Horses, Inc.

10. On August 27, 2009, (the "Committee Formation Date"), the United States Trustee appointed the Committee in the case of Babcock Quarter Horses, Inc. No official committee of unsecured creditors has been appointed in Jim Babcock's bankruptcy case.

C. The Assets of the Bankruptcy Estates of Jim Babcock and Babcock Quarter Horses, Inc.

a. The Gainesville Ranch and the Valley View Ranch (Assets of Jim Babcock's Bankruptcy Estate Before Secured Creditors Foreclosed on Them).

11. According to his bankruptcy schedules, Mr. Babcock purportedly owns 100% of the stock of BQH. Mr. Babcock also owned the ranches upon which BQH operates its business before the secured creditors foreclosed on the ranches on September 7, 2010: a ranch of approximately 73 acres used as a training facility in Gainesville, Texas (the "Gainesville Ranch"); and a ranch in Valley View, Texas (the "Valley View Ranch") that presently serves as a breeding facility for the horses. FOCUS is finalizing its purchase of the Valley View Ranch. According to his bankruptcy schedules, Sanger Bank has a second lien on some of this real estate and is apparently cross-collateralized by the aforementioned equipment in an amount of \$200,000.

b. The Mare Lease Program.

12. BQH has entered into agreements with various persons for the lease of mares. Under the typical mare lease agreement, a non-debtor party (the "Lessor") agrees to lease a mare to BQH for a certain period of time, generally three to four years. The lease provides that all foals born prior to the termination of the lease become the property of BQH. At the termination of the lease, the Lessor can either choose to have his mare returned, or he can choose to receive a cash payment in exchange for selling the mare to BQH. The cash payment varies from \$50,000 to \$100,000.

13. According to the Debtor's schedule G (schedule of executory contracts), there were twenty-four (24) participants in the mare lease program at the time that BQH filed this

schedule in October 2009. The Trustee has concurrently filed its Expedited Motion to Reject the mare lease contracts.

IV. ARGUMENT AND AUTHORITY

14. Bankruptcy Code § 363(b)(1) provides that “[t]he [debtor in possession], after notice and hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1).

15. Bankruptcy Code § 363(f) authorizes a sale of property free and clear of all liens, interests, and encumbrances:

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). Because Bankruptcy Code § 363(f) is drafted in the disjunctive, only one of the conditions set forth in that statute needs to be satisfied for a sale free and clear of liens, interests, and encumbrances to occur.

16. To the Trustee’s knowledge, no entity has a lien on the horses that BQH owns and that the Chapter 11 Trustee intends to sell by this motion. The equipment is being sold subject to liens. To the extent that an entity does assert a lien on such assets, however, the Chapter 11 Trustee submits that one or more of the conditions set forth in section 363(f) can be satisfied.

NOTICE OF THIS MOTION

17. Under Bankruptcy Rule 2002(a) and (c), the Chapter 11 Trustee is required to provide twenty-one (21) day notice to BQH's creditors of a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the Court for cause shown shortens the time. The Chapter 11 Trustee respectfully requests that cause exists to shorten the twenty-one (21) day time period so that a hearing can be held on September 30, 2010. The Chapter 11 Trustee therefore requests that the Court determine that notice of this Expedited Sale Motion is sufficient under the circumstances. The Chapter 11 Trustee therefore respectfully requests that the Court approve the foregoing notice procedures.

WAIVER OF 14-DAY STAY

18. Bankruptcy Rule 6004(h) provides for a fourteen (14) day stay of an order authorizing the use, sale, or lease of property after the entry of the order, unless the court orders otherwise. *See* FED. R. BANKR. P. 6004(h). Because the Chapter 11 Trustee intends to conduct private sales of the BQH Assets on an emergency basis, the Chapter 11 Trustee requests that the Court waive the 14-day stay period provided in Bankruptcy Rule 6004(h).

PRAYER

The Chapter 11 Trustee requests that the Court enter an Order authorizing him to finalize the sales of the BQH Assets as shown above and for such other and further relief as he may show himself justly entitled.

Dated: September 23, 2010

Respectfully submitted,

SINGER & LEVICK, P.C.

By: /s/Larry A. Levick
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ATTORNEYS FOR CHRISTOPHER MOSER, TRUSTEE

CERTIFICATE OF CONFERENCE

I hereby certify that I was unable to confer with Bill Payne, counsel for BQH and Mr. Babcock, concerning the relief requested in this motion, before filing this motion.

 /s/ Christopher J. Moser
Christopher J. Moser

CERTIFICATE OF SERVICE

I hereby certify that Notice of this document will be electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in this case pursuant to the Electronic Filing Procedures in this District and that a true and correct copy of the foregoing will be served upon all parties listed on the attached service list via United States mail, first class, postage prepaid on this 23rd day of September 2010.

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Larry A. Levick

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Case 09-42232
Eastern District of Texas
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End of Label Matrix
Mailable recipients 105
Bypassed recipients 22
Total 127