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**Brief Of
Amicus Curiae:
National Association Of Bankruptcy
Trustees In Support
Of Appellee,
Mark Degiacomo,
Chapter 7 Trustee**



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In the last issue, I described the benefit of NABT's web site from a personal perspective as a seller of assets. In this issue, a regular **buyer** of assets offers his thoughts on the web site and what trustees can do to encourage the sale of assets in Ch. 7 cases. What really strikes me are the comments in the next to last paragraph of his article; that he regularly contacts trustees who are content to sell to their typical buyer and thus freeze him out of the bidding process. In an era where we are expected to create more and more asset cases, particularly small asset cases, none of us can afford to overlook those who **want** to buy our assets.

Buying Bankruptcy Estate Assets

By Michael C. Taylor
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On a recent morning in January I planned my day around the telephonic auction of music royalties. Since I had seen the estate asset on the NABT website the previous summer I studied this investment carefully, estimated how much I believed these irregular and uncertain payments were worth over time and how much I could pay. I submitted an offer to the Trustee five months prior to the auction of approximately \$5,200, leaving room to increase my bid if necessary.

Two other buyers plugged in to the telephonic auction that morning. Two out of three of us traded offers for a few moments — raising the price in \$100 increments — and I felt confident I would be walking away as the owner of this unusual but hopefully safe and lucrative investment. After offering \$6,500 stretching my limit a little bit I ceased bidding and conceded to the second buyer. But strangely, the third until-now-silent bidder suddenly raised the offer. Now he traded raises with my auction opponent in \$1,000 increments. The royalties soon passed \$9,000, with

no let up in sight. I listened, just to see what would happen. With a few pauses in the action, surprisingly the offers kept rising. At the end of five minutes the winning bidder had it at \$22,500. The third, previously silent bidder, had pushed the final price and additional recovery for the estate by more than \$15,000 beyond where the 2nd bidder and I had been willing to go.

The lesson for Bankruptcy Trustees was never more clear: If you can introduce even one additional buyer to the sales process, you're going to recover much more for the estate, even on unusual assets such as music royalties. In this case, recovery was three times as large simply by increasing the number of buyers from two to three.

Selling bankruptcy assets for high prices is a difficult job for trustees partly because as one trustee mentioned to me, sales must be done "in a fishbowl, so that everything can be seen by everyone." As a result, trustees need to find the right kind of buyer, one who understands the special requirements of the bankruptcy process. At the same time, trustees know that the likely buyer for many assets is someone local, who can visit the asset in the case of real estate, or who is willing to cart it away in their own truck if the asset is household goods.

The NABT website does a wonderful job of attracting national attention to assets, and by all means trustees should be using this tool to the maximum. But let's face it, many times a trustee is better served showing an unimproved 1-acre lot, or a Toyota Camry with 50,000 miles on it, to a local audience of buyers. Local buyers are the only ones who would pay top-dollar for such an asset.

Since joining the NABT as an associate member and participating in many asset purchases, I've noticed a few things that work well for Trustees in maximizing estate recovery and minimizing hassle. What I suggest below are two methods of attracting to your sales buyers who are both local and experienced in the bankruptcy process. Best of all, while they require some organization and coordination efforts upfront, they will repay your efforts many times in terms of estate recovery.

1. ORGANIZE MONTHLY BANKRUPTCY AUCTIONS FOR TRUSTEES IN YOUR AREA TARGETED FOR LOCAL BUYERS

A few years ago in the Phoenix, Arizona area, Trustee David Birdsell organized a monthly specialized bankruptcy auction which I believe is unique nationwide. Every month a paralegal collects the



descriptions of saleable assets from all 17 Trustees in the Phoenix area. Trustees agree to provide \$20 to the paralegal for every successful sale of the asset at the auction.

The effort requires the paralegal to devote a few hours each month to edit the information, and fax or email the list to all interested asset buyers who sign up with the paralegal. The Phoenix list of asset buyers now boasts 200 interested parties.

Trustee Birdsell traditionally conducts the auction in person himself on the steps of the Phoenix courthouse, while the rest of the Phoenix-area trustees can relax knowing their assets will fetch top prices.

For trustees, they get an outsourced, specialized auction that does not use their own office resources but attracts a sophisticated and local audience to their assets. Knowing that assets will be auctioned every month, buyers are certain to watch for the Phoenix list and study it carefully when it hits their inbox. Phoenix-area trustees get higher prices for even small assets cases as a result of these auctions, and without increasing their workload.

Every trustee who works in a concentrated population area should encourage a paralegal to set up this mini-business of gathering asset descriptions and holding a local, monthly auction on behalf of the 5, 10, or 15 Trustees who service the same area.

2. LOBBY YOUR DISTRICT BANKRUPTCY COURT WEBMASTER TO POST ASSET SALES

When I began purchasing bankruptcy assets I was shocked to learn that only a few bankruptcy courts post sales. Of the 89 bankruptcy court websites in the United States, 10 currently list asset sales. And of the 10 that list

assets, rarely are the sites timely, relevant, and complete.¹ The few court-run websites fulfill the “fishbowl” function of public disclosure, but do not help trustees attract buyers for their assets.

I’ve contacted a few non-listing bankruptcy court webmasters to ask whether they plan to list assets, but they respond with complete surprise that this is even possible. I am convinced that this will change only if trustees, a major constituency of the courts, lobby for change. No asset buyer is going to make this happen, as we have no voice in the bankruptcy court process.

Each local bankruptcy court website is the ideal location to attract specialized, local buyers, the target buyer of bankrupt estate assets. The local Clerk of Courts already receives notification of the intention to sell assets by trustees. It seems only logical that trustees would insist on the final step of posting that sale on the best public notice-board, the internet. The Clerk, in coordination with the local webmaster, should provide the service of posting timely notification of sales to the largest audience of good buyers.

If bankruptcy sales should be con-

ducted “in a fishbowl” then the local court website should be that fishbowl. The best part of this for trustees is that their offices will not have to expend additional effort, beyond the initial lobbying for the service.

I have contacted many Trustees to introduce my company and offer to purchase assets which are otherwise difficult to liquidate. I am sorry to report that often I hear: “Well, we already have a person who buys our assets.” The fact is that if Trustees increase the numbers of experienced, local buyers by just one or two more, then they stand to increase estate recoveries dramatically.

The goal of maximizing recovery for the estate while minimizing hassle is a tricky business of finding the right audience - sophisticated in the bankruptcy process while likely to care about assets which may hold only local appeal. Holding monthly local, specialized bankruptcy auctions and pushing the local bankruptcy courts to post assets online will go a long way toward achieving that goal. 🏠

Footnotes

1. On a typical month on the New Hampshire Bankruptcy Court asset sales page, for example, only two assets are listed, far fewer than must be in the entire state. In addition, posted information on bankruptcy websites is often incomplete, without the name of the Trustee, for example, or the nature of the asset. New Hampshire, of course, is ahead of the other 79 courts that list no assets on their sites.

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