

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
Atari, Inc., <u>et al.</u> ,)	Case No. 13-10176 (JMP)
)	
Debtors.)	(Jointly Administered)

**ORDER AUTHORIZING RETENTION AND EMPLOYMENT OF DUFF & PHELPS
SECURITIES, LLC, AS FINANCIAL ADVISOR TO THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS NUNC PRO TUNC TO FEBRUARY 11, 2013**

Upon the application (the “Application”) of the Official Committee of Unsecured Creditors (the “Committee”) of the above-captioned debtors and debtors-in-possession (the “Debtors”) for the entry of an order, pursuant to sections 328(a) and 1103(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended and supplemented, the “Bankruptcy Code”), Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2014-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York (the “Local Rules”), authorizing the Committee to retain and employ Duff & Phelps Securities, LLC (“D&P”) as its financial advisor in connection with these Chapter 11 cases *nunc pro tunc* to February 11, 2013 pursuant to the terms of the Engagement Letter¹ and as supported by the Declaration of Thomas Clark Carlson, a Managing Director at D&P (the “Carlson Declaration”); and this Court having jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. §§ 157(b) and 1334; and this proceeding being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Application having been provided, and it appearing that no other or further notice need be provided; and this

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Application.

Court having reviewed the Application; and the Court being satisfied based on the representations made in the Application and the Carlson Declaration, that D&P represents no interest adverse to the Committee and/or the Debtors' estates with respect to the matters upon which it is to be engaged, that the terms and conditions set forth in the Engagement Letter are reasonable; and this Court having determined that D&P is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code; and upon the limited objection of Alden Global Value Recovery Master Fund, L.P. and the Statement and Reservation of Rights of the Debtors (together, the "Objections"); and upon the record of the hearing held before the Court on March 20, 2013; and the Court having determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and this Court being satisfied that D&P's employment is necessary and in the best interest of the Committee, the Debtors' estates and all parties-in-interest, and after due deliberation and sufficient cause appearing therefor, it is hereby:

ORDERED that the Objections are overruled and the Application is GRANTED;

and it is further

ORDERED that in accordance with sections 328(a) and 1103(a) of the Bankruptcy Code and Bankruptcy Rule 2014(a), the Committee is authorized to retain and employ D&P as its financial advisor, *nunc pro tunc* to February 11, 2013 on the terms described in the Application and set forth in the Engagement Letter; and it is further

ORDERED that D&P shall be compensated in accordance with the Engagement Letter and that D&P is authorized to perform the services set forth in the Application, as more fully described in the Engagement Letter, in compliance with the applicable provisions of the

Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any other applicable procedures and orders of this Court; and it is further

ORDERED that notwithstanding the foregoing, fee applications filed by D&P shall be subject to review only pursuant to the standards set forth in section 328(a) of the Bankruptcy Code, and not subject to the standards of review set forth in section 330 of the Bankruptcy Code; provided, however, that the U.S. Trustee shall retain the right to object to any D&P fee application based on the reasonableness standard pursuant to section 330 and of the Bankruptcy Code; and it is further

ORDERED that D&P and its professionals (i) shall be permitted to provide hours in half hour increments along with reasonably detailed time records and (ii) shall not be required to maintain or provide detailed time records using project categories in connection with its fee applications; and it is further

ORDERED that all requests of D&P for indemnification or contribution payments pursuant to the Engagement Letter shall be made by means of an application (interim or final as the case may be) and shall be subject to review by this Court to ensure that payment of indemnification or contribution payments conforms to the terms of the Engagement Letter and is reasonable based upon the circumstances of the litigation or settlement in respect of which indemnity or contribution is sought; provided, however, that in no event shall D&P be indemnified or receive contribution (i) in the case of its own bad faith, self-dealing, breach of fiduciary duty (if any), gross negligence or willful misconduct, or (ii) if the Debtors or a representative of the estates asserts a claim for, and a court of competent jurisdiction determines by final order that such claim arose out of, D&P's own bad faith, self-dealing, breach of fiduciary duty (if any), gross negligence, or willful misconduct; and it is further

ORDERED that in the event that D&P seeks reimbursement for attorneys' fees from the Debtors relating to indemnity claims, the invoices and supporting time records from such attorneys shall be included in D&P's own applications (both interim and final) and such invoices and time records shall be subject to the United States Trustee's Guidelines for compensation and reimbursement of expenses and approval by the Bankruptcy Court under the standards of sections 330 and 331 of the Bankruptcy Code, without regard to whether such attorney has been retained under section 327 of the Bankruptcy Code and without regard to whether such attorney's services satisfy section 330(a)(3)(C) of the Bankruptcy Code; and it is further

ORDERED that notwithstanding the possible applicability of Bankruptcy Rules 6004, 7062 and 9014, or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that to the extent there is any inconsistency between this Order and the Engagement Letter, this Order shall govern; and it is further

ORDERED that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: New York, New York
March 21, 2013

s/ James M. Peck
HONORABLE JAMES M. PECK
UNITED STATES BANKRUPTCY JUDGE