IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
	:	
CHI-CHI'S, INC., et al.,	:	Bankr. Case No. 03-13063 (CGC)
	:	
Debtors.	:	Jointly Administered
	:	
	:	**Objections Due: 1/05/04 at 4:00 p.m. ET**
	:	**Hearing Date: 1/12/04 at 10:00 a.m. ET**

OBJECTION OF THE ACTING UNITED STATES TRUSTEE TO THE APPLICATION OF DEBTORS FOR ORDER PURSUANT TO 11 U.S.C. SECTION 327(a) AND FED.R.BANKR.P. 2014(A) AUTHORIZING THE EMPLOYMENT AND RETENTION OF FRED BUSH AND ASSOCIATES, INC. AS LIQUIDATOR FOR CERTAIN OF THE DEBTOR'S PERSONAL PROPERTY

In support of her Objection to the Debtors Chi-Chi's, Inc and Koo Koo Roo, Inc's Application for an Order pursuant to 11 U.S.C. § 327(a) and Fed.R.Bankr. P. 2014(A) authorizing the employment and retention of Fred Bush and Associates, Inc. ("Bush") as liquidator for certain of the Debtor's personal property (the "Application"), Roberta A. DeAngelis, the Acting United States Trustee for Region 3 ("UST"), by and through her undersigned counsel, states as follows:

Background

1. This Court has jurisdiction to hear the above-referenced Objection.

2. Under 28 U.S.C. § 586, the UST is charged with monitoring applications filed under section 327 of the Bankruptcy Code "and, whenever the United States trustee deems it to be appropriate, filing with the court comments with respect to the approval of such applications." 28 U.S.C. § 586(a)(3)(H). This duty is part of the UST's overarching responsibility to enforce the laws as written by Congress and interpreted by the courts. *See*

United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.), 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that UST has "public interest standing" under 11 U.S.C. § 307 which goes beyond mere pecuniary interest); *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6th Cir. 1990) (describing the UST as a "watchdog").

3. Pursuant to 11 U.S.C. § 307, the UST has standing to be heard with regard to the above-referenced Objection.

4. On October 8, 2003, the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses as debtors-in-possession. 11 U.S.C. §§ 1107, 1108.

5. On October 20, 2003, the Official Committee of Unsecured Creditors (the "Committee") was appointed.

6. The Application requests authority to employ and retain Bush to liquidate the personal property removed from the Debtors' restaurant locations in California, whose leases the Debtor has rejected.

Grounds/Basis for Relief

7. Section 327(a) of the Bankruptcy Code provides:

> The trustee, with the court's approval, may employ one or more auctioneers. . .or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title. .

11 U.S.C. § 327 (a).

8. The United States Trustee objects to the provision in the Application that states

that Bush is not required to file an application to the Court for payment of its commission. Because Bush is being employed as a professional under section 327(a), its fees are subject to further review under section 330. Without a fee application, the Court, and all parties in interest, lose their statutory right to review the reasonableness of the professional's fees.

9. The UST further objects to Bush's requested commissions of 15% of the total gross proceeds collected at the auctions for the cleaning, reconditioning, advertising and labor costs incurred plus an additional 15% of the total gross proceeds collected at the auctions as a straight commission. Bush also requests a flat fees of $1,000.00 and $1,250.00 per location for labor and transportation costs. The UST asserts that such compensation is excessive and unreasonable and is above the standard rates charged by auctioneers in this jurisdiction.

10. The UST further objects to the Application because it does not provide an itemization of Bush's estimated expenses, including for advertisement and labor. A list of estimated expenses should be provided to the Court and parties in interest to allow them an opportunity to determine if the expenses are reasonable at this juncture and provide them with a comparison when the final fee application is filed.

11. The UST leaves the movants to their burden and reserves any and all of her rights to, *inter alia*, conduct discovery and to modify, amend, supplement or augment this objection and take whatever other actions are deemed necessary and appropriate.

WHEREORE the UST requests that this Court issue an order consistent with the foregoing objection and/or granting such other relief that this Court deems appropriate.

Respectfully submitted,

ROBERTA A. DeANGELIS
ACTING UNITED STATES TRUSTEE

By: /s/ David M. Klauder
David M. Klauder, Esq.
Trial Attorney
Office of the U.S. Trustee
J. Caleb Boggs Federal Building
844 King Street, Room 2207
Wilmington, DE 19801
Phone: (302) 573-6491
Fax: (302) 573-6497

Dated: January 5, 2004

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
	:	
CHI-CHI'S, INC., et al.,	:	Bankr. Case No. 03-13063 (CGC)
	:	
Debtors.	:	Jointly Administered
	:	
	:	
	:	

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on this 5th day of January, 2004, Objection of the Acting United States Trustee to the Application of Debtors for Order Pursuant to 11 U.S.C. Section 327(a) and Fed.R.Bankr.P. 2014(A) Authorizing the Employment and Retention of Fred Bush and Associates, Inc. as Liquidator for Certain of the Debtor's Personal Property was served by sending copies via facsimile to the following persons:

Alan J. Friedman, Esq.
Irell & Manella, LLP
840 Newport Center Drive, Suite 400
Newport Beach, CA 92660-6324
Fax: (949) 760-5200

Bruce Grohsgal, Esq.
Pachulski, Stang, Ziehl, Young, Jones & Weintraub P.C.
919 N. Market Street, Suite 1600
Wilmington, DE 19801
Fax: (302) 652-4400

Hydee R. Feldstein, Esq.
Paul Hastings, Janofsky & Walker, LLP
515 South Flower Street, 25th Floor
Los Angeles, CA 90071
Fax: (213) 627-0705

Victoria Counihan, Esq.
Greenberg Traurig, LLP
The Brandywine Building
1000 West Street, Suite 1540
Wilmington, DE 19801
Fax: (302) 661-7360

Frederick B. Rosner, Esq.
Jaspan Schlesinger Hoffman LLP
1201 N. Orange Street, Suite 1001
Wilmington, DE 19801
Fax: (302) 351-8010

Charles R. Gibbs
Kevin Rice
Akin Gump Strauss Hauer & Feld LLP
1700 Pacific Avenue, Suite 4100
Dallas, TX 75201
Fax: (214) 969-4343

/s/ Chris N. Green
Chris N. Green, Paralegal Specialist