

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA**

In re) **Chapter 7**
)
PIKE NURSERY HOLDING, LLC) **Case No. 07-79129-mgd**
)
Debtor.)
)

**FINAL APPLICATION OF ALVAREZ & MARSAL SECURITIES, LLC AS
FINANCIAL ADVISOR TO THE DEBTOR FOR ALLOWANCE OF COMPENSATION
AND REIMBURSEMENT OF EXPENSES**

Alvarez & Marsal Securities, LLC ("A&M" or "Applicant"), Financial Advisor for the above-captioned Debtor during its Chapter 11 case (the "Debtor"), hereby applies for the allowance of compensation for professional services rendered in the amount of \$200,000.00 together with reimbursement of expenses incurred in the amount of \$2,122.72 that have not previously been reimbursed. In support of its application (the "Application"), A&M respectfully states as follows:

FEES AND EXPENSES FOR WHICH ALLOWANCE IS SOUGHT

1. A&M makes this Application pursuant to section 330 of title 11 of the United States Code (the "Bankruptcy Code"), and the Court's administrative order, dated February 21, 2008, authorizing the retention of A&M as financial advisor for the Debtor.

2. A&M seeks approval and allowance of compensation for professional services charged to the Debtor in the amount of \$200,000.00. A&M also requests reimbursement of actual and necessary out-of-pocket expenses incurred in connection with its representation of the Debtor during its Chapter 11 case for which A&M has not previously been reimbursed. A schedule setting forth the break down of professional services is attached hereto as Exhibit "A" and a schedule setting forth the expenses for which A&M is seeking reimbursement, is attached hereto as Exhibit "B".

GENERAL BACKGROUND

3. On November 14, 2007 (the "Petition Date"), the Debtor commenced this case by

filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code. On the Petition Date, the Debtors filed motions and applications seeking typical “first day” orders. The factual background regarding the Debtor, including its historical business operations and the events precipitating its chapter 11 filing, is set forth in detail in the *Declaration of Scott Schnell, in Support of First Day Applications and Motions* (the “Schnell Affidavit”), and is incorporated herein by reference.

JURISDICTION

4. The Court has jurisdiction over this Final Application pursuant to 28 U.S.C. §§ 157 and 1334, and the "Standing Order of Referral of Bankruptcy Cases to Bankruptcy Judges," dated July 10, 1984, issued by District Court Judge Robert T. Ward. This is a core proceeding under 28 U.S.C. § 157(a) & (b) as set forth in 28 U.S.C. § 157(b)(2)(A). Venue of this case and this Final Application is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

RETENTION OF A&M

5. By order of this Court entered on February 21, 2008, the Debtor retained A&M, under section 328(a) of the Bankruptcy Code (the “Retention Order”), to serve as financial advisor and investment bankers to the Debtor. Pursuant to the Retention Order, A&M was retained to provide financial advisory services to the Debtor as set forth in detail in the modified engagement letter attached to the *Second Amendment to Application to Employ A&M Securities, LLC as Financial Advisor to the Debtor, nunc pro tunc to November 26, 2007* (the “Engagement Letter”) and is incorporated herein by reference.

A&M COMPENSATION PURSUANT TO THE ENGAGEMENT LETTER

6. As set forth in the Engagement Letter, A&M is to be compensated as follows:

A. Monthly Fees. In addition to the other fees set forth in the Engagement Letter, upon the execution of the Engagement Letter, and on the monthly anniversary of the effective date of the Engagement Letter, the Debtor shall

pay A&M a non-refundable cash fee of \$25,000 per month. Each monthly fee is earned upon A&M's receipt thereof.

B. Sale Transaction Fees. Concurrently with the close of each Sale Transaction (as defined in the Engagement Letter) the Debtor shall thereupon immediately pay and directly from the proceeds of such Sale Transaction, as a cost of sale, a Sale Transaction Fee calculated as three percent (3.0%) of the Aggregate Gross Consideration (as defined in the Engagement Letter) from the first and all subsequent Sale Transactions (if any).

C. Multiple Sale Transaction Fee. In addition to the Sale Transaction Fee(s) described above, concurrently with the close of the second and each subsequent Sale Transaction, A&M shall earn, and the Debtor shall thereupon pay immediately and directly from the proceeds of such Sale Transaction, as a cost of sale, a Multiple Sale Transaction Fee of: (a) \$100,000 on the second Sale Transaction, (b) \$50,000 on the third Sale Transaction, and (c) \$25,000 on each subsequent sale Transaction.

D. Minimum Fee. The minimum Sale Transaction Fee A&M shall be entitled to receive is \$500,000 in the aggregate during the term of this engagement, which minimum Sale Transaction Fee shall be determined and paid, to the extent due and owing and not otherwise paid upon closing of a Transaction, upon the earlier to occur of the following dates (the "Fee Maturity Date): (a) disposition of all or substantially all assets of the Debtor through the occurrence of one or more Restructuring Transactions, Refinancing Transactions or Sale Transactions, or (b) the filing of a motion to appoint a trustee or seeking conversion or dismissal of the Debtor's pending Chapter 11 Case, or (c) entry of an order closing the Debtor's pending Chapter 11 Case. In the event a Sale Transaction is closed which does not generate a Sale Transaction Fee which equals or exceeds the Minimum Fee, counsel for the

Debtor shall hold in escrow for the benefit of A&M pursuant to an escrow agreement acceptable to A&M in its sole discretion, from the sales proceeds an amount equal to the difference between the Sale Transaction Fee paid to A&M and the Minimum Fee (the “Escrowed Fee”), which Escrowed Fee shall be immediately payable to A&M on the Fee Maturity Date. The Escrowed Fee shall not be subject to any claims or interest by or on behalf of the Debtor or the Debtor’s Chapter 11 estate, however, the amount of the Escrowed Fee shall be reduced by any subsequent Fees paid to A&M under this Agreement which, under the terms of this Agreement, reduce the unpaid Minimum Fee. **Any Multiple Transaction Fee shall be in addition to the foregoing, shall not be subject to the escrow described above and shall be payable as and when otherwise provided for in this Agreement.** (emphasis added)

E. The Engagement Letter also includes provisions for a Financing Transaction Fee and a Restructuring Transaction Fee. The Financing Transaction Fee and the Restructuring Transaction Fee described in the Engagement Letter are not applicable to this Application.

A&M COMPENSATION RECEIVED TO DATE

7. Pursuant to the Retention Order, A&M received four payments of \$25,000 for the Monthly Fees described in the Engagement Letter, for the period of November 26, 2007 through March 25, 2008.

8. By orders of this Court entered on March 3, 2008, the Debtor was granted authorization to sell substantial portions of its assets to Armstrong Garden Centers, Inc., Skinner Nurseries, Inc., Geo. Schofield Co., Inc., and Premier Investments and Consulting, Inc. (the “Sale Orders”), all of which are Sale Transactions pursuant to the Engagement Letter. Subsequent to the entry of the Sale Orders, the Debtor entered into a second asset purchase agreement with Premier Investments and Consulting, Inc., which transaction was approved by

this Court on March 31, 2008. This second sale agreement with Premier Investments and Consulting, Inc. is also a Sale Transaction pursuant to the Engagement Letter.

9. Pursuant to the Sale Orders, the Debtor was authorized to pay, among other items, “any accrued but unpaid fees and expenses owed to A&M, including \$500,000 of the transaction fee owed to A&M; provided however, that the remaining \$175,000 claimed by A&M for a multiple transaction fee shall not be paid at Closing, without prejudice to A&M’s right to assert a surcharge for that amount against the remaining proceeds of the sale.”

10. A&M has received payment of \$500,000 as authorized under the Sale Orders.

A&M COMPENSATION WHICH IS SOUGHT BUT HAS NOT YET BEEN RECEIVED

11. Pursuant to the Sale Orders, Multiple Transaction Fees of \$175,000 due to A&M under the Engagement Letter have not yet been paid by the Debtor. Further, the additional Multiple Sale Transaction Fee payable as a result of the second sale transaction approved by this Court with Premier Investments and Consulting, Inc., in the amount of \$25,000, has not yet been paid by the Debtor. Collectively, the total amount claimed by A&M pursuant to the Engagement Letter for Multiple Sale Transaction Fees totals \$200,000.

12. The services for which compensation is being sought by A&M were rendered for and on behalf of the Debtor. A&M has received no other payments or promises of payment from any other source for services rendered in any capacity whatsoever in this case. There is no outstanding agreement or understanding between A&M and any other person, other than professionals of A&M, for the sharing of compensation.

13. At all relevant times, A&M has been a disinterested person as that term is defined in Section 101(14) of the Bankruptcy Code and has not represented nor held any interest adverse to this estate.

CONCLUSION

14. A&M deployed significant professional resources, totaling approximately 3,650 hours advising the Debtor. A&M's services resulted in significant benefit to the Debtor. If this Application is approved by this Court and A&M receives payment, A&M will have received \$800,000 in total professional fees, yielding an hourly rate of approximately \$219.18. Accordingly, A&M respectfully submits that its request for compensation and reimbursement of expenses is reasonable and is justified by the benefits received by the Debtor and that the request, therefore, should be allowed in full.

WHEREFORE, A&M respectfully requests entry of an order granting it (a) allowances of final compensation for professional services rendered in the amount of is \$200,000 plus expenses incurred in the amount of \$2,122.72, totaling \$202,122.72; (b) authorization and direction of the Chapter 7 trustee to pay the amount owed to A&M; and (c) such other and further relief as is just and proper.

Dated: May 29, 2008

ALVAREZ & MARSAL SECURITIES, LLC

By: 
James D. Decker, Managing Director

EXHIBIT A – TRANSACTION SUCCESS FEE SUMMARY

| PURCHASER: | TRANSACTION SUCCESS FEE: |
|------------------------------------|---------------------------------|
| Geo. Schofield Co., Inc. | \$100,000.00 |
| Skinner Nurseries, Inc. | \$50,000.00 |
| Premier Investments and Consulting | \$25,000.00 |
| Premier Investments and Consulting | \$25,000.00 |
| Grand Total: | \$200,000.00 |

EXHIBIT B – EXPENSE SUMMARY

| EXPENSE CATEGORY: | TOTAL EXPENSES: |
|--------------------------|------------------------|
| Transportation | \$479.18 |
| Lodging | \$0.00 |
| Meals | \$572.11 |
| Miscellaneous | \$14.04 |
| Telephone/Cell | \$1,057.39 |
| Grand Total: | \$2,122.72 |

CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the attached **Final Application of Alvarez & Marsal Securities, LLC as Financial Advisor to the Debtor for Allowance of Compensation and Reimbursement of Expenses** by causing it to be deposited in the United States Mail in a properly addressed envelope with adequate postage affixed thereon addressed to:

Marcus A. Watson
Finley, Colmer and Company
3091 Governors Lake Drive
Suite 450
Norcross, GA 30071

John A. Christy
Schreeder, Wheeler & Flint, LLP
1100 Peachtree Street N.E., Suite 800
Atlanta, GA 30309-4516

Office of the United States Trustee
362 Richard Russell Building
75 Spring Street, S.W.
Atlanta, GA 30303

This 29th day of May, 2008.

Respectfully submitted,

SCROGGINS & WILLIAMSON

/s/ J. Robert Williamson
J. ROBERT WILLIAMSON
Georgia Bar No. 765214
ASHLEY REYNOLDS RAY
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