

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

SHARITY MINISTRIES, INC.,¹

Debtor.

Chapter 11 (Subchapter V)

Case No.: 21-11001 (___)

**APPLICATION OF THE DEBTOR TO APPROVE THE EMPLOYMENT AND
RETENTION OF LANDIS RATH & COBB LLP AS CO-COUNSEL, *NUNC PRO TUNC*
TO THE PETITION DATE, PURSUANT TO BANKRUPTCY CODE SECTION 327(a),
BANKRUPTCY RULES 2014 AND 2016 AND LOCAL RULE 2014-1**

The above-captioned debtor and debtor-in-possession, Sharity Ministries, Inc. (“Sharity” or “Debtor”) hereby submits this *Application of the Debtor to Approve the Employment and Retention of Landis Rath & Cobb LLP as Co-Counsel, Nunc Pro Tunc to the Petition Date, Pursuant to Bankruptcy Code Section 327(a), Bankruptcy Rules 2014 and 2016 and Local Rule 2014-1* (the “Application”). In support of the Application, the Debtor relies on the (i) First Day Declaration (defined below), and (ii) the Affidavit of Matthew B. McGuire (the “McGuire Affidavit”, a partner at Landis Rath & Cobb LLP (“LRC”)) attached hereto as **Exhibit A**. In further support of the Application, the Debtor respectfully states as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012. Venue of these proceedings and this Application in this district is proper under 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28

¹ The last four digits of the Debtor’s federal tax identification number is 0344. The Debtor’s mailing address is 821 Atlanta Street, Suite 124, Roswell, GA 30075.

U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution.²

2. The legal predicates for the relief sought herein are section 327(a) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended or modified, the “Bankruptcy Code”), rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rule 2014-1.

GENERAL BACKGROUND

3. On the date hereof (the “Petition Date”), the Debtor commenced the above-captioned chapter 11 case (the “Chapter 11 Case”) by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Court.

4. The Debtor continues to operate its business and manage its properties as debtor-in-possession, pursuant to Bankruptcy Code sections 1107(a) and 1108. As of the date of this Application, no trustee, examiner or statutory committee has been appointed in this Chapter 11 Case.

5. Additional information regarding the circumstances leading to the commencement of this Chapter 11 Case and information regarding the Debtor’s businesses and capital structure is set forth in detail in the *Declaration of Neil F. Luria in Support of Chapter 11 Petition and First Day Motions* [D.I. 5] (“First Day Declaration”),³ filed contemporaneously with this Application and incorporated herein by reference.

² Pursuant to rule 9013-1(f) of the Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtor hereby confirms its consent to the entry of a final order by this Court in connection with this Application if it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

³ Capitalized terms used but not otherwise defined in this application shall have the meanings ascribed to them in the First Day Declaration.

RELIEF REQUESTED

6. The Debtor desires to employ and retain LRC as its co-counsel in this Chapter 11 Case. By this Application, the Debtor respectfully requests that the Court approve the employment and retention of LRC, *nunc pro tunc* to the Petition Date, pursuant to Bankruptcy Code section 327(a), Bankruptcy Rules 2014 and 2016 and Local Rule 2014-1 under a general retainer as its co-counsel to perform the legal services that will be necessary during the Debtor's Chapter 11 Case.

7. LRC has informed the Debtor that Adam G. Landis and Matthew B. McGuire, partners of LRC, and Nicolas E. Jenner, an associate of LRC, as well as other partners and associates of LRC who will be involved in these cases, are members in good standing of various state and federal bars.

LRC'S QUALIFICATIONS

8. The Debtor has selected LRC as its co-counsel because of the firm's knowledge of the Debtor's businesses and financial affairs and its extensive experience and knowledge, with particular emphasis on its national expertise in the field of debtor and creditor law and business reorganizations under chapter 11 of the Bankruptcy Code. LRC has a recognized reorganization practice and experience in aspects of the law that are expected to arise in the context of this Chapter 11 Case.

9. LRC's practice presently includes eleven (11) attorneys, many of whom regularly appear in bankruptcy cases in Delaware and other jurisdictions nationwide. LRC attorneys have represented debtors, creditors' committees, bank groups, and other significant parties in a multitude of bankruptcy cases.

10. In assisting with the preparation of the Debtor's Chapter 11 Case, LRC worked

closely with the Debtor and its professionals and has become extensively familiar with the Debtor's business affairs and capital structure, and will be able to immediately assist the Debtor in its efforts in this Chapter 11 Case. LRC has the necessary background to deal effectively with many of the potential legal issues and problems that may arise in the context of this Chapter 11 Case. Thus, in order to maximize the value of the Debtor's estate and because of LRC's recognized expertise in bankruptcy law, the Debtor desires that LRC represent it in this Chapter 11 Case.

11. The Debtor's employment of LRC under an evergreen retainer is appropriate and necessary to enable the Debtor to execute faithfully its duties in this Chapter 11 Case.

12. The Debtor also anticipates filing applications to retain and employ Baker Hostetler LLP ("Baker Hostetler") as its co-counsel and SOLIC Capital Advisors, LLC ("SOLIC") together with LRC and Baker Hostetler, the "Professionals") as its chief restructuring officer. The Debtor believes that the employment of the Professionals will best enable it to navigate through this Chapter 11 Case.

SERVICES TO BE PROVIDED BY LRC

13. The Debtor anticipates that, in connection with this Chapter 11 Case, LRC will render general legal services as needed, including, but not limited to, the following:

- a. Providing legal advice regarding Delaware local rules, practices, precedents, and procedures and providing substantive and strategic advice on how to accomplish the Debtor's goals in connection with the prosecution of these cases, in all aspects of each bankruptcy proceeding;
- b. Advising and assisting the Debtor with respect to its rights, powers and duties as debtor-in-possession and taking all necessary action to protect and preserve the Debtor's estate, including prosecuting actions on the Debtor's behalf, defending any actions commenced against the Debtor, negotiating all disputes involving the Debtor, and preparing objections to claims filed against the Debtor's estate;
- c. Preparing and filing necessary pleadings, motions, applications,

proposed orders, notices, schedules, and other documents, and reviewing all financial and other reports to be filed in this Chapter 11 Case, and advising the Debtor concerning, and preparing responses to, applications, motions, other pleadings, notices and other papers that may be filed and served in these cases;

- d. Handling inquiries and calls from creditors and counsel to interested parties regarding pending matters and the general status of this Chapter 11 Case;
- e. Appearing in Court and any appellate courts to represent and protect the interests of the Debtor and its estate;
- f. Attending meetings including any meeting of creditors and negotiating with representatives of creditors and other parties-in-interest;
- g. Advising and assisting the Debtor in maximizing value in this Chapter 11 Case, including, without limitation, in connection with the formulation, negotiation and promulgation of debtor-in-possession financing, use of cash collateral, sales of assets, other transactions and/or a disclosure statement and chapter 11 plan and all documents related thereto, and taking all further actions as may be required in connection with any sale, disclosure statement or plan during this Chapter 11 Case; and
- h. Performing all other necessary legal services for the Debtor in connection with the prosecution of this Chapter 11 Case, including, but not limited to: (i) analyzing the Debtor's leases and contracts and the assumptions, rejections, or assignments thereof, (ii) analyzing the validity of liens against the Debtor, (iii) advising the Debtor on litigation matters, and (iv) developing a reorganization or liquidation strategy.

Furthermore, LRC will coordinate with the other Professionals in this Chapter 11 Case to minimize duplication of efforts.

PAYMENT OF LRC'S FEES AND EXPENSES

14. Subject to the Court's approval and in accordance with Bankruptcy Code section 330, LRC will charge for its legal services on an hourly basis in accordance with its standard hourly rates in effect on the date services are rendered. The current rates of LRC partners range from

\$675.00 - \$1,025.00 per hour; associates range from \$360.00 - \$495.00 per hour; paralegals range from \$265.00 - \$280.00 per hour; and legal assistants range from \$135.00 - \$170.00 per hour. The hourly rates set forth herein are LRC's standard hourly rates for work of this nature. These rates are set at a level designed to compensate the firm fairly for the work of its attorneys and professional staff, and to cover fixed and other routine overhead expenses. These rates may change from time to time in accordance with LRC's established billing practices and procedures, including yearly rate increases at the beginning of each fiscal year. LRC will maintain detailed, contemporaneous records of time and any actual and necessary expenses incurred in connection with the rendering of legal services described above by category and nature of the service rendered.

15. In addition to the hourly rates set forth above, it is LRC's policy to charge its clients for certain other expenses incurred in connection with its representation of the client. These charges include, among other things, telecopier (outgoing only) toll and other charges, mail and express mail charges, special or hand delivery charges, photocopying charges (at the rate of \$0.10 per page in cases in which LRC is paid by a debtor's estate), travel expenses, expenses for "working meals," computerized legal research, transcription costs, document retrieval charges, as well as non-ordinary overhead expenses such as secretarial overtime. LRC will charge the Debtor for these expenses in a manner and at rates consistent with charges made generally to the firm's other clients, or as required by the Local Rules.

16. Within ninety (90) days of the Petition Date, LRC received a retainer payment on July 2, 2021 from the Debtor in the amount of \$75,000 (the "Retainer") in advance payment for and to secure the payment of actual and estimated professional fees and disbursements to be incurred prior to the Petition Date. As explained in greater detail in the Rule 2016 Statement (defined below), prior to the Petition Date, LRC was paid by the Debtor after the submission of an

invoice in the amount of \$67,024.50. At no time prior to the Petition Date did LRC's invoiced fees and expenses exceed the amount of the Retainer. As set forth in the McGuire Affidavit, and the Statement Pursuant to Bankruptcy Code sections 329 and 504, Federal Rule of Bankruptcy Procedure 2016 and Local Rule 2016-1 (the "Rule 2016 Statement") attached hereto as **Exhibit B**, LRC applied a portion of the Retainer to its prepetition fees and expenses and, subject to further order of the Court, will hold the unused balance as an evergreen retainer to be held by LRC as security throughout this Chapter 11 Case until LRC's fees and expenses are awarded by final order and payable to LRC.⁴

17. LRC intends to apply to the Court for payment of compensation and reimbursement of expenses in accordance with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, the Local Rules, and any other orders entered in this Chapter 11 Case for all services performed and expenses incurred after the Petition Date.

18. The Debtor proposes to pay LRC its standard hourly rates in effect from time to time for services rendered and to reimburse LRC according to its customary reimbursement policies, which rates and policies the Debtor believes to be reasonable, subject to the provisions of the Bankruptcy Code, Bankruptcy Rules, Local Rules, and such further orders of the Court.

⁴ In this district, evergreen retainer agreements reflect normal business terms in the marketplace. *See In re Insilco Tech., Inc.*, 291 B.R. 628, 634 (Bankr. D. Del. 2003) ("[T]he practice [of receiving security retainers] in this district has been engaged in since at least the early 1990s."). Moreover, LRC believes that its request for approval of an evergreen retainer in these cases satisfies the five-part test articulated by Judge Carey in *Insilco*. First LRC submits that the proposed terms of its engagement reflect normal business terms in the marketplace. Second, LRC submits that both it and the Debtor are sophisticated business entities that have negotiated the Retainer at arm's length. Third, LRC believes that approval of the Retainer as an evergreen retainer is in the best interests of the Debtor's estate. Indeed, at this crucial stage of the Debtor's Chapter 11 Cases, LRC believes that it is essential that the Debtor has immediate and uninterrupted access to sophisticated counsel to assist in the prosecution of its bankruptcy case. Fourth, LRC is currently unaware of any creditor opposition to the approval of the Retainer as an evergreen retainer. Fifth, given the size, circumstances, and posture of the Debtor's Chapter 11 Case, LRC believes approval of the Retainer as an evergreen retainer provides it with an appropriate level of risk minimization in connection with the payment of its prospective fees and costs in these cases. Indeed, in similar circumstances, the Court has overruled opposition from the United States Trustee and approved professional retainers as evergreen retainers. *See In re Capmark Fin. Group, Inc.*, Case No. 09-13684 (CSS) (Bankr. D. Del. Dec. 10, 2009) (Transcript of Hearing on Retention Applications [D.I. 490] at 42:7-22).

BASIS FOR RELIEF REQUESTED

19. Bankruptcy Code section 327(a) provides:

Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, 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).

20. The standard for a debtor-in-possession to employ attorneys as counsel is set forth in Bankruptcy Code sections 327(a) and 1107. Those sections provide that a debtor-in-possession, with the Court's approval, may employ attorneys "that do not hold or represent an interest adverse to the estate," and that are "disinterested persons." 11 U.S.C. §§ 327(a), 1107; *see also In re BH&P, Inc.*, 949 F.2d 1300, 1314 (3d Cir. 1991) (citing *In re Star Broadcasting, Inc.*, 81 B.R. 835, 838 (Bankr. D.N.J. 1988) (for counsel to be retained, "counsel must 'not hold or represent an interest adverse to the estate' and must be a 'disinterested person.'")). A "disinterested person" is defined as one who does not have an interest materially adverse to the interest of the estate, by reason of any direct or indirect relationship with the debtor, or for any other reason. *See* 11 U.S.C. § 101(14)(C). In general, however, subject to the requirements of Bankruptcy Code sections 327(a) and 1107, a debtor-in-possession is entitled to the counsel of its choosing. *See, e.g., In re Vouzianas*, 259 F.3d 103, 108 (2d Cir. 2001) (observing that "[o]nly in the rarest of cases should the trustee be deprived of the privilege of selecting his own counsel").

21. To the best of the Debtor's knowledge, except as disclosed in the McGuire Affidavit, LRC neither holds nor represents any interest adverse to the Debtor's estate and is a "disinterested person" within the meaning of Bankruptcy Code sections 327(a) and 101(14).

22. The Debtor believes that the employment of LRC is necessary and in the best

interest of the Debtor and its estate.

NOTICE AND NO PRIOR REQUEST

23. The Debtor will provide notice of this application to: (a) the Office of the U.S. Trustee for the District of Delaware; (b) each of the Debtor's creditors holding the twenty (20) largest unsecured claims as set forth in the consolidated list filed with the Debtor's petition; (c) the United States Attorney's Office for the District of Delaware; (d) the Internal Revenue Service; and (e) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

24. No prior request for the relief sought in this Application has been made to this or any other court.

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WHEREFORE, the Debtor respectfully requests that the Court enter an order, substantially in the form attached hereto (i) authorizing the employment and retention of LRC as its co-counsel *nunc pro tunc* to the Petition Date and (ii) granting such other and further relief as the Court deems just and proper.

Dated: July 8, 2021
Wilmington, Delaware



Neil F. Luria
Chief Restructuring Officer
Sharity Ministries, Inc.