

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-006304

03/04/2004

HONORABLE J. RICHARD GAMA

CLERK OF THE COURT
L. Muhammad
Deputy

FILED: 03/24/2004

ALEXANDER JEFFRIES

ROBERT G ROBINSON

v.

RENATE BODNARIUC, et al.

RENATE BODNARIUC
GHEORGHE L BODNARIUC
535 E MORROW DR
PHOENIX AZ 85024

ALTERNATIVE DISPUTE
RESOLUTION – CCC

ROBERT B HUNTER
REALTY EXECUTIVES
1819 E MORTON AVE #100
PHOENIX AZ 85020

RENATE BODNARIUC
GHEORGHE L BODNARIUC
822 E UNION HILLS 2D-202
PHOENIX AZ 85024

RENATE BODNARIUC
GHEORGHE L BODNARIUC
19401 N 7TH ST #241
PHOENIX AZ 85024

MINUTE ENTRY

9:20 a.m. This is the time set for Pretrial Status Conference. Robert G. Robinson appears on behalf of the Plaintiff Alexander Jeffries. Defendants are not present.

Court reporter: Michele Sink.
Docket Code 028

Form V000A

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THE COURT NOTES that it is now approximately 20 minutes after the time set for this hearing to commence and Defendants are not present or represented by counsel.

Court and counsel discuss the status of the case.

**ORDER FOR APPOINTMENT OF SPECIAL COMMISSIONER
FOR SALE OF REAL PROPERTY**

On the Court's Motion,

THE COURT FINDS the parties have an interest in real property.

Good Cause appearing,

IT IS ORDERED:

1. Robert B. Hunter, Realty Executives, 1819 East Morton Ste 100, Phoenix, Arizona, telephone 602-997-7324, fax 602-943-6789, is appointed Special Commissioner for Assessment of Real Property (hereinafter, Special Commissioner), said real property located at:

9014 North 10th Street, Phoenix, Arizona 85020

and more particularly described as:

Lot 3, Waltmore, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 29 of Maps, Page 14.

2. The Special Commissioner shall maintain a policy of Errors and Omissions Insurance equal to at least three times the market analysis or appraised value (as applicable of the subject property during the pendency of this appointment.

3. COOPERATION AND ACCESS. The parties and their attorneys shall cooperate in good faith in providing access to the property by the Special Commissioner. The party in possession of the premises shall provide the Special Commissioner with a key to the property within 48 hours after a request by the Special Commissioner. The Special Commissioner shall attempt to give reasonable notice to the parties before gaining access to the premises at reasonable times.

4. MARKET ANALYSIS AND APPRAISAL. The Special Commissioner shall, within **20 days** of being granted access to the premises, cause a market analysis of said property to be made, and shall deliver copies of said market analysis to the parties and (if applicable) to the parties' attorneys. Within ten days after receipt of the market analysis, either party may provide

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written comments about the market analysis to the Special Commissioner, and either party or the Special Commissioner may request an appraisal. The cost of the appraisal shall be paid by the requesting party(ies) upon demand. The Special Commissioner shall have no obligation to obtain an appraisal unless the parties advance the appraisal fee except in those cases when the Special Commissioner is requesting the appraisal. In such cases, the Special Commissioner shall advance the appraisal fee to be reimbursed from the proceeds of sale after close of escrow. The Special Commissioner shall select an appraiser agreed to by both parties except that if the parties are unable to agree, the Special Commissioner shall select an independent appraiser.

5. LISTING. The subject real property shall be listed for sale in a commercially reasonable manner at the value estimated by the market analysis or, if applicable, at the appraised value. The Special Commissioner shall execute a listing agreement substantially consistent with the current model listing agreement approved by Arizona Association of Realtors. As used in this Order, the term “commercially reasonable manner” includes, but is not limited to [a] listing the property on the Multiple Listing Service (hereinafter, MLS), [b] stating a fair description of the properties’ features, and [c] a statement of terms the sellers and the Special Commissioner will, and (as appropriate) will not, consider. The listing shall contain a provision that “the sale is subject to Court approval.”

6. REPORTS. The Special Commissioner shall upon request by either party or the Court, in writing, the efforts made to sell the property. The Special Commissioner shall deliver copies of said report to both parties and (if applicable) their counsel, every 30 days. Said report shall include recommendations, if any, for changes to the offering terms. The report shall not be filed directly with the Court, however, either party may submit any or all reports for the Court’s consideration in further proceedings.

7. The parties shall consider all written offers for purchase of the subject real property. Approval of terms of offer shall not be unreasonably withheld; approval, rejection, or counter-offer shall be made timely and in the manner necessary to consummate an arms-length real property transaction.

8. The Special Commissioner shall determine if reasonable changes are necessary to the terms of listing the property for sale if, after a period of not less than 90 days from the date of first publication in the MLS, the property remains unsold. As applied herein, “unsold” means the parties have not accepted a written offer for sale. The Special Commissioner shall make a recommendation in writing to the parties, and, if applicable, to their attorneys. If either party fails, neglects or refuses to deliver a written approval to/of changes to the terms of listing recommended by the Special Commissioner, the Special Commissioner or either party may petition the Court for hearing. Pending hearing, changes to the terms of listing suggested by the Special Commissioner shall be the terms which the property is offered for sale; the MLS listing shall note stated terms under these conditions to be “subject to Court approval”. If neither party has requested a hearing within 10 days of mailing to their last known address or delivery of notice of the change recommended by the Special Commissioner, the recommendation shall be

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deemed accepted by the parties, and the phrase “subject to Court approval” may be removed from the MLS.

9. **OFFER REJECTED: REQUEST FOR HEARING.** If the Special Commissioner receives a written offer to purchase the subject real property which the parties, or either of them, reject, the Special Commissioner may petition the Court for an emergency or accelerated hearing and for acceptance of the offer. If, after emergency or accelerated hearing, the Court determines the offer should be accepted, the Court may direct the Special Commissioner or the Clerk of Court, pursuant to Arizona Rules of Civil Procedure, Rule 70, to make, execute and deliver the appropriate documents for consummation of sale. The Court shall impose sanctions against the party having unreasonably withheld approval of sale.

10. Net proceeds of sale shall be impounded by the title company engaged by the Special Commissioner, pending written agreement of the parties or Order of the Court.

11. Upon close of escrow, the Special Commissioner and the selling broker shall be paid a commission consistent with the reasonable and customary fees paid to Realtors in similar transactions in Maricopa County, Arizona.

12. **PURCHASE OF PROPERTY BY A PARTY.** In the event either owner wishes to purchase the subject real property, the purchasing owner shall submit an offer to the other owner, in writing with a copy to the Special Commissioner. All such offers that are rejected may be submitted to the Court for approval. No party shall reject an offer unless that party can make a factual showing as to a reasonable basis for the rejection. In the event of an owner purchase or property withdrawal from sale based upon an agreement of the parties, Special Commissioner compensation shall be paid as follows:

a. Offers made and accepted prior to an executed listing agreement that are approved by the Court or agreed to by the parties shall result in a reasonable fee for the time expended, including preparation of the market analysis;

b. Agreements to sell by the parties or agreements approved by the Court after the listing agreement shall subject the offering owner to payment of a fee to the Special Commissioner. The fee shall be the greater of one percent (1%) of the total selling price or a reasonable hourly fee for the efforts expended by the Commissioner based upon reasonable hourly rates to be approved by the Court. In all such cases, the out-of-pocket expenses of the Commissioner shall be paid directly by the purchasing owner. All such fees and costs shall be paid from the proceeds of sale. In the event the proceeds of sale are insufficient to pay the Special Commissioner costs and fees, those fees shall be paid by the purchasing owner prior to close of escrow.

c. If, after receipt by the Special Commissioner of a *bona fide* offer to purchase the real property from a third party, either owner makes a written offer to purchase the real property, which offer is approved by the Court, the purchasing owner shall pay a commission to the

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Special Commissioner in the amount of three and one-half percent (3.5%) of the total selling price. A *bona fide* offer means an offer from a qualified purchaser presenting commercially reasonable terms. Payment of the Special Commissioner's fee shall be part of the Court's Order of approval requiring the payment as a contingency to the close of escrow.

13. SANCTIONS. The Court may impose additional sanctions for a party's unreasonable behavior under this order, including, but not limited to, adding an additional 1% of the selling price as compensation for services rendered as Special Commissioner, over and above the reasonable and customary fees paid for similar services not involving a Special Commissioner within Maricopa County. Other sanctions may include contempt, an award of attorney's fees, or removal from the premises.

PRETRIAL STATUS/SCHEDULING CONFERENCE SET

IT IS FURTHER ORDERED setting a Pretrial Status/Scheduling Conference on **September 9, 2004 at 9:15 a.m. for 15 minutes** in this division.

HONORABLE J. RICHARD GAMA
JUDGE OF THE SUPERIOR COURT
MARICOPA COUNTY
101 WEST JEFFERSON
EAST COURT BUILDING, 6TH FLOOR
COURTROOM/SUITE 611
PHOENIX AZ 85003
602-506-1245

JOINT PRETRIAL MEMORANDUM

IT IS FURTHER ORDERED directing the parties to meet personally, with their respective calendars, no later than **10 days prior** to the Pretrial Status Conference date (due date: **August 23, 2004**). The parties shall file **5 days prior** to the Pretrial Status Conference date, **with a copy delivered to this division**, a comprehensive Joint Pretrial Memorandum consistent with Rule 16, which shall include the following (due date: **August 27, 2004**):

1. A list of all discovery that has been completed through **September 2, 2004**;
2. A list of all outstanding discovery remaining on all issues; and
3. A comprehensive schedule for the completion of all outstanding discovery. This timetable shall include deposition dates, acceptable to each counsel, for all outstanding expert and lay witnesses who need to be deposed.

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The Court will consider setting this matter for trial at the **September 2, 2004** Pretrial Status Conference and/or discuss Settlement/Mediation Conference between the parties and a Mediator/Judge *Pro Tempore*.

**REFERRAL TO
ALTERNATIVE DISPUTE RESOLUTION**

IT IS FURTHER ORDERED referring this matter to the Court's Alternative Dispute Resolution Office for the appointment of a Judge *Pro Tempore* to conduct a Settlement Conference. Counsel and/or the parties are instructed that ADR will not set the Settlement Conference and therefore should not contact the Office of ADR. Counsel and/or the parties will be notified by ADR via minute entry upon the appointment of a Judge *Pro Tempore* and at that time should contact the appointed Judge *Pro Tempore* to arrange the time and location for the Settlement Conference. The Judge *Pro Tempore* is requested to conduct a Settlement Conference on or before **September 2, 2004**.

IT IS FURTHER ORDERED that the parties shall simultaneously submit memoranda to the Judge Pro Tempore at least **5 days prior** to the date set for Settlement Conference.

All counsel/parties and their clients, or non-lawyer representatives who have full and complete authority to settle this case, shall personally appear or be accessible to participate in good faith in this Settlement Conference even if no settlement is expected.

9:27 a.m. Hearing concludes.

/S/ J. RICHARD GAMA

HONORABLE J. RICHARD GAMA
JUDGE OF THE SUPERIOR COURT