

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2002-005224

02/06/2003

HONORABLE COLLEEN MCNALLY

CLERK OF THE COURT  
M. Smith  
Deputy

FILED: 02/11/2003

KEVEN KULLBERG

JOHN M O'NEAL

v.

PATRICIA AINSWORTH, et al.

GEORGE L PAUL

JANICE LOVE  
1028 W MCELLAN RD  
MESA AZ 85201-0000  
MANNY CISNEROS  
CISNEROS REALTY GROUP, INC  
14022 N 42ND AVENUE  
PHOENIX AZ 85023

MINUTE ENTRY

Pursuant to Joint Nomination of Real Estate Commissioners,

**THE COURT FINDS** the parties have an interest in real property, which property shall be sold in conjunction with proceedings now before the Court.

Good cause appearing,

**IT IS ORDERED:**

1. Manny Cisneros, Cisneros Realty Group, Inc., 14022 N. 42<sup>nd</sup> Avenue, Phoenix, AZ 85023 (602) 547-0077 is appointed Special Commissioner for Sale of Real Property (hereinafter, Special Commissioner), said real property located in Mexico.

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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. The Special Commissioner shall, within ten days of receipt of a copy of this Order, 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 or the Special Commissioner may request an appraisal. The cost of the appraisal shall be paid by the requesting party upon demand. The Special Commissioner shall have no obligation to obtain an appraisal unless the parties advance the appraisal fee. The Special Commissioner shall select any appraiser agreed to by both parties.

4. 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 parties shall execute and deliver a listing agreement substantially consistent with the current model listing agreement approved by Arizona Association of Realtors, and shall so deliver said listing agreement within 3 days of presentation by the Special Commissioner. 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. If either party fails or refuses to execute the listing agreement as presented, the Special Commissioner may sign for them.

5. The Special Commissioner shall upon request by either party or the Court report, 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.

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6. 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.

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

8. 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 accelerated hearing and for acceptance of the offer. If, after 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.

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9. The parties shall provide the Special Commissioner with a key to the property forthwith. The Special Commissioner shall attempt to give reasonable notice to the parties before gaining access to the premises at reasonable times. The parties shall cooperate in providing such access.

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. In the event either party wishes to purchase the subject real property, that party shall tender the other party an offer, in writing, for purchase of the property on the following basis:

a. If one party tenders the other party a proper offer, in writing, and if such offer is rejected for any reason prior to the engagement/appointment of the Special Commissioner, and said writing contains all terms and conditions of sale, and a reasonable third-party offer to purchase has not been received by the Special Commissioner within 90 days of the first publication of the property within the MLS, then the offering party may renew the offer in writing. Either party may request a hearing as to the reasonableness of the offer. If, after a hearing, the Court approves the offer, the party having rejected the offer shall pay the Special Commissioner a reasonable fee for the efforts of sale, plus costs reasonably incurred with the offering of the property for sale to the general public, and such sum shall be a judicial lien upon that party's proceeds of sale until paid. The Court may order the purchasing party to refinance the property.

b. If neither party has made a written offer for purchase of the property as specified in paragraph 12(a) above, and a party wishes to retain the real property, that party shall make a written offer to the other party and the Special Commissioner, which written offer shall not be unreasonably refused. If accepted by the other party, the parties shall pay the Special

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Commissioner a reasonable and customary fee for a listing agent who was the "sole procuring cause" of sale, provided, however, that said fee shall not exceed 4% of the sales price. If rejected by the other party but approved by the Court, the rejecting party shall pay the reasonable and customary fee for a listing agent who was the "sole procuring cause" of sale, not greater than 4% of the sales price, plus the costs of preparation for and attendance at hearing for approval of sale. If rejected by both the other party and the Court, the Special Commissioner shall be compensated as provided in paragraph 11 above, and the Court may impose sanctions as appropriate.

c. Either party may make a written offer to purchase the property upon receipt of a bona fide offer to purchase the property from a third party, which offer shall be upon the same terms and conditions as those offered by the third party. Such competing offers shall be submitted to the Court. If the Court orders the property conveyed to a party, the purchasing party shall pay  $\frac{1}{2}$  of the reasonable and customary fees of the transaction, including Realtors' commissions, as though consummated with a third party. In addition, the purchasing party shall assume, pay, indemnify, and hold the other party harmless from claims, if any, of the third-party prospective bona fide purchaser, including attorneys' fees and costs of litigation.

13. The Court may impose additional sanctions for a party's unreasonable behavior under this order, including 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.

/S/ HON. COLLEEN MCNALLY

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