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Contentious auction yields higher bids for NYC Opera

Andrew Hedlund

The nearly eight hours that bankrupt New York City Opera Inc. spent in a Manhattan courtroom on Tuesday led to all-cash offers that more than doubled a stalking-horse bid of \$510,000, but the organization will have to decide on Wednesday between two surviving proposals— NYCO Renaissance Ltd. 's offer of \$1.25 million and local opera enthusiast Gene Kaufman's offer of \$1.5 million.

The Tuesday proceeding before Judge Sean Lane of the Southern District of New York in Manhattan was supposed to be a sale hearing but instead became a combative auction that ran well past the close of business.

NYC Opera must decide which offer it considers the highest or best offer by Thursday morning. Lane will preside over a sale hearing that afternoon to approve the one that NYC Opera selects.

The debtor had two separate bids on the table when it walked into Tuesday's hearing.

One was from stalking-horse NYCO Renaissance's for \$510,000 — \$10,000 cash upfront and \$50,000 in annual payments for 10 years. The other was from Kaufman, who offered a bid of a \$500,000 note and \$50,000 in cash.

Initially, the squabbling in the court room centered on whether Kaufman's nonprofit vehicle had been certified as such in Delaware. Part of the requirements for bidding is that the acquiring party has to be a nonprofit.

Arthur Steinberg of King & Spalding LLP , counsel to Kaufman, said in court that, despite his client making overtures to NYC Opera, he was "never the favorite of the debtor."

After hours of deliberation, NYCO Renaissance and Kaufman put forward their opening gambits in the auction.

NYCO Renaissance, which had been labeled the stalking-horse bidder at a Dec. 22 bidding procedures hearing, revised its bid to include \$150,000 in cash, a \$500,000 five-year purchase note and a \$200,000 premium. After the parties calculated the bid with the applicable discount factor, the total bid was valued at \$776,000.

Kaufman came forward with a bid of \$300,000 cash, a \$250,000 purchase note and a pledge to cover \$2 million in operating shortfalls for the first two years the reincarnated opera company did business. After the discount rate factored in for Kaufman's bid, the value was \$513,000, excluding the shortfall guarantee.

In the end, both bidders stripped away all the financing engineering and decided to go with simple, all-cash final bids — \$1.5 million from Kaufman, \$1.25 million from NYCO Renaissance.

The auction came after a tense morning of court proceedings.

Though Kaufman offered an extra \$40,000 in cash before the auction began, Nicole Stefanelli and Kenneth Rosen from debtor counsel Lowenstein Sandler LLP maintained that NYCO Renaissance better positioned itself to carry out the mission of the nonprofit.

Rosen said in court that aspects beyond finances must be taken into account, specifically naming the organization's efforts to educate people about opera. The cash differential, he said, "doesn't ... move the needle to show ... [the Kaufman bid is] better" than the NYCO offer.

Lane appeared not to tip his hand all morning. He said the cash differential didn't appear to be large, noting it seemed to be "the tail-end of the dog compared to the note," but also questioned debtor's counsel about their duty under Section 363 of the federal bankruptcy code, which covers the auctioning and purchasing of a debtor's assets, to take the extra cash into account.

NYCO Renaissance counsel James Vincequerra of Duane Morris LLP said in an interview after the hearing that the stalking horse declined to increase its bid past Kaufman's \$1.5 million offer because it ultimately decided that more money spent on an acquisition would be less spent on putting on opera, adding that the effort "was, is and always will be" about the art form.

The opera company filed for Chapter 11 on Oct. 3, 2013, after it raised only \$1.5 million through an online campaign out of the \$7 million it needed to finance its 2013-14 season. It later auctioned costumes, props, wigs, equipment and about 60 musical instruments, along with other assets.

Founded in 1943, the opera's mission is to "inspire audiences with innovative and theatrically compelling opera, to nurture the work of American artists and young singers, and to build new audiences through affordable ticket prices and extensive outreach and education programs," court papers said.

Sean C. Southard, Fred Stevens and Maeghan J. McLoughlin of Klestadt & Winters LLP are counsel to the official committee of unsecured creditors.

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