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NYC Opera wants buyer to maintain its mission

Kelsey Butler

Just ahead of a Thursday auction for its assets, New York City Opera Inc. has made it clear it will only move forward with an offer from a party that wants to uphold its vision.

Debtor counsel Kenneth Rosen of Lowenstein Sandler LLP said "what makes the opera case very different [from most bankruptcies] is that we are always focusing on the mission statement" of the nonprofit.

Rosen said the debtor would not accept offers from any parties that were not interested in providing opera to the people of New York, "no matter what the purchase price is."

He added, "If the Santa Fe Opera called up and said I'd like to move your assets to Santa Fe, that is not really consistent with [the NYC Opera's] mission statement."

Rosen noted that in bankruptcy, "It's not simply a question of who offers the higher price. ... The standard is higher or better."

Under bidding procedures approved on Dec. 22 by Judge Sean H. Lane of the U.S. Bankruptcy Court for the Southern District of New York in Manhattan, NYCO Renaissance Ltd. is the stalking-horse bidder for NYC Opera's assets with a \$510,000 offer. The nonprofit's board of directors has approved the deal with NYCO Renaissance.

The stalking horse has agreed to pay \$10,000 cash and make \$50,000 annual payments for 10 years, bringing the deal value to \$510,000. The stalking horse also would assume certain liabilities under the deal.

Competing offers for the assets were due by Monday morning, with an auction set to take place Thursday if NYC Opera received at least one qualified rival bid.

Rival bidders must offer at least \$30,000, as well as cover a \$10,000 breakup fee, up to \$10,000 in expense reimbursement and the assumed liabilities.

A sale hearing is set for Jan. 20.

Rosen pointed out that the reason the debtor on Dec. 10 opted to move forward with the stalking-horse offer was "the amount of time and energy and details when they presented their business plan to us."

Rosen continued, "It was clear to us that they had put a tremendous amount of work into [the proposal]."

The attorney also noted the debtor took into consideration the financial wherewithal of any potential bidder. "We wouldn't want to sell the assets to a company that would shut down in a few years," he said.

The stalking horse, also a New York nonprofit, is controlled by NYC Opera board member Roy Niederhoffer. Under the proposed deal, the hedge fund manager and classical musician would serve as chairman. Rosen emphasized that Niederhoffer has been excluded from any NYC Opera discussions about the NYCO Renaissance deal.

"Roy has personally put up \$1 million, and we have been closely monitoring his efforts to raise more money," Rosen said. "He's been diligent and working his back off."

Rosen said that before selecting NYCO Renaissance's offer to kick off a potential auction, the debtor "spoke to several potential suitors" — approximately half a dozen.

He noted each interested party was asked about a future venue, what their intentions were as to opera education and what their plans were to hire future employees. Additionally, each bidder was asked if it planned to run a "union or nonunion shop," Rosen said. He said NYCO Renaissance plans to run a union shop and "intends to hire many of the NYC Opera's employees."

Rosen said NYC Opera declined to move forward with an offer from vocal creditor Gene Kaufman due to his concentration on the NYC Opera's endowment.

"His focus was on the endowment, and we kept saying to him, put the endowment aside," Rosen said. "What's your vision for the NYC Opera? How would you comply with our mission statement? And every time we talked to him, his focus was on the endowment. ... One of the criticisms that I have had of Mr. Kaufman is that he was focused more on the endowment and not on resuming the operations of the opera."

Rosen also said Kaufman only promised "not to raid the endowment for 12 months."

The debtor's board has "not made any decisions as to where the endowment goes," the attorney said. He noted that it's not really an asset owned by the opera, as Paula Gellman, an assistant New York attorney general, is charged with ensuring the endowment is used in a way that's consistent with donors' intentions.

Rosen added: "The board does not have exclusive power over what happens to the endowment. The New York State [Office of the Attorney General] has a huge voice as to what happens to the endowment."

Kaufman, an opera enthusiast who is underwriting a new opera about Tibetan Buddhist Jetsun Milarepa, an 11th century yogi, has been extremely vocal in his criticism about NYC Opera's auction process.

According to a Dec. 18 objection to the bidding procedures, "Despite the promise made to him, Kaufman was not consulted about the dates of when the bids must be submitted and when the auction will take place. He believes that the dates should be pushed out by two weeks or so to accommodate for the holiday season."

In the objection, Kaufman said he would pay more money to the estate for the right to recommend to the state attorney general how the opera's endowment fund should be disbursed.

"The estate creditors should get the benefit of that additional sum," he said. "There is no reason to leave that recommendation right with the board. The board has effectively squandered that right by its past mishandling of the endowment."

Kaufman in court papers also highlighted the cozy relationship between the debtor and Niederhoffer, whom he labeled a former board member.

"When the debtor decided to select a stalking horse, it chose a former board member who had strong ties to its current board members," he said in court documents. "It never asked Kaufman to competitively bid against the offer being made by the former board member."

Rosen, for his part, said the debtor routinely ignores Kaufman's filings because "it's demeaning to get involved with childish name calling."

Kaufman, however, hasn't abandoned his pursuit of the nonprofit. He has made a bid "in conformity with the bid procedures," his counsel, Arthur Steinberg of King Spalding LLP, confirmed Monday. Steinberg declined to comment further on the matter.

It is unclear if other bids were submitted by the Monday morning deadline.

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.

Nicole Stefanelli at Lowenstein Sandler also serves as debtor counsel.

Sean Southard, Fred Stevens and Maeghan J. McLoughlin of Klestadt & Winters LLP are counsel to the official committee of unsecured creditors. Southard could not be reached on Monday.

James Vincequerra of Duane Morris LLP is counsel to NYCO Renaissance.

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---- **Index References** ----

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