

RIMON P.C.
Proposed Counsel to the Chapter 7 Trustee
Kenneth P. Silverman
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300
Brian Powers
Courtney M. Roman

Presentment Date: June 5, 2024
Time: 12:00 p.m.

Objection Deadline: June 5, 2024
Time: 11:30 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:

Chapter 7

BUTH-NA-BODHAIGE, INC.,

Case No.: 24-10392 (DSJ)

Debtor.

-----X

**NOTICE OF PRESENTMENT OF TRUSTEE’S
APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE
RETENTION OF CUSHMAN & WAKEFIELD AS REAL ESTATE
BROKER TO MARKET AND SELL THE DEBTOR’S REAL PROPERTY**

PLEASE TAKE NOTICE, that on **June 5, 2024 at 12:00 noon**, upon the application dated May 21, 2024 (the “Application”) of Kenneth P. Silverman, Esq., the chapter 7 trustee (the “Trustee”) of the estate of Buth-Na-Bodhaidge, Inc., will present an order in accordance with Bankruptcy Code §327(a) (the “Proposed Order”), seeking to retain Cushman & Wakefield as real estate broker to the Trustee, to the Honorable David S. Jones, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, Courtroom 701, New York, New York 10004-1408.

PLEASE TAKE FURTHER NOTICE, that objections, if any, to the entry of the Proposed Order shall be in writing, must be filed with the Court electronically in accordance with General Order M-399 by registered users of the Court’s electronic case filing system, and by all other parties in interest, mailed to the Clerk of the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton U.S. Custom House, One Bowling Green, Courtroom



701, New York, New York 10004-1408, with a hard copy delivered directly to the Chambers of the Honorable David S. Jones, and served in accordance with General Order M-399 or other form upon: (i) attorneys for the Trustee, Rimon P.C., 100 Jericho Quadrangle, Suite 300, Jericho, New York, 11753, Attention: Brian Powers, Esq., and (ii) the U.S. Department of Justice, Office of the United States Trustee, Alexander Hamilton Custom House, One Bowling Green, Room 534, New York, New York 10004, Attn: Mark Bruh, Esq. so as to be received no later than **June 5, 2024 at 11:30 a.m.**

PLEASE TAKE FURTHER NOTICE, that if a timely objection is filed, the Court may schedule a hearing on the Application.

Dated: Jericho, New York
May 21, 2024

RIMON P.C.
Proposed Counsel to Kenneth P. Silverman, Esq.,
the Chapter 7 Trustee

By: s/ Brian Powers
Brian Powers
Partner
100 Jericho Quadrangle, Suite 300
Jericho, NY 11753
(516) 479-6300

RIMON P.C.
Counsel to the Chapter 7 Trustee
Kenneth P. Silverman
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300
Brian Powers
Courtney M. Roman

Presentment Date: June 5, 2024
Time: 12:00 p.m.

Objection Deadline: June 5, 2024
Time: 11:30 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

Chapter 7

BUTH-NA-BODHAIGE, INC.,

Case No.: 24-10392 (DSJ)

Debtor.

-----X

**TRUSTEE’S APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING
THE RETENTION OF CUSHMAN & WAKEFIELD AS REAL ESTATE
BROKER TO MARKET AND SELL THE DEBTOR’S REAL PROPERTY**

Kenneth P. Silverman, Esq., the chapter 7 trustee (the “Trustee”) for the bankruptcy estate of Buth-Na-Bodhaidge, Inc. (the “Debtor”), hereby submits this Application (this “Application”) for entry of an order, substantially in the form annexed hereto as **Exhibit A**, appointing Cushman & Wakefield (“Cushman”) as the Trustee’s real estate broker (“Broker”) to market and sell the Debtor’s real property known as and located at 5036 One World Way, Wake Forest, North Carolina 27587 (the “Real Property”), and respectfully represents as follows:

BACKGROUND

1. On March 8, 2024, the Debtor filed a voluntary petition for relief under chapter 7 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York (the “Court”).

2. On March 11, 2024, Kenneth P. Silverman was appointed the interim chapter 7 trustee, and has since duly qualified.

3. The Debtor owns and, prior to the appointment of the Trustee, managed, the Real Property, which was operating as the Debtor's main warehouse.

JURISDICTION AND VENUE

4. This Court has jurisdiction to hear this Motion under 28 U.S.C. §§157(a) and 1334, and the Order of Reference of the United States District Court for the Southern District of New York. This is a core proceeding pursuant to 28 U.S.C. §§157(b)(2).

RELIEF REQUESTED

5. In accordance with Bankruptcy Code §§ 105(a), 327(a), and 330, Bankruptcy Rules 2014 and 2016, and Local Bankruptcy Rule 2014-1, the Trustee seeks authorization to employ Cushman as his real estate broker for the purpose of marketing and selling the Real Property.

6. In support of the Application, the Trustee submits the affidavits of Carol Bell, annexed hereto as **Exhibit B** (the "Broker Affidavit"). As set forth in the Broker Affidavit, the Broker has extensive experience and expertise in selling real estate similar to the Real Property. Importantly, the Broker was retained by the Debtor prior to the Petition Date to market and sell the Real Property, which resulted in an executed contract of sale.¹ The Trustee believes that the retention of the Broker as real estate broker for the estate will assist the Trustee in obtaining the highest and best offer(s) for the Real Property through its efforts.

7. In accordance with the listing agreement (the "Listing Agreement") annexed hereto as **Exhibit C**, the Trustee and the Broker have agreed that the Broker shall be paid a total of two and one-half percent (2.5%) of the total sale price.

¹ The prepetition contract of sale for the Real Property contained a lease-back provision, a requirement which the Debtor is now unable to meet due to its chapter 7 filing. The Trustee has been working with counsel to the counterparty to that agreement regarding a potential stalking-horse purchase agreement for the sale of the Real Property and will seek approval of any such agreement at the appropriate time.

8. The Trustee believes that the proposed compensation to the Broker is fair and reasonable under the circumstances and in the best interest of the estate.

9. To the best of the Trustee's knowledge, and as set forth in the Broker Affidavit, the Broker is "disinterested" within the meaning of Bankruptcy Code §§ 101(4) and 327(a).

10. In light of the foregoing, the Trustee respectfully requests that the Court authorize and approve his retention of the Broker as real estate broker for the Trustee and the estate.

CONCLUSION

11. No previous application for the relief requested in this Motion has been made to this or any other Court.

WHEREFORE, the Trustee respectfully requests that this Court enter an order substantially in the form annexed hereto as Exhibit A and grant such other and further relief as is just and proper.

Dated: Jericho, New York
May 21, 2024

RIMON P.C.
Attorneys for Kenneth P. Silverman, Esq.,
Chapter 7 Trustee of the estate of
Buth-Na-Bodhaige, Inc.

By: s/ Brian Powers
 Brian Powers
Partner
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

BUTH-NA-BODHAIGE, INC.,

Chapter 7

Case No. 24-10392 (DSJ)

Debtor.

-----X

**ORDER GRANTING TRUSTEE'S APPLICATION FOR
ENTRY OF AN ORDER AUTHORIZING THE RETENTION OF
CUSHMAN & WAKEFIELD AS REAL ESTATE BROKER TO MARKET
AND SELL THE DEBTOR'S REAL PROPERTY**

Upon consideration of the application (the "Application") of Kenneth P. Silverman, Esq., the chapter 7 trustee (the "Trustee") of the estate of Buth-Na-Bodhaige, Inc. (the "Debtor"), seeking authority to employ Cushman & Wakefield (the "Broker") as the Trustee's real estate broker to market and sell the Debtor's real property known as and located at 5036 One World Way, Wake Forest, North Carolina (the "Real Property") and the Court having jurisdiction to consider the Application and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Court having found that good and sufficient cause exists for granting the Application and it appearing that the relief requested in the Application is appropriate in the context of this case and in the best interests of the Debtor and its estate, its creditors, and all other parties-in-interest it is hereby

ORDERED that the Application is granted as set forth herein and it is further

ORDERED that pursuant to §327(a) of Title 11, United States Code (the "Bankruptcy Code"), the Trustee is authorized to retain the Broker as his real estate broker to market and sell the Real Property and it is further

ORDERED that, subject to an appropriate application and further order of this Court, the Broker shall be paid a total of two and one-half percent (2.5 %) of the total sale price and it is further

ORDERED, that all compensation and reimbursement of expenses to be paid to the Broker shall be subject to prior application to, and award by, this Court, pursuant to Bankruptcy Code §§330 and 331, the Bankruptcy Rules, the local Rules, and applicable law and it is further

ORDERED, that in the event of a discrepancy between the terms of this Order and the Broker Affidavit, the terms of this Order shall control and it is further

ORDERED, that the terms of Broker's retention may not be modified without Court approval and it is further

ORDERED, that, notwithstanding any provision to the contrary in the Application, Broker Affidavit or the existing Agreement, the Court shall retain jurisdiction to hear and to determine all matters arising from or related to the Application, Broker Affidavit, existing Agreement and the implementation of this Order.

Dated: June __, 2024
New York, New York

HONORABLE DAVID S. JONES
UNITED STATES BANKRUPTCY JUDGE

NO OBJECTION:

s/ Mar Br
Office of the United States Trustee

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:

BUTH-NA-BODHAIGE, INC,

Chapter 7
Case No. 24-10392 (DSJ)

Debtor.

-----X

**AFFIDAVIT OF CAROL BELL
IN SUPPORT OF TRUSTEE'S APPLICATION
FOR ENTRY OF AN ORDER AUTHORIZING THE
RETENTION OF CUSHMAN & WAKEFIELD AS REAL ESTATE
BROKER TO MARKET AND SELL THE DEBTOR'S REAL PROPERTY**

STATE OF NORTH CAROLINA)
) SS:
COUNTY OF Wake)

Carol Bell, being duly sworn, deposes and says:

I am a Director at Cushman & Wakefield U.S., Inc. ("Cushman"), a Missouri corporation with offices at 1 Fenton Main Street, Suite 480, Cary, North Carolina 27511. This affidavit is submitted in support of the application (the "Application")¹ of Kenneth P. Silverman, Esq., the chapter 7 trustee of the estate of Buth-Na-Bodhaige, Inc. (the "Debtor"), authorizing the Trustee to retain Cushman as the Trustee's real estate broker to market and sell the Debtor's real property known as and located at 5036 One World Way, Wake Forest, North Carolina 27587 (the "Real Property").

1. Cushman is a full service international real estate firm that is licensed by the State of North Carolina as a licensed real estate broker.

2. To the best of my actual knowledge, Cushman is a "disinterested person" as that term is defined in 11 U.S.C. § 101(14) such that Cushman: (a) is not a current creditor, equity

¹ Capitalized terms used but not otherwise defined herein have the meanings given to them in the Application.

security holder, or insider of the Debtors; (b) is not and was not, within two (2) years of the petition date, a director, officer, or employee of the Debtors; and (c) does not have any interest materially adverse to the interests of the estates or any class of creditors or security holders, by reason of any direct or indirect relationship to, connection with, or interest in the Debtors, or for any other reason. In preparing this Affidavit of Disinterest, I conducted a search of Cushman's client database to determine whether Cushman had any relationships with the Debtor or its respective members as disclosed in the bankruptcy petition. I also conducted a search to determine whether Cushman is presently engaged by or on behalf of any creditors or insiders of the Debtor in any matter relating to the Debtor or the Real Property. With the exception that Cushman was engaged by the Debtor prior to the Petition Date to market and sell the Real Property, no matches were found and this search has not identified any additional parties involved or any which might pose a potential bias for a conflict.

3. To the best of my knowledge, information and belief, Cushman has no connection to Judge David S. Jones, Lynda Calderon, Tammi Hellwig or Vincent Puzak.

4. Cushman is experienced and qualified to represent the Trustee in connection with the marketing and sale of the Real Property.

5. I have advised the Trustee of Cushman's willingness to serve as his real estate broker and to broker the transaction. Subject to approval of the Court, Cushman has agreed to be paid commission of two and one-half percent (2.5%) of the total sale price for the Real Property.

6. To the best of my actual knowledge, information, and belief, Cushman has not entered into any agreement prohibited by section 155 of title 18 of the United States Code or Federal Rule of Bankruptcy Procedure 2016(b).

7. Cushman was engaged by the Debtor prior to the Petition Date to market and sell

the Real Property. Subject to approval of Cushman's retention by the Trustee, Cushman waives any amounts which may be due relating to that prepetition engagement.

8. I have read the Application and, to the best of my actual knowledge, information, and belief, the contents of said application are true and correct.


Carol Bell, Director

Sworn to before me this
21 day of June, 2024


Notary Public



LISTING AGREEMENT
FOR SALE

Kenneth P. Silverman, Esq. as Chapter 7 Trustee of Buth-na-Bodhaige, Inc. d/b/a The Body Shop ("Owner") appoints **Cushman & Wakefield U.S., Inc.** ("C&W") as its sole agent and grants to C&W the exclusive right to sell the real property located at 5036 One World Way, Wake Forest, North Carolina 27587 (the "Property") as provided below.

1. Term. The term of this agreement will commence on May 1, 2024, and will expire on December 31, 2024. This agreement may only be extended for an additional term upon written agreement signed by both parties.

2. Services. C&W will use its efforts to obtain a satisfactory purchaser for the Property at a sale price to be determined by Owner and on such other terms as are acceptable to Owner. C&W will negotiate the business terms of any purchase and sale agreement on behalf of Owner and in Owner's best interest, subject to Owner's review and final approval, except as otherwise directed by Owner. C&W will cooperate with other licensed real estate brokers.

3. Marketing. Owner authorizes C&W to advertise and place signage on the Property, subject to Owner's approval of any advertisements and signage. Owner agrees, as and when billed, to reimburse C&W (regardless of whether any commission is earned or payable hereunder) for all of C&W's out-of-pocket expenses in connection with the promotion of the property, including but not limited to signage, printing, photographs, mailings, and communications, and not to exceed a budget amount approved by Owner in advance. C&W will obtain Owner's consent prior to incurring any marketing expense. All advertising whether prepared or issued by C&W or by Owner will identify C&W as Owner's exclusive agent for the Property.

4. Referrals. During the term of this agreement, Owner will refer to C&W all inquiries and offers received by Owner with respect to the Property, regardless of the source of such inquiries or offers.

5. Commission. If, during the term hereof, Owner sells any interest in the Property, Owner will pay to C&W a commission in accordance with the attached Schedule of Commissions ("Schedule"). Within 10 days after the end of the term, C&W will provide to Owner a list of prospective purchasers to whom the Property was submitted by any party during the term. If a prospective purchaser, appearing on the list, enters into a purchase and sale agreement within 180 days after the end of the term, and thereafter the sale is closed, Owner will pay a commission to C&W as provided above. Owner agrees that such 180-day period will be extended for so long as negotiations with a prospective purchaser are continuing.

6. Outside Brokers. If C&W recognizes an outside broker representing the purchaser in a transaction for which a commission is payable hereunder, C&W will advise such broker that it must look to its own client for payment of any and all compensation which may become due it for the proposed transaction. It is acknowledged and agreed that C&W shall not be required to share the commission payable hereunder with any outside broker, and in no event whatsoever shall Owner be required to pay any commission to any outside broker.

7. Representation of Purchasers. **Intentionally Deleted.**

8. Fees and Expenses. If either party commences litigation against the other party to enforce its rights under this agreement, the prevailing party will be entitled to recover from the other party the costs and expenses (including reasonable attorneys' fees) incurred.

9. Authority. Owner represents that it is in fact the owner of the Property and has the right to sell the Property. The individuals signing below represent that they are authorized to sign this agreement on behalf of the entity indicated.

10. Professional Advice. C&W recommends that Owner obtain legal, tax or other professional advice relating to this agreement and the proposed sale of the Property as well as the condition and/or legality of the Property, including, but not limited to, the Property's improvements, equipment, soil, tenancies, title, environmental aspects and compliance with the Americans with Disabilities Act. C&W will have no obligation to investigate any such matters unless expressly otherwise agreed to in writing by Owner and C&W. Owner further agrees that in determining the financial soundness of any prospective purchaser, Owner will rely solely upon Owner's own investigation and evaluation, notwithstanding C&W's assistance in gathering any financial information.

11. OFAC. Each party represents and warrants to the other that it, and all persons and entities owning (directly or indirectly) an ownership interest in it: (a) are not, and will not become, a person or entity with whom a party is prohibited from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order or other governmental action; and (b) are not knowingly engaged in, and will not knowingly engage in, any dealings or transactions or be otherwise associated with such persons or entities described in clause (a) above.

12. Anti-Bribery & Corruption. Each party represents and warrants to the other that it (and any party acting on its behalf) has not, in order to enter into this agreement, offered, promised, authorized or made any payments or transfers of anything of value which have the purpose or effect of public or commercial bribery, kickbacks or other unlawful or improper means of doing business ("Prohibited Activity") and will not engage in Prohibited Activity during the term of this agreement.

In the event of any violation of this section, the non-offending party shall be entitled to immediately terminate this agreement and take such other actions as are permitted or required to be taken under law or in equity.

13. Miscellaneous. This agreement shall be governed by the laws of the State of North Carolina, without giving effect to principles of conflicts of law. This agreement constitutes the entire agreement between the parties regarding the subject matter herein, and no amendments, changes or modifications may be made to this agreement without the express written consent of each of the parties. If any term or provision of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms and provisions of the Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated. No failure or delay by a party in exercising any right hereunder or any partial exercise thereof shall operate as a waiver thereof or prohibit any other or further exercise of any right hereunder. This agreement shall benefit and be binding upon the parties and their respective successors and assigns. This agreement may be executed and delivered (including by facsimile, "pdf" or other electronic transmission) in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. **This agreement supersedes any and all prior agreements for C&W to sell the Property.**

14. Working with Real Estate Agents. Owner acknowledges that it has received, and that C&W has reviewed with Owner, the "Working with Real Estate Agents" publication attached hereto as Exhibit "A".

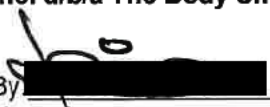
BOTH PARTIES SHALL CONDUCT ALL BROKERAGE ACTIVITIES IN REGARD TO THIS AGREEMENT WITHOUT RESPECT TO THE RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN,

LISTING AGREEMENT FOR SALE

BUTH-NA-BODHAIGE, INC.
5036 ONE WORLD WAY



HANDICAP OR FAMILIAL STATUS OF ANY PARTY OR PROSPECTIVE PARTY TO THE AGREEMENT.

**Kenneth P. Silverman, Esq., as
Chapter 7 Trustee of Buth-na-Bodhaige,
Inc. d/b/a The Body Shop**

By: 
Name: _____
Title: _____
Date: _____
Address: _____

Phone: _____
Email: _____

CUSHMAN & WAKEFIELD U.S., INC.
NC License No. 

By: 
Name: Carol J. Bell
Title: Director, Broker-in-Charge
Date: May 21, 2024
NC Broker License No. 

[Schedule of Commissions Follows]

SCHEDULE OF COMMISSIONS FOR LISTING AGREEMENT – SALE

Rates:

Two and one-half percent (2.5%) of the Total Sales Price (defined below).

Time of Payment:

The commission shall be paid in full **upon the closing of the Property and order of the bankruptcy court**, except in the case of an installment purchase contract, in which case the commission shall be paid by Owner in full at the time of full execution and delivery of the installment purchase contract between Owner and purchaser. Owner agrees to: (a) cause such commission to be listed as a separate line item on the settlement sheet prepared for closing; and (b) provide C&W with certain documentation pertaining to the closing of any transaction involving the Property that is reasonably necessary for C&W to confirm the Total Sales Price, including, but not limited to, a fully executed copy of the transaction settlement statement and a fully executed copy of the applicable purchase and sale agreement.

Computation of Total Sales Price:

The commission shall be computed in accordance with the above rate based upon the gross sales price, which shall include any mortgages, loans or other obligations of Owner which may be assumed by purchaser or which purchaser takes title "subject to," and any purchase money loans or mortgages taken back by Owner, the sales price of any fixtures or other personal property sold by separate agreement between Owner and purchaser as part of the overall sale of the Property, and the current market value of any other real or personal property transferred from the purchaser to Owner (collectively, the "Total Sales Price").

EXHIBIT "A"

This form is required for use in all sales transactions, including residential and commercial.



Working With Real Estate Agents Disclosure (For Sellers)

IMPORTANT

This form is not a contract. Signing this disclosure only means you have received it.

- In a real estate sales transaction, it is important that you understand whether an agent represents you.
• Real estate agents are required to (1) review this form with you at first substantial contact - before asking for or receiving your confidential information and (2) give you a copy of the form after you sign it. This is for your own protection.
• Do not share any confidential information with a real estate agent or assume that the agent is acting on your behalf until you have entered into a written agreement with the agent to represent you. Otherwise, the agent can share your confidential information with others.

Note to Agent: Check all relationship types below that may apply to this seller.

X Seller's Agency (listing agent): The agent who gave you this form (and the agent's firm) must enter into a written listing agreement with you before they begin to market your property for sale.

Dual Agency: Dual agency will occur if your listing firm has a buyer-client who wants to purchase your property. If you agree in a written agency agreement, the real estate firm, and any agent with the same firm (company), would be permitted to represent you and the buyer at the same time.

Designated Dual Agency: If you agree in a written agency agreement, the real estate firm would represent both you and the buyer, but the firm would designate one agent to represent you and a different agent to represent the buyer.

Buyer Agent Working with an Unrepresented Seller (For Sale By Owner, "FSBO"): The agent who gave you this form will not be representing you and has no loyalty to you. The agent will represent only the buyer. Do not share any confidential information with this agent.

Note to Seller: For more information on an agent's duties and services, refer to the NC Real Estate Commission's "Questions and Answers on: Working With Real Estate Agents" brochure at nrec.gov (Publications, Q&A Brochures) or ask an agent for a copy of it.

Seller's Signature: David Finger; Seller's Signature: [Redacted]; Date: Cushman & Wakefield; Agent's Name; Agent's License No.; Firm Name