

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	CASE NO. BK03-80561
)	
DAVID J. BENES and)	
KELLY E. BENES,)	CH. 7
)	
Debtor(s).)	Filing No. 61, 62

ORDER

Hearing was held on April 22, 2005, regarding Filing No. 61, Motion to Sell filed by the trustee, and Filing No. 62, Resistance filed by interested party John J. Tvrdy. Thomas Stalnaker appeared as trustee, Robert O’Gara appeared for John Tvrdy, and John Hahn appeared for Ten-T Limited Partnership.

Debtor Kelly E. Benes owns an interest in a limited partnership. The Chapter 7 trustee originally filed a motion (Fil. # 61), requesting authority to sell the partnership interest of the debtors for \$2,000. A stranger to the case, a person who is not a debtor and not a creditor and not a member of the limited partnership, objected to the sale price and offered the trustee \$5,142.60 for the debtor’s one-seventh (1/7th) interest in the partnership.

A hearing was held and the court was informed that the partnership agreement had very specific provisions with regard to the procedure for sale of an interest in the partnership. Those procedures had not been complied with by the trustee and the court ordered the trustee to comply with the procedures and give notice to the partnership and all of the partners of the higher offer.

The trustee provided such notice and thereafter the person who had made the higher offer increased the offer to \$12,000. The partnership, in compliance with the partnership agreement, matched the \$5,142.60. However, the trustee, by then having received the \$12,000 offer, requested another hearing. Prior to the second hearing, the partnership agreed to match the \$12,000 offer by paying \$5,142.60 up front and then, pursuant to provisions of Section 10, subsection 10.3(b)(v)(ii), paying the balance over twenty calendar quarters, with interest.

The trustee is authorized to sell the partnership interest to the partnership on the terms contained in the offer made by the partnership. There is a good argument that an offer of \$12,000 in cash is better than an offer of \$5,142.60 in cash and the balance payable over twenty quarters, with interest. However, each of the partners agreed to the procedure that any partner would be required to follow when attempting to sell a partnership interest. The trustee is bound by the terms of the partnership agreement, just as each of the partners is. The third-party offeror has no rights with regard to the partnership, nor does he have any rights with regard to the bankruptcy estate. His willingness to pay more to the trustee or to pay on better terms than the partnership agreement provides is not a good reason for this court to ignore the terms of the partnership agreement.

The trustee is authorized to sell the partnership interest pursuant to the terms of the offer made by the partnership.

SO ORDERED.

DATED this 5th day of May, 2005.

BY THE COURT:

/s/ Timothy J. Mahoney

Chief Judge

Notice given by the Court to:

*Thomas D. Stalnaker
Robert O'Gara
John Hahn

*Movant is responsible for giving notice of this order to all other parties not listed above if required by rule or statute.