

ROBB EVANS
Receiver of
D.W. Heath & Associates, Inc.;
PCM Fixed Income Fund I, LLC;
Private Capital Management, Inc.;
Private Collateral Management, Inc.
and the Schlarmann Interests

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Securities and Exchange Commission v. D. W. Heath & Associates Inc., et al.
CASE No. CV-04-02949 JFW (Ex)

Order

- (1) Approving Marketing and Sale Procedures for Sale of Real Property Commonly Known as Northwoods Resort Hotel and Conference Center; and**
- (2) Authorizing and Confirming Sale of Northwoods Property Subject to Approved bidding Procedures**

Filed February 28, 2005

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9 Attorneys for Permanent Receiver
10 ROBB EVANS

ENTERED
CLERK, U.S. DISTRICT COURT
MAR - 1 2005
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

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FILED
CLERK, U.S. DISTRICT COURT
FEB 28 2005
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 v.

17 D.W. HEATH & ASSOCIATES,
18 INC., etc., et al.,

19 Defendants.

20 CASE NO. CV 04-02949 JFW (Ex)

21 ORDER (1) APPROVING
22 MARKETING AND SALE
23 PROCEDURES FOR SALE OF
24 REAL PROPERTY COMMONLY
25 KNOWN AS NORTHWOODS
26 RESORT HOTEL AND
27 CONFERENCE CENTER; AND
28 (2) AUTHORIZING AND
CONFIRMING SALE OF
NORTHWOODS PROPERTY
SUBJECT TO APPROVED
BIDDING PROCEDURES.

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

DATE: February 28, 2005
TIME: 1:30 pm
DEPT: Courtroom 16

21 The Motion for Order (1) Approving Marketing and Sale Procedures for Sale
22 of Real Property Commonly Known as Northwoods Resort Hotel and Conference
23 Center; and (2) Authorizing and Confirming the Sale of Northwoods Property to
24 Richard Wang or to an Overbidder Subject to Approved Overbidding Procedures
25 (the "Motion") brought by the Permanent Receiver, Robb Evans ("Receiver") came
26 on regularly for hearing on February 28, 2005 at 1:30 pm in Courtroom 16 of the
27 above-referenced Court, the Honorable John F. Walter, United States District Judge
28 presiding. Gary Owen Caris of Frandzel Robins Bloom & Csato, L.C. appeared on

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1 behalf of the Receiver and other appearances were made as noted in the record. The
2 Court, having read and considered all papers filed in support of the Motion, plaintiff
3 Securities and Exchange Commission having filed its statement of non-opposition to
4 the Motion, no opposition to the Motion having been filed, the Court having been
5 advised that proposed purchaser Richard Wang failed to perform under the sales
6 contract attached as Exhibit 1 to the Motion ("Wang Agreement"), but that the
7 Receiver was prepared to go forward with an auction sale on the terms and
8 conditions generally set forth in the Motion provided that the Net Proceeds obtained
9 by the Receiver, as defined hereinbelow, are not less than the Net Proceeds to be
10 obtained by the Receiver under the Wang Agreement, and the Receiver having
11 retained The Redfield Group, Inc. ("Redfield") to assist in the marketing and auction
12 sale of Northwoods Resort and Conference Center at 40650 Village Drive, Big Bear
13 Lake, California 92315 ("Northwoods"), and good cause appearing therefor, it is

14 ORDERED that the Motion shall be and hereby is granted in its entirety
15 except as modified hereinbelow.

16 IT IS FURTHER ORDERED that:

17 1. An auction sale for Northwoods shall be held on March 15, 2005 at
18 1:30 p.m. at the law offices of Frandzel Robins Bloom & Csato, L.C., counsel for
19 the Receiver, located at 6500 Wilshire Blvd., 17th Floor, Los Angeles, California.
20 Notice of the auction sale shall be provided by overnight mail on or before March 4,
21 2005 to all parties who have expressed an interest to the Receiver in purchasing
22 Northwoods prior to February 28, 2005, including those parties who have submitted
23 offers to the Receiver and including those brokers that the Receiver has already been
24 in contact with concerning Northwoods. The Notice shall include a copy of the
25 Wang Agreement, this Order, and such other relevant information that the Receiver
26 and Redfield deem appropriate, and shall explain that bids must be generally on the
27 terms and conditions set forth in the Wang Agreement except as modified herein.
28 All other interested parties shall receive from Redfield copies of the Wang

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SCANNED

1 Agreement, notice of the auction sale and such other relevant information as the
2 Receiver and Redfield deem appropriate at such time and in such manner as the
3 Receiver and Redfield deem appropriate.

4 2. To be eligible to bid, a bidder shall present certified funds at or prior
5 to the auction sale to the Receiver in the amount of \$200,000 made payable to
6 "Robb Evans, Receiver of D.W. Heath & Associates, Inc., et al." The opening bid
7 shall generate Net Proceeds to the Receiver of not less than \$9,065,000. For all
8 bids, Net Proceeds shall be calculated by the bid's gross sales price deducting only
9 broker's fees. The opening bid has been calculated by considering the original
10 Net Proceeds due under the Wang Agreement increased by \$92,500, the maximum
11 amount which shall be paid to Redfield for performing marketing, consulting and
12 other functions for the Receiver with respect to the sale of Northwoods.

13 3. The initial minimum overbid shall be not less than \$100,000 higher
14 than the opening bid based upon Net Proceeds to the Receiver. All subsequent
15 overbids shall be at least \$100,000 higher than the previous bid based upon Net
16 Proceeds to the Receiver.


17 4. The successful bidder shall promptly execute a purchase and sale
18 agreement generally on the terms and conditions of the Wang Agreement except as
19 modified hererin and pay a 15% down payment within two days of the execution of
20 the purchase and sale agreement. The successful bidder shall have a 15-day
21 inspection period from the date of the execution of the purchase and sale agreement.
22 The Receiver shall have a concurrent 15-day period to complete all investigations
23 concerning the financial capacity of the successful bidder and may elect not to
24 proceed to sell to such buyer for any reason during that time. The \$200,000 pre-
25 auction qualification payment shall be deemed to be a portion of the successful
26 bidder's deposit and shall become non-refundable at the expiration of the 15-day
27 inspection period. A successful bidder shall close the purchase of Northwoods
28 within 20 days from the expiration of the inspection period.

1 5. In the event that any sale is not consummated with the highest bidder
2 for any reason, the next highest bidder shall be deemed to be the successful bidder.

3 IT IS FURTHER ORDERED that any sale of Northwoods in compliance with
4 the marketing and sale procedures set forth herein is hereby authorized and
5 confirmed without the need for further Court order.

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DATE: 2/28/05


THE HONORABLE JOHN F. WALTER,
UNITED STATES DISTRICT JUDGE

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