

commissions or fees will be paid by the Plans as a result of the Sale; (3) the Sale will enable the Plans to liquidate their assets and will facilitate implementation of participant-directed investments; and (4) the Sale price will be the higher of: (a) The fair market value of the Partnership Interest on the date of the Sale, or (b) the Plan's total investment in the Partnership Interest.

FOR FURTHER INFORMATION CONTACT:

Virginia J. Miller of the Department, telephone (202) 219-8971. (This is not a toll-free number.)

Pediatric Dentistry Ltd. Profit Sharing Trust (the Plan).

Located in Fargo, North Dakota
[Exemption Application No. D-09903]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code³ shall not apply to the proposed cash sale of a parcel of improved real property (the Property) by the Plan to William Hunter, M.D. (Dr. Hunter), a party in interest with respect to the Plan; provided that: (1) The sale will be a one-time transaction for cash; (2) as a result of the sale, the Plan will receive in cash the greater of \$79,000 or the fair market value of the Property, as determined by an independent, qualified appraiser, as of the date of the sale; (3) the Plan will pay no commissions, fees, or other expenses as a result of the transaction; and (4) the terms of the sale will be no less favorable to the Plan than those it would have received in similar circumstances when negotiated at arm's length with unrelated third parties.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan sponsored by Pediatric Dentistry Ltd. (the Employer). As of November 29, 1994, there were seven (7) participants. As of November 17, 1994, the assets of the Plan totaled approximately \$1,295,866. Approximately seven percent (7%) of

the Plan's assets are invested in the Property. Northern Capital Trust Company is the trustee (the Trustee) of the Plan. Dr. Hunter is the administrator of the Plan.

2. The Employer which sponsors the Plan is a professional service corporation providing dental services. The Employer's business office is located in a residential area immediately adjacent to the Property. Dr. Hunter is the sole shareholder of the Employer.

3. In 1989, the Property was purchased at a price of \$67,500 from third parties unrelated to Dr. Hunter or to any other beneficiary of the Plan. It is represented that one of the factors contributing to the purchase was the view that eventually the Property would be needed for the Employer's business and would at that time satisfy the definition of "qualifying employer real property," as set forth in section 407(d)(4) of the Act.⁴

However, it is represented that since the acquisition by the Plan, the Property has been rented to various parties unrelated to Dr. Hunter or to any other beneficiary of the Plan. It is represented that the annual average return on the investment to the Plan since the Property was acquired in 1989, has been 4.31%.

4. The Property is described as a one-story detached single family residence on a corner lot in a newer diversified neighborhood in Fargo, North Dakota. The Property consists of an 8,447 square foot level site improved by a structure that contains a 1,253 square foot finished living area above grade and a basement of the same size below grade. The Property is located at 1206 15 Avenue South and is situated on the lot adjacent to the Employer's business office.

5. This exemption is requested to permit the Plan to sell the Property to Dr. Hunter for the greater of \$79,000 or the appraised fair market value of the Property on the date of sale. Dr. Hunter represents that beginning in April, 1992, the Property was listed with a local realtor as part of the multiple listing service. The Property was initially listed at a price of \$71,950 which it is represented reflected the fair market value of the Property at that time based

⁴ The Department notes that the decisions of the fiduciary, acting on behalf of the Plan, in connection with the acquisition and holding of the Property are governed by the fiduciary responsibility requirements of part 4, subpart B, of Title I. The Department expresses no opinion herein, as to whether any of the relevant provisions of part 4, subpart B, of title I have been violated regarding the Plan's investment in and subsequent holding of the Property, and no exemption from such provisions is proposed herein.

on an appraisal. Subsequently, the price of the Property was reduced to \$68,950. Though the Property was shown to prospective buyers by several realtors who participate in the multiple listing service, it is represented that the Plan did not receive any offers from those buyers to purchase the Property.

It is represented that the proposed transaction is feasible in that it involves a one-time sale of the Property for cash. In addition, the proposed transaction is in the interest of the Plan in that the price offered by Dr. Hunter could not be obtained otherwise. In addition, the Plan will be able to sell the Property without incurring any further expense of searching for a buyer and without paying brokerage commissions, fees, or other expenses as a result of the transfer. The Trustee is desirous of selling the Property, which is illiquid, in order to facilitate the establishment of participant directed individual accounts in the Plan. It is anticipated that once the Property is sold the cash proceeds would be invested in marketable securities.

In the opinion of the Trustee, the proposed transaction is protective of the participants and beneficiaries of the Plan in that the sales price would be based on the fair market value of the Property as determined by an independent, qualified appraiser, as of the date of the sale. Further, the Trustee will review the transaction and make the final determination regarding the sale of the Property to Dr. Hunter. In this regard, the Trustee represents that in its fiduciary capacity with respect to the Plan, it will review the contemplated transaction so as to insure that the interests of the participants of the Plan are protected.

6. An appraisal of the Property was prepared by Jerry Link (Mr. Link), of Appraisal Services, Inc., in Fargo, North Dakota. It is represented that Mr. Link is qualified in that he is licensed by the State of North Dakota as an appraiser. It is further represented that he is independent in that he has no present or prospective interest in the Property and has no personal interest or bias with respect to the participants in the proposed transaction. Mr. Link represents that neither his employment nor his compensation was conditioned upon the appraised value of the Property, nor was he required to report a predetermined value or base the appraisal on a requested minimum value for the Property. After physically inspecting the Property, and reconciling values for the Property established by the cost approach, income approach, and sales comparison approach, Mr. Link determined that the fair market

³ For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

value of the Property was \$79,000, as of January 13, 1994.

Because the Property is located on the lot adjacent to the Employer's business office, Mr. Link was asked to determine whether there would be any premium value associated with the Property. In this regard, Mr. Link indicated that the Property is a single family dwelling located in an R-1, One/Two Family Dwelling District. It is represented that this zoning category does not allow commercial development without a special use permit. According to Mr. Link the highest and best use of the Property is single family. Based on this highest and best use, it is the opinion of Mr. Link that the Property's location next to the Employer's business office does not result in a premium associated with the value of the Property to Dr. Hunter.

7. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because:

(a) the sale of the Property will be a one-time transaction for cash; (b) as a result of the sale, the Plan will receive in cash the greater of \$79,000 or the fair market value of the Property, as determined by an independent, qualified appraiser, as of the date of the sale; (c) the Plan will pay no commissions, fees, or other expenses as a result of the transaction; (d) the terms of the sale will be no less favorable to the Plan than those it would have received in similar circumstances when negotiated at arm's length with unrelated third parties; (e) the Plan will be able to invest the proceeds from the sale of the Property in marketable securities; (f) the Plan will be able to dispose of the Property which is illiquid; and (g) the sale of the Property will facilitate the establishment of participant directed individual accounts in the Plan.

FOR FURTHER INFORMATION CONTACT:

Angelena C. Le Blanc of the Department, telephone (202) 219-8883 (This is not a toll-free number.)

Bob Murphy, Inc. Profit Sharing Plan (the Plan)

Located in Boynton Beach, Florida
[Exemption Application No. D-09949]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is

granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale (the Sale) of certain works of art (the Art Work) by the Plan to Robert J. Murphy, Jr., a disqualified person with respect to the Plan.⁵

This proposed exemption is conditioned upon the following requirements: (1) all terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction between unrelated parties; (2) the Sale is a one-time cash transaction; (3) the Plan is not required to pay any commissions, costs or other expenses in connection with the Sale; and (4) the Plan receives a sales price equal to the fair market value of the Art Work on the date of the Sale as determined by an independent, qualified appraiser.

Summary of Facts and Representations

1. The Plan is a profit sharing Plan whose only participants are Mr. Murphy and his wife, Gail F. Murphy. As of June 30, 1994, the Plan had total assets of \$572,050. Mr. and Mrs. Murphy serve as the trustees of the Plan (the Trustees) and have sole investment discretion with respect to its assets.

2. The Plan has approximately 17 percent of its assets in the Art Work, which consists of ten Leroy Nieman serigraphs. The Plan received the Art Work as a rollover from the Bob Murphy, Inc. Defined Benefit Pension Plan (the DB Plan), which the trustees terminated on November 15, 1987. The DB Plan purchased the Art Work between 1980 and 1987 from two dealers—Hammers Gallery in New York and Hanson Gallery in New Orleans. Mr. Murphy represents that he is independent of, and unrelated to, both Hammers Gallery and Hanson Gallery.

3. Following its acquisition, the Art Work has been in the possession of Mr. Murphy at his residence at Delray Beach, Florida and his office at the Delray Dunes Country Club in Boynton Beach, Florida. In an examination report dated January 6, 1993, the Internal Revenue Service (the Service) determined that Mr. and Mrs. Murphy had engaged in prohibited transactions by reason of their use of the Art Work for the years 1989, 1990 and 1991. Mr. Murphy represents that on August 22, 1994 he filed Forms 5330 with the Service and paid the applicable excise

⁵ Since Robert J. Murphy, Jr. and his wife, Gail F. Murphy, are the only participants in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

taxes associated with the past prohibited transaction in the amount of \$9,195.

4. Because the Art Work is not an income producing asset for the Plan and certain pieces of the Art Work have declined in value, Mr. Murphy proposes to purchase the Art Work from the Plan for a cash amount equal to its fair market value on the date of the Sale. Accordingly, Mr. Murphy requests an administrative exemption from the Department to permit his purchase of the Art Work from the Plan under the terms and conditions described herein.

5. Celeste B. Stover, the Assistant Director for Hanson Gallery in New Orleans, Louisiana, valued the Art Work as of August 10, 1994. In her capacity as Assistant Director, Ms. Stover has actively represented the work of Leroy Nieman since 1983. Ms. Stover represents that while Mr. Murphy has been a client of the Hanson Gallery since 1984, both she and Hanson Gallery are unrelated to, and independent of, Mr. and Mrs. Murphy. Ms. Stover states that she derives less than 1 percent of her annual income from Mr. Murphy.

In determining the fair market value of the Art Work, Ms. Stover represents that she looked to the recommended retail values of Leroy Nieman serigraphs provided yearly to Hanson Gallery by Knoedler and Co., the publishers of Leroy Nieman's prints. The recommended values are based upon current demand for the specific image as well as availability of the image and previous bids within the last year. Ms. Stover's valuations of the Art Work are as follows:

Work	Fair Market Value
Rush Street Bar	\$6,500
Elephant Nocturne	10,000
New York Stock Exchange	15,000
P.J. Clarkes	15,000
Buena Vista Bar	8,000
Harry's Wall Street Bar	7,000
Bistro Gardens	6,800
Polo Lounge	11,000
Bar at 21	7,000
Fix McRory's Whiskey Bar	12,000

6. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 4975(c)(2) of the Code because: (a) All terms and conditions of the Sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction between unrelated parties; (b) the Sale will be a one-time cash transaction; (c) the Plan will not be required to pay any commissions, costs