

grant Sujal M. Pandya's ("Mr. Pandya") withdrawal in this matter. In support of his Motion, the Receiver states as follows:

INTRODUCTION

1. The Receivership Estate includes various real estate assets, including the Property.² Prior to the date of the Motion, an all-cash offer for \$145,000.00 was made for the Property. As more fully set forth below, the Receiver consulted with multiple real estate professionals and has determined that the offer constitutes market value for the Property and, as a result, seeks authority to sell the Property and deliver clear title to the proposed buyer (the "Proposed Sale").

2. Also, Mr. Pandya is no longer employed with Receiver's counsel's law firm, Fox Swibel Levin and Carroll, LLP ("Fox Swibel"). As a result, Receiver requests that Mr. Pandya be allowed to withdraw from this matter.

AUTHORITY

3. Pursuant to the Securities Act of 1933 and the Securities Exchange Act of 1934, the Securities and Exchange Commission (the "SEC") sought and obtained the appointment of a Receiver pursuant to the Receivership Order. Under the Receivership Order, the Receiver has authority in equity, as well as under 28 U.S.C. §§ 754, 959, and 1692, and Fed. R. Civ. P. 66, and was given broad powers to investigate and safeguard the assets of the Receivership Defendants. Among other powers, the Receiver is authorized to cause the sale of real property at public or private sale. *Receivership Order*, ¶¶ 37–38. Upon further order of this Court, the Receiver may be authorized to sell, and transfer clear title to, real estate. *Id.* at ¶ 39.

4. Local Rule 83.17 provides that an attorney of record may not withdraw, nor may

² The Property is the one (1) remaining condo in a group of units that was sold prior to entry of the Receivership Order.

any other attorney file an appearance on behalf of the same party or as a substitute for the attorney of record, without first obtaining leave of court.

RELEVANT BACKGROUND

A. The Proposed Sale

5. The nominal fee owner of the property is Harris Bank, N.A., as Trustee under a trust agreement dated January 3, 2006, known as Trust Number HTB1786 (the “Land Trust”). A true and accurate copy of the Land Trust agreement is attached hereto as **Exhibit A**. The beneficiary of the Land Trust is Receivership Entity, 5528 Hyde Park, L.P. and the power of direction for the Land Trust is vested in Glenn Mueller, as President of Northridge Holdings, Ltd. *See* Exhibit A. As a result, pursuant to the Receivership Order, the Receiver is vested with the authority to sell the Property (subject to order of this Court).

6. Pre- Receivership, the Property had been marketed by Louis Virgilio of American Realty Services, Inc. Mr. Virgilio is the Receivership Defendants’ former real estate agent. The Property has been listed since June 2019 and was put on the MLS in the beginning of September 2019 (after a tenant vacated and the property could be cleaned). Mr. Virgilio fielded other offers for the Property for \$140,000 and \$130,000, but those offers were below market and were not pursued.

7. Post-entry of the Receivership Order, an offer for the Property from Karandeep S. Bhatia and Inder P. Arora³ (collectively, the “Proposed Buyer”) was brought to the Receiver by Mr. Virgilio. The offer from the Proposed Buyer is for \$150,000, all-cash. The Proposed Buyers then reduced their offer to \$145,000 (still all-cash). The Receiver consulted with multiple brokers who advised the Receiver that the proposed price was market, especially since it

³ To the Receiver’s knowledge, the Proposed Buyers are disinterested and have no connection to Glenn C. Mueller or the Receivership Defendants (i.e., this is an arm’s length sale). As a requirement of closing, the Proposed Buyers will be required to sign a sworn declaration that they are, in fact, disinterested.

was an all-cash offer. Attached as **Exhibit B**, are true and correct copies of comparable sales provided by the Receiver's brokers which evidence that the proposed purchase price is a market price. Additionally, with respect to these Unit 482 listed in the Exhibit A, Mr. Virgilio sold that unit and has advised the Receiver that this unit had hardwood floors throughout, new kitchen cabinets and bathroom vanities, new bathroom tile, and new appliances that justified the higher purchase price (\$163,000). Mr. Virgilio also informed the Receiver that he is aware of other units in the complex that sold in the \$140,000-\$149,000 range.

8. The Receiver negotiated and executed a real estate sale contract (the "Agreement"), subject to Court approval. A true and correct copy of the Agreement with amendments and exhibits is attached hereto as group **Exhibit C**. The contract includes a sworn declaration by the Proposed Buyer that they are not related to the Defendants or Receivership Defendants in this case and that same will not benefit in any way as a result of the proposed transaction.

9. Closing this sale will require payment of certain closing costs, as follows (collectively, the "Closing Costs"): Mr. Virgilio has agreed to a four percent (4%) commission, which the Receiver has verified is market rate.⁴ The Law Offices of Kevin F. Alexander, LLC have been retained at a flat fee of \$600.00 to cost-efficiently close this smaller transaction. Mr. Alexander has closed many of the Receivership Defendants' pre-Receivership real property sales, including units in the same "complex" as the Property. Additionally, as is custom in Illinois, the seller will be responsible for paying for title insurance. A draft closing statement setting forth all of these costs and net proceeds to be paid to the Receivership is attached hereto as **Exhibit D**.

⁴ As a condition to receivership any commission, Mr. Virgilio will be required to sign a sworn declaration providing that none of the Commission will be paid or otherwise shared with Glenn Mueller, any of Glenn Mueller's family members or any of Glenn Mueller's affiliated entities including the Receivership Defendants.

B. Mr. Pandya's Withdrawal

10. On September 12, 2019, Mr. Pandya filed an appearance on behalf of the Receiver. (See Dkt. 28.)

11. Effective December 11, 2019, Mr. Pandya is no longer an employee of Fox Swibel, the firm that represents the Receiver. Mr. Pandya, therefore, no longer represents the Receiver in this matter.

BEST INTERESTS OF RECEIVERSHIP ESTATE (PROPOSED SALE)

12. A receiver's proposed sale of assets in an equity receivership is generally governed by 28 U.S.C. § 2001. Sale of property in the possession of a receiver must generally be conducted by public sale at the courthouse of the county, parish or city where the property is located or on the premises of the property. 28 U.S.C. § 2001(a). Courts may also determine in equity receiverships that the best interests of the estate are served by permitting private sales, with adequate notice to all interested parties, but requires three independent appraisals. 28 U.S.C. § 2001(b). 28 U.S.C. § 2004, however, allows the Court to deviate from section 2001 and "order otherwise." *See* 28 U.S.C. 2004 ("Any personalty sold under any order or decree of any court of the United States shall be sold in accordance with 28 U.S.C. § 2001, **unless the court orders otherwise.**") (emphasis added). Courts throughout the country have exercised their discretion in permitting receivers to enter into private asset sales, outside of the requirements of sections 2001 and 2004. *See FTC v. E.M. Sys. & Serv., LLC*, 2016 WL 11110381, *3 (M.D. Fla. 2016) (citing to *SEC v. Nadel*, No. 8:09-cv-87-T-26TBM, Dkt. No. 1050 (M.D. Fla. Aug. 13, 2013) (waiving requirements of three (3) independent appraisals and publication of terms of sale)); *SEC. v. Kirkland*, No. 6:06-cv-183-Orl-28KRS, 2008 WL 4264532, at *3 (M.D. Fla. Sept. 12, 2008) (permitting sale of motorcycle based on highest of six (6) offers received). Additionally, District

Courts have broad power and wide discretion in determining relief in an equity receivership. *SEC v. Elliott*, 953 F. 2d 1560, 1566 (11th Cir. 1992); *see also A.I. Case Co. v. Borak*, 377 U.S. 426, 433 (1964) (once the equitable jurisdiction of a district court has been properly invoked, the Court may use all of its equitable remedies to effectuate the statutory purpose, including ordering non-injunctive relief in a variety of forms). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F. 2d at 1566. The relief sought by the Receiver in this Motion falls squarely within the Court's discretionary powers.

13. Here, the Receiver is satisfied that the propose sale price is a market price based on the marketing of the Property by Mr. Virgilio and the comparable sales in the area and in the complex. As a result, the Receiver submits that performing three (3) appraisals for this condo will only reduce the net-proceeds available for possible distribution to creditors, including investors. Moreover, there would be a risk that the resulting delay would cause the buyer to walk away from the deal. Finally, there is no known mortgage or other lien of record on the Property so all of the sale proceeds less Closing Costs would be realized by the Receivership Estate. Put simply, sale of the Property at this time is in the best interest of the Receivership and the Receivership Estate and its creditors / investors.

14. Likewise, payment of the Closing Costs is in the best interest of the Receivership. Mr. Virgilio's real estate commission was earned in connection with the Proposed Sale as he brought to the table the Proposed Buyers and marketed the Property. And, Mr. Virgilio's four percent commission rate is well within market rate for a deal of this size and scope. Also, retaining Mr. Alexander's firm to close this transaction at a fixed cost will also save the Receivership Estate time and money. Lastly, the title insurance fee is standard in the market and

must be paid without jeopardizing deal-closing.

MR. PANDYA'S WITHDRAWAL SHOULD BE GRANTED

15. As permitted by the Local Rules, the undersigned respectfully requests that Mr. Pandya be permitted to formally withdraw as counsel.

16. This motion is brought in good faith and not for the purpose of delay.

17. No party will be prejudiced by the granting of this motion, as the Receiver will continue to be represented by the other attorneys at Fox Swibel who have filed appearances on the Receiver's behalf, and no changes to any presently scheduled dates or deadlines will be necessary.

NO OBJECTION BY THE SEC

18. Counsel for the SEC has indicated that the SEC does not object to the relief requested herein.

WHEREFORE, the Receiver respectfully requests that the Court (a) grant this Motion; (B) enter the *Order Authorizing the Sale of Real Property and Granting Related Relief* (a proposed form of which is attached hereto as **Exhibit E**)⁵; (c) grant Mr. Pandya leave to withdraw; and (d) grant all other or further relief as is just and proper.

Dated: December 18, 2019

N. Neville Reid, Receiver

By: /s/ Ryan T. Schultz

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⁵ The Receiver anticipates that the relevant title company will require a stand-alone order approving the Proposed Sale in order to close this sale.