

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION,**

**Plaintiff,**

**V.**

**NORTHRIDGE HOLDINGS, LTD., ET AL.,**

## Defendants.

**Civil Action No. 19-cv-05957**

**Hon. John Z. Lee**

**Magistrate Judge Susan E. Cox**

**RECEIVER'S MOTION FOR COURT APPROVAL OF: (A) THE RATES TO BE CHARGED BY RECEIVER'S REAL ESTATE BROKER (ELSTON PROPERTY); (B) SALES PROCEDURES (ELSTON PROPERTY); (C) THE RATES TO BE CHARGED BY RECEIVER'S REAL ESTATE BROKER (VACANT LOTS PROPERTY) AND (D) SALES PROCEDURES (VACANT LOTS PROPERTY)**

N. Neville Reid, not individually, but solely as the court-appointed receiver (the “Receiver”) for the Estate of Defendant Northridge Holdings, Ltd. and its related entities and affiliates as more particularly set forth in the Receivership Order (as defined herein) (collectively, the “Receivership Defendants”, and the assets of such entities as more particularly set forth therein, the “Receivership Assets”, and such estate the “Receivership Estate” and such administration, the “Receivership”), and pursuant to the powers vested in him by the *Order Appointing Receiver* entered by the Court on September 12, 2019 [Dkt. No. 22] (the “Receivership Order”), hereby moves for approval of: (a) the real estate commission rate to be charged by Millennium Properties R/E, Inc. (“MPI”) upon sale of the Elston Property (defined below); (b) sales procedures to be employed in connection with the sale of the Elston Property (defined below); (c) the real estate commission rate to be charged by First Team Real Estate (“First Team”) upon sale of the Vacant Lots Property (defined below); and (d) sales procedures to

be employed in connection with the sale of the Vacant Lots Property (defined below). In support of the Motion, the Receiver states as follows:

### **INTRODUCTION**

1. As set forth in prior motions, the Receivership Assets include an office building located at 5097 N. Elston, Chicago, Illinois 60630 (the “Elston Property”), which is currently being leased.<sup>1</sup> The Receiver, with the assistance of MPI, has prepared a real estate marketing and sale process for the Elston Property that is robust, efficient and intended to maximize the value of the Receivership Estate for the benefit of all stakeholders (collectively, the “Elston Sales Procedures”).

2. Additionally, the Receivership Assets include 36 vacant lots located outside of Palm Springs, California (collectively, the “Vacant Lots Property”).<sup>2</sup> The Receiver, with the assistance of First Team, has prepared a real estate marketing and sale process for the Vacant Lots Property that is robust, efficient and intended to maximize the value of the Receivership Estate for the benefit of all stakeholders (collectively, the “Vacant Lots Sales Procedures”).

3. As described herein, the Elston and Vacant Lots Sales Procedures will be carefully run in accordance with the Receivership Order and applicable law. And, in no case will the Receiver close on a proposed sale of real property absent further order of the Court. By this Motion, the Receiver seeks approval of: (a) the commission rate to be charged by MPI for the marketing and sale of the Elston Property and authority to pay such commission at the closing of the Elston Property; (b) the Elston Sales Procedures (as set forth below); (c) the commission rate to be charged by First Team for the marketing and sale of the Vacant Lots Property and authority

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<sup>1</sup> The Receivership Entities include the fee owner.

<sup>2</sup> The Receivership Entities include the fee owner.

to pay such commission at the closing of the Vacant Lots Property; and (d) the Vacant Lots Sales Procedures (as set forth below).

### **AUTHORITY**

4. 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 retain a broker, otherwise engage a broker or take “all necessary and reasonable actions” to cause the sale or lease of all real property in the Receivership Estate. *See Receivership Order*, ¶¶ 8K, 38, 50. Although the Receivership Order and relevant law may authorize the Receiver to (1) retain MPI and First Team as brokers for the Elston Property and the Vacant Lots Property, respectively; (2) utilize the Elston Property and Vacant Lots Property Sales Procedures to sell such properties; and (3) seek further order of the Court in order to close such sales, the Receiver presently seeks approval of the brokerage rates and Elston Property and Vacant Lots Property Sales Procedures out of abundance of caution and in the interest of full disclosure to the Court and interested parties.

### **ELSTON PROPERTY**

#### **A. Relevant Background**

5. Maximizing the value of the Receivership Defendants’ real estate assets is a major objective of the Receivership. With the assistance of the Receiver’s property manager and MPI, the Receiver has prepared the Elston Property to be marketed for sale. This effort included updating the rent roll, getting the building’s leases and finances on a generally acceptable

property management software system, creating a financial pro forma of the Elston Property, and creating a data room and identifying comparable sales. MPI is producing marketing materials (the “Elston Marketing Materials”) that will be distributed to potential buyers. With respect to the Elston Property, during this case, the Receiver solicited proposals from three Chicagoland brokers. For the reasons set forth further below, the Receiver selected MPI’s proposal.

**B. Rates to be Charged by MPI**

6. The proposed commission rate to be charged by MPI is six percent (6%) of the sale price for the Elston Property (the “Elston Commission”), which is to be charged as a “buyer’s premium” (i.e. the buyer will be required to pay the Elston Commission in addition to the purchase price) at the Auction (defined below). Any cooperating broker commission would be paid out of the Elston Commission. The auction listing agreement between the Receiver and MPI is attached hereto as Exhibit A and is incorporated herein. The Receiver selected MPI as broker for the Elston Property because (among other reasons): (a) MPI’s rate was the same as the other proposals; (b) MPI proposed the auction structure (described below) which the Receiver believes will be the best way to maximize the value of this asset, in contrast to the other brokers who proposed more traditional marketing methods; and (c) MPI demonstrated the most experience with respect to marketing and selling this type of office building located in this area of Chicago. Put simply, MPI’s proposed commission rate is fair, reasonable, appropriate and in the best interest of the efficient and economical administration of this Receivership. Further, MPI does not hold or represent an interest materially adverse to the interests of the receivership.

**C. Proposed Elston Sales Procedures**

7. Pursuant to the Elston Sales Procedures, MPI plans to market the Elston Property on a local and national basis, exposing such property to as much of the market as possible. The

Receiver seeks to sell the Elston Property at a competitive auction on an “as is where is” basis with no representations or warranties of any kind (other than delivering “quitclaim” title to the property).

8. The proposed Elston Sales Procedures are as follows:

a. **Marketing Phase (approximately 45 days):**<sup>3</sup> By late January, MPI will send out the Elston Marketing Materials through the following channels: (a) MPI’s website; (b) MPI’s extensive mailing list of potential buyers; and (c) Co-Star, Loopnet, and Crexi, which are all national databases of potential buyers and brokers. During this period, MPI will also call high probability buyers, distribute a press release to major real estate publications around the country and will place a notice of sale in Crain’s Chicago Business.

b. **Auction:**

- **Auction Date & Time:** March 19, 2020 at 10:30 AM CDT.
- **Auction Location:** The offices of Fox Swibel Levin & Carroll LLP, 200 W. Madison, Suite 300, Chicago, Illinois 60606.
- **Pre-Qualification of Bidders:** MPI will pre-qualify bidders and require that each bidder satisfy the following conditions in order to be allowed to bid at the auction: (1) deposit with MPI (or the Receiver) \$75,000 (or bring to the auction a certified check in that amount made out to the Receiver); and (2) agree to the Receiver’s form purchase agreement (which will be provided to potential buyers

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<sup>3</sup> The Receiver seeks authority to shorten or extend deadlines (including the auction date) in his reasonable business judgment.

as part of due diligence).<sup>4</sup>

- **Bid Procedures:** MPI will open the auction and the minimum opening bid will be \$700,000.<sup>5</sup> The bidding will continue until no higher bid has been made after fair warning by MPI and at the Receiver's reasonable discretion.
- **Notice:** The date, time and location of the auction will be clearly set forth in the Elston Marketing Materials. Any change will be clearly communicated to potential buyers.

c. **Closing:** The highest and best bid at the auction will be chosen, and the Receiver will then seek Court approval of the sale of the Elston Property to such bidder. The Receiver intends to close the sale upon entry of such order approving the sale of the Elston Property.

### **VACANT LOTS PROPERTY**

#### **A. Relevant Background**

9. With the assistance of First Team, the Receiver has prepared the Vacant Lots Property to be marketed for sale. This effort included informally appraising the property and identifying comparable sales. First Team is producing marketing materials that will be distributed to potential buyers.

#### **B. Rates to be Charged by First Team**

10. The proposed commission rate to be charged by First Team is six percent (6%) of the sale price for the Vacant Lots Property (the "Vacant Lots Commission"). Any cooperating

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<sup>4</sup> Glenn Mueller (and/or his counsel); the secured lender, Parkway Bank (and/or its counsel) and counsel for the SEC shall be permitted to attend the auction.

<sup>5</sup> Such bid would allow the Receiver to satisfy all outstanding secured debt.

broker commission would be paid out of the Vacant Lots Commission. The auction listing agreement between the Receiver and First Team is attached hereto as **Exhibit B** and is incorporated herein. Due to the unique nature of this property, the Receiver contacted several brokers that had national referral networks. First Team came highly recommended and, as a result, the Receiver selected First Team to market and sell the Vacant Lots Property. Put simply, First Team's proposed commission rate is fair, reasonable, appropriate and in the best interest of the efficient and economical administration of this Receivership. Further, First Team does not hold or represent an interest materially adverse to the interests of the receivership.

**B. Proposed Vacant Lots Sales Procedures**

11. Pursuant to the Vacant Lots Sales Procedures, First Team plans to market the Vacant Lots Property on a local basis, exposing such property to as much of the relevant market as possible. First Team will initially focus its efforts on residential developers in the area that are the most likely to purchase the Vacant Lots Property in bulk. To the extent such efforts fail to produce buyers for all of the Vacant Lots Property, First Team may seek to sell any remaining property to individual buyers. The Receiver seeks to sell the Vacant Lots Property on an "as is where is" basis with no representations or warranties of any kind (other than delivering "quitclaim" title to the property).

12. Additionally, because the Vacant Lots Property is comprised of 36 separate lots, there presently exist the following options for sale of the Vacant Lots Property: (a) sell the Vacant Lots Property on a lot by lot basis; (b) sell the Vacant Lots Property in bulk; or (c) a combination of the two. For the sake of efficiency, the Receiver will seek to sell Vacant Lots Property in bulk (i.e., more than one unit at a time).

13. If offers are made, First Team will convey such offers to the Receiver and make recommendations with respect to the same. The Receiver will consider all offers on a one-off basis. If acceptable, the Receiver will seek to enter into a purchase and sale agreement for Court approval.

### **BEST INTERESTS OF RECEIVERSHIP ESTATE**

14. 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 this 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 *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.

15. Here, the Receiver seeks approval from the Court to deviate from the requirements of section 2001 (i.e., not require three appraisals) and sell the Elston and Vacant Lots Properties in a manner consistent with the process by which office properties in Illinois and vacant lots in California are normally marketed and sold. The proposed Elston and Vacant Lots Sales Procedures have been designed to expose the relevant properties to the market in order to obtain the highest and best offers for the Elston Property and Vacant Lots Property. The Elston and Vacant Lots Sales Procedures are the product of a joint effort between the Receiver and MPI (in the case of the Elston Property) and the Receiver and First Team (in the case of the Vacant Lots Property), and are based on their collective experience in maximizing the value of real estate assets such as the Elston and the Vacant Lots Properties. The Receiver respectfully submits that the Court should approve the Elston and Vacant Lots Sales Procedures because they are in the best interests of the Receivership Estate and are commercially reasonable. Lastly, the Elston and Vacant Lots Sales Procedures contemplate that the Receiver will return to the Court and file a motion seeking approval of the sale (the "Sale Motion"). The Sale Motion will, among other things: (a) describe the marketing process conducted (i.e., confirm the Sales Procedures were followed); (b) disclose the number of offers received; (c) describe the Receiver's consideration of offers generally and set forth the reasons the Receiver

chose the “winning” proposal as highest and best; and (d) attach the proposed purchase and sale agreement. The Sale Motion will also seek entry of an order authorizing the Receiver, among other things, to convey title to the Elston and Vacant Lots Properties free and clear of all claims, liens and encumbrances and to pay certain costs at closing (i.e., payoff the existing mortgage, real estate commission, etc.).

**NO OBJECTION BY THE SEC**

16. 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 and the relief requested herein and (b) grant all other or further relief that is just and proper.

Dated: January 17, 2020

N. Neville Reid, Receiver

By: /s/ Ryan T. Schultz

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