

If no objections are filed within seven (7) days of the service of the motion, the Receiver shall file with the Court a Notice of No Objections in which case the Court may enter the proposed order *sua sponte*, or set the matter for hearing. If an objection is filed and served within seven (7) days of service of the motion, or if the Receiver anticipates that such an objection will be filed or believes that a hearing is appropriate, the Receiver shall obtain a hearing date from the Court and issue and serve, a Notice of Hearing setting the matter for hearing before the Court, and the Notice of Hearing shall be served upon all persons on who have appeared in the case at least seven (7) days prior to the hearing.

B. Petitions for Payment of Fees. The Receiver shall file his first motion requesting authority to pay fees and expenses no later than December 13, 2021, and subsequent motions for payment of fees and expenses will be filed at regular intervals thereafter. Prior to filing any motion seeking authority to pay fees and expenses of the receivership, the Receiver shall submit itemized statements of services rendered to, and costs incurred or expended on behalf of the receivership to the Commission and Defendant's counsel. Fee statements provided to Defendant's counsel may be redacted as necessary to protect all appropriate privileges. The motion filed by the Receiver seeking authority to pay fees and costs incurred by the Receiver, his attorneys or accountants, shall not include as exhibits the itemized statements of services rendered to, and costs incurred or expended on behalf of, the receivership. Each such motion shall include a statement that anyone desiring additional information concerning the services and costs to be paid under the motion may obtain redacted information from the Receiver by delivering to the Receiver or the Receiver's counsel, Scheef & Stone, L.L.P. within five (5) days of the filing of the motion a written request specifying the additional information requested. The Receiver shall make available for in camera review by the Court, the unredacted statements and

supporting documentation for the services and costs to be paid under the motion, if directed to do so by this Court. The Commission and Defendant shall have the right to object to any motion for payment of fees and expenses filed by the Receiver.

II. PROCEDURES GOVERNING SALE OF PERSONAL PROPERTY

A. Private Sale. The Receiver is hereby authorized to sell personal property constituting Receivership Assets (“Personal Property”), in any manner outlined below, and is further authorized to determine which method to use in selling any particular item of Personal Property. None of the parties to this lawsuit or the Receiver, their agents, assigns, or employees may purchase any of the Personal Property.

1. The Receiver may, in his discretion, sell Personal Property at a private sale conducted by the Receiver or his staff or agents at which the Personal Property will be offered for sale at a specific asking price, as determined by the Receiver. The Receiver shall set the sales price by determining value from any reputable source, such as a trade journal, appraisal, or comparable sales on public auction sites such as E-Bay. The Receiver may also set a reserve price which may, in the Receiver’s sole discretion, be made public by the Receiver. The Personal Property need not be sold for the asking price, but may be sold at any price at or above the reserve price.

2. The Receiver shall conduct the private sale in a location and provide such advertising as in the opinion of the Receiver is appropriate given the nature and condition of the property to be sold. Sales on E-Bay, or other similar public forums are specifically authorized, as deemed appropriate in the Receiver’s discretion.

3. The Receiver shall pay from the Receivership Assets all reasonable and customary costs incurred in connection with the sale, without necessity of further Court authorization.

B. Auction. In lieu of, or in addition to, a private sale, the Receiver is hereby authorized to liquidate at a public auction the Personal Property in his possession, in accordance with the following procedures:

1. The Receiver shall sell the Personal Property to the highest bidder at a public auction conducted by an established auctioneer.

2. The Receiver will provide such advertising, if any, as in the opinion of the Receiver is appropriate given the nature and condition of the property to be sold.

3. The Receiver shall pay from the Receivership Assets all reasonable and customary costs incurred in connection with the auction.

4. Notice of the terms of the sale will be included in the Receiver's periodic reports to the Court.

C. Abandonment. In the event the Receiver is unable to sell an item of Personal Property under the procedures described herein, or determines that an item of Personal Property has an appraised or estimated value of less than \$100.00, the Receiver is hereby authorized to dispose of the item by either a direct negotiated sale, donation to charity, or destruction. If the interest held by the Receiver is that of a lessee, the Receiver may surrender the property to the lessor in exchange for the value, if any, of the interest held by the Receiver. The Receiver shall include the description of any abandoned property in his periodic reports to the Court.

D. Notice of Intended Disposition. Notice of a sale pursuant to a private sale, or abandonment of Personal Property under the above procedures shall be provided as follows:

a. At least ten (10) days prior to any sale or abandonment, the Receiver shall file a written Notice of the intended sale or abandonment. The Notice shall describe the property to be sold or abandoned and the manner in which it will be sold or abandoned.

b. The Receiver shall also serve by First Class Mail, the written Notice described above on every person who has made a written request to the Receiver. The Receiver may in his discretion provide additional notice as he deems appropriate.

c. Any person who wishes to object to the proposed sale or abandonment, shall file a written objection with this Court setting forth the objection and shall file and serve the objection on the Receiver not more than five days after mailing of the Notice by the Receiver.

d. If no objection is timely filed and served, the Receiver may sell or abandon the property without further order of the Court in accordance with these procedures and as described in the Notice.

e. If an objection is timely filed and served, the proposed sale or abandonment shall not be completed until the objection has been decided by the Court.

f. Additionally, any person may submit to the Court a written offer for the property the Receiver seeks to sell or abandon. If the offer is submitted to the Court within five days from the date the Notice of Sale is filed and is at least ten percent (10%) greater than the amount of the sale included in the Notice of Sale, the person submitting the increased offer shall be entitled to purchase the property described in the Notice, without further order of the Court.

E. Execution of Certificates of Title. The Receiver is hereby authorized to execute certificates of title and other documents as may be necessary to effectuate the transfer of title to Personal Property sold, abandoned, or surrendered pursuant to the procedures approved herein.

III. PROCEDURES GOVERNING THE RECEIVER'S SALE OF REAL PROPERTY

Any sale of real property or an interest in real property by the Receiver shall be made in compliance with 28 U.S.C. § 2001.

1. The Receiver may employ and pay appraisers, environmental engineers, hydrologists, surveyors and similar real estate professionals, without the necessity of further order of the Court, except that payment of real estate brokers' commissions for the sale of real property shall be contingent upon this Court's approval of, and upon the closing of, the sale of the real property.

2. In selecting the professional to engage under this order the Receiver shall consider, in addition to the price to be charged for the services, the professional's experience, familiarity with particular markets, professional and technical reputation in the community, and ability to perform in a timely manner.

3. As required by 28 U.S.C. § 2001(b), the Receiver will obtain three appraisals of the real property to be sold from three disinterested persons, and will not submit any offer to the Court of less than two-thirds of the average appraised value.

4. Any contract for the sale or disposition of an interest in real property by the Receiver shall be made contingent upon approval of this Court. Upon entering into such a contract, the Receiver shall file with this Court a motion seeking the Court's approval of the contract. Each motion may include information concerning any bids or quotations obtained from appraisers, engineers, hydrologists, surveyors, and real estate brokers or other professionals as the Receiver deems appropriate, and shall include the amount or percentage to be paid as commissions.

5. Pursuant to 28 U.S.C. § 2001(b), the Court shall set for hearing the motion seeking approval of the contract to sell the Real Property and the Receiver shall, at least ten (10) days prior to the hearing, publish notice of the hearing and the price at which the Real Property is to be sold, in a newspaper of general circulation in the county in which the Real Property to be sold is located.

6. If by the time of the hearing on the motion seeking approval of the contract to sell the Real Property, a qualified person submits a bona fide written offer for the Real Property which exceeds the amount offered in the first contract by at least ten percent (10%), the Court

may direct sale of the Real Property to the person submitting the highest written bona fide offer.

7. Except as may otherwise be permitted by an order of this Court, Receivership Assets consisting of an interest in real property shall not be knowingly sold to any party or any employee, independent contractor or attorney of a party or of the Receiver, or any member of their immediate families, or entities in which any such persons have a material ownership interest.

So ORDERED and SIGNED on this 2nd day of November 2021.



DAVID C. GUADERRAMA
UNITED STATES DISTRICT JUDGE