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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

GINA CHAMPION-CAIN AND ANI
DEVELOPMENT, LLC,

Defendants, and

AMERICAN NATIONAL
INVESTMENTS, INC.,

Relief Defendant.

Case No.: 3:19-cv-1628-LAB-AHG

**ORDER GRANTING RECEIVER'S
MOTION FOR APPROVAL OF
SALE OF TENNYSON STREET
PROPERTY**

[ECF No. 252]

I. BACKGROUND

As described in prior orders, *see, e.g.*, ECF Nos. 54, 162, 163, this is an action brought by the Securities and Exchange Commission (“SEC”) against Defendants ANI Development, LLC (“ANI Development”) and Gina Champion-Cain and Relief Defendant American National Investments, Inc. (“ANI Inc.”), alleging violations of federal securities laws based on a purportedly fraudulent liquor license loan scheme. ECF No. 1.

On September 3, 2019, the Court established an equitable receivership and appointed Krista L. Freitag (“Receiver”) as a permanent receiver of ANI Development and ANI Inc., authorizing her to take control over all funds and assets owned, managed, or in the possession or control of the receivership entities. *See* ECF No. 6 at 14-16. In that role, the Receiver acts under the control and direction of the Court to facilitate the “orderly and efficient administration of the estate . . . for the benefit of creditors.” *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). *See also Atl. Tr. Co. v. Chapman*, 208 U.S. 360, 370 (1908) (explaining that a motion to appoint a receiver to take charge of property is “to the end that the property might be cared for and preserved for all who had or might have an interest in the proceeds of its sale. . . . Immediately upon such appointment and after the qualification of the receiver, the property passed into the custody of the law, and thenceforward its administration was wholly under the control of the court by its officer [], the receiver.”). On December 11, 2019, the presiding judge in this action, Chief Judge Burns, granted the parties’ Joint Motion (ECF No. 156) to give limited consent to the undersigned to hear and directly decide all motions filed in this action to approve sales of receivership assets. ECF No. 160. *See also* 28 U.S.C. § 636(c); CivLR 72.1(g). All property sale motions are set before the undersigned pursuant to that grant of consent.

On February 21, 2020, the Receiver filed the present Motion for Approval of Sale of Tennyson Street Property (the “Tennyson Property Motion”). ECF No. 252. The motion concerns one of the residential real properties within the receivership estate, a single-family residence located at 3548 Tennyson Street, San Diego, California, 92106 (the “Tennyson Property”). *See* ECF No. 252; ECF No. 76-2 at 6 (listing the Tennyson Property in the

1 Preliminary Real Estate and Liquor License Asset Schedule filed on October 3, 2019). The
2 Court entered an order the same day setting a briefing schedule and hearing on
3 March 16, 2020. ECF No. 255. The Court set a deadline of March 6, 2020 to file any
4 response in opposition to the Tennyson Property Motion, and noted that “if no opposition
5 is filed by the deadline, the Court may take the motion under submission without oral
6 argument.” *Id.* at 2. No opposition was filed. Therefore, being fully advised and noting the
7 lack of opposition, the Court will **GRANT** the Tennyson Property Motion without oral
8 argument,¹ for the reasons explained more fully below.

9 II. LEGAL STANDARD

10 “[I]t is a recognized principle of law that the district court has broad powers and
11 wide discretion to determine the appropriate relief in an equity receivership.” *SEC v.*
12 *Lincoln Thrift Ass’n*, 577 F.2d 600, 606 (9th Cir. 1978). Where a district court sits in equity,
13 “[u]nless a statute in so many words, or by a necessary and inescapable inference, restricts
14 the court’s jurisdiction in equity, the full scope of that jurisdiction is to be recognized and
15 applied. ‘The great principles of equity, securing complete justice, should not be yielded
16 to light inferences, or doubtful construction.’” *Porter v. Warner Holding Co.*, 328 U.S.
17 395, 398 (1946).

18 “[A] district court’s power to supervise an equity receivership and to determine the
19 appropriate action to be taken in the administration of the receivership is extremely broad.”
20 *Hardy*, 803 F.2d at 1037. As part of this broad discretion, the district court sitting in equity
21 and having custody and control of property “has power to order a sale of the same in its
22 discretion. The power of sale necessarily follows the power to take control of and to
23 preserve property[.]” *SEC v. Am. Capital Investments, Inc.*, 98 F.3d 1133, 1144 (9th Cir.
24 1996), *abrogated on other grounds by Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83,
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27 ¹ Because of the lack of opposition and non-receipt of qualified overbids, the Court took
28 both the present motion and another pending property sale motion under submission on
the papers on March 12, 2020 and vacated the March 16th hearing. ECF No. 273.

1 93-94 (1998) (quoting 2 Ralph E. Clark, Treatise on Law & Practice of Receivers § 482
2 (3d ed. 1992)). If the court approves an equitable receiver’s proposed property sale, the
3 sale “does not . . . purport to convey ‘legal’ title, but rather ‘good,’ equitable title enforced
4 by an injunction against suit.” *Id.* (citing 2 Clark, Treatise on Law & Practice of Receivers,
5 §§ 342, 344, 482(a), 487, 489, 491).

6 Pursuant to 28 U.S.C. § 2001(a), realty in the possession of an appointed receiver is
7 subject to a public sale process, “upon such terms and conditions as the court directs.”
8 28 U.S.C. § 2002 further requires that notice be published once a week for at least four
9 weeks prior to the sale in at least one newspaper regularly issued and of general circulation
10 in the county, state, or judicial district where the realty is located.² These safeguards of
11 notice and opportunity to submit overbids help to ensure that the sale is able to fetch the
12 best price possible, which is consistent with the principle that “a primary purpose of equity
13 receiverships is to promote orderly and efficient administration of the estate by the district
14 court for the benefit of creditors.” *Hardy*, 803 F.2d at 1038. *See also United States v.*
15 *Grable*, 25 F.3d 298, 303 (6th Cir. 1994) (noting that “the intent of” the requirement in 28
16 U.S.C. § 2001 that property be sold in the county in which the land is situated is “to bring
17 a better price at the sale”).

18 III. DISCUSSION

19 A. Background of the Property and Proposed Sale

20 The Tennyson Property was purchased for \$840,000 on August 20, 2019, only two
21 weeks before the receivership in this case was established. ECF No. 252-1 at 5. Title was
22 taken in the name of Relief Defendant American National Investments, Inc. *Id.*

23 Following her appointment, the Receiver and her staff reviewed automated valuation
24 scores for the Tennyson Property and a survey of market-comparable properties. *Id.*

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27 ² 28 U.S.C. § 2001 also provides for a private sale process under subsection (b), but the
28 requirements of that subsection are more stringent. The Receiver does not propose a private
sale here.

1 Though habitable, the property was unoccupied and in need of various repairs. The
2 Receiver consulted with multiple licensed brokers about the value of the property and terms
3 of a potential listing agreement, ultimately selecting Resonate Real Estate (“Broker”) and
4 listing the Tennyson Property for sale at a purchase price of \$865,000. *Id.*

5 Broker held two open houses and received two offers near the listing price soon after.
6 Because there were multiple offers, the Receiver counter-offered the prospective buyers
7 for their highest and best price and accepted the highest offer of \$885,000 from Matthew
8 Minnick and Peyton Shealy (“Buyer”) on January 22, 2020. *Id.*; *see also* ECF No. 252-3
9 at 14, Ex. A to Freitag Decl. The Receiver and Buyer executed a California Residential
10 Purchase Agreement and Joint Escrow Instructions (“Purchase Agreement”), along with
11 an Addendum making court approval of the sale a condition to closing and providing for
12 the overbid and auction process required by 28 U.S.C. § 2001(a). ECF No. 252-3. Buyer
13 has removed all contingencies other than Court approval and deposited \$8,450 into escrow.
14 ECF No. 252-1 at 6, 7.

15 **B. Proposed Procedures and Distribution**

16 In the motion seeking approval of the sale, the Receiver proposed compliance with
17 the overbid and auction process by publishing the following notice in the San Diego Union-
18 Tribune once a week for four weeks:

19 In the action pending in U.S. District Court for the Southern District of
20 California, Case No. 19-CV-01628-LAB-AHG, Securities and Exchange
21 Commission v. Gina Champion-Cain, et al., notice is hereby given that the
22 court-appointed receiver will conduct a public auction for the real property
23 located at 3548 Tennyson Street, San Diego, California 92106-1847 in San
24 Diego County, California. Sale is subject to Court confirmation after the
25 auction is held. Minimum bid price is at least \$910,000. The auction will take
26 place on March 12, 2020 at 1:30 p.m. in front of the entrance to the United
27 States Courthouse, 221 W. Broadway, San Diego, California. To be allowed
28 to participate in the auction, prospective purchasers must meet certain bid
qualification requirements, including submitted a signed purchase and sale
agreement, an earnest money deposit of \$9,295, and proof of funds. All
bidders must be qualified by 5:00 p.m. PT on March 10, 2020, by submitting

1 the required materials to the receiver at 501 West Broadway, Suite 290, San
2 Diego, California, 92101.

3 ECF No. 252-1 at 11-12. For those interested in qualifying as bidders, the notice also
4 provided a phone number and email address for the relevant point of contact. *Id.* at 12.

5 The above notice was published as proposed. On March 11, 2020 the Receiver filed
6 a Notice of Non-Receipt of Qualified Overbids Regarding the Tennyson Property Motion.
7 ECF No. 271. In the Notice, the Receiver informs the Court that, after filing the Tennyson
8 Property Motion and in addition to publishing the notice in the San Diego Union-Tribune,
9 she posted notice of the Motion on the receivership website anireceivership.com, and
10 continued to market the property through Broker and notify potential purchasers about the
11 opportunity to submit an overbid by March 10, 2020. *See id.* No overbids were submitted
12 by the deadline. Therefore, Matthew Minnick and Peyton Shealy are still the intended
13 Buyer.

14 The Tennyson Property is encumbered by a deed of trust in favor of Seattle Funding
15 Group (“SFG”). ECF No. 252-1 at 6. The outstanding principal balance on the interest-
16 only loan is approximately \$546,000, and the Receiver continues to pay the loan current.
17 *Id.* The Receiver intends to use the proceeds of the sale of the Tennyson Property to pay
18 off the SFG loan and estimates the amount required to do so will be between \$546,000 and
19 \$550,000, assuming a late March or early April 2020 closing. *Id.* The Receiver also
20 estimates that the property taxes to be paid at closing will be between \$6,700 and \$8,600,³
21 and that costs of sale including escrow, title and recording fees will be approximately
22 \$7,200. Additionally, the Receiver agreed to give Buyer a credit in the amount of \$4,000
23 to be used for repairs to the sewer line and termite damage, to be paid from escrow. The
24 Broker’s fee pursuant to the listing agreement is 4% of the sale price, or \$35,400, to be
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28 ³ This estimate incorporates a supplemental tax bill stemming from the August 2019
purchase of the property.

1 split with Buyer's broker. *Id.* Based on these estimates, the Receiver anticipates that the
2 net sale proceeds for the receivership estate will be in the range of \$280,000 to \$285,000.

3 At the time the Tennyson Property Motion was filed, there was another encumbrance
4 on the property in the form of a lien recorded by the California Employment Development
5 Department ("EDD"), standing at a balance of approximately \$6,000. *Id.* at 6-7. EDD
6 recorded the lien against the Tennyson Property for unpaid payroll taxes for the ownership
7 entity, Relief Defendant American National Investments, Inc., from the second and third
8 quarter of 2016. However, after filing the motion, the Receiver continued to negotiate with
9 EDD to release the lien, and filed a notice informing the Court that the EDD lien had been
10 released on March 17, 2020. ECF No. 279. Consequently, the Court need not address
11 whether to approve the sale free and clear of the lien and will deny as moot that portion of
12 the Tennyson Property Motion asking the Court to remove the lien and order it to attach to
13 the net sale proceeds. *See* ECF No. 252-1 at 7.

14 **C. Court Approval of the Proposed Procedures and Sale**

15 The Court has reviewed the documents submitted by the Receiver in support of the
16 Tennyson Property Motion and finds the purchase price of \$885,000 to be fair and
17 reasonable. This price exceeds the August 2019 purchase price of the property by \$45,000,
18 representing a return of more than 5%. ECF No. 252-1 at 5. After Broker listed the property
19 for sale at \$865,000, two prospective buyers made offers near the listing price. The
20 Receiver then negotiated the price upward by seeking the highest and best counter-offers
21 from the offerors. *See* ECF No. 252-2, Freitag Decl. ¶ 4; ECF No. 252-3 at 13-14.
22 Additionally, Broker's proposed commission of 4% of the gross sales price, to be split with
23 the Buyer's broker, is consistent with the lower range of industry standards. ECF No. 252-
24 2, Freitag Decl. ¶ 8. Broker broadly marketed and advertised the property and diligently
25 responded to inquiries from interested parties. *Id.*

26 Moreover, the Receiver's publication of notice seeking qualified overbids in the San
27 Diego Union Tribune, in addition to the solicitation of overbids through the receivership
28 website and continued efforts to market the property, establish that the Receiver not only

1 met but exceeded the requirements for the public sale procedures set forth in
2 28 U.S.C. §§ 2001(a) and 2002 designed to ensure the best price is obtained. Therefore,
3 upon review of the factual history and the Purchase Agreement itself, the Court finds the
4 Purchase Agreement was negotiated at arm's-length and, further, that the Receiver
5 implemented sufficient safeguards by way of the notice and overbid process to garner the
6 highest possible price for the property. The Court is thus satisfied that the intent of the
7 statutory scheme—to ensure that the best and highest possible price is paid for property
8 within the receivership estate—has been fulfilled.

9 All uniform property sale procedures have been satisfied. Based on these
10 considerations, and noting in particular the lack of any express opposition to the Motion,
11 the Court finds the Receiver has sufficiently established that the proposed sale of the
12 Tennyson Property and proposed distribution of the sale proceeds are consistent with
13 principles of equity and the goal of a receivership to ensure the orderly and efficient
14 administration of the estate for the benefit of creditors. *See Hardy*, 803 F.2d at 1038.

15 **IV. CONCLUSION**

16 Having considered the Receiver's Motion for Approval of Sale of Tennyson
17 Property (ECF No. 252) on its merits and noting that there is no opposition thereto, the
18 Court **GRANTS** the Motion, and **APPROVES** the proposed sale of the single-family
19 residence located at 3548 Tennyson Street, San Diego, California, 92106 to Buyer Matthew
20 Minnick and Peyton Shealy, or their designee, as described in the Purchase Agreement
21 attached as Exhibit A to the Declaration of the Receiver (ECF No. 252-3). The purchase
22 price of \$885,000 for the Tennyson Street Property is confirmed and approved.

23 The Court further **ORDERS** the proceeds of the sale to be distributed from escrow
24 at the close of sale as follows:

25 (1) The Receiver is authorized to pay broker Resonate Real Estate a commission
26 of 4% of the sale price, or \$35,400, which amount will be split with Buyer's broker;
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1 (2) The Receiver is authorized to pay Seattle Funding Group the amount
2 necessary to pay off the mortgage on the Property, which amount is estimated to be in the
3 range of \$546,000 to \$550,000 (with the exact amount to be determined at closing);

4 (3) The Receiver is authorized to pay the property taxes due from the seller at
5 closing, which amount is estimated to be in the range of \$6,700 to \$8,600 (with the exact
6 amount to be determined at closing);

7 (4) The Receiver is authorized to pay the costs of sale due from the seller at
8 closing, which amount is estimated to be approximately \$7,200 (with the exact amount to
9 be determined at closing);

10 (5) The Receiver is authorized to pay the costs to fix the sewer line and some
11 termite damage, which amounts are expected to total approximately \$4,000;

12 (6) After the aforementioned estimated amounts (with the exact amounts to be
13 determined at closing) are paid out of escrow, the net sale proceeds, which are estimated
14 to be in the range of \$280,000 to \$285,000 (with the exact amount to be determined at
15 closing), shall be paid to the receivership estate; and

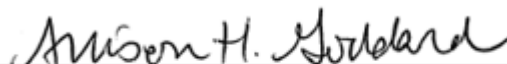
16 (7) The Receiver is immediately authorized to complete the sale transaction,
17 including executing any and all documents as may be necessary and appropriate to do so.

18 After closing, the Receiver shall provide a full accounting of sale, maintenance, and
19 repair costs, property taxes paid, the precise amount used to pay off the SFG loan, and the
20 amount ultimately returned to the receivership estate from the sale proceeds.

21 The Court **DENIES as moot** the request to approve the sale free and clear of the
22 now-resolved EDD lien.

23 **IT IS SO ORDERED.**

24 Dated: March 17, 2020

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26 _____
27 Honorable Allison H. Goddard
28 United States Magistrate Judge