

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

Case No: 6:21-cv-694-CEM-DCI

**HARBOR CITY CAPITAL CORP.,
HARBOR CITY VENTURES, LLC,
HCCF-1 LLC, HCCF-2 LLC, HCCF-3
LLC, HCCF-4 LLC, HCCF-5 LLC,
HARBOR CITY DIGITAL VENTURES,
INC., HCC MEDIA FUNDING, LLC,
JONATHAN P. MARONEY, CELTIC
ENTERPRISES, LLC and TONYA L.
MARONEY,**

Defendants.

REPORT AND RECOMMENDATION

This cause comes before the undersigned for consideration without oral argument on the following motion:

MOTION: Motion to Approve Private Sale of Real Property (Doc. 111)

FILED: September 2, 2022

THEREON it is Recommended that the motion be GRANTED.

Receiver seeks to have the Court approve the sale of a piece of real property. Doc. 111 (the Motion). Specifically, the real property is located at 143 Lansing Island Drive, Indian Harbor Beach, Florida 32937 (the Property), and the Property is to be sold for \$2,925,000.00. *Id.* The Motion is unopposed, and the Motion is due to be granted.

“The district court has broad powers and wide discretion to determine relief in an equity receivership.” *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (citations omitted). “This discretion derives from the inherent powers of an equity court to fashion relief.” *Id.* (citation omitted). “Any personalty sold under any order or decree of any court of the United States shall be sold in accordance with section 2001 of this title, unless the court orders otherwise.” 28 U.S.C. § 2004 (emphasis added). “While judicial sales must generally be conducted by public auction, 28 U.S.C. § 2001(a), a court may determine that the best interests of the estate will be conserved by private sale after holding a hearing with adequate notice given to all interested persons.” *Fed. Trade Comm’n v. E.M. Sys. & Servs., LLC*, No. 8:15-CV-1417-T-23EAJ, 2016 WL 11110381, at *3 (M.D. Fla. Mar. 4, 2016) (citing 28 U.S.C. § 2001(b)). “If the court determines that a private sale is appropriate, the court must appoint three disinterested appraisers and publish the terms of any private sale in a newspaper.” *Id.*

However, as succinctly explained by a court in this district:

Courts in the Middle District and elsewhere have exercised their discretion in relieving receivers from the judicial sale requirements of 28 U.S.C. §§ 2001, 2004. *See S.E.C. v. Nadel*, No. 8:09-cv-87-T-26TBM, Dkt. 1050 (M.D. Fla. Aug. 13, 2013) (waiving requirements of three independent appraisals and publication of terms of sale); *S.E.C. 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 offers received); *see also S.E.C. v. Billion Coupons, Inc.*, No. CIV. 09-00068 JMS-LEK, 2009 WL 2143531, at *4 (D. Haw. July 13, 2009) (recommending receiver be given discretion to sell items at best price without court confirmation) report and recommendation adopted, 2009 WL 2365696 (D. Haw. July 29, 2009).

Fed. Trade Comm’n v. E.M. Sys. & Servs., LLC, No. 8:15-CV-1417-T-23EAJ, 2016 WL 11110381, at *3 (M.D. Fla. Mar. 4, 2016).

As in the foregoing case, the undersigned finds that Receiver has established good cause for relief from the judicial sale requirements of 28 U.S.C. §§ 2001, 2004. Receiver listed the Property on the Multiple Listing Service as well as on Zillow, a popular real estate listing website.

Doc. 111 at 5. Receiver also obtained valuations from three disinterested sources, which valued the Property at \$3,200,000.00 (Doc. 111-2); \$2,925,000.00 (Doc. 111-3); and \$3,050,000.00 (Doc. 111-4). Notably, the Property is to be purchased at a price of \$2,925,000.00, which is within the fairly narrow range of appraised values. *See, e.g.*, 28 U.S.C. § 2001(b) (“No private sale shall be confirmed at a price less than two-thirds of the appraised value.”). Finally, Receiver published a notice of the sale in a newspaper of general circulation (Florida Today) and did not receive any bona fide offers. Doc. 112, 112-1; *see* 28 U.S.C. § 2001(b).

The proposed sale is certainly commercially reasonable, represents an orderly and efficient disposal of Receivership assets, and will result in a recovery of over one million dollars for the benefit of the Receivership Estate, including affected investors. Doc. 111 at 8–9. The undersigned finds that Receiver has stated good cause to be relieved from the formal requirements of § 2001, in no small part because Receiver complied with the substance of § 2001’s requirements (appraisal, publication) without being ordered to do so.

The undersigned finds that this private sale furthers the best interests of the Receivership Estate. Accordingly, the undersigned respectfully **Recommends** that the Motion (Doc. 111) be **GRANTED**.¹

NOTICE TO PARTIES

The party has fourteen days from the date the party is served a copy of this report to file written objections to this report’s proposed findings and recommendations or to seek an extension

¹ Receiver requests that the Court include the legal description of the Property in a resulting Order. Receiver represents that including the legal description can promote quicker closings and avoid potential questions about the chain of title. Doc. 111 at 10. The undersigned finds that including the legal description would be appropriate, and therefore the undersigned also respectfully recommends that the Court include the legal description of the Property in the Order, should the Court adopt this recommendation. *See id.*

of the fourteen-day deadline to file written objections. 28 U.S.C. § 636(b)(1)(C). A party's failure to serve and file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. *See* 11th Cir. R. 3-1; 28 U.S.C. § 636(b)(1).

Recommended in Orlando, Florida on October 7, 2022.



DANIEL C. IRICK
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

Presiding District Judge
Counsel of Record
Unrepresented Party
Courtroom Deputy