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12
13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **WESTERN DIVISION**

16 SECURITIES AND EXCHANGE
COMMISSION,

17 Plaintiff,

18 v.

19 STEVE CHEN, USFIA, INC.,
20 ALLIANCE FINANCIAL
GROUP, INC., AMAUCTION, INC.,
21 ABORELL MGMT I, LLC, ABORELL
22 ADVISORS I, LLC, ABORELL
REIT II, LLC, AHOME REAL
23 ESTATE, LLC, ALLIANCE
NGN, INC., APOLLO REIT I, INC.,
24 APOLLO REIT II, LLC, AMKEY, INC.,
25 US CHINA CONSULTATION
ASSOCIATION, and QUAIL RANCH
26 GOLF COURSE, LLC,

27 Defendants.
28

Case No. 2:15-cv-07425 RGK PLA

**NOTICE OF MOTION AND
MOTION FOR (A) APPROVAL OF
SALE OF RESIDENTIAL REAL
PROPERTY (LYND AVENUE
PROPERTY), AND (B) AUTHORITY
TO PAY BROKER'S COMMISSION;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: June 26, 2017
Time: 9:00 a.m.
Ctm.: 850
Judge: Hon. R. Gary Klausner

1 **TO ALL INTERESTED PARTIES:**

2 **PLEASE TAKE NOTICE** that on June 26, 2017, at 9:00 a.m. in
3 Courtroom 850 of the above-entitled Court, located at 255 East Temple Street,
4 Los Angeles, California 90012-3332, Thomas A. Seaman ("Receiver"), the Court-
5 appointed permanent receiver for Defendants USFIA, Inc., Alliance Financial
6 Group, Inc., Amauction, Inc., Aborell Mgmt I, LLC, Aborell Advisors I, LLC,
7 Aborell REIT II, LLC, Ahome Real Estate, LLC, Alliance NGN, Inc., Apollo
8 REIT I, Inc., Apollo REIT II, LLC, Amkey, Inc., US China Consultation
9 Association, Quail Ranch Golf Course, LLC, and their subsidiaries and affiliates
10 (collectively, "Receivership Entities"), hereby moves the Court for (A) approval of
11 sale of residential real property (Lynd Avenue Property), and (B) authority to pay
12 broker's commission ("Motion").

13 This Motion is based on this Notice of Motion and Motion, the attached
14 Memorandum of Points and Authorities, the Declaration of Thomas A. Seaman, the
15 documents and pleadings already on file in this action, and upon such further oral
16 and documentary evidence as may be presented at the time of the hearing.

17 **Procedural Requirements:** If you oppose this Motion, you are required to
18 file your written opposition with the Office of the Clerk, United States District Court,
19 255 East Temple Street, Los Angeles, California 90012-3332, and serve the same on
20 the undersigned not later than 21 days prior to the hearing.

21 **IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION** by the
22 above date, the Court may grant the requested relief without further notice. This
23 Motion is made following the conference of counsel pursuant to L.R. 7 3.

24 Dated: May 25, 2017

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Edward Fates

EDWARD G. FATES
Attorneys for Receiver
Thomas A. Seaman

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Receiver was appointed by this Court with full powers of an equity
4 receiver, and ordered, among other things, to take possession of and assume
5 authority and control over all assets of the receivership estate, including that certain
6 real property located at 4116 Lynd Avenue, Arcadia, California ("Property") – a
7 single-family residence. Declaration of Thomas A. Seaman filed herewith
8 ("Seaman Decl."), ¶ 3.

9 The Property was purchased on August 7, 2014, for \$483,000 by Ahome Real
10 Estate, LLC. The Property is approximately 1,050 square feet and has two
11 bedrooms. Defendants had apparently rented out the Property, but at the time the
12 Receiver inspected the Property, the tenant had abandoned the Property. *Id.* at ¶ 4.

13 Given that maintaining the Property entails significant carrying costs to the
14 receivership estate, including costs for maintenance, insurance, and property taxes,
15 and that the Property has no business purpose for the benefit of the Receivership
16 Entities, the Receiver listed the Property for sale through licensed broker, Secured
17 Properties, Inc. ("Broker"). *Id.* at ¶ 5.

18 The Property was appraised at \$515,000 in September 2016. After reviewing
19 recent comparable sales and similar property listings, the Receiver listed the
20 Property for sale on March 31, 2017, at \$490,000. On April 17, 2017, the Receiver
21 received an all cash offer for the full asking price, \$490,000, from Kana
22 Financial LLC ("Buyer"), which the Receiver accepted, subject to Court approval.
23 Other offers ranging from \$490,000 to \$530,000 were received. Only Buyer,
24 however, would agree to the overbid process and did not have a financing
25 contingency. *Id.* at ¶ 6.

26 In accordance with the Receiver's acceptance, the Receiver and Buyer entered
27 into a Residential Purchase Agreement and Joint Escrow Instructions
28 ("Agreement"). Among other things, the Agreement specifies the sale is subject to

1 Court approval and is on an "AS IS" basis. The Agreement is attached as Exhibit A
2 to the Seaman Declaration filed herewith. Buyer has recently removed all
3 contingencies for the sale, other than Court approval. *Id.* at ¶ 7.

4 In his reasonable business judgment, the Receiver believes the Agreement,
5 obtained through the commercially reasonable and customary method of listing the
6 property with a licensed broker and after arm's length negotiations with Buyer,
7 reflects the fair market value of the Property. Moreover, the sale is subject to
8 overbid and public auction procedures discussed below. *Id.* at ¶ 8. Accordingly, the
9 Receiver respectfully requests this Court grant this Motion and approve and
10 authorize: (1) the sale of the Property, and (2) payment of the Broker's commission.

11 **II. PROCEDURAL BACKGROUND**

12 On September 28, 2015, the Court appointed the Receiver on a temporary
13 basis as part of its Temporary Restraining Order and Orders (1) Freezing Assets;
14 (2) Appointing a Receiver, (3) Prohibiting the Destruction of Documents;
15 (4) Granting Expedited Discovery; and (5) Requiring Accountings; and Order to
16 Show Cause Why a Preliminary Injunction Should Not Be Granted ("TRO"). Dkt.
17 No. 8. On October 6, 2015, the Court entered a Preliminary Injunction and Orders:
18 (1) Freezing Assets; (2) Appointing a Receiver; (3) Prohibiting the Destruction of
19 Documents; and (4) Requiring Accountings ("PI Order"), which included
20 appointment of the Receiver on a permanent basis. Dkt. No. 13. Hereinafter, the
21 TRO and PI Order are collectively referred to as the "Appointment Orders."

22 **III. TERMS OF THE AGREEMENT**

23 A copy of the Agreement is attached as Exhibit A to the Seaman Declaration.
24 Its terms are summarized as follows:¹

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¹ The terms of the Agreement are summarized herein for convenience only. In the event of any conflict between the Agreement and the summary provided herein, the Agreement governs and controls.

1 **Court approval.** All aspects of the Agreement and the sale are subject to
2 approval by the Court.

3 **Purchase Price.** \$490,000.

4 **Closing Date.** Escrow to close once Court approval of the sale is granted.

5 **Deposit.** Buyers have deposited \$14,700 into escrow, refundable only if the
6 Court does not approve the sale to Buyer.

7 **As Is Purchase.** Buyer agrees to purchase the Property on an "AS IS" basis.

8 **Broker's Commission.** By separate agreement, the Receiver has agreed,
9 subject to Court approval, to pay Broker a commission of 6% of the final purchase
10 price if the purchaser is represented by a different broker, or 5% if the purchaser is
11 also represented Broker. Pursuant to that agreement, Broker will compensate
12 cooperating and referring brokers, as applicable. Broker has invested substantial
13 time into preparing the Property for sale, locating potential purchasers, marketing
14 the property to them, negotiating terms, and preparing sale documents. In the
15 proposed transactions, Buyer is represented by Broker, so the applicable
16 commission is 5% of the final purchase price.

17 **IV. ARGUMENT**

18 "The power of a district court to impose a receivership or grant other forms of
19 ancillary relief does not in the first instance depend on a statutory grant of power
20 from the securities laws. Rather, the authority derives from the inherent power of a
21 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
22 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
23 and efficient administration of the estate by the district court for the benefit of
24 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment
25 of a receiver is authorized by the broad equitable powers of the court, any
26 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,
27 953 F.2d 1560, 1569 (11th Cir. 1992).

28

1 District courts have the broad power of a court of equity to determine the
2 appropriate action in the administration and supervision of an equity receivership.
3 *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth
4 Circuit explained:

5 A district court's power to supervise an equity receivership and to
6 determine the appropriate action to be taken in the administration of
7 the receivership is extremely broad. The district court has broad
8 powers and wide discretion to determine the appropriate relief in an
9 equity receivership. The basis for this broad deference to the district
court's supervisory role in equity receiverships arises out of the fact
that most receiverships involve multiple parties and complex
transactions. A district court's decision concerning the supervision
of an equitable receivership is reviewed for abuse of discretion.

10 *Id.* (citations omitted); *see also CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115
11 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role,
12 and 'we generally uphold reasonable procedures instituted by the district court that
13 serve th[e] purpose' of orderly and efficient administration of the receivership for
14 the benefit of creditors.").

15 Accordingly, this Court has broad equitable powers and discretion in
16 formulating procedures, schedules and guidelines for administration of the
17 receivership estate and disposition of receivership assets.

18 **A. The Proposed Sale**

19 It is generally conceded that a court of equity having custody and control of
20 property has power to order a sale of the same in its discretion. *See, e.g., Elliott,*
21 *supra*, 953 F.2d at 1566 (finding that the District Court has broad powers and wide
22 discretion to determine relief in an equity receivership). "The power of sale
23 necessarily follows the power to take possession and control of and to preserve
24 property." *See also SEC v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144
25 (9th Cir. 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds)
26 (*citing* 2 Ralph Ewing Clark, *Treatise on Law & Practice of Receivers* § 482 (3d ed.
27 1992) (*citing First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887))). "When a court of
28 equity orders property in its custody to be sold, the court itself as vendor confirms

1 the title in the purchaser." 2 Ralph Ewing Clark, Treatise on Law & Practice of
2 Receivers § 487).

3 "A court of equity, under proper circumstances, has the power to order a
4 receiver to sell property free and clear of all encumbrances." *Miners' Bank of*
5 *Wilkes-Barre v. Acker*, 66 F.2d 850, 853 (2d Cir. 1933). *See also*, 2 Ralph Ewing
6 Clark, Treatise on Law & Practice of Receivers § 500. To that end, a federal court
7 is not limited or deprived of any of its equity powers by state statute. *Beet Growers*
8 *Sugar Co. v. Columbia Trust Co.*, 3 F.2d 755, 757 (9th Cir. 1925) (state statute
9 allowing time to redeem property after a foreclosure sale not applicable in a
10 receivership sale).

11 Generally, when a court-appointed receiver is involved, the receiver, as agent
12 for the court, should conduct the sale of the receivership property. *Blakely Airport*
13 *Joint Venture II v. Federal Sav. and Loan Ins. Corp.*, 678 F. Supp. 154, 156
14 (N.D. Tex. 1988). The receiver's sale conveys "good" equitable title enforced by an
15 injunction against the owner and against parties to the suit. *See* 2 Ralph Ewing
16 Clark, Treatise on Law & Practice of Receivers §§ 342, 344, 482(a), 487, 489, 491.
17 "In authorizing the sale of property by receivers, courts of equity are vested with
18 broad discretion as to price and terms." *Gockstetter v. Williams*, 9 F.2d 354, 357
19 (9th Cir. 1925).

20 **B. 28 U.S.C. § 2001**

21 Specific requirements are imposed by 28 U.S.C. § 2001 for public sales of
22 real property under subsection (a) and specific requirements for private sales of real
23 property under subsection (b). Although both involve unnecessary cost and delay,
24 the cost and delay of a public sale are significantly less than those for a private sale.
25 *SEC v. Goldfarb*, 2013 U.S. Dist. LEXIS 118942, at *5 (N.D. Cal. 2013)
26 ("Section 2001 sets out two possible courses of action: (1) property may be sold in
27 public sale; or (2) property may be sold in a private sale, provided that three separate
28 appraisals have been conducted, the terms are published in a circulated newspaper

1 ten days prior to sale, and the sale price is no less than two-thirds of the valued
2 price."). Therefore, by proceeding under Section 2001(a), the receivership estate
3 can avoid the significant costs and delay of (a) the Court having to appoint three
4 disinterested appraisers, and (b) obtaining three appraisals from such appraisers.

5 The requirements of a public sale under Section 2001(a) are that notice of the
6 sale be published as proscribed by Section 2002 and a public auction be held at the
7 courthouse "as the court directs." 28 U.S.C. § 2001(a); *SEC v. Capital Cove*
8 *Bancorp LLC*, 2015 U.S. Dist. LEXIS 174856, at *13 (C.D. Cal. 2015); *SEC v.*
9 *Kirkland*, 2007 U.S. Dist. LEXIS 45353, at *5 (M.D. Fla. 2007). In terms of
10 publication of notice, Section 2002 provides:

11 A public sale of realty or interest therein under any order, judgment
12 or decree of any court of the United States shall not be made without
13 notice published once a week for at least four weeks prior to the sale
14 in at least one newspaper regularly issued and of general circulation
15 in the county, state, or judicial district of the United States wherein
16 the realty is situated.

17 If such realty is situated in more than one county, state, district or
18 circuit, such notice shall be published in one or more of the counties,
19 states, or districts wherein it is situated, as the court directs. The
20 notice shall be substantially in such form and contain such
21 description of the property by reference or otherwise as the court
22 approves. The court may direct that the publication be made in other
23 newspapers.

24 This section shall not apply to sales and proceedings under Title 11
25 or by receivers or conservators of banks appointed by the
26 Comptroller of the Currency.

27 The notice of sale is sufficient if it describes the property and the time, place,
28 and terms of sale. *Breeding Motor Freight Lines, Inc. v. Reconstruction Finance*
Corp., 172 F.2d 416, 422 (10th Cir. 1949). The Court may limit the auction to
qualified bidders, who "(i) submit to the Receiver . . . in writing a bona fide and
binding offer to purchase the [property]; and (ii) demonstrate . . . , to the satisfaction
of the Receiver, that it has the current ability to consummate the purchase of the
[property] per the agreed terms." *Regions Bank v. Egyptian Concrete Co.*,
2009 U.S. Dist. LEXIS 111381, at *8 (E.D. Mo. 2009).

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V. DISCUSSION

Here, the proposed sale to Buyer should be approved. The Property has been fully and properly exposed to the market by Broker through the customary means of listing the property on the Multiple Listing Service ("MLS"), advertising, and holding open houses. In response, the Receiver received an offer for the full asking price within three weeks of listing the property. The Receiver believes the proposed sale represents the fair market value and will generate the highest and best recovery from the Property. Seaman Decl., ¶ 9.

Moreover, the proposed sale is subject to overbid and public auction. The Receiver proposes to conduct a public auction consistent with the requirements of Section 2001(a). Specifically, the Receiver will publish the following notice of the sale once a week for four weeks in the San Gabriel Valley Tribune:

In the action pending in U.S. District Court for the Central District of California, Case No. 16-CV-07425-RGK-PLA, Securities and Exchange Commission v. Steve Chen et al., notice is hereby given that the court-appointed receiver will conduct a public auction for the residential real property located at 4116 Lynd Avenue, Arcadia California. Sale is subject to Court confirmation after the auction is held. Minimum bid price is \$515,000. The auction will take place on June 26, 2017, at 11:00 a.m. at the property located at 4116 Lynd Avenue, Arcadia California. To be allowed to participate in the auction, prospective purchasers must meet certain bid qualification requirements, including submitting a signed purchase and sale agreement, an earnest money deposit of \$14,700, and proof of funds. All bidders must be qualified by 4:00 p.m. PST on June 19, 2017, by submitting the required materials to the Thomas Seaman at 3 Park Plaza, Suite 550, Irvine California, 92614. If interested in qualifying as a bidder, please contact Alexis Kim at (213) 200-5882 or akim@securedproperties.com.

Id. at ¶ 10.

In order to conduct an orderly auction and provide sufficient time for the publication of notices discussed above, the Receiver will require bidders to complete the above steps by June 19, 2017 ("Bid Qualification Deadline"), and conduct the live public auction at the Property at 11:00 a.m. on June 26, 2017. *Id.* at ¶ 11.

The Receiver will inform all interested persons of the opportunity to overbid at the public auction, provided they qualify themselves to bid by the Bid

1 Qualification Deadline by (a) signing a purchase and sale agreement for the
2 properties on the same terms and conditions as Buyer, but with a purchase price of
3 at least \$515,000, (b) providing the Receiver with an earnest money deposit of
4 \$14,700, and (c) providing proof of funds necessary to close the sale transaction in
5 the form of a current bank statement, cashier's check delivered to the Receiver, or
6 other evidence deemed sufficient by the Receiver. *Id.* at ¶ 12.

7 In the event one or more prospective purchasers qualify themselves to bid, the
8 Receiver will promptly notify the Court and the auction will be conducted at the
9 Property as noted above. Bids will be allowed in increments of \$5,000. The
10 Receiver will then file a notice advising the Court of the result of the auction
11 (*i.e.*, the highest bid) and seek entry of an order confirming the sale. Earnest money
12 deposits provided by bidders who are unsuccessful will be promptly returned to
13 them. If Buyer is not the successful bidder, it shall be paid a break-up fee of \$5,000
14 in addition to the return of its earnest money deposit. In the event no prospective
15 purchasers qualify themselves to bid by the Bid Qualification Deadline, the Receiver
16 will notify the Court and seek entry of an order approving the sale to Buyer. *Id.* at
17 ¶ 13.

18 **A. Additional Relief**

19 Pursuant to its broad equitable powers with respect to the administration of
20 receivership assets, the Receiver requests that the Court authorize payment from the
21 proceeds of the sale of the Property of the valid liens,² taxes, and any other claims
22 on the property, subject to any objections to such liens, taxes, or claims by the
23 Receiver.

24 Finally, the Receiver requests authority to pay Broker a commission in the
25 amount of 5% of the final purchase price or 6% in the event of a successful
26 overbidder represented by a different broker. Based on his extensive experience in
27

28 ² The Receiver is not aware of any valid liens on the Property, which was
purchased with all cash.

1 real estate transactions, the Receiver believes that such commission is commercially
2 reasonable and consistent with real estate industry standards. *Id.* at ¶ 14.

3 **VI. CONCLUSION**

4 For the reasons set forth herein, the Receiver respectfully requests entry of an
5 Order approving and authorizing: (1) sale of the Property to Buyer, and (2) payment
6 of a 5% commission to Broker from the sale proceeds or 6% commission in the
7 event of a successful overbidder represented by a different broker.

8
9 Dated: May 25, 2017

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Edward Fates

EDWARD G. FATES
Attorneys for Receiver
THOMAS A. SEAMAN

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