UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE COMMISSION,

CASE NO. 8:20-CV-325-T-35AEP

Plaintiff,

v.

BRIAN DAVISON;
BARRY M. RYBICKI;
EQUIALT LLC;
EQUIALT FUND, LLC;
EQUIALT FUND II, LLC;
EQUIALT FUND III, LLC;
EA SIP, LLC;

Defendants, and

128 E. DAVIS BLVD, LLC;
310 78TH AVE, LLC; et al.,

Relief Defendants.
_____/

RECEIVER'S MOTION TO APPROVE
ENGAGEMENT OF REAL ESTATE VALUATION CONSULTANT,
SPECIFICALLY, COLDWELL BANKER

Burton W. Wiand (the "**Receiver**"), as Receiver over the assets of the above-captioned Corporate Defendants and Relief Defendants (the "**Receivership Entities**"), moves the Court to approve his engagement of Coldwell Banker as a real estate valuation consultant to assist the Receiver in providing a valuation of properties owned by the Receivership Entities. A copy of the proposed engagement agreement is attached as **Exhibit A**.

BACKGROUND

At the request of the Securities and Exchange Commission ("**SEC**"), the Court appointed the Receiver on February 14, 2020 ("**Receivership Order**") and directed him, in relevant part, to "take immediate possession of all property, assets and estates of every kind of the Corporate Defendants and Relief Defendants whatsoever and wheresoever located…" which includes "all real property of the Corporate Defendants and Relief Defendants, wherever situated…." Doc. 11 at ¶ 1. Further, the Receivership Order directs the Receiver to "recover, control and possess liquid assets, known real estate, LLC assets and high-end personal assets purchased with funds traceable from investor proceeds, and trusts if the Receiver deems appropriate." *Id*. at ¶ 3.

In paragraph 4 of the Receivership Order, the Court directs the Receiver to "present to this Court a report reflecting the existence and value of the assets of the Corporate Defendants and Relief Defendants and of the extent of liabilities…." *Id*. at ¶ 4. Further, the Court allows the Receiver to "appoint one or more special agents, employ legal counsel, actuaries, accountants, clerks, consultants and assistants as the Receiver deems necessary…" and "engage persons in the Receiver's discretion to assist the Receiver in carrying out the Receiver's duties and responsibilities…." *Id*. at ¶¶ 5-6. To this end, the Receiver seeks approval of the Court to retain Coldwell Banker Realty and Coldwell Banker Commercial NRT (collectively "Coldwell Banker") to provide Broker Price Opinion ("BPO") reports for the properties owned by the Receivership Entities, which exceeds 350 properties.

Coldwell Banker and the Proposed Services

Coldwell Banker is one of the oldest and most established real estate companies in the United States, founded in 1906. It has offices throughout the country and across the globe. At the Receiver's request, Coldwell Banker has proposed providing BPO reports on the properties owned

by the Receivership Entities.[1] These reports would provide the following information for each property:

- Property Information Summary
- General Market Conditions
- Subject Property Marketability
- 3 Competitive Closed Sales
- 3 Competitive Active Listings
- Location Map
- Summary of Public Property Appraiser Data
- Opinion of value considering the income approach and/or market approach, as applicable.

See Exhibit A. The Reports would also include three exterior photos of each property. *Id*. The cost for each property's report would be $110. Thus, the entire project is estimated at approximately $40,000.

MEMORANDUM OF LAW

The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership is extremely broad. *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *S.E.C. v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *S.E.C. v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). A court imposing a receivership assumes custody and control of all assets and property of the receivership, and it has broad equitable authority to issue all orders necessary for the proper administration of the receivership estate. *See S.E.C. v. Credit Bancorp Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002); *S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980). The court may enter such orders as may be appropriate and necessary for a receiver to fulfill his duty to preserve and

[1] The Receiver also received proposals from Colliers International and Integra Realty Resources Tampa Bay.

maintain the property and funds within the receivership estate. *See, e.g., Official Comm. Of Unsecured Creditors of Worldcom, Inc. v. S.E.C.*, 467 F.3d 73, 81 (2d Cir. 2006). Any action taken by a district court in the exercise of its discretion is subject to great deference by appellate courts. *See United States v. Branch Coal*, 390 F.2d 7, 10 (3d Cir. 1969). Such discretion is especially important considering that one of the ultimate purposes of a receiver's appointment is to provide a method of gathering, preserving, and ultimately liquidating assets to return funds to creditors. *See S.E.C. v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982) (court overseeing equity receivership enjoys "wide discretionary power" related to its "concern for orderly administration") (citations omitted).

As noted above, the Receivership Order directs the Receiver to "present to this Court a report reflecting the existence and value of the assets of the Corporate Defendants and Relief Defendants and of the extent of liabilities…." *Id*. at ¶ 4. Further, the Receivership Order authorizes the Receiver to "appoint one or more special agents, employ legal counsel, actuaries, accountants, clerks, consultants and assistants as the Receiver deems necessary…" and "engage persons in the Receiver's discretion to assist the Receiver in carrying out the Receiver's duties and responsibilities…." *Id*. at ¶¶ 5-6.

In order to determine whether the assets owned by the Receivership Entities are sufficient to repay the monies invested in the EquiAlt Funds, the Receiver must obtain a proper market valuation. Therefore, the retention of a valuation consultant is necessary to the administration of this Receivership.

The Receiver believes Coldwell Banker's rate is fair and reasonable and the company has the requisite experience to provide these services. Coldwell Banker's fees will be included in the Receiver's quarterly fee applications, and subject to supervision by the Receiver, the SEC, and the

Court. Based on these factors, as well the Court's wide discretion and the provisions in the Receivership Order, the Receiver asks the Court to approve his retention of Coldwell Banker, as set forth in Exhibit A.

LOCAL RULE 3.01(G) CERTIFICATION

Counsel for the Receiver has conferred with counsel and neither the SEC nor Mr. Rybicki object to the relief sought. Counsel for Mr. Davison objects to the motion for the reasons set forth in Exhibit B.

Respectfully submitted,

/s/ Katherine C. Donlon
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Counsel for Burton W. Wiand, Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 20, 2020, I electronically filed a true and correct copy of the foregoing with the Clerk of the Court, which served counsel of record.

/s Katherine C. Donlon
Katherine C. Donlon, FBN 0066941