

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

SECURITIES AND EXCHANGE  
COMMISSION,  
Plaintiff,

v.

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

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;  
551 3D AVE S, LLC;  
604 WEST AZEELE, LLC;  
2101 W. CYPRESS, LLC;  
2112 W. KENNEDY BLVD, LLC;  
5123 E. BROADWAY AVE, LLC;  
BLUE WATERS TI, LLC;  
BNAZ, LLC;  
BR SUPPORT SERVICES, LLC;  
BUNGALOWS TI, LLC;  
CAPRI HAVEN, LLC;  
EA NY, LLC;  
EQUIALT 519 3RD AVE S., LLC;  
MCDONALD REVOCABLE LIVING TRUST;  
SILVER SANDS TI, LLC;  
TB OLDEST HOUSE EST. 1842, LLC;  
Relief Defendants.

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**RECEIVER’S VERIFIED UNOPPOSED MOTION TO APPROVE  
PRIVATE SALE OF REAL PROPERTY — 3914 ½ NORTH RIDGE  
AVENUE, TAMPA, FLORIDA**

Burton W. Wiand, as Receiver over the assets of the above-captioned Corporate Defendants and Relief Defendants,<sup>1</sup> moves the Court to approve the sale of 3914 ½ North Ridge Avenue, Tampa, Florida 33603 (the “**Property**”) to Vishal Nagda and Stephanie Nagda (the “**Buyer**”) for \$820,000. A copy of the Purchase and Sale Agreement is attached as **Exhibit 1** (the “**Contract**”). As explained below, the Receiver believes the proposed sale is commercially reasonable and will result in a fair and equitable recovery for the Receivership Estate.

**BACKGROUND**

At the request of the Securities and Exchange Commission (“**SEC**”), the Court appointed the Receiver on February 14, 2020 and directed him, in relevant part, to “[t]ake immediate possession of all property, assets and estates of every kind of the Corporate Defendants and Relief Defendants,” which includes “all real property of the Corporate Defendants and Relief Defendants, wherever situated, and to administer such assets as is required in

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<sup>1</sup> The (“**Receiver**” and the “**Receivership**” or “**Receivership Estate**”) has been expanded to include not only the Corporate and Relief Defendants but also the following entities: EquiAlt Qualified Opportunity Zone Fund, LP; EquiAlt QOZ Fund GP, LLC; EquiAlt Secured Income Portfolio REIT, Inc.; EquiAlt Holdings LLC; EquiAlt Property Management LLC; and EquiAlt Capital Advisors, LLC. *See* Doc. 184, at 6–7.

order to comply with the directions contained in this Order.” Doc. 6 (the “**Order**”) at 73, ¶ 1. The Court also ordered that “[t]itle to all property, real or personal, all contracts, rights of action and all books and records of the Corporate Defendants and Relief Defendants and their principals wherever located within or without this state, is vested by operation of law in the Receiver.” Doc. 6 at 77, ¶ 17.

The Order also directs the Receiver to “[m]ake or authorize such payments and disbursements from the funds and assets taken into control, or thereafter received by the Receiver, and incur, or authorize the incurrence of, such expenses and make, or authorize the making of, such agreements as may be reasonable, necessary, and advisable in discharging the Receiver’s duties.” Doc. 6 at 75, ¶ 8. EquiAlt Fund, LLC incurred substantial expenses in acquiring the Property as vacant land and constructing the home that is located on the Property. The Property is currently vacant and not generating any revenue while also incurring carrying costs such as insurance, utilities, and taxes.

### **The Procedures Applicable to Sales of Real Property**

The procedures applicable to private sales of receivership real estate are set forth in 28 U.S.C. § 2001(b) (“**Section 2001(b)**”) <sup>2</sup>:

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<sup>2</sup> Section 2001(b) governs here because this is a private sale of real property and because 28 U.S.C. §§ 2001(a) and 2004 deal with public auctions and personal property, respectively.

After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

28 U.S.C. § 2001(b).

The Receiver can move the Court to waive strict compliance with these procedures, but as explained below, the Receiver has substantially and materially complied with the statute.

**The Property, the Receiver’s Marketing Efforts,  
and the Proposed Sale**

EquiAlt Fund, LLC, a Receivership entity, owned the Property until the Order appointed the Receiver, who took title to the Property. The Property was purchased with scheme proceeds – i.e., money contributed to the scheme by victim investors. The Property has five bedrooms and five bathrooms.<sup>3</sup> The Property was purchased by EquiAlt Fund III, LLC in 2013 as vacant land. The

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<sup>3</sup> [https://www.zillow.com/homes/3914-1-2-N-Ridge-Ave-Tampa,-FL,-33603\\_rb/2081414257\\_zpid/](https://www.zillow.com/homes/3914-1-2-N-Ridge-Ave-Tampa,-FL,-33603_rb/2081414257_zpid/)

Property was transferred to EquiAlt Fund, LLC and construction of the home was completed in 2021.<sup>4</sup> The most recent listing price for the Property was \$815,000. The sale price is above that is in line list price and is substantially above the approximate tax assessed value.

In compliance with Section 2001(b), the Receiver obtained valuations from three disinterested sources. These valuations include three opinions of value from licensed real estate professionals (collectively, the “**Valuations**”), which are attached as **Exhibits 2–4**. According to the Valuations, a reasonable sale price for the Property would be between \$811,000 and \$830,000. The \$820,000 sale price is within this range and is thus fair and reasonable. The sale of the Property would constitute a \$820,000 gross recovery for the Receivership Estate. The average of the Valuations is \$822,000 and in compliance with Section 2001(b), the sale price of \$820,000 is substantially greater than two-thirds of that amount – i.e., \$548,000.

The Property is free of any significant liens or encumbrances, such as a mortgage. Should any administrative liens be discovered during a title search, they will be resolved routinely at closing.

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<sup>4</sup> <https://gis.hcpafl.org/propertysearch/#/parcel/basic/182911A0K000000000020A>

### **Section 2001(b) Publication**

To satisfy the publication requirement of Section 2001(b), the Receiver will publish the terms of the sale for one day in the Tampa Bay Times, which is regularly issued and of general circulation in the district where the Property is located. A copy of the notice is attached as **Exhibit 5**. The Receiver will also publish this motion and the notice on his website – [www.equialtreceivership.com](http://www.equialtreceivership.com). After the 10-day period for the submission of “bona fide offers” expires, the Receiver will inform the Court whether any potential purchaser submitted a “bona fide offer” as contemplated by Section 2001(b). In the absence of such an offer, the Receiver submits that approval of the proposed sale pursuant to the Order and Section 2001(b) is commercially reasonable, fair and equitable, and will ensure a cost-effective recovery for the ultimate benefit of the Receivership Estate. Should a “bona fide offer” be received, the Receiver will so advise the Court and recommend appropriate steps in response thereto.

### **ARGUMENT**

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 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).

Given these principles, the Court should approve the proposed sale for at least five reasons. First, the Receiver is complying with Section 2001(b). Specifically, he obtained the Valuations, and the sale price is in line with the

estimates disclosed in those valuations. *See* Exs. 2–4. Section 2001(b) provides that “[n]o private sale shall be confirmed at a price less than two-thirds of the appraised value” — here, \$548,000 based on an average of the three Valuations. The \$820,000 sale price is well above that amount. The Receiver has arranged for a notice of the proposed sale and its terms to be published in the Tampa Bay Times. *See* Ex. 5. After the expiration of the 10-day statutory window, the Receiver will advise the Court whether any individual or entity submitted a “bona fide offer” — i.e., an offer 10% higher than the current sale price. If no one objects to this motion or submits a “bona fide offer,” to conserve resources, the Receiver asks that the Court grant the motion without a hearing.

Second, as noted above, the sale price represents a gross recovery of \$820,000 for the benefit of the Receivership Estate, and ultimately its creditors, including the victim investors.

Third, the Receiver’s independent evaluation of the transaction demonstrates that it is commercially reasonable. The Receiver is not aware of any other association between the Receivership entities and the Buyer. As such, this is an arm’s-length transaction.

Fourth, the existence of a ready-and-willing buyer will ensure an efficient and cost-effective recovery for the Receivership Estate, and in the



Receiver's opinion, the sale price is at or near the maximum price that can be anticipated for the sale of the Property.

Fifth, sale of the Property will eliminate the Receiver's need to pay for additional upkeep and carrying costs on the Property, including taxes, insurance, utilities, and repairs. If required to hold the Property, the Receiver would incur approximately \$17,000 per year maintaining and safeguarding the Property.<sup>5</sup> By selling the Property, the Receiver will avoid those costs.

### CONCLUSION

For the reasons discussed above, the transaction is commercially reasonable, fair and equitable, and will ensure a cost-effective recovery for the ultimate benefit of the Receivership Estate. As such, the Receiver requests an order (1) approving the transaction and the Contract and (2) ordering that the Receiver may transfer title to the Property by Receiver's Deed to the Buyer, free and clear of all claims, liens, and encumbrances.

Communications with underwriters and title counsel have indicated that including the legal description in the Court's order could promote quicker closings and avoid potential questions about the chain of title in an abundance of caution. As such, if the Court grants this motion, the Receiver asks the Court

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<sup>5</sup> This cost includes estimates for utilities, insurance, and taxes but does not include additional necessary expenses such as maintenance and upkeep. The Property is currently vacant, and the Receivership is not generating any rental revenue from the Property.

include the legal description for the property in the order granting this motion.

The legal description is as follows:

North Ridge Estates Lot 2 and Undiv Interest in Tract A

**LOCAL RULE 3.01(G) CERTIFICATION**

Counsel for the Receiver has conferred with counsel for the parties and is authorized to represent to the Court that neither the SEC nor the individual defendants object to the relief sought.

Respectfully submitted,

/s/ Katherine C. Donlon

Katherine C. Donlon, FBN 0066941

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*Attorneys for Burton W. Wiand Receiver*

**VERIFICATION OF THE RECEIVER**

I, Burton W. Wiand, Court-Appointed Receiver in the above-styled matter, hereby certify that the information contained in this motion is true and correct to the best of my knowledge and belief.

**s/ Burton W. Wiand**  
Burton W. Wiand, Court-Appointed  
Receiver

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on April 1, 2021, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

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