

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 UNOPPOSED MOTION TO APPROVE
ENGAGEMENT OF SOTHEBY'S**

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 Sotheby's as the auction house to assist the Receiver in marketing and selling

the extensive watch collection and jewelry referenced in the Court's recent Final Judgment against Brian Davison. (Doc. 355).

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.

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 Sotheby’s to assist the Receiver in the marketing and sale of jewelry and watches recently turned over by Brian Davison to the Receiver pursuant to the terms of this Court’s Final Judgment.

The Receiver's Efforts to Choose an Auction House

During the course of negotiations between the SEC and Mr. Davison, it became apparent that Mr. Davison's extensive watch collection would be part of the assets to be turned over by Mr. Davison to the Receiver. Given the high-end nature of the timepieces, the Receiver determined that these items should be marketed and sold through a respected and worldwide auction house. To that end, the Receiver solicited bids from three such candidates – Phillips, Sotheby's and Christie's.

Each of these firms submitted proposals to the Receiver. The Receiver met with each of the candidates to discuss their proposals on August 24-25, 2021. After these in-person meetings, some of the firms offered revised proposals. Setting a deadline for final proposals at noon on August 26th, the Receiver received highly competitive and lucrative proposals to review. Based on these revised proposals, the Receiver chose Sotheby's as the exclusive auction house to market and sell the watches to be turned over by Mr. Davison.

Sotheby's and the Proposed Services

Sotheby's is a world-renowned auction house that sells fine art, watches, automobiles, jewelry and other collectibles worldwide. Sotheby's proposes selling the watch collection through its live auctions to be held in Hong Kong, Geneva and New York, in the fall/early winter of 2021. As part of its proposal, Sotheby's would travel to Tampa and take possession of the watches as part of

the Davison turnover set out in the Final Judgment. Sotheby's would then catalog and authenticate the timepieces before shipping them to its offices to prepare them for auction. Sotheby's will handle the marketing, insurance and photography of the watches for each of the auctions. Proceeds from the auctions will be made to the Receivership within 45 days of the completion of each auction.

Each of the proposals received by the Receiver was very competitive in the financial incentives offered and without cost to the Receivership Estate. In the Receiver's opinion, the proposal made by Sotheby's offered the Receivership the best opportunity to recover the highest level of proceeds for the defrauded investors from these assets.

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 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.

The Receiver has spent great efforts marshalling the assets acquired by Mr. Davison which have now been made a part of the SEC’s settlement. To maximize the value of this watch collection, it is the Receiver’s opinion that he should retain a world-class auction house to market and sell these assets. Having reviewed the proposals from three such auction houses, the Receiver believes that the Receivership Estate is best served by Sotheby’s proposal. 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 Sotheby’s.

LOCAL RULE 3.01(G) CERTIFICATION

Counsel for the Receiver has conferred with counsel for the SEC and the individual defendants and there is no objection to the relief sought. Counsel for Mr. Davison states that Mr. Davison does not consent to the motion but will not be filing an objection.

Respectfully submitted,

/s/ Katherine C. Donlon

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Counsel for Burton W. Wiand, Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 21, 2021, 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