

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

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

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.

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**RECEIVER'S UNOPPOSED MOTION TO APPROVE  
ENGAGEMENT OF HINDMAN, LLC**

Burton W. Wiand (the “**Receiver**”), as Receiver over the assets of the above-captioned Corporate Defendants and Relief Defendants (“**Receivership Entities**”), moves the Court to approve his engagement of Hindman, LLC (“**Hindman Auctions**”) as the auction house to assist the Receiver in marketing and selling the jewelry referenced in the Court’s final judgment against Barry Rybicki (Doc. 528) (“**Final Judgment**”).

## **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 “[t]ake 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 Hindman Auctions to assist the Receiver in the marketing and sale of certain jewelry recently turned over by Barry Rybicki to the Receiver pursuant to the terms of the Final Judgment and Assignment of Assets.

### **The Receiver's Efforts to Choose an Auction House**

During the course of negotiations between the SEC and Mr. Rybicki, it became apparent that Mr. Rybicki's jewelry would be part of the assets to be turned over to the Receiver. Mr. Rybicki turned over all nine pieces of jewelry as described in the Final Judgment. *See* Doc. 528-1 at 7, ¶ iv.<sup>1</sup> The Receiver determined that these items should be marketed and sold through a respected auction house. To that end, the Receiver solicited bids from two such candidates — Sotheby's and Hindman Auctions. Each of these firms submitted proposals to the Receiver. Due to the lower value of the items, Sotheby's was only interested in auctioning one piece of jewelry surrendered by Mr. Rybicki. That item will be auctioned by Sotheby's pursuant to the Receiver's previously reached agreement regarding Brian Davison's watches and jewelry. *See* Docs. 393 and 419. The Receiver therefore chose Hindman Auctions as the exclusive auction house to market and sell the remaining eight pieces of jewelry turned over by Mr. Rybicki. The Receiver negotiated an Agreement that substantially discounts the company's standard fees for their services.

Hindman Auctions is an internationally recognized fine art auction house with jewelry specialists with expertise to offer one of the most comprehensive approaches to selling jewelry in the industry. Hindman Auctions proposes selling

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<sup>1</sup> The Rolex watches described in the same paragraph of the Final Judgment are not addressed in this motion.

the jewelry through its upcoming Holiday Jewelry Auction on December 5, 2022, and its Important Jewelry Auction on December 13, 2022. Hindman Auctions has authenticated the jewelry and will handle the marketing, insurance, and photography for each of the auctions. Proceeds from the sales of the jewelry will be made to the Receivership shortly after the auctions have concluded. In the Receiver's opinion, the proposal made by Hindman Auctions offers the best opportunity to recover the highest level of proceeds 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 marshalled the assets acquired by Mr. Rybicki which have been made a part of the SEC's settlement, including the jewelry that is the subject of this motion. To maximize the value of this jewelry collection, it

is the Receiver's opinion that he should retain an auction house to market and sell these items. Having reviewed the proposals from two such auction houses, the Receiver believes that the Receivership Estate is best served by Hindman Auctions' 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 Hindman Auctions to market and auction the jewelry turned over by Mr. Rybicki.

**LOCAL RULE 3.01(G) CERTIFICATION**

Counsel for the Receiver has conferred with counsel for the SEC and the SEC consents to the relief sought herein.

Respectfully submitted,

**/s/ Katherine C. Donlon**

Katherine C. Donlon, FBN 0066941

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on October 25, 2022, 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