

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

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

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; et al.,

Relief Defendants.

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**RECEIVER'S UNOPPOSED MOTION TO
APPROVE SALE OF COINS**

Burton W. Wiand, as Receiver (the “**Receiver**”) over the assets of the corporate and relief defendants,¹ moves the Court to approve the marketing

¹ The “**Receivership**,” “**Receivership Estate**,” or “**Receivership Entities**” includes the corporate defendants, the relief defendants, and the following entities: EquiAlt Qualified Opportunity Zone Fund, LP (“**QOZ**”); EquiAlt QOZ Fund GP, LLC; EquiAlt Secured Income Portfolio REIT, Inc. (“**REIT**”); EquiAlt Holdings LLC; EquiAlt Property Management LLC; and EquiAlt Capital Advisors, LLC (collectively, the “**REIT and QOZ Entities**”). *See* Doc 184 at 6-7. *See also*, Doc. 284 regarding EquiAlt Fund I, LLC.

and sale of silver and gold coins in the Receiver's possession for the benefit of the Receivership Estate. As described more specifically below, the Receiver is in possession of coins received from Brian Davison and Barry Rybicki that were turned over as part of the judgments entered by the Court. Due to pending motions involving some of the coins, the Receiver had delayed the sale of all of the coins. However, given the current market for precious metals, the Receiver is now seeking the Court's approval for the sale of the coins by closed bids with local companies who trade in precious metals. As explained below, the Receiver believes the proposed manner of sale is commercially reasonable and will result in a fair and equitable recovery for the Receivership Estate. The Receiver also moves for relief from the requirements of 28 U.S.C. §§ 2001 and 2004 in connection with the sale.

BACKGROUND

The Securities and Exchange Commission ("SEC") alleges that, prior to the appointment of the Receiver, Brian Davison and Barry Rybicki used the Receivership Entities to perpetrate a massive real estate Ponzi scheme that raised more than \$170 million from over 1,100 victim investors across the country.

The Court has entered judgments against the individual defendants in this case, Brian Davison and Barry Rybicki (Docs. 355 and 528), which required them to turn over certain assets, including gold and silver coins.

Pursuant to the judgment against Rybicki, he turned over 140 silver coins to the Receiver. Davison's turnover was more complicated. Under the terms of the judgment against Davison he was to provide the following coins to the Receiver:

- 480 platinum American Eagles;
- 61 gold America Eagles;
- 2 Elizabeth II gold coins; and
- 13 U.S. Liberty silver coins.

As noted in filings with the Court, Davison failed to turn over the platinum coins but instead turned over 480 silver coins. The issues raised by this deficiency – a \$600,000 difference in value at today's prices – are still pending before this Court. (Docs. 767, 768, 918, 923, 925, 930, 931, 1303) Given the pendency of these motions, the Receiver had delayed selling any of the coins believing it to be more efficient to sell all the coins at one time. However, given the increasing market for precious metals, the Receiver is seeking the Court's approval to sell all coins in his possession² through the process described below.

² The Receiver has the following coins in his possession: 73 gold coins, 147 silver plus the 480 silver coins turned over by Davison in lieu of the platinum coins promised, for a total of 700 coins.

Plan for Sale of Items

Although the Receiver had been very successful in auctioning real property, automobiles and other miscellaneous items through the Receiver's auction site, given the fluctuating prices of precious metals, the Receiver is proposing to sell all the coins together (as opposed to individual lots) through a closed bid auction on a date specific. Further, based on the research by the Receiver's team, selling the coins outside of the local area will be cost prohibitive given the expenses associated with shipping and insurance. Therefore, the Receiver has contacted a number of local vendors who specialize in precious metals to determine their interest in bidding on the Receivership coins. To date, at least three local vendors have expressed an interest in this process. If this process is approved by the Court, the Receiver will also publicize the closed bid auction for the coins on the Receiver's website so that any other interested parties can participate in the process.

If approved by the Court, the Receiver proposes that interested parties will be provided a date specific on which to electronically submit a closed bid (expressed in total dollars) for the entirety of the coin collection to the Receiver. The bidder with the highest bid will win the closed bid auction. If two or more vendors have the same highest bid, the process will be repeated on a separate day with those vendors until there is one winner. The Receiver

believes this is the most efficient and economical process to obtain a commercially reasonable price for the coins held by the Receivership estate.

Inclusion of Davison's 480 Silver Coins

The 480 silver coins turned over by Davison are at the heart of the issues raised in the outstanding motions referenced above. The Receiver stands ready to include these coins in the closed bid auction but needs direction from the Court as to whether these coins should be included in the closed bid auction or held until the pending motions are decided.

ARGUMENT

I. THE COURT HAS BROAD POWER OVER THIS RECEIVERSHIP

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).

II. SELLING THESE ASSETS IN THIS MANNER IS IN THE BEST INTEREST OF THE RECEIVERSHIP ESTATE

The Court should approve the Receiver's proposal as it avoids time and expenses associated with selling these coins and filing attendant motions for Court approval. This saves both judicial time and attorney resources. The practical problems of selling these coins separately and pursuant to federal

statutes would generate significant expense for the Receivership. The procedures suggested by the Receiver will allow the coins to be sold efficiently and economically. Further, as described below in Section III, the Receiver's proposal substantially complies with the relevant statutes.

III. THE REQUIREMENTS OF 28 U.S.C. §§ 2001(a) and 2002

Personal property sold by a federal court receiver should be done in compliance with 28 U.S.C. § 2001(a) ("**Section 2001(a)**") and 28 U.S.C. § 2004 ("**Section 2004**"). Section 2001(a) reads as follows:

Any realty or interest therein sold under any order or decree of any court of the United States shall be sold as a whole or in separate parcels at public sale at the courthouse of the county, parish, or city in which the greater part of the property is located, or upon the premises or some parcel thereof located therein, as the court directs. **Such sale shall be upon such terms and conditions as the court directs.** Property in the possession of a receiver or receivers appointed by one or more district courts shall be sold at public sale in the district wherein any such receiver was first appointed, at the courthouse of the county, parish, or city situated therein in which the greater part of the property in such district is located, or on the premises or some parcel thereof located in such county, parish, or city, as such court directs, unless the court orders the sale of the property or one or more parcels thereof in one or more ancillary districts.

28 U.S.C. § 2001(a) (emphasis added). Section 2004 reads in relevant part as follows:

Any personalty sold under any order or decree of any court of the United States shall be sold in accordance with Section 2001 of this titled, **unless the court orders otherwise.**

28 U.S.C. § 2004 (emphasis added). Sections 2001(a) and 2004 impose relatively onerous and costly procedures, including an in-person auction at the courthouse (or other property as the Court directs).

The Court has the discretion to waive strict compliance. Pursuant to Section 2001(a), the auctions shall occur “as the court directs” and “[s]uch sale shall be upon such terms and conditions as the court directs.” 28 U.S.C. § 2001(a). Additionally, Section 2004 indicates that personal property “shall be sold in accordance with section 2001 of this title, **unless the court orders otherwise**” 28 U.S.C. § 2004 (emphasis added). Here, using the discretion afforded by Sections 2001(a) and 2004, the Court should “order otherwise” in approving the Receiver’s proposal. The Receiver’s closed bid auction provides the protection that would be provided by an auction on the courthouse steps and, through modern technology, provides vastly greater notice of the auctions and participation by interested buyers. Moreover, allowing the Receiver to utilize this process is efficient, cost-effective and benefits the Receivership estate.

This Court has approved such waivers previously in this case. Additionally, such waivers routinely occur in enforcement actions and receiverships, including those in this district. *See F.T.C. et al. v. E.M. Systems & Services, LLC et al.*, Case No. 8:15-cv-1417-T-23EAJ, Order (M.D. Fla. March 4, 2016) (finding good cause to excuse receiver from judicial sale

procedures of 28 U.S.C. § 2001); *S.E.C. v. A. Nadel et. al.*, Case No. 8:09-cv-00087-RAL-TBM, Order (M.D. Fla. Aug. 13, 2013) (authorizing receiver to sell automobile and deviate from appraisal and publication requirements under 28 U.S.C. § 2001); *S.E.C. v. Kirkland*, 2008 WL 4264532, *2 (M.D. Fla. 2008) (approving sale of personal property without appraisals or publication where costs of compliance would significantly offset sale proceeds). Therefore, the Receiver requests that these additional procedures under 28 USC § 2001 be waived.

CONCLUSION

For the foregoing reasons, the Receiver moves the Court for entry of an order granting the Receiver the authority to sell the coins via a closed bid auction or other means that, in the Receiver's judgment, provide the most efficient and economical method of liquidation of these items.

LOCAL RULE 3.01(G) CERTIFICATION

Counsel for the Receiver has conferred with counsel for the SEC who does not object to the relief sought herein. Brian Davison does not object to the sale of the coins as described but believes that the proceeds would be subject to the arguments he previously raised in the motions pending before the Court. The Receiver does not agree with this assertion.

Respectfully submitted,

/s/ Katherine C. Donlon

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 20, 2025, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

/s/ Katherine C. Donlon