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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

GINA CHAMPION-CAIN AND ANI
DEVELOPMENT, LLC,

Defendants, and

AMERICAN NATIONAL
INVESTMENT, INC.,

Relief Defendant.

Case No.: 3:19-cv-1628-LAB-AHG

**ORDER GRANTING RECEIVER'S
MOTION TO APPROVE SALE OF
REAL PROPERTY LOCATED AT
1617 THOMAS AVENUE**

[ECF No. 100]

1 **I. BACKGROUND**

2 On August 28, 2019, the Securities and Exchange Commission (“SEC”) brought this
3 action against Defendants ANI Development, LLC (“ANI Development”) and Gina
4 Champion-Cain and Relief Defendant American National Investments, Inc. (“ANI Inc.”),
5 alleging violations of federal securities laws based on a purportedly fraudulent liquor
6 license loan scheme. ECF No. 1. Along with the Complaint, the SEC filed a Joint Motion
7 and Stipulated Request seeking a preliminary injunction, appointment of a permanent
8 Receiver, and other related relief (ECF No. 2), which the Court granted on September 3,
9 2019. ECF No. 6 (“the Appointment Order”). In the Appointment Order, the Court
10 established an equity receivership, appointing Krista Freitag as Receiver of ANI
11 Development and ANI Inc. and authorizing her to take control over all funds and assets
12 owned, managed, or in the possession or control of the receivership entities. *See id.* at 14-
13 16. Relevant here, the Receiver was granted full power over all premises owned, leased,
14 occupied, or otherwise controlled by the receivership entities. *Id.* at 14.

15 On October 3, 2019, the Receiver filed a Motion for Order in Aid of Receivership
16 (ECF No. 76), which included the Receiver’s Verified Initial Report. ECF No. 76-1 at 11-
17 24. According to the Initial Report, the receivership encompasses approximately 70
18 entities, including over 60 real properties and operating businesses at the time of the
19 Receiver’s appointment. *Id.* at 11. Attached to the Report is a Preliminary Real Estate and
20 Liquor License Asset Schedule (ECF No. 76-2), which lists all premises leased or owned
21 by the receivership entities, including a vacation home located at 1617 Thomas Avenue,
22 San Diego CA, 92109.¹

23 After filing the Motion for Order in Aid of Receivership, the Receiver began filing
24 motions seeking Court approval of various real property sales, including the present Motion
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27 ¹ In the report, the property is mistakenly listed as “1617 Thomas St., Pacific Beach, CA
28 92109.” ECF No. 76-2 at 3.

1 for Order for Approval of Sale of Real Property Located at 1617 Thomas Avenue and
2 Authority to Pay Broker’s Commission (“the 1617 Thomas Motion”), filed on November
3 4, 2019. ECF No. 100.

4 On November 15, 2019, the Presiding Judge in this matter, Chief Judge Larry A.
5 Burns, issued a Minute Order stating in pertinent part:

6 The Court is inclined to refer certain other matters to Magistrate Judge
7 Allison Goddard to take evidence, if necessary, and to submit to this Court a
8 Report and Recommendation with her findings and recommendations, with
9 regard to the proposed sale and management of properties and assets and the
allocation of proceeds from such sales.

10 ECF No. 113. Consistent with the Minute Order, on December 5, 2019, Chief Judge
11 Burns formally referred the 1617 Thomas Motion to Judge Goddard, who held a hearing
12 on the Motion the same day.² See ECF Nos. 135, 154.

13 Then, on December 11, 2019, Chief Judge Burns granted the parties’ Joint Motion
14 (ECF No. 156) to give limited consent to the undersigned to decide all motions filed in
15 this action to approve sales of receivership assets. ECF No. 160. Consequently, this Order
16 resolves the Motion directly pursuant to the grant of limited consent rather than serving
17 merely as a report and recommendation to Chief Judge Burns. See 28 U.S.C. § 636(c);
18 CivLR 72.1(g).

19 Having reviewed the relevant briefing and considered the testimony at the hearing,
20 the Court **GRANTS** the Motion, for the reasons explained more fully below.

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24 ² Initially, the Court set the December 5, 2019 hearing solely on the Receiver’s Motion for
25 Approval of Sale of 4205 Lamont Street, #12 and Authority to Pay Broker’s Commission
26 (ECF No. 84). ECF No. 86. However, on November 26, 2019, in light of Chief Judge
27 Burns’s stated inclination to refer all such matters, the undersigned issued a Minute Order
28 permitting oral argument on this and another pending property sale motion in addition to
the 4205 Lamont Street Motion at the hearing. ECF No. 135.

II. LEGAL STANDARD

“[I]t is a recognized principle of law that the district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership.” *SEC v. Lincoln Thrift Ass’n*, 577 F.2d 600, 606 (9th Cir. 1978). Where a district court sits in equity, “[u]nless a statute in so many words, or by a necessary and inescapable inference, restricts the court’s jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied. ‘The great principles of equity, securing complete justice, should not be yielded to light inferences, or doubtful construction.’” *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946).

As part of its wide discretion, the district court sitting in equity and having custody and control of property “has power to order a sale of the same in its discretion. The power of sale necessarily follows the power to take control of and to preserve property[.]” *SEC v. Am. Capital Investments, Inc.*, 98 F.3d 1133, 1144 (9th Cir. 1996), *abrogated on other grounds by Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 93-94 (1998) (quoting 2 Ralph E. Clark, Treatise on Law & Practice of Receivers § 482 (3d ed. 1992)). If the court approves an equitable receiver’s proposed property sale, the sale “does not . . . purport to convey ‘legal’ title, but rather ‘good,’ equitable title enforced by an injunction against suit.” *Id.* (citing 2 Clark, Treatise on Law & Practice of Receivers, §§ 342, 344, 482(a), 487, 489, 491).

Pursuant to 28 U.S.C. § 2001(a), realty in the possession of an appointed receiver is subject to a public sale process, “upon such terms and conditions as the court directs.” 28 U.S.C. § 2002 further requires that notice be published once a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state, or judicial district where the realty is located.³ These safeguards of notice

³ 28 U.S.C. § 2001 also provides for a private sale process under subsection (b), but the requirements of that subsection are more stringent. The Receiver does not propose a private sale here.

1 and opportunity to submit overbids help to ensure that the sale is able to fetch the best price
2 possible, which is consistent with the principle that “a primary purpose of equity
3 receiverships is to promote orderly and efficient administration of the estate by the district
4 court for the benefit of creditors.” *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). *See*
5 *also United States v. Grable*, 25 F.3d 298, 303 (6th Cir. 1994) (noting that “the intent of”
6 the requirement in 28 U.S.C. § 2001 that property be sold in the county in which the land
7 is situated is “to bring a better price at the sale”); *SEC v. Billion Coupons, Inc.*, No. CIV.
8 09-00068 JMSLEK, 2009 WL 2143531, at *3 (D. Haw. July 13, 2009), *report and*
9 *recommendation adopted*, No. CIV. 09-00068JMS-LEK, 2009 WL 2365696 (D. Haw. July
10 29, 2009) (approving a receiver’s proposed alternative procedure for the sale of real
11 property because the alternative procedure “ha[d] sufficient safeguards in order to solicit
12 the highest price that a willing buyer in an arms-length negotiation will offer while
13 conducting the sales in a timely and cost-efficient manner that will maximize the net sales
14 proceeds.”).

15 III. DISCUSSION

16 The Gina-Champion Cain Revocable Trust purchased the 1617 Thomas Avenue
17 property for \$775,000 on July 6, 2017. ECF No. 100-1 at 5. On July 13, 2019, prior to the
18 Receiver’s appointment, licensed broker Pacific Sotheby’s International Realty (“Broker”)
19 listed the 1617 Thomas Avenue property for sale for \$925,000. *Id.* Three credible offers
20 were received within the first few days of listing, and Paul and Deborah Ludford’s
21 (“Buyer”) offer of \$985,000 was accepted. The property went into escrow on July 19, 2019
22 with that purchase price. *Id.*

23 Following her appointment and upon learning of the pending sale, the Receiver and
24 her staff performed their own evaluation of the property, by reviewing automated valuation
25 scores, a survey of market-comparable properties, and the appraisal Buyer had previously
26 procured that appraised the property at a value of \$990,000, leading her to conclude that
27 the proposed purchase price of \$985,000 is fair and reasonable. *Id.* at 6. Consequently, on
28 October 15, 2019, the Receiver and Buyer executed a First Amendment to Residential

1 Purchase Agreement and Escrow Instructions, which made court approval of the sale a
2 condition to closing and provided for the overbid and auction process required by
3 28 U.S.C. § 2001(a). *Id.*; *see also* ECF No. 100-3 at 19-25.

4 On November 4, 2019, the Receiver filed the present Motion seeking approval of
5 the sale and proposing compliance with the overbid and auction process by publishing the
6 following notice in the San Diego Union-Tribune once a week for four weeks:

7 In the action pending in U.S. District Court for the Southern District of
8 California, Case No. 19-CV-01628-LAB-AHG, Securities and Exchange
9 Commission v. Gina Champion-Cain, et al., notice is hereby given that the
10 court-appointed receiver will conduct a public auction for the real property
11 located at 1617 Thomas Avenue in San Diego County, California. Sale is
12 subject to Court confirmation after the auction is held. Minimum bid price is
13 at least \$1,010,000. The auction will take place on December 5, 2019 at 1:30
14 p.m. in front of the entrance to the United States Courthouse, 221 W.
15 Broadway, San Diego, California. To be allowed to participate in the auction,
16 prospective purchasers must meet certain bid qualification requirements,
including submitted a signed purchase and sale agreement, an earnest money
deposit of \$29,550, and proof of funds. All bidders must be qualified by 5:00
p.m. PT on December 2, 2019, by submitting the required materials to the
receiver at 401 W. A Street, Suite 1830, San Diego, California, 92101.

17 ECF No. 100-1 at 11.

18 For those interested in qualifying as bidders, the notice also provided a phone
19 number and email address for the relevant point of contact. *Id.* In her Reply to the present
20 Motion, the Receiver reported that no qualified overbids were received by the deadline of
21 December 2, 2019 at 5:00 p.m. ECF No. 141 at 2. Therefore, Paul and Deborah Ludford
22 remain the intended Buyer.

23 Although no express opposition to the Motion was filed, interested non-party Axos
24 Bank filed a Statement of Position regarding the sale on November 25, 2019. ECF No. 131.
25 1617 Thomas Avenue is encumbered by a deed of trust in favor of Axos Bank, along with
26 six other residential properties that are all part of the receivership estate. ECF No. 100-2,
27 Freitag Decl. ¶ 5. *See also* ECF No. 131-1. According to the Receiver's calculations, the
28 total estimated market value of the other six properties subject to the Axos loan is

1 \$9,494,000. ECF No. 100-2, Freitag Decl. ¶ 5 n.2. The documents governing the loan
2 provide for partial release prices to facilitate the sale of separate properties. *See* ECF No.
3 131 at 2; ECF No. 131-1 at 70, 102. The release price for the 1617 Thomas Avenue property
4 is \$657,572.00. ECF No. 131-1 at 102. At the time the Receiver filed the present Motion,
5 she was still in the process of reviewing the payment history of the Axos Bank loan to
6 verify the release price prior to the sale closing. ECF No. 100-2, Freitag Decl. ¶ 5. Thus,
7 Axos Bank's Statement lent clarity to the record regarding the status of the loan and the
8 amount needed to pay the release price, due and past-due payments, and three required
9 prepayment premiums. *See* ECF No. 131 at 2. In her Reply, the Receiver represents that
10 she has been in communication with Axos Bank about the loan and the proper release price
11 since the Statement was filed, and that they reached an agreement that the Receiver would
12 pay Axos Bank a total of \$828,067.97 at closing. ECF No. 141 at 2. That amount reflects
13 a release price of \$653,571.61 plus a payment of \$174,496.36 to bring the loan current
14 through the end of December, with the three prepayment premiums subtracted. *Id.* During
15 the December 5, 2019 hearing, counsel for Axos Bank confirmed on the record that its
16 opposition was withdrawn and that it had no objection to the sale.

17 The Court has reviewed the documents submitted by the Receiver in support of the
18 1617 Thomas Motion and finds the purchase price of \$985,000 to be fair and reasonable in
19 light of the appraised value of the property of \$990,000, as well as the fact that the price
20 exceeds the 2017 purchase price of the property by \$210,000. *See* ECF No. 100-2, Freitag
21 Decl. ¶¶ 2-4. The broker's commission of 5% of the purchase price is consistent with
22 industry standards.

23 Notably, 1617 Thomas Avenue is held by Defendant Gina Champion-Cain's
24 revocable trust. ECF No. 100-1 at 5 n.1. However, Defendant Champion-Cain does not
25 dispute that the property is an asset of the receivership estate, and the title company has
26 confirmed that the Receiver may sign closing documents for the sale on behalf of the trust.
27 *Id.* The Receiver's publication of notice seeking qualified overbids in the San Diego Union-
28 Tribune complies with the requirements for the public sale procedures set forth in

1 28 U.S.C. §§ 2001(a) and 2002. In particular, the Court notes that three credible offers
2 were made on the property within the first few days of its listing, and the sale price far
3 exceeds the listing price. That fact, coupled with the Receiver's implementation of the
4 notice and overbid process, satisfies the Court that the intent of the statutory scheme—to
5 ensure that the best and highest possible price is paid for property within the receivership
6 estate—has been fulfilled. In addition, the Court questioned the Receiver further at the
7 hearing to clarify certain details of the proposed sale, including, e.g., whether all payments
8 to Axos Bank and Broker would be made from escrow at closing rather than disbursed by
9 the Receiver, and whether the Receiver anticipates property taxes will need to be paid from
10 the proceeds. Based on these considerations, the Court finds the Receiver has sufficiently
11 established that the proposed sale of 1617 Thomas Avenue and proposed distribution of
12 the sale proceeds are consistent with the principles of equity that must guide the Court in
13 overseeing the "orderly and efficient administration of the estate by the district court for
14 the benefit of creditors." *Hardy*, 803 F.2d at 1038.

15 IV. CONCLUSION

16 Having considered the Receiver's Motion for Order for Approval of Sale of Real
17 Property Located at 1617 Thomas Avenue and Authority to Pay Broker's Commission
18 (ECF No. 100) on its merits and noting that there is no opposition thereto, the Court
19 **GRANTS** the Motion and **APPROVES** the sale of 1617 Thomas Avenue to Buyer Paul
20 and Deborah Lundford at the proposed purchase price of \$985,000. The Court further
21 **ORDERS** the proceeds of the sale to be distributed from escrow at the close of sale as
22 follows:

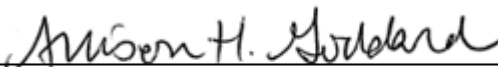
- 23 (1) Payment shall be made to Axos Bank of \$828,067.97 in exchange for a release
24 of Axos Bank's Deed of Trust on the property;
 - 25 (2) Payment of the Broker's Commission in the amount of \$49,250.00 shall be paid
26 to Pacific Sotheby's International Realty;
 - 27 (3) Payment of any outstanding real property taxes, to the extent any are due;
- 28

1 (4) Payment of reasonable and customary costs of sale, such as escrow fees, title
2 insurance, and recording fees. The Receiver shall provide a full accounting of
3 sale costs once the sale is complete for the Court to take into consideration in
4 approving future real property sales; and

5 (5) Payment of the remainder of the sale proceeds to the Receiver.

6 **IT IS SO ORDERED.**

7 Dated: December 11, 2019

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Honorable Allison H. Goddard
United States Magistrate Judge

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