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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 INVESTMENTS, INC.,	
	Relief Defendant.

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

**ORDER GRANTING RECEIVER’S
MOTION FOR APPROVAL OF
SALE OF REAL PROPERTY
LOCATED AT 724 ZANZIBAR
COURT**

[ECF No. 282]

I. BACKGROUND

As described in prior orders, *see, e.g.*, ECF Nos. 54, 162, 163, this is an action brought by the Securities and Exchange Commission (“SEC”) against Defendants ANI Development, LLC (“ANI Development”) and Gina Champion-Cain and Relief Defendant American National Investments, Inc. (“ANI Inc.”), alleging violations of federal securities laws based on a purportedly fraudulent liquor license loan scheme. ECF No. 1.

1 On September 3, 2019, the Court established an equitable receivership and appointed
2 Krista L. Freitag (“Receiver”) as a permanent receiver of ANI Development and ANI Inc.,
3 authorizing her to take control over all funds and assets owned, managed, or in the
4 possession or control of the receivership entities. *See* ECF No. 6 at 14-16. In that role, the
5 Receiver acts under the control and direction of the Court to facilitate the “orderly and
6 efficient administration of the estate . . . for the benefit of creditors.” *SEC v. Hardy*, 803
7 F.2d 1034, 1038 (9th Cir. 1986). *See also Atl. Tr. Co. v. Chapman*, 208 U.S. 360, 370
8 (1908) (explaining that a motion to appoint a receiver to take charge of property is “to the
9 end that the property might be cared for and preserved for all who had or might have an
10 interest in the proceeds of its sale. . . . Immediately upon such appointment and after the
11 qualification of the receiver, the property passed into the custody of the law, and
12 thenceforward its administration was wholly under the control of the court by its officer [],
13 the receiver.”). On December 11, 2019, the presiding judge in this action, Chief Judge
14 Burns, granted the parties’ Joint Motion (ECF No. 156) to give limited consent to the
15 undersigned to hear and directly decide all motions filed in this action to approve sales of
16 receivership assets. ECF No. 160. *See also* 28 U.S.C. § 636(c); CivLR 72.1(g). All property
17 sale motions are set before the undersigned pursuant to that grant of consent.

18 On March 19, 2020, the Receiver filed the present Motion for Approval of Sale of
19 Real Property Located at 724 Zanzibar Court (the “Zanzibar Court Motion”). ECF No. 282.
20 The motion concerns one of the residential real properties within the receivership estate, a
21 single-family residence located at 724 Zanzibar Court, San Diego, California (the
22 “Zanzibar Court Property”). *See* ECF No. 282; ECF No. 76-2 at 3 (listing the Zanzibar
23 Court Property in the Preliminary Real Estate and Liquor License Asset Schedule filed on
24 October 3, 2019).

25 On March 20, 2020 the Court entered an order setting a briefing schedule and an
26 April 27, 2020 hearing on the Zanzibar Court Motion. ECF No. 285. The Court set a
27 deadline of April 3, 2020 for responses in opposition to the motion, and noted that “[i]f no
28 opposition is filed by the deadline, and the overbid submission deadline has passed with

1 no overbids, the Court may take the motion under submission without oral argument.” *Id.*
2 at 2. No opposition was filed. Further, bid qualifications from prospective bidders seeking
3 to submit overbids pursuant to the notice and auction process set forth in 28 U.S.C. §§ 2001
4 and 2002 (described in more detail below) were due by April 14, 2020. *See* ECF No.
5 282-1 at 11; ECF No. 301 at 2. The Receiver filed a Notice of Non-Receipt of Qualified
6 Overbids regarding the Zanzibar Court Motion on April 15, 2020. ECF No. 301.
7 Accordingly, the Court vacated the April 27, 2020 hearing and took the motion under
8 submission on the papers on April 23, 2020. ECF No. 315.

9 For the reasons explained more fully below, the Court **GRANTS** the Zanzibar Court
10 Motion.

11 II. LEGAL STANDARD

12 “[I]t is a recognized principle of law that the district court has broad powers and
13 wide discretion to determine the appropriate relief in an equity receivership.” *SEC v.*
14 *Lincoln Thrift Ass’n*, 577 F.2d 600, 606 (9th Cir. 1978). Where a district court sits in equity,
15 “[u]nless a statute in so many words, or by a necessary and inescapable inference, restricts
16 the court’s jurisdiction in equity, the full scope of that jurisdiction is to be recognized and
17 applied. ‘The great principles of equity, securing complete justice, should not be yielded
18 to light inferences, or doubtful construction.’” *Porter v. Warner Holding Co.*, 328 U.S.
19 395, 398 (1946).

20 “[A] district court’s power to supervise an equity receivership and to determine the
21 appropriate action to be taken in the administration of the receivership is extremely broad.”
22 *Hardy*, 803 F.2d at 1037. As part of this broad discretion, the district court sitting in equity
23 and having custody and control of property “has power to order a sale of the same in its
24 discretion. The power of sale necessarily follows the power to take control of and to
25 preserve property[.]” *SEC v. Am. Capital Investments, Inc.*, 98 F.3d 1133, 1144 (9th Cir.
26 1996), *abrogated on other grounds by Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83,
27 93-94 (1998) (quoting 2 Ralph E. Clark, Treatise on Law & Practice of Receivers § 482
28 (3d ed. 1992)). If the court approves an equitable receiver’s proposed property sale, the

1 sale “does not . . . purport to convey ‘legal’ title, but rather ‘good,’ equitable title enforced
2 by an injunction against suit.” *Id.* (citing 2 Clark, Treatise on Law & Practice of Receivers,
3 §§ 342, 344, 482(a), 487, 489, 491).

4 Pursuant to 28 U.S.C. § 2001(a), realty in the possession of an appointed receiver is
5 subject to a public sale process, “upon such terms and conditions as the court directs.”
6 28 U.S.C. § 2002 further requires that notice be published once a week for at least four
7 weeks prior to the sale in at least one newspaper regularly issued and of general circulation
8 in the county, state, or judicial district where the realty is located.¹ These safeguards of
9 notice and opportunity to submit overbids help to ensure that the sale is able to fetch the
10 best price possible, which is consistent with the principle that “a primary purpose of equity
11 receiverships is to promote orderly and efficient administration of the estate by the district
12 court for the benefit of creditors.” *Hardy*, 803 F.2d at 1038. *See also United States v.*
13 *Grable*, 25 F.3d 298, 303 (6th Cir. 1994) (noting that “the intent of” the requirement in 28
14 U.S.C. § 2001 that property be sold in the county in which the land is situated is “to bring
15 a better price at the sale”).

16 III. DISCUSSION

17 A. Background of the Property and Proposed Sale

18 The Zanzibar Court Property was purchased on February 27, 2015 by Luv Surf
19 Brands LLC, an affiliated receivership entity, for \$1,660,000. ECF No. 282-1 at 5. *See also*
20 *Freitag Decl.*, ECF No. 282-2 ¶ 2.

21 Following her appointment, the Receiver and her staff analyzed the value of the
22 Zanzibar Court Property by reviewing automated valuation scores and a survey of market-
23 comparable properties. *Id.* ¶ 3. The Receiver consulted with multiple licensed brokers with
24 experience selling residential properties in the Mission Beach area, ultimately selecting
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27 ¹ 28 U.S.C. § 2001 also provides for a private sale process under subsection (b), but the
28 requirements of that subsection are more stringent. The Receiver does not propose a private
sale here.

1 Pacific Pines Real Estate (“Broker”) due to its experience and low listing commission, and
2 listed the property for sale at a listing price of \$1,899,900. *Id.*

3 Broker marketed the Zanzibar Court Property by listing it on the local MLS and its
4 website and holding two open houses. *Id.* ¶ 4. Broker reported that the listing received an
5 average of 75 digital views per day, and that over 500 real estate agents viewed the listing
6 and forwarded it to approximately 73 unique clients. *Id.* at 2 n.1. Broker received an offer
7 near the full list price in February 2020. *Id.* ¶ 4, The Receiver negotiated terms with the
8 offeror, Laurie J. Stone (“Buyer”), and, following negotiations, the Zanzibar Court
9 Property went into escrow on February 22, 2020 with a purchase price of \$1,875,000, to
10 be paid in cash. *Id.*; *see also* ECF No. 282-1 at 7. The Receiver and Buyer executed a
11 California Residential Purchase Agreement and Joint Escrow Instructions (“Purchase
12 Agreement”), along with an Addendum making court approval of the sale a condition to
13 closing and providing for the overbid and auction process required by 28 U.S.C. §§ 2001
14 and 2002. ECF No. 282-3, Freitag Decl. Ex. A. Buyer agreed that the sale would be as-is
15 and removed all contingencies other than Court approval, and deposited \$37,500 (2% of
16 the purchase price) into escrow. *Id.* at 13; *see also* ECF No. 282-1 at 7.

17 **B. Proposed Procedures and Distribution**

18 In the motion seeking approval of the sale, the Receiver proposed compliance with
19 the overbid and auction process mandated by 28 U.S.C. §§ 2001 and 2002 by publishing
20 the following notice in the San Diego Union-Tribune once a week for four weeks:

21 In the action pending in U.S. District Court for the Southern District of
22 California, Case No. 19-CV-01628-LAB-AHG, Securities and Exchange
23 Commission v. Gina Champion-Cain, et al., notice is hereby given that the
24 court-appointed receiver will conduct a public auction for the real property
25 located at 724 Zanzibar Court in San Diego County, California. Sale is subject
26 to Court confirmation after the auction is held. Minimum bid price is at least
27 \$1,900,000. The auction will take place on April 16, 2020 at 1:30 p.m. in front
28 of the entrance to the United States Courthouse, 221 W. Broadway, San
Diego, California. To be allowed to participate in the auction, prospective
purchasers must meet certain bid qualification requirements, including
submitted a signed purchase and sale agreement, an earnest money deposit of

1 \$41,250, and proof of funds. All bidders must be qualified by 5:00 p.m. PT
2 on April 14, 2020, by submitting the required materials to the receiver at 401
3 W. A Street, Suite 1830, San Diego, California, 92101.

4 ECF No. 282-1 at 11. For those interested in qualifying as bidders, the notice also provided
5 a phone number and email address for the relevant point of contact. *Id.*

6 As previously noted, the Receiver filed a Notice of Non-Receipt of Qualified
7 Overbids Regarding the Zanzibar Court Motion on April 15, 2020. ECF No. 301. In the
8 Notice, the Receiver informs the Court that, after filing the Zanzibar Court Motion, and in
9 addition to publishing the above notice in the San Diego Union-Tribune as proposed, she
10 posted notice of the Motion on the receivership website anireceivership.com, and continued
11 to market the property through Broker and notify potential purchasers about the
12 opportunity to submit an overbid by April 14, 2020. *Id.* at 2. No overbids were submitted
13 by the deadline. *Id.* Therefore, Laurie J. Stone remains the intended Buyer.

14 The Zanzibar Court Property is one of seven properties in the receivership estate
15 encumbered by a deed of trust in favor of Axos Bank (the “Axos portfolio loan”). Two of
16 the other properties encumbered by the loan—1617 Thomas Avenue and 805 Brighton
17 Court—have already been sold following Court approval. ECF Nos. 163, 226. The
18 estimated principal balance outstanding for the Axos portfolio loan (prior to the sale of the
19 Zanzibar Court Property) is \$3.07 million.² ECF No. 282-1 at 6 n.2. As explained in the
20 Court’s previous order approving the sale of the 1617 Thomas Avenue property, the
21 documents governing the loan provide for partial release prices to facilitate the sale of
22 separate properties. *See* ECF No. 163 at 7. Assuming a May 2020 closing with the May
23 2020 loan payment having been made in the ordinary course, the Receiver’s estimate of

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26 ² According to the Receiver’s calculations earlier provided in the Brighton Court Motion,
27 the total estimated market value of the other five properties subject to the Axos Bank
28 portfolio loan (including the Zanzibar Court Property, but not including the 1617 Thomas
 Avenue or 805 Brighton Court properties) is \$8,244,000. ECF No. 148-1 at 6 n.1.

1 the release price for the Zanzibar Court Property is \$1,540,000. ECF No. 282-2, Freitag
2 Decl. ¶ 5.

3 Turning to the proposed distribution of the \$1,875,000, the Receiver intends to use
4 the proceeds of the sale of the Zanzibar Court Property to pay the approximately \$1.54
5 million release price. *Id.* The Receiver estimates that the receivership estate will receive a
6 property tax credit at closing in the range of \$1,800 to \$3,600, since the second installment
7 of property taxes for 2019-2020 is expected to be paid prior to closing. ECF No. 282-1 at
8 6. The Receiver also estimates that costs of sale including escrow, title and recording fees
9 will be approximately \$9,500. *Id.* Broker's commission pursuant to the listing agreement
10 is \$12,000, with 2.5% of the gross sales price—or \$46,875—to be paid to Buyer's broker,
11 amounting to a total commission of \$58,875. *Id.* at 6, 7. Based on these estimates, the
12 Receiver anticipates that the net sale proceeds for the receivership estate will be in the
13 range of \$265,000 to \$275,000. *Id.* at 6.

14 **C. Court Approval of Procedures and Proposed Sale**

15 The Court has reviewed the documents submitted by the Receiver in support of the
16 Zanzibar Court Motion, including the Purchase Agreement, and finds the purchase price of
17 \$1,875,000 to be fair and reasonable. This price exceeds the February 2015 purchase price
18 of the property by \$215,000, representing a return of approximately 12.9%. Although the
19 sale price of \$1,875,000 falls short of the listing price of \$1,899,900, the Receiver
20 successfully negotiated the price upward with the Buyer from \$1,850,000 and obtained
21 other valuable concessions, such as sale of the property "as is," payment of the purchase
22 price in cash, removal of all contingencies besides Court approval, and making the sale
23 subject to the requisite public notice and auction process of 28 U.S.C. §§ 2001 and 2002.
24 *See* ECF No. 282-2, Freitag Decl. ¶ 4; ECF No. 282-3 at 13. Additionally, the proposed
25 total commission of 2.5% of the gross sales price for Buyer's broker plus a mere \$12,000
26 commission for Broker is within the lower range of industry standards. The Court further
27 finds the Receiver has demonstrated that Broker adequately marketed and advertised the
28 property to be sure to fetch fair market value for the property. *See* ECF No. 282-2, Freitag

1 Decl. ¶ 4. And importantly, the sale of the Zanzibar Court Property brings the receivership
2 estate closer to paying off the Axos portfolio loan—with a remaining principal balance of
3 approximately \$3.07 million—in full, which will reduce the ongoing monthly expenses of
4 the receivership estate and thus aid the Receiver in ultimately creating a better return for
5 all creditors.

6 As for the procedures followed, the Court finds that all of its uniform property sale
7 procedures have been satisfied. *See* ECF No. 219. The Receiver’s publication of notice
8 seeking qualified overbids in the San Diego Union-Tribune, in addition to the solicitation
9 of overbids through the receivership website and continued efforts to market the property,
10 establish that the Receiver satisfied the public sale and auction procedures set forth in
11 28 U.S.C. §§ 2001 and 2002, which are designed to ensure that the best purchase price for
12 realty within the receivership is obtained. Upon review of the factual history and the
13 Purchase Agreement itself, the Court finds the Purchase Agreement was negotiated at
14 arm’s-length and, further, that the Receiver implemented sufficient safeguards by way of
15 the notice and overbid process to garner the highest possible price for the property. The
16 Court is thus satisfied that the intent of the statutory scheme—to ensure that the best and
17 highest possible price is paid for property within the receivership estate—has been fulfilled.

18 Based on these considerations, and noting in particular the lack of any opposition to
19 the Zanzibar Court Motion, the Court finds the Receiver has sufficiently established that
20 the proposed sale of the Zanzibar Court Property and proposed distribution of the sale
21 proceeds are consistent with principles of equity and the goal of a receivership to ensure
22 the orderly and efficient administration of the estate for the benefit of creditors. *See Hardy*,
23 803 F.2d at 1038.

24 **IV. CONCLUSION**

25 Having considered the Receiver’s Motion for Approval of Sale of Real Property
26 Located at 724 Zanzibar Court (ECF No. 282) on its merits and noting that there is no
27 opposition thereto, the Court **GRANTS** the Motion, and **APPROVES** the proposed sale
28 of the single-family residence located at 724 Zanzibar Court, San Diego, California to

1 Buyer Laurie J. Stone, as described in the Purchase Agreement attached as Exhibit A to
2 the Declaration of the Receiver (ECF No. 282-3). The purchase price of \$1,875,000 for the
3 Zanzibar Court Property is confirmed and approved.

4 The Court further **ORDERS** the proceeds of the sale to be distributed from escrow
5 at the close of sale as follows:

6 (1) The Receiver shall pay lender Axos Bank the amount necessary to have the
7 Deed of Trust on the Property in favor of Axos Bank reconveyed and released from the
8 Property, which amount is estimated to be approximately \$1.54 million;

9 (2) The Receiver shall pay broker Pacific Pines Real Estate a commission of
10 \$58,875, which amount will be split with Buyer's broker in a fashion consistent with the
11 listing agreement and the description in the Zanzibar Court Motion;

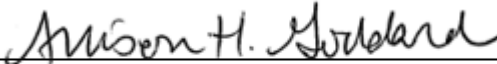
12 (3) The Receiver shall pay the seller's share of the costs of sale, including
13 escrow, title and recording fees, which are anticipated to be approximately \$9,500; and

14 (4) The Receiver is immediately authorized to complete the sale transaction,
15 including executing any and all documents as may be necessary and appropriate to do so,
16 with the remaining sale proceeds, after the above-referenced payments have been made
17 from escrow, going to the receivership estate.

18 **IT IS FURTHER ORDERED** that after closing, the Receiver shall provide a full
19 accounting of sale costs, property tax credits received and/or property taxes paid, the
20 precise release price paid to Axos Bank, and the amount ultimately returned to the
21 receivership estate from the sale proceeds.

22 **IT IS SO ORDERED.**

23
24 Dated: May 12, 2020

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26 _____
27 Honorable Allison H. Goddard
28 United States Magistrate Judge