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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:

(1) GRANTING REQUEST TO APPROVE SALE OF 3816 MISSION BLVD. PROPERTY TO WINNING BIDDER; and

(2) GRANTING IN PART AND DENYING IN PART MOTION FOR APPROVAL OF SALE OF 3816 MISSION BLVD. PROPERTY

[ECF Nos. 586, 604]

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 the 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 [within the equitable receivership] passed into
12 the custody of the law, and thenceforward its administration was wholly under the control
13 of the court by its officer [], the receiver.”).

14 On December 11, 2019, the presiding judge in this action, Chief Judge Burns,
15 granted the parties’ Joint Motion (ECF No. 156) to give limited consent to the undersigned
16 to hear and directly decide all motions filed in this action to approve sales of receivership
17 assets. ECF No. 160. *See also* 28 U.S.C. § 636(c); CivLR 72.1(g). All property sale motions
18 are set before the undersigned pursuant to that grant of consent.

19 Pursuant to 28 U.S.C. § 2001(a), realty in the possession of an appointed receiver is
20 subject to a public sale process, “upon such terms and conditions as the court directs.”
21 28 U.S.C. § 2002 further requires that notice be published once a week for at least four
22 weeks prior to the sale in at least one newspaper regularly issued and of general circulation
23 in the county, state, or judicial district where the realty is located. The purpose of such
24 notice “is to inform the public of the kind and condition of the property to be sold, the time,
25 the place, and the terms of the sale. It is to secure bidders and prevent the sacrifice of the
26 property.” *Breeding Motor Freight Lines v. R.F.C.*, 172 F.2d 416, 422 (10th Cir. 1949).
27 Therefore, the safeguards of notice and opportunity to submit overbids help to ensure that
28 the sale is able to fetch the best price possible, which is consistent with the principle that

1 “a primary purpose of equity receiverships is to promote orderly and efficient
2 administration of the estate by the district court for the benefit of creditors.” *Hardy*, 803
3 F.2d at 1038. *See also United States v. Grable*, 25 F.3d 298, 303 (6th Cir. 1994) (noting
4 that “the intent of” the requirement in 28 U.S.C. § 2001 that property be sold in the county
5 in which the land is situated is “to bring a better price at the sale”).

6 The Receiver filed a Motion for Approval of Sale of 3816 Mission Blvd. Property
7 (the “3816 Mission Blvd. Motion”) on January 28, 2021. ECF No. 586. The motion
8 concerns one of the real properties within the receivership estate, a mixed-use building
9 containing one commercial unit (used as a surf shop) and one residential unit, located at
10 3816 Mission Boulevard, San Diego, California 92109 (the “3816 Mission Blvd.
11 Property”).¹ *See* ECF No. 586-1 at 5; ECF No. 76-2 at 4 (listing the 3816 Mission Blvd.
12 Property in the Preliminary Real Estate and Liquor License Asset Schedule filed on
13 October 3, 2019, and noting the building includes a surf shop on the ground floor and a
14 rented apartment loft).

15 Both at the time the motion was filed and now, the intended buyer of the 3816
16 Mission Blvd. Property was Mauricio Schwartzman (“Buyer”). However, the previous
17 intended sale price was \$1,210,000. ECF No. 586-1 at 6. In the motion, the Receiver
18 proposed compliance with 28 U.S.C. §§ 2001 and 2002 by publishing notice in the San
19 Diego Union-Tribune once a week for four weeks of a public auction for the property on
20 February 25, 2021. *Id.* at 11-12. Potential bidders were invited to qualify for the auction by
21 submitting a signed purchase and sale agreement, an earnest money deposit of \$55,000,
22 and proof of funds by February 22, 2021. *Id.*

23 The Court set a deadline of February 11, 2021 to file any response in opposition to
24 the 3816 Mission Blvd. Motion, and ordered the Receiver to file a notice of non-receipt of
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27 ¹ The address of the residential unit is 733 Salem Court, San Diego, California 92109. *See*
28 ECF No. 586-1 at 5. For the sake of clarity, however, the Court refers to the entire property
as the 3816 Mission Blvd. Property.

1 overbids if no qualified overbids were received by February 22, 2021. ECF No. 587. No
2 opposition to the 3816 Mission Blvd. Motion was filed. However, on February 23, 2021,
3 the Receiver filed a Notice of Receipt of Qualified Overbid, reporting that a qualified
4 overbid was received for the 3816 Mission Blvd. Property. ECF No. 596. The Receiver,
5 through her broker, obtained the consent of the Buyer and the qualified overbidder to
6 conduct the live auction via videoconference on February 25, 2021. *Id.*

7 On March 4, 2021, the Receiver filed a Notice of Results of Auction of 3816 Mission
8 Blvd. Property and Request to Approve Sale to Winning Bidder. ECF No. 604 (“Notice of
9 Results”). In the Notice of Results, the Receiver requests that the Court approve the sale of
10 the 3816 Mission Blvd. Property to the winning bidder (and original buyer) Mauricio
11 Schwartzman, and also to approve the sale of the property to the back-up bidder Steven
12 Ozbun in the event the winning bidder does not close the sale for any reason. *Id.* at 2-3.
13 The winning bidder submitted a bid of \$1,590,000 for the property, while the back-up
14 bidder submitted the second-highest bid of \$1,580,000. *Id.* Other than approval of the sale
15 to the winning bidder (and the back-up bidder if the sale falls through) at a new sale price,
16 all other relief requested in the 3816 Mission Blvd. Motion, including authority to pay the
17 costs of sale from the sale proceeds, remains the same. *Id.* at 3.

18 Being fully advised and noting the lack of opposition to the 3816 Mission Blvd.
19 Motion, the Court will **GRANT** (1) the request to approve the sale of the 3816 Mission
20 Blvd. Property to the winning bidder; (2) the request to approve the sale of the 3816
21 Mission Blvd. Property to the back-up bidder if the winning bidder does not close the sale
22 for any reason; and (3) all relief requested in the 3816 Mission Blvd. Motion, other than
23 the request to approve the sale at the price of \$1,210,000. That portion of the 3816 Mission
24 Blvd. Motion will be **DENIED**.

25 II. LEGAL STANDARD

26 “[I]t is a recognized principle of law that the district court has broad powers and
27 wide discretion to determine the appropriate relief in an equity receivership.” *SEC v.*
28 *Lincoln Thrift Ass’n*, 577 F.2d 600, 606 (9th Cir. 1978). Where a district court sits in equity,

1 “[u]nless a statute in so many words, or by a necessary and inescapable inference, restricts
2 the court’s jurisdiction in equity, the full scope of that jurisdiction is to be recognized and
3 applied. ‘The great principles of equity, securing complete justice, should not be yielded
4 to light inferences, or doubtful construction.’” *Porter v. Warner Holding Co.*, 328 U.S.
5 395, 398 (1946).

6 “[A] district court’s power to supervise an equity receivership and to determine the
7 appropriate action to be taken in the administration of the receivership is extremely broad.”
8 *Hardy*, 803 F.2d at 1037. As part of this broad discretion, the district court sitting in equity
9 and having custody and control of property “has power to order a sale of the same in its
10 discretion. The power of sale necessarily follows the power to take control of and to
11 preserve property[.]” *SEC v. Am. Capital Investments, Inc.*, 98 F.3d 1133, 1144 (9th Cir.
12 1996), *abrogated on other grounds by Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83,
13 93-94 (1998) (quoting 2 Ralph E. Clark, Treatise on Law & Practice of Receivers § 482
14 (3d ed. 1992)). If the court approves an equitable receiver’s proposed property sale, the
15 sale “does not . . . purport to convey ‘legal’ title, but rather ‘good,’ equitable title enforced
16 by an injunction against suit.” *Id.* (citing 2 Clark, Treatise on Law & Practice of Receivers,
17 §§ 342, 344, 482(a), 487, 489, 491).

18 III. DISCUSSION

19 A. Background of the Property and Proposed Sale

20 The 3816 Mission Blvd. Property was purchased for \$618,000 in March 2015 by
21 The Gina Champion Cain Revocable Trust. ECF No. 586-1 at 5. In April 2016, title was
22 transferred to the receivership entity 3816 Mission Blvd., LLC, the current owner. *Id.*; *See*
23 *also* ECF No. 6 at 5 (the Court’s Appointment Order, listing 3816 Mission Blvd., LLC as
24 an entity subject to the equitable receivership).

25 Following her appointment, the Receiver and her staff analyzed the value of the 3816
26 Mission Blvd. Property by reviewing automated valuation scores and a survey of market-
27 comparable properties. ECF No. 586-1 at 5. The Receiver consulted with multiple licensed
28 brokers about the value of the property and terms of a potential listing agreement,

1 ultimately selecting Compass Realty (“Broker”), and listing the property for sale at a listing
2 price of \$1,250,000. *Id.*

3 Broker marketed the 3816 Mission Blvd. Property by creating marketing flyers with
4 professional photos and sending the listing out via email campaigns to a targeted list of
5 brokers and investors. *Id.* Broker also advertised the property on key websites, including
6 the local MLS and LoopNet. *Id.* In compliance with guidance from the California
7 Association of Realtors, Broker held socially-distanced property tours. *Id.* The Receiver
8 explains that there was significant interest in the property throughout the time it was
9 marketed, leading to a total of four offers, although three such offers were withdrawn due
10 to the potential buyers’ inability to secure acceptable financing. ECF No. 586-2, Freitag
11 Decl. ¶ 4. Through Broker, the Receiver negotiated terms with prospective buyers,
12 ultimately leading to the property going into escrow on or around December 30, 2020, with
13 Buyer to pay the original purchase price of \$1.21 million. ECF No. 586-1 at 6. As
14 previously noted, however, pursuant to 28 U.S.C. §§ 2001 and 2002, the Receiver
15 published notice in the San Diego Union-Tribune of a public auction for the property and
16 ultimately received a qualified overbid. *Id.* at 11-12; *see also* ECF Nos. 596, 604. Based
17 on the results of the auction, the high bidder and current intended buyer remains Mauricio
18 Schwartzman, with a bid of \$1,590,000. If the sale with Buyer falls through, the property
19 will be sold to back-up bidder Steven Ozburn, with a bid of \$1,580,000. ECF No. 604.

20 Prior to the auction, both the winning bidder and back-up bidder executed a Form
21 Purchase and Sale Agreement and Joint Escrow Instructions (“Form PSA”) removing all
22 contingencies, and each of them also provided an earnest money deposit of \$50,000
23 (Buyer) and \$55,000 (back-up bidder). *See* ECF Nos. 604-1 at 1-48; 604-2 at 1-48.
24 Following the auction, Buyer and the back-up bidder also executed amendments to their
25 PSAs to modify the purchase prices therein in accordance with their bids at the auction.
26 *See* ECF No. 604-1 at 49-52 (modifying Buyer’s purchase price in his PSA from \$1.21
27 million to \$1.59 million); ECF No. 604-2 at 49-52 (modifying back-up bidder’s purchase
28 price in his PSA from \$1.4 million to \$1.58 million).

1 **B. Proposed Procedures and Distribution**

2 The 3816 Mission Blvd. Property is encumbered by a loan and deed of trust in favor
3 of Axos Bank.² ECF No. 586-2, Freitag Decl. ¶ 5. The Receiver intends to use the proceeds
4 of the sale of the property to pay off the loan and estimates the amount required to do so
5 will be approximately \$486,000, assuming a March 2021 closing. *Id.* The Receiver also
6 estimates that approximately \$2,300 to \$3,300 in property taxes will be owed, again
7 assuming a March 2021 closing. *Id.* The Receiver estimates that costs of sale including
8 escrow, title and recording fees will be approximately \$9,000. *Id.* The Broker’s fee
9 pursuant to the listing agreement is 4% of the sale price, or \$48,400. *Id.* Based on these
10 estimates, the Receiver estimated in the 3816 Mission Blvd. Motion that the net sale
11 proceeds for the receivership estate would be approximately \$664,000. *Id.*

12 In light of the higher winning bid (\$1,590,000) and back-up bid (\$1,580,000)
13 compared to the formerly agreed-upon purchase price of \$1,210,000, however, the Court
14 assumes an adjusted Broker’s fee in the range of \$63,200 to \$63,600, and an adjusted
15 estimate of net sale proceeds for the receivership estate in the range of \$1,019,200 to
16 \$1,028,800.³

17 **C. Court Approval of the Proposed Procedures and Sale**

18 The Court has reviewed the documents submitted by the Receiver in support of the
19 3816 Mission Blvd. Motion, as well as the Notice of Results and request to approve the
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22 ² The Court understands that this Axos Bank loan is different from the Axos Bank portfolio
23 loan that previously encumbered seven properties within the receivership estate, and which
24 was paid off in full when the 737 Windemere Court Property closed (the Court approved
25 the 737 Windemere Court Property sale on September 24, 2020). *See* ECF No. 505 at 3
n.1; ECF No. 467.

26 ³ Although the Receiver did not include any such estimate in the Notice of Results, the
27 Receiver submitted a proposed order to the Court concurrently with the filing of the Notice,
28 which includes an estimate that \$1,029,000 will be returned to the receivership estate from
the sale proceeds.

1 sale to the winning bidder or to the back-up bidder if the winning bidder does not close the
2 sale for any reason. The Court finds that both the winning bid and the back-up bid are fair,
3 reasonable, and will represent a strong return of proceeds to the receivership estate.

4 Both bids are more than double the March 2015 \$618,000 purchase price of the
5 property, representing a return of \$972,000 (for the winning bid) or \$962,000 (for the back-
6 up bid). Broker broadly marketed and advertised the property through flyers, email
7 campaigns, and online advertising, leading to significant interest, as reflected by the four
8 offers received during the time the property was marketed. Moreover, the Receiver's
9 publication of notice seeking qualified overbids in the San Diego Union Tribune, in
10 addition to the solicitation of overbids and holding of a public auction, establish that the
11 Receiver fully satisfied the requirements for the public sale procedures set forth in 28
12 U.S.C. §§ 2001(a) and 2002, which are designed to ensure the best price for real property
13 is obtained. After receiving an offer from Buyer, the Receiver continued to market the
14 property, and successfully secured an overbid above the original purchase price agreed
15 upon with Buyer, triggering the auction process and ultimately fetching a far greater price.
16 The Court finds that the carrying out of the notice and auction process alone suffices to
17 show that the Receiver has secured the best and highest price for the property, whether the
18 sale closes with either the winning bidder or the back-up bidder. The Court is thus satisfied
19 that the intent of the statutory scheme—to ensure that the best and highest possible price is
20 paid for property within the receivership estate—has been fulfilled. Even taking into
21 account the need to pay off the loan on the property from the sale proceeds, the anticipated
22 return to the receivership estate is substantial. Finally, Broker's proposed commission of
23 4% of sale price is consistent with industry standards.

24 Based on these considerations, and noting the lack of any opposition to the 3816
25 Mission Blvd. Motion, the Court finds the Receiver has established that the proposed sale
26 of the 3816 Mission Blvd. Property and proposed distribution of the sale proceeds, whether
27 the sale closes with the winning bidder or the back-up bidder, are consistent with principles
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1 of equity and the goal of a receivership to ensure the orderly and efficient administration
2 of the estate for the benefit of creditors. *See Hardy*, 803 F.2d at 1038.

3 **IV. CONCLUSION**

4 Having considered the Receiver's Motion for Approval of Sale of 3816 Mission
5 Blvd. Property (ECF No. 586), and the Receiver's Notice of Results of Auction for 3816
6 Mission Blvd. Property and Request to Approve Sale to Winning Bidder (ECF No. 604),
7 the Court **GRANTS IN PART** and **DENIES IN PART** the 3816 Mission Blvd. Property
8 Motion (ECF No. 586). Specifically, the Court **GRANTS** all relief requested therein, other
9 than the approval of the sale at the former purchase price. The Court **GRANTS** the
10 Receiver's request to approve the sale of the 3816 Mission Blvd. Property to Buyer and
11 winning bidder Mauricio Schwartzman at the winning bid price of \$1,590,000. If the
12 winning bidder does not close the sale for any reason, the Court further **APPROVES** the
13 sale of the 3816 Mission Blvd. Property to the back-up bidder Steven Ozbun at the sale
14 price of \$1,580,000.

15 Accordingly, it is **ORDERED** as follows:

16 (1) The sale of property located at 3816 Mission Blvd., San Diego, California
17 92109, as described in Exhibit A to the Declaration of Krista L. Freitag in support of the
18 Notice of Results of Auction for 3816 Mission Blvd. Property and Request to Approve Sale
19 to Winning Bidder (ECF No. 604-1), by Krista L. Freitag, as receiver, to Mauricio
20 Schwartzman or his designee ("Buyer" or "Winning Bidder"), is confirmed and approved;

21 (2) The purchase price of \$1,590,000, to be paid by the Winning Bidder for the
22 3816 Mission Blvd. Property, is confirmed and approved;

23 (3) The Receiver is authorized to pay Axos Bank the amount necessary to pay off
24 the mortgage on the Property, which is estimated to be approximately \$485,000 (with the
25 exact amount to be determined at closing);

26 (4) The Receiver is authorized to pay the property taxes due from the seller at
27 closing, which amount is estimated to be in the range of \$2,300 to \$3,300 (with the exact
28 amount to be determined at closing);

1 (5) The Receiver is authorized to pay broker Compass Realty a commission of
2 4% of the sale price;

3 (6) The Receiver is authorized to pay the costs for title, escrow, and recording,
4 which are estimated to be \$9,000 (with the exact amount to be determined at closing);

5 (7) After the aforementioned estimated amounts are paid, the net sale proceeds,
6 which are estimated to be approximately \$1,029,000 (with the exact amount to be
7 determined at closing), shall be paid to the receivership estate; and

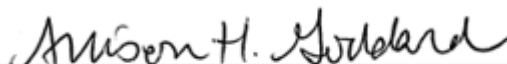
8 (8) The Receiver is immediately authorized to complete the sale transaction,
9 including executing any and all documents as may be necessary and appropriate to do so.

10 (9) *If and only if* the Winning Bidder does not close the sale transaction pursuant
11 to the Purchase and Sale Agreement and Joint Escrow Instructions (including the
12 Amendment thereto) attached to the Notice of Results of Auction as Exhibit A, then the
13 sale of the Property by the Receiver to Back-Up Bidder pursuant to the Purchase and Sale
14 Agreement and Joint Escrow Instructions (including the Amendment thereto), attached to
15 the Notice of Results of Auction as Exhibit B for \$1,580,000, is approved, the Receiver is
16 authorized to make the payments from escrow described above, and the Receiver is
17 authorized to complete the sale to Back-Up Bidder (or his designee), including executing
18 any and all documents as may be necessary and appropriate to do so.

19 (10) After closing, the Receiver shall provide a full accounting of sale costs,
20 property taxes paid, the precise amount used to pay off the loan to Axos Bank, and the
21 amount ultimately returned to the receivership estate from the sale proceeds.

22 **IT IS SO ORDERED.**

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24 Dated: March 9, 2021

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