

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,)
)
 Plaintiff,)
)
 v.)
)
 GLOBAL ACCESS TECHNICAL)
 SUPPORT LLC, et al.)
)
 Defendants.)

Case No. 4:16-cv-01556-HEA

**RECEIVER’S MEMORANDUM IN SUPPORT OF RECEIVER’S MOTION FOR
ORDER APPROVING AND CONFIRMING THE SALE OF 559 GRAESER ROAD,
CREVE COEUR, MISSOURI AND APPROVING SALE PROCEDURES**

This proceeding began as a civil enforcement action originally commenced by plaintiff Federal Trade Commission (“FTC”) in 2016. On October 4, 2016, the Court appointed Claire M. Schenk as Receiver (the “Receiver”) over Global Access Technical Support LLC, Global sMind LLC, Source Pundit LLC, and Helios Digital Media LLC. Various Defendants, including Rajiv Chhatwal (“Chhatwal”), agreed to a stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief which was on entered June 6, 2017 (“the Order”). Pursuant to the Order, the Receiver was directed to liquidate various accounts within sixty (60) days of the Order and to accomplish a sale of 559 Graeser Road, Creve Coeur, Missouri (“559 Graeser”) within one hundred and eighty (180) days of the Order, unless such deadline is extended by written agreement with the FTC for additional time for the completion of such sale. See Order, Subsection III.G and IV.F Pursuant to the Motion filed concurrently herewith and based upon the Order, the Receiver seeks authority to sell 559 Graeser to Terry Reznikov (“the

Buyer”) for the sum of \$270,000, pursuant to the Special Sale Contract dated October 5, 2017 (the “Special Sale Contract”).

The Receiver’s Motion requests that the Court approve modified sale procedures pursuant to 28 U.S.C. §§ 2001 and 2002 by which this proposed sale is approved without further notice, hearing, or order or opportunity for overbids. The Receiver submits that the proposed sale pursuant to the Special Sale Contract and related relief sought should be granted in that 559 Graeser is the final asset to be liquidated by the Receiver. Decl. C. Schenk ¶3. The sale will allow the receivership estate to move toward closing and expedite the return of funds to the FTC for redress to injured consumers. Thus, the proposed sale is in the best interests of the estate and it is appropriate for the Court to approval and confirm the sale and grant the other relief sought in the Motion under the circumstances.

I. THE COURT HAS BROAD POWERS IN THE SUPERVISION OF THE RECEIVERSHIP TO ACHIEVE EQUITY FOR THE BENEFIT OF THE ESTATE.

The “general equity power” of the District Court in issuing orders addressing the administration of a receivership estate is discussed at length by the Ninth Circuit in *SEC v. Hardy*, 803 F.2d 1034 (9th Cir. 1986). Recognizing the limited body of reported decisions in federal receiverships, the Court nevertheless articulated two overriding principles gleaned from the case law:

First, a district court’s power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad The basis for broad deference to the district court’s supervisory role in equity receiverships arises out of the fact that most receiverships involve multiple parties and complex transactions.

Secondly, we have acknowledged that a primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court for the benefit of creditors.

[Citations omitted.] Accordingly, we generally uphold reasonable procedures instituted by the district court that serve this purpose.
[Citations omitted.]

Id. at 1037-1038; *see also SEC v. Black*, 163 F.3d 188, 199 (3d Cir. 1998); *SEC v. Elliot*, 953 F.2d 1560 (11th Cir. 1992). The Court has approved a sale under analogous circumstances in an FTC matter. *FTC v. Neiswonger*, No. 4:96CV02225 SNLJ (E.D. Mo. June 17, 2011), ECF No. 417.

II. CAUSE EXISTS TO MODIFY THE SALE REQUIREMENTS OF 28 U.S.C. SECTION 2001(b) TO PERMIT THE SALE OF THE 559 GRAESER ROAD PROPERTY PURSUANT TO THE SALES AGREEMENT.

The relief sought by this Memorandum and Motion is an equitable order of administration to allow the Receiver to sell 559 Graeser pursuant to a fair market value sale. Section 2001(b) of title 28 enables a Receiver to sell real property of a receivership estate by private sale. That statute ordinarily requires three appraisals to be obtained to ensure that fair value is achieved for the property. The statute authorizes the sale if the sale price is at least two-thirds of the amount of the average of the appraisals and if no one makes an overbid that is at least 10% higher than the price in the sale contract. Courts are granted discretion in setting the terms and conditions for judicial sales, and the Court's discretion will not be disturbed on appeal except where abuse of discretion is shown. *United States v. Branch Coal Corp.*, 390 F. 2d 7 (3rd Cir. 1968), *cert. den. Sun Protection Co. v. United States*, 391 U.S. 966 (1968); *see also United States v. Hunwardsen*, 39 F. Supp. 2d. 1157, 1162 (N.D. Iowa 1999) ("The court has broad discretion in setting the terms and conditions of a sale under 28 U.S.C. § 2001.").

Based on the facts and circumstances detailed in the Receiver's Motion, the Receiver seeks authority to sell 559 Graeser pursuant to the Special Sale Contract. The Receiver submits that under the circumstances and consistent with the Court's equitable powers to promote the

goals and policies of the receivership through appropriate administrative orders, the sale procedures of 28 U.S.C. section 2001(b) relating to private sales of real property should be modified for good cause shown.¹

The Receiver believes the sale under the Special Sale Contract is in the best interests of the receivership estate for several reasons. The sale is at an amount that is 122.5% of the appraised value of the 559 Graeser Road Property based on an independent appraisal performed by a highly credentialed residential real property appraiser. Decl. of C. Schenk ¶¶ 5, 13 (The Appraisal, based upon onsite visits and an inspection of the property, opines that the value of the fee simple interest of 559 Graeser is \$220,000). Additionally, the Receiver executed a Listing Agreement with a well-known and established sales agent with particular expertise in the geographic area of St. Louis County which includes 559 Graeser. Decl. of C. Schenk ¶ 6. While the Receiver considered other agents, the sales agent was selected by the Receiver based on his experience and expertise in selling properties appropriate for development in this particular geographic area and submission of a written marketing plan. Decl. of C. Schenk ¶ 7.

The Receiver received and accepted a written offer for \$270,000 for 559 Graeser. Decl. of C. Schenk ¶ 9. The sale under the Special Sale Contract is a \$270,000 cash payment, not contingent upon financing by the purchaser. Decl. of C. Schenk ¶¶ 9, 12. The Special Sale Contract represents the highest and best offer obtained by the Receiver in connection with the marketing and sale of 559 Graeser. Decl. of C. Schenk ¶ 15. The Receiver engaged multiple potential buyers, and this sale represents the highest and best offer the Receiver obtained. *Id.*

¹ An argument may be made that 28 U.S.C. § 2001(b) relating to private sales of real property does not apply to the sale of 559 Graeser as 559 Graeser was not placed into the Receivership estate. Rather, the Receiver was appointed as a liquidator of individual defendant Rajiv Chhatwal's personal property, including 559 Graeser. Regardless as to whether the strict statutory requirements regarding the sale of receivership property are applicable, the general equitable principles ruled upon herewith support the proposed sale.

Neither Quicken Loans nor the FTC objects to this filing nor the sale of the property. Decl. of C. Schenk ¶¶ 10-11.

The confirmation of the sale without further notice or overbidding will allow the sale to close promptly in keeping with the Court ordered deadline and avoid further time and expense associated with continued marketing of the property and continuation of the Receivership. Decl. of C. Schenk ¶ 16. The equitable goals of the receivership as articulated by the Court of Appeals in the *Hardy* decision are thus met by allowing the Receiver to sell the 559 Graeser Road Property under the Special Sale Contract.

559 Graeser is subject to the arm's-length Special Sale Contract that provides for sale at an amount that is 122.5% of the value under the August 2017 Appraisal, a price that exceeds the minimum threshold for a private sale of two-thirds of the fair market value as provided in the statute. *See* 28 U.S.C. § 2001(b); Decl. of C. Schenk ¶¶ 5, 13. Delaying the sale for further notice or further overbids would only diminish the estate's recovery with little or no prospect of any higher or better offer being obtained based on the sale price under the Special Sale Contract. The Receiver submits that the arm's length negotiation of the Special Sale Contract, as well as the market value appraisal obtained for 559 Graeser, support the conclusion that the proposed sale is in the best interest of the receivership estate. Further, 559 Graeser is the final asset to be liquidated by the Receiver. Once the 559 Graeser is sold, the liquidating process will be completed and the receivership estate will move towards closure. Sufficient cause exists to modify the procedures for the sale of real property by the Receiver under 28 U.S.C. § 2001.

III. CONCLUSION

For the foregoing reasons, as well as those set forth in the Motion and the accompanying Declaration of Receiver Claire Schenk in support of the Motion, the Receiver respectfully requests that the Motion and all relief requested therein be granted.

DATED: October 16, 2017

Respectfully Submitted,
THOMPSON COBURN LLP

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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2017, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system to all counsel of record.

 /s/ Emilee L. Hargis