

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

SECURITIES AND EXCHANGE
COMMISSION

Plaintiff,

VS.

JAMES G. TEMME,
STEWARDSHIP FUNDS, LP

Defendants.

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CIVIL ACTION NO. 4:11-CV-00655

**JEG'S RESPONSE IN OPPOSITION AND
OBJECTION TO THE RECEIVER'S SALES MOTIONS**

Comes Now, John Graves, as attorney for JEG Property Investments, L.P. *f/k/a Beracah Valley Enterprises, LP*, NG Roth Investments, LLC, JG Roth Investments, LLC, JG Roth, LLC, JEG Property Investments 401k Trust, (collectively "JEG") non-parties to this SEC Receivership Proceeding, files this Response in Opposition and Objection to both the Motion for Authority to Sell Properties to Lakeside Portfolio Management, LLC (Dkt. 103) (the "Lakeside Motion") and the Motion for Authority to Sell Property and to Approve Sales Procedures (Dkt. 104) (the "Barrier Motion") (together, the "Sales Motions"), each filed by Keith M. Aurzada, as receiver in the above-captioned matter (the "Receiver") for James G. Temme ("Temme"), Stewardship Fund, LP, and all other entities directly or indirectly controlled by Temme or Stewardship Fund, LP, including, but not limited to Stewardship Advisors, LLC, d/b/a Stewardship Advisors, LP, Stewardship Asset Management Genpar I, LLC, Stewardship Group, LLC, Destiny Fund, LP, and Stewardship Management, LP (collectively, the "Receivership Entities").

In support of the Response and Objection, JEG shows as follows:

Introduction

JEG files in opposition and objection to the Receiver's sales motions in order to voice its concern with the Receiver's recent actions in this proceeding, which do not appear to be in the best interests of the estate. This concern seems to be shared by both of the groups who formed the factual basis of the underlying SEC complaint as well the overwhelming majority of investors who are to be protected through this proceeding. JEG herein opposes the sales and the sales procedures proposed in the Receiver's Sales Motions.

JEG objects to the Sales Motions on several grounds. The Receiver appears to be trying to force through—as quickly as possible and without any checks—both the proposed sale of assets to Lakeside Portfolio Management, LLC (“Lakeside”) and also the sales procedures outlined in the Barrier Motion, which seeks blanket approval to allow the Receiver and Barrier Advisors (“Barrier”) to market and sell certain assets without further court approval. The Receiver offers no explanation for his “business judgment” that the proposed sales would be aided by a lack of oversight.

The most notable problem with the Sales Motions is that the Receiver seeks for the Court to waive the basic statutory safeguards of 28 U.S.C. §§ 2001 and 2002, which are *mandatory* for any federal court-approved sale of an interest in realty (such as the mortgage notes¹) and exist both to provide transparency to such sales and to help assure that the estate receives adequate value for the assets sold. Additionally, each of the Sales Motions is objectionable for a number of other reasons including a lack of notice to investors, various deficiencies of information, some of the notes belong to JEG or are secured by UCC-1 filings and a failure by the Receiver to

¹ Based on the limited information in the Sales Motions, the mortgage notes appear to a mixture of security interests in properties and, in the case of the assets in the Barrier Motion, fee interests in property.

provide details regarding the procedures and mechanisms that he intends to employ to effectuate his proposed Sales. JEG opposes and objects to the Sales Motions on these grounds, as detailed below.

Argument and Authorities

The Receiver's Proposed Sales Fail to Adhere to the Mandatory Safeguards of 28 U.S.C. §§ 2001 and 2002

“The Court has authority to authorize the sale of real estate within the receivership estate.” *S.E.C. v. T-Bar Res., LLC*, CA No. 3:07-CV-1994-B, 2008 WL 4790987, *2 (N.D. Tex. Oct. 28, 2008). “The power to authorize the sale of real property is limited, however, by federal statute.” *Id.* (citing 28 U.S.C. § 2001). Section 2001 provides as follows:

(a) **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.

(b) **After a hearing**, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. **Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation.** The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

28 U.S.C. § 2001. As reflected above, Section 2001(a) generally requires receivership property to be sold at public auction. Section 2002 requires publication “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 of the United States wherein the realty is situated.” 28 U.S.C. § 2002.

The statute permits the Court to alter these default procedures after certain mandatory procedural safeguards are followed. Section 2001(b) makes clear that a hearing is required before approval of a private sale. That the statute defaults to notice of the hearing by publication suggests such notification should be broader than merely serving a motion upon the limited universe of potentially interested parties who have made an appearance in the action. Further, “per the express terms of the statute, a court must have the assistance of three appraisals before confirming the private sale of real property.” *T-Bar*, 2008 WL 4790987, at *3. “Only upon reviewing the multiple appraisals may a court finally determine whether a proposed sale is in the best interests of the estate.” *Id.* Importantly, “[n]o private sale shall be confirmed at a price less than two-thirds of the appraised value”—a determination that obviously cannot be made without an appraisal of the assets. Indeed, the Northern District of Texas has clarified that the appraisals are “mandatory” under the statute and cannot be waived by the Court. *See id.* (holding that the three appraisals are mandatory in the sale of real property and refusing to confirm a private sale where the receiver obtained just one appraisal as outside the court’s power).

Here, the Receiver seeks to sell mortgage notes and fee simple interests, which are realty or interests in realty; therefore, the sale of these assets is controlled by Section 2001 and 2002. Per the statute, the Receiver is required to obtain three appraisals, to sell the assets for at least two-thirds value based on the appraisals, and to comply with the notice provisions of these

Sections. As such, the Court must deny the Receiver's Sales Motions for failure to comply with *any* of these mandatory statutory requirements.²

The Receiver's Lakeside Motion Is Objectionable for Additional Reasons.

In addition to failing to fulfill the requirements provided by Sections 2001 and 2002, the Receiver's Sales Motions are problematic for several other reasons. Specifically, with regard to the Lakeside Motion, JEG objects for the following reasons:

- The Lakeside Motion fails to provide sufficient notice to potential interested parties who have not yet appeared in the proceeding. By serving only those individuals who have filed a proof of claim or otherwise appeared in this proceeding, the Receiver has disregarded the many interested parties who have not yet appeared. The Receiver has not proposed any form of additional notice outside of the proceeding. *See also* 28 U.S.C. §§ 2001 and 2002 (requiring notice by publication prior to either public or private sale).
- The Lakeside Motion fails to provide sufficient information regarding the assets, their valuation, or any method used to value any assets beyond conclusory statements regarding the Receiver's "business judgment." As noted, this lack of information fails to meet the appraisal requirements of Section 2001. Further, interested parties are unable to otherwise determine whether the proposed sale to Lakeside is fair. The Receiver's inclusion of a single data point in which he divides the unpaid principal balance of the notes by the Lakeside offer only raises

² The Receiver inappositely seeks to invoke Section 2004, which provides the Court some discretion in the sale of personalty. However, as noted above, Section 2001 expressly covers the mortgage notes as interests in realty. Even assuming Section 2004 applied here (which it does not), the few courts to have deviated from the Section 2001 requirements where personalty is involved recognize that Section 2001(b) establishes a "preferential course to be followed," that should only be deviated from in "extraordinary circumstances." *See id.*, at *4. The Receiver has done nothing to show extraordinary circumstances and none exist here.

more questions with respect to valuation of the assets. For instance, how much is the underlying property worth if foreclosed upon? What is each borrower's equity in the property? What is the status of performance on the notes and who owns them?

- Indeed, due to the above-noted lack of information, JEG is forced to blindly object to the price based on information and belief that a price of 3.4 cents on the dollar of the unpaid balance seems low.
- The Lakeside Motion also fails to provide adequate information regarding the manner of marketing Halo performed with regard to the assets to secure the Lakeside bid. What is the relationship between the two companies? What other potential buyers were contacted? How much information was provided to Lakeside?
- Similarly, the Lakeside Motion fails to specify how, where, and when other bidders for the assets will be solicited going forward and what information such potential bidders will be provided. Will there be publication? Will Halo solicit additional bids? In what manner? The Receiver also fails to provide any mechanism for a potential buyer to review information on the assets.
- The twenty-one (21) days from confirmation to sale is too short a time period for a potential buyer to review information adequate to permit a purchase.
- Finally, the Receiver should not be permitted to make the sole determination of what constitutes a superior bid, which gives him too much discretion to arbitrarily reject other bids.

The Receiver's Motions are objectionable as some of the Notes offered for sale or bid were contractually purchased by JEG from Stewardship Fund and some of the Notes are secured by UCC-1 Filings.

In addition to the other objections set forth in this Response, some of the Notes listed for sale by the Receiver contractually belong to JEG or are pledged in UCC-I Security filings which were pledged by Stewardship months before the Receivership and the copies of such were filed with this Court March 27, 2012 (Dkt. 70). The Sales Motions filed by the receiver set forth for the first time a list of addresses that can be compared to contracts and UCC-1 filed by JEG.

As shown below about 60 of the 585 assets that the Receiver is attempting to sale were purchased by or are pledged as security to JEG. JEG objects specifically to the sale of the notes listed below:

- The asset below was a non-performing note purchased by JEG from a GMAC packaged purchased by Stewardship Fund, LP over a year before the receivership.

4103 DREXEL AVENUE	ORLANDO	FL	32808
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- The addresses below related to notes that contractually belong to JEG and the files were transferred to JEG by Stewardship in exchange for GMAC assets purchased before the Receivership.

4135 Forest Oak Dr	Shreveport	LA	71109
20436 Greenley	Detroit	MI	48203
5524 Queen Elizabeth Ln.	Jackson	MS	39209
9031 Malabar St	Bay St. Louis	MS	39520
25-19 Far Rockaway Blvd	Far Rockaway	NY	11691
4000 Creekwood Dr.	Lewis Center	OH	43035

- The assets below are performing notes that belong to JEG contractually and the collateral files along with notarized legal assignments were signed by Stewardship months before the Receivership.

1301 Cumberland Street	Gadsden	AL	35903
1178 White Avenue	Lincoln Park	MI	48146
6020 NE County Rd 612	Kalkaska (Excelsior TWP)	MI	46946
69131 Maple Street	Edwardsburg	MI	49112

- The following assets are performing notes pledged by Stewardship in the UCC-1 filed with the Secretary of State and filed in this proceeding on March 27, 2012 (Dkt. 70). These assets were pledged by Stewardship Fund, LP months before the Receivership. JEG objects to any assets being sold that relate to the UCC-1 filed to secure its investments.

1509 West 24th Street	Jacksonville	FL	32209
110 East Depew	Odin	IL	62870
1400 S. Faraday Avenue	Peoria	IL	61605
14820 Winchester Ave	Harvey	IL	60426
219 N 68th St	East St. Louis	IL	62203
1119 Thomas St	South Bend	IN	46601
207 East Main St	Farmersburg	IN	47850
2314 North Parker Avenue	Indianapolis	IN	46218
3622 E. Prospect St	Indianapolis	IN	46203
810 Linden St.	Richmond	KY	40475
207 West Philadelphia Blvd	Flint	MI	48505
2749 - 2751 Tyler Street	Detroit	MI	48238
2960 Hanchett Street	Saginaw	MI	48604
3729 Iroquois Street	Detroit	MI	48214
5439 Helen Street	Detroit	MI	48211
637 - 639 Hercules	Gwinn	MI	49841
698 Amity Avenue	Muskegon	MI	49442
77 Minden Street	Sandusky	MI	48471
1477 70th Street	Pagedale	MO	63133
7609 East 112th Street	Kansas City	MO	64134
121 Bundy Road	Harrisville	MS	39082

275 Sewell Road	Thaxton	MS	38871
815 N 13th Avenue	Laurel	MS	39440
293 Highland Avenue	Henrietta	NC	28076
323 Phillips Avenue	Red Springs	NC	28377
58 Mill Street	Nunda	NY	14517
1127 7th Street NW	Canton	OH	44703
119 East Norman Avenue	Dayton	OH	45405
1365 Loretta Ave.	Columbus	OH	43213
1685 Manchester Road	Akron	OH	44314
2544 Falmouth Avenue	Dayton	OH	45406
607 South Second Street	Hamilton	OH	45011
859 Kumler Avenue	Dayton	OH	45407
325 W. Harrison Street	Mangum	OK	73554
1330 Paulson	Pittsburgh	PA	15206
141 Jucunda Street	Pittsburgh	PA	15213
2735 Stafford Street	Pittsburgh	PA	15204
371 Prindle Street	Sharon	PA	16146
535 East Warrington Avenue	Pittsburgh	PA	15210
711 Park Street	McKeesport	PA	15132
74 Crescent Heights Drive	Daisytown	PA	15427
921 North Avenue	Pittsburgh	PA	15221
640 Comos Road	Neeses	SC	29107
3125 Pacific	Memphis	TN	38122
25686 BANKHEAD DR	Bedias	TX	778315323
25686 BANKHEAD DR	Bedias	TX	778315323
2817 Ada Ave	Tyler	TX	75702
905 W 21st Street	Bryan	TX	77803
619 Jamison Street	Fairmont	WV	26554

The Receiver's Barrier Motion Is Objectionable for Additional Reasons.

With regard to the Barrier Motion, because the motion seeks approval of sale procedures, the primary objections are grounded in the Receiver's failure to comply with 28 U.S.C. §§ 2001 and 2002 in his proposed procedures. In addition, JEG objects for the following reasons:

- The Barrier Motion fails to provide sufficient notice to potential interested parties who have not yet appeared in the proceeding. By serving only those individuals who have filed a proof of claim or otherwise appeared in this proceeding, the

Receiver has disregarded the many interested parties who have not yet appeared.

The Receiver has not proposed any form of additional notice outside of the proceeding. See also 28 U.S.C. §§ 2001 and 2002 (requiring notice by publication prior to either public or private sale).

- The Barrier Motion fails to provide sufficient information regarding the assets, their valuation, or any method used to value any assets. As noted, this lack of information fails to meet the appraisal requirements of Section 2001. Further, without more information, interested parties are unable to determine whether the proposed sales procedures are reasonable.
- The Barrier Motion fails to specify what information such potential buyers will be provided (either initially or as part of due diligence) and the mechanism by which bidding will take place.
- The Barrier Motion provides too short a time period (30 to 45 days) for marketing the assets considering the number and complexity of the assets. This short time frame will deter potential buyers who are unable to perform adequate due diligence in such a protracted time frame.

Prayer

For these reasons, JEG requests that the Court deny each of the Receiver's Sales Motions. At minimum, JEG requests a hearing to address the Receiver's Sales Motions, as required by Section 2001.

Respectfully submitted,

John Graves, P.C.

By: /s/John Graves

John Graves

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NG ROTH INVESTMENTS, LLC,
JG ROTH INVESTMENTS, LLC,
JEG PROPERTY INVESTMENTS 401K
TRUST and JG ROTH, LLC,**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via the Court's ECF System on this 23rd day of August, 2012.

/s/John Graves
John Graves

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SECURITIES AND EXCHANGE
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CIVIL ACTION NO. 4:11-CV-00655

**ORDER DENYING RECEIVER’S MOTION FOR AUTHORITY TO SELL
PROPERTIES TO LAKESIDE PORTFOLIO MANAGEMENT, LLC [DKT. NO. 103]
AND ORDER DENYING RECEIVER’S MOTION FOR AUTHORITY TO SELL
PROPERTY AND TO APPROVE SALES PROCEDURES [DKT. NO. 104]**

The Court has considered both the Motion for Authority to Sell Properties to Lakeside Portfolio Management, LLC [Dkt. No. 103] and the Motion for Authority to Sell Property and to Approve Sales Procedures [Dkt. No. 104], each filed by Keith M. Aurzada, as receiver in the above-captioned matter (the “Receiver”) for James G. Temme (“Temme”), Stewardship Fund, LP, and all other entities directly or indirectly controlled by Temme or Stewardship Fund, LP, including, but not limited to Stewardship Advisors, LLC, d/b/a Stewardship Advisors, LP, Stewardship Asset Management Genpar I, LLC, Stewardship Group, LLC, Destiny Fund, LP, and Stewardship Management, LP, as well as all responses, replies, arguments, and evidence. The Court finds that both Motions should be denied.

It is therefore, ORDERED that,

the Receiver’s Motion for Authority to Sell Properties to Lakeside Portfolio Management, LLC is DENIED. It is further ORDERED that

the Receiver’s Motion for Authority to Sell Property and to Approve Sales Procedures is DENIED.

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