

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

SECURITIES AND EXCHANGE COMMISSION
Plaintiff,

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Civil Action No. 4:11-cv-655

v.

JAMES G. TEMME, and
STEWARDSHIP FUND, LP,
Defendants.

**STEWARDSHIP RECEIVERSHIP CLAIMANTS ASSOCIATION’S RESPONSE IN
OPPOSITION AND OBJECTION TO THE RECEIVER’S SALES MOTIONS**

Stewardship Receivership Claimants Association (the “Association”), as a Texas Nonprofit Association, formed by and composed of claimants in the Receivership Entities (defined below), files this Response in Opposition and Objection to both the Motion for Authority to Sell Properties to Lakeside Portfolio Management, LLC [Dkt. No. 103] (the “Lakeside Motion”) and the Motion for Authority to Sell Property and to Approve Sales Procedures [Dkt. No. 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, the Association shows as follows:

I. INTRODUCTION

The Association is currently¹ composed of forty distinct members, both natural persons and entities (as listed on Exhibit A), who invested in the Receivership Entities. For many of the Association's members, their investment in the Receivership Entities represents a substantial portion of personal assets. Loss of these assets would be significant, if not devastating, to these members. The members formed the Association within the last few days in order to voice their collective concern with the Receiver's recent actions in this proceeding which do not appear to the Association to be consistent with the best interests of the estate. By his recently-filed Sales Motions, the Receiver is attempting to compel—as quickly as possible and with limited checks, if any—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 disclosure or oversight.

A major 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 assets in question²) and exist both to provide transparency to such sales and to help assure that the estate receives adequate value for the assets sold. Each of the Sales Motions is objectionable for a number of additional reasons including a lack of notice to investors, various deficiencies of information, and a failure by the

¹ The Association expects its membership to grow, as its formation was expedited by the need to timely file this Response and Objection. Other investors in Stewardship Fund have expressed an intention to join the Association, but their paperwork was received by the Association by the time of this filing. The Association anticipates supplementing its membership list at a later date.

² Based on the limited information in the Sales Motions, the assets at issue appear to a mixture of mortgage notes for real property and fee simple interests in certain properties.

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

II. ARGUMENT AND AUTHORITIES

A. **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 (emphasis added). As reflected above, Section 2001(a) generally requires that receivership property 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 allow for a private sale *after* certain mandatory procedural safeguards are followed. At its outset, Section 2001(b) makes clear that a hearing is required before court approval of a private sale. The statute’s default 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.³ In addition to the hearing and notice components, the statute affords value and transparency safeguards. “[P]er 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. Indeed, the Northern District of Texas has clarified that the safeguards are “mandatory” under the statute and cannot be waived. *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).

³ At least one investor-member of the Association was reportedly informed by the Receiver that there was no need to file a proof of claim until a later date. However, without having filed a proof of claim or otherwise appeared in this action, a claimant would not have been given any notice of the Sales Motions, even though the proposed sales would clearly affect the claimant’s interest in the estate. There are also believed to be many other investors who have not yet been identified by the Receiver, who similarly would not have been provided notice by the mere filing of the Sales Motions.

Here, the Receiver seeks to sell mortgage notes and fee simple interests, which are “realty or interest[s] therein;” 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. Because the Receiver has failed to comply with *any* of these statutory requirements, the Court must deny the Receiver’s Sales Motions.⁴

B. 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, the Association 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 any interested parties who, on information and belief, have not yet appeared. The Receiver has not proposed any form of additional notice outside of the proceeding. *See* 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

⁴ The Receiver inappositely seeks to invoke Section 2004, which provides the Court limited discretion in the sale of personalty. However, as noted above, Section 2001 expressly covers the mortgage notes as interests in realty. Even assuming, *arguendo*, 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 T-Bar*, 2008 WL 4790987, at *4. The Receiver has done nothing to show extraordinary circumstances and none exist here.

statements regarding the Receiver's "business judgment."⁵ 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 more questions with respect to valuation of the assets. For example, 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?

- The Lakeside Motion also fails to provide adequate information regarding how Halo⁶ marketed 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?
- The Association objects to the price based on information and belief that a price of 3.4 cents on the dollar of the unpaid balance is too low. The Association would need to receive substantially more information regarding the assets to determine the appropriate value. Of course, an appraisal (or three) would be significant for determining the assets' value. *See* 28 U.S.C. § 2001(b).
- Relatedly, the Association objects to the decision to liquidate all of these assets at once. The Association has reason to believe that the value of underperforming assets set to be sold to Lakeside could be managed for a short period for little

⁵ The overall lack of information regarding the assets is particularly alarming to the Association where the Receiver has taken the position in this proceeding that non-parties have no right to discovery of receivership information and no right intervene in the action. *See* [Dkt. No. 108].

⁶ The Association is also concerned with the Receiver's reliance on Halo to market the assets and Halo's continued involvement with the assets as a general matter in light of the allegations that have been lodged against Halo by various parties who have transacted with Halo and Stewardship Fund.

cost, which would increase the overall value dramatically. An analysis could be performed in conjunction with the appraisal to determine whether liquidation is an appropriate action in this circumstance.

- 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 appears to be too short a time period for most, if not all, potential buyers to review information adequate to permit a purchase. This compressed time frame will likely deter potential buyers who are unable to perform adequate due diligence in such a time frame.
- Finally, the Receiver should not be permitted to make the sole determination of what constitutes a superior bid because it gives him too much discretion to arbitrarily reject other potential bids.

C. 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, the Association 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 any interested parties who, on information and belief, 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, potentially 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 only a 30 to 45 day period for marketing the assets. Considering the number and complexity of the assets, this compressed time frame will likely deter potential buyers who are unable to perform adequate due diligence in such a time frame.

III. PRAYER

For these reasons, the Association requests a hearing to address the Receiver's Sales Motions and the objections thereto, as required by Section 2001, and at the conclusion of the hearing that the Court deny the relief requested in each of the Receiver's Sales Motions. The Association further prays for such other and further relief that the Court deems just.

Dated: August 23, 2012

Respectfully submitted,

KANE RUSSELL COLEMAN & LOGAN PC

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Stewardship Receivership Claimants Association's Response in Opposition and Objection to the Receiver's Sales Motions* has been served via the Court's ECF system on this 23rd day of August.

/s/ Bruce Flowers

Bruce M. Flowers

EXHIBIT A

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

**SECURITIES AND EXCHANGE COMMISSION
Plaintiff,**

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Civil Action No. 4:11-cv-655

v.

**JAMES G. TEMME, and
STEWARDSHIP FUND, LP,
Defendants.**

**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.