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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

LOUIS V. SCHOOLER and FIRST
FINANCIAL PLANNING
CORPORATION d/b/a WESTERN
FINANCIAL PLANNING
CORPORATION,

Defendants.

Case No. 3:12-cv-02164-GPC-JMA

ORDER APPROVING:

**SALE OF HONEY SPRINGS
PROPERTY AND AUTHORIZING
RECEIVER TO PAY BROKER'S
COMMISSION**

[ECF No. 1430]

Before the Court is the Receiver’s Motion for Approval of Sale of Honey Springs Property and Authority to Pay Broker’s Commissions (“Motion”). ECF No. 1430. No opposition was filed. Based upon a review of the moving papers and the applicable law, the Court **GRANTS** the Receiver’s motion.

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1 **BACKGROUND**

2 **A. The SEC Enforcement Action**

3 On January 21, 2016, the Court granted the SEC’s motion for final judgment
4 against Defendant Louis V. Schooler. ECF No. 1170. The SEC had initiated this
5 civil action against Defendant Schooler and Western Financial Planning Corporation
6 (“Western”) four years earlier, on account of their practice of defrauding investors
7 into purchasing unregistered securities. *Id.* (citing Second Summary Judgment
8 Order, ECF No. 1081). To carry out the scheme, Defendant Western bought
9 undeveloped real estate, with cash or through financing, and simultaneously formed
10 one or more General Partnerships (“GPs”) to own the land. First Summary
11 Judgment Order, ECF No. 1074 at 10. Western then sold General Partnership units
12 to investors and sold the undeveloped real estate to the General Partnerships. *Id.* at
13 10. In total, Western raised approximately \$153 million from almost 3,400
14 investors through implementing this scheme. *Id.*

15 **B. The Decline of the General Partnership Assets**

16 In 2013, the Court-appointed Receiver, Thomas Hebrank, engaged licensed
17 appraisers to value the 23 properties owned by the General Partnerships. ECF No.
18 203 at 2. Those professionals determined that the land was worth \$16,328,000 and
19 that the net appraised value (appraised value less outstanding balances on all
20 mortgages) of the properties was \$12,860,661. *Id.* The net appraised value
21 represented just 8.41% of the total funds that the general partners had invested in the
22 land. *Id.* The Receiver further estimated that, based on the then-current appraised
23 values of the land, the average GP investor would suffer an 88.40% loss if the GP
24 properties were sold in 2013. *Id.*

25 Three years later, soon after final judgment was entered, the Receiver moved
26 for authority to conduct an Orderly Sale of the General Partnership Properties
27 (“Orderly Sale”). Motion for Orderly Sale, ECF No. 1181-1. In the Motion, the
28 Receiver indicated that the aggregate value in the GP accounts had been steadily

1 decreasing while litigation was ongoing. *See id.* In September 2012, the
2 Receivership had assets of \$6.6 million. *Id.* at 1. By the end of 2015, the assets had
3 dropped to \$3.5 million, and the Receiver had reason to believe that the value of the
4 Receivership would continue to drastically decrease through the end of 2016.¹ This
5 decline, he noted, was due to three main factors: (1) 14 of the 23 properties were not
6 appreciating in value²; (2) the properties were not worth enough to cover the costs of
7 the GPs carrying the properties; and (3) low levels of investor contributions to pay
8 GP administrator fees, tax preparation fees, property taxes, property insurance
9 premiums, and notes owed to Western. *See id.* at 1-2. In other words, the Receiver
10 concluded, because the money being spent to hold the GP properties was
11 disproportionately high in relation to the value of the GP's real estate assets, the
12 Receivership was in a steady decline. *Id.*

13 In order to prevent the value of the Receivership from falling into further
14 decline, the Receiver proposed that the GP properties be sold in accordance with
15 Court-approved orderly sale procedures. *Id.* The Receiver's proposal explained that
16 the best way to maximize the value of all of the GP assets for the benefit of all
17 investors, irrespective of any given investors' direct property interest, was to initiate
18 an orderly sale of the GP properties. *Id.* The Receiver estimated that the
19 Receivership, after conducting sales of the GP properties, Western's properties and
20 asset recovery, would be worth \$21,804,826. *Id.* at 16.

21 **C. The Receiver's Motion for Orderly Sale**

22 On May 20, 2016, the Court held a hearing on the Receiver's Motion for
23 Orderly Sale, at which time the Court heard from the SEC, Defendant, the Receiver,
24 and the investor-intervenors — that is, those investors who were granted permission
25

26 ¹ The Receiver provided the Court with projections that the Receivership would further decline to
27 \$1.8 million by the end of 2016. Indeed, the Receiver's projection has since proved to be
28 accurate. The Eighteenth Interim Status Report submitted by the Receiver indicates that the
Receivership's current cash balance is \$1,546,447. ECF No. 1441 at 20.

² By way of example, the Receiver notes that the value of these 14 properties in 2016, \$3,732,815,
was about \$400,000 less than their value in 2013, \$4,137,000. *Id.* at 2.

1 under Rule 23 to intervene to oppose the Receiver’s Motion. *See* ECF No. 1298. A
2 short time thereafter, on May 25, 2016, the Court approved, in part, the Receiver’s
3 Orderly Sale process.³ ECF No. 1304.

4 In approving the Orderly Sale, the Court addressed and evaluated the
5 concerns expressed by the Receiver, the SEC, and myriad investors, all of whom
6 held differing positions on whether the Orderly Sale would benefit the Receivership
7 estate. *See generally* ECF Nos. 1181 (Motion for Orderly Sale), 1232 (SEC
8 Response), 1234 (Dillon Investors’ Response), 1235 (Graham Investors’ Response);
9 *see also, e.g.*, ECF Nos. 1240, 1242, 1244, 1249-1257 (Letters from Investors). The
10 Court also took into consideration the recommendations of the investors’ experts, as
11 set forth in the Xpera Report. *See* ECF No. 1304 at 16. The Xpera Report, the
12 Court noted, substantially agreed with the Receiver on how to maximize the value of
13 the Receivership estate and, for the most part, agreed on the appraised value of the
14 various GP properties. *Id.* As such, the Court directed the Receiver, where feasible,
15 to incorporate the recommendations of the Xpera Report into his ultimate sale
16 Orderly Sale proposal. *Id.* at 19.

17 On July 22, 2016, the Receiver moved for permission to engage CBRE, a real
18 estate brokerage firm, as a consultant in order to weigh the pros and the cons of the
19 Xpera Report. ECF No. 1341-1. The Court granted the Receiver’s motion on
20 August 30, 2016. ECF No. 1359. CBRE presented its findings on the GP properties
21 on October 24, 2016. ECF No. 1419 (filed under seal). On November 22, 2016, the
22 Receiver submitted a report evaluating the Xpera Report recommendations. ECF
23 No. 1405. The Court reviewed the Receiver’s report and adopted the
24 recommendations contained therein on December 12, 2016. ECF No. 1423.

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27 ³ The Court directed the Receiver to file a Modified Orderly Sale Process that incorporated the
28 public sale process consistent with the requirement of 28 U.S.C. § 2001. ECF No. 1304. The
Receiver filed a modified proposal on June 8, 2016 (ECF No. 1309) and the Court approved
the modified proposal on August 30, 2016 (ECF No. 1359).

1 **D. Honey Springs Property**

2 The Receiver valued the Honey Springs property at \$68,667 in 2013. ECF
3 No. 1405, Ex. A at 9. In 2015, the Broker Opinion Value (BOV) of the property
4 was \$243,094. *Id.* Although the Xpera Report did not value the Honey Springs
5 property standing alone, it did value the property as one of three parcels, and the
6 value that Xpera ascribed to all three properties corresponds to the Receiver’s
7 appraisal of all three properties.⁴

8 In October 2016, the Receiver received an offer from Felipi and Ofelia
9 Aguilar to purchase the Honey Springs property for \$225,000. ECF No. 1430-1 at
10 2. In accordance with the Court-approved modified Orderly Sale procedures, *see*
11 *generally* ECF No. 1309, 1359, the Receiver sent notice of the offer to investors,
12 consulted with a broker, and made a counter-offer of \$250,000. ECF No. 1430-1 at
13 2. The putative purchasers countered at \$240,000 and the Receiver accepted. *Id.*
14 After executing a purchase agreement, the Receiver laid out a timeline for the
15 submission of qualified overbids pursuant to the modified Orderly Sale procedures.
16 *Id.* at 3. On February 7, 2017, Receiver notified the Court that no qualified overbids
17 had been received for the Honey Springs property. ECF No. 1442.

18 **E. Conclusion**

19 The Court is satisfied that the Receiver has complied with the modified
20 Orderly Sale procedures. The Court further observes that the purchase price of
21 \$240,000 is reasonable in light of the Receiver’s 2015 appraisal of the Honey
22 Springs property and the Xpera Report. Accordingly, and given that no opposition
23 to the Motion has been filed and that no qualified overbid was received, the Court
24 **GRANTS** Receiver’s motion.

25
26 ⁴ The Xpera Report valued the Honey Springs property, along with the Bratton View and Valley
27 Vista properties, between \$629,878 (a low valuation) and \$944,816 (a high valuation). ECF
28 No. 1405, Ex. A at 9. The Receiver’s appraisal of Honey Springs, together with Bratton View
and Valley Vista, totaled \$756,548, placing the Receiver’s appraisal within the range proposed
by Xpera. *See id.*

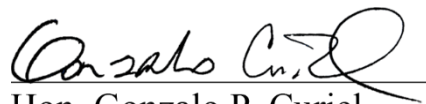
1 **ORDER**

2 The Receiver's Motion for Approval of Sale of Honey Springs Property and
3 Authority to Pay Broker's Commission of Thomas C. Hebrank ("Receiver"), the
4 Court-appointed receiver for First Financial Planning Corporation d/b/a Western
5 Financial Planning Corporation ("Western"), its subsidiaries and the General
6 Partnerships listed in Schedule 1 to the Preliminary Injunction Order entered on
7 March 13, 2013 (collectively, "Receivership Entities"), having been reviewed and
8 considered by this Court, the Receiver having notified the Court that no qualified
9 overbids were received (ECF No. 1442), and for good cause appearing therefore, the
10 Court finds as follows:

- 11 1. The Motion is granted;
- 12 2. The sale of the Property known as the Honey Springs property, as
13 described on Exhibit A in the Receiver's Motion ("Property"), by Thomas C.
14 Hebrank, as receiver for Honey Springs Partners, to Felipi and Ofelia Aguilar is
15 confirmed and approved;
- 16 3. The purchase price of \$240,000.00 for the Property is confirmed and
17 approved;
- 18 4. The Receiver is immediately authorized to complete the sale
19 transaction, including executing any and all documents as may be necessary and
20 appropriate to do so; and
- 21 5. The Receiver is authorized to immediately pay, upon closing of the
22 sale, a commission of 6% of the final purchase price to broker Real Estate Results.

23 **IT IS SO ORDERED.**

24 Dated: March 20, 2017

25 
26 Hon. Gonzalo P. Curiel
27 United States District Judge
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