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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 GRANTING MOTION FOR
APPROVAL OF SALE OF 3816
MISSION BLVD. PROPERTY**

[ECF No. 653]

1 **I. BACKGROUND**

2 As described in prior orders, *see, e.g.*, ECF Nos. 54, 162, 163, this is an action
3 brought by the Securities and Exchange Commission (“SEC”) against Defendants ANI
4 Development, LLC (“ANI Development”) and Gina Champion-Cain and Relief Defendant
5 American National Investments, Inc. (“ANI Inc.”), alleging violations of federal securities
6 laws based on a purportedly fraudulent liquor license loan scheme. ECF No. 1.

7 On September 3, 2019, the Court established an equitable receivership and appointed
8 Krista L. Freitag (“Receiver”) as the receiver of ANI Development and ANI Inc.,
9 authorizing her to take control over all funds and assets owned, managed, or in the
10 possession or control of the receivership entities. *See* ECF No. 6 at 14-16. In that role, the
11 Receiver acts under the control and direction of the Court to facilitate the “orderly and
12 efficient administration of the estate . . . for the benefit of creditors.” *SEC v. Hardy*, 803
13 F.2d 1034, 1038 (9th Cir. 1986). *See also Atl. Tr. Co. v. Chapman*, 208 U.S. 360, 370
14 (1908) (explaining that a motion to appoint a receiver to take charge of property is “to the
15 end that the property might be cared for and preserved for all who had or might have an
16 interest in the proceeds of its sale. . . . Immediately upon such appointment and after the
17 qualification of the receiver, the property [within the equitable receivership] passed into
18 the custody of the law, and thenceforward its administration was wholly under the control
19 of the court by its officer [], the receiver.”).

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

25 Pursuant to 28 U.S.C. § 2001(a), realty in the possession of an appointed receiver is
26 subject to a public sale process, “upon such terms and conditions as the court directs.”
27 28 U.S.C. § 2002 further requires that notice be published once a week for at least four
28 weeks prior to the sale in at least one newspaper regularly issued and of general circulation

1 in the county, state, or judicial district where the realty is located. The purpose of such
2 notice “is to inform the public of the kind and condition of the property to be sold, the time,
3 the place, and the terms of the sale. It is to secure bidders and prevent the sacrifice of the
4 property.” *Breeding Motor Freight Lines v. R.F.C.*, 172 F.2d 416, 422 (10th Cir. 1949).
5 Therefore, the safeguards of notice and opportunity to submit overbids help to ensure that
6 the sale is able to fetch the best price possible, which is consistent with the principle that
7 “a primary purpose of equity receiverships is to promote orderly and efficient
8 administration of the estate by the district court for the benefit of creditors.” *Hardy*, 803
9 F.2d at 1038. *See also United States v. Grable*, 25 F.3d 298, 303 (6th Cir. 1994) (noting
10 that “the intent of” the requirement in 28 U.S.C. § 2001 that property be sold in the county
11 in which the land is situated is “to bring a better price at the sale”).

12 On April 23, 2021, Court-appointed Receiver Krista L. Freitag (the “Receiver”) filed
13 a Second Motion for Approval of Sale of 3816 Mission Blvd. Property (the “Second
14 Mission Blvd. Motion”). ECF No. 653. The motion is now ripe for ruling.

15 II. LEGAL STANDARD

16 “[I]t is a recognized principle of law that the district court has broad powers and
17 wide discretion to determine the appropriate relief in an equity receivership.” *SEC v.*
18 *Lincoln Thrift Ass’n*, 577 F.2d 600, 606 (9th Cir. 1978). Where a district court sits in equity,
19 “[u]nless a statute in so many words, or by a necessary and inescapable inference, restricts
20 the court’s jurisdiction in equity, the full scope of that jurisdiction is to be recognized and
21 applied. ‘The great principles of equity, securing complete justice, should not be yielded
22 to light inferences, or doubtful construction.’” *Porter v. Warner Holding Co.*, 328 U.S.
23 395, 398 (1946).

24 “[A] district court’s power to supervise an equity receivership and to determine the
25 appropriate action to be taken in the administration of the receivership is extremely broad.”
26 *Hardy*, 803 F.2d at 1037. As part of this broad discretion, the district court sitting in equity
27 and having custody and control of property “has power to order a sale of the same in its
28 discretion. The power of sale necessarily follows the power to take control of and to

1 preserve property[.]” *SEC v. Am. Capital Investments, Inc.*, 98 F.3d 1133, 1144 (9th Cir.
2 1996), *abrogated on other grounds by Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83,
3 93-94 (1998) (quoting 2 Ralph E. Clark, Treatise on Law & Practice of Receivers § 482
4 (3d ed. 1992)). If the court approves an equitable receiver’s proposed property sale, the
5 sale “does not . . . purport to convey ‘legal’ title, but rather ‘good,’ equitable title enforced
6 by an injunction against suit.” *Id.* (citing 2 Clark, Treatise on Law & Practice of Receivers,
7 §§ 342, 344, 482(a), 487, 489, 491).

8 **III. DISCUSSION**

9 **A. Background of the Property and Proposed Sale**

10 The 3816 Mission Blvd. Property is a mixed-use building containing one
11 commercial unit (used as a surf shop) and one residential unit, located at 3816 Mission
12 Boulevard, San Diego, California 92109 (the “3816 Mission Blvd. Property”).¹ *See* ECF
13 No. 586-1 at 5; ECF No. 76-2 at 4 (listing the 3816 Mission Blvd. Property in the
14 Preliminary Real Estate and Liquor License Asset Schedule filed on October 3, 2019, and
15 noting the building includes a surf shop on the ground floor and a rented apartment loft).

16 The Court previously granted the Receiver’s motion to approve the sale of the same
17 property, (ECF No. 586), as amended by the Receiver’s Notice of Results of Auction for
18 3816 Mission Blvd. Property and Request to Approve Sale to Winning Bidder (ECF No.
19 604), approving the sale of the 3816 Mission Blvd. Property to winning bidder Mauricio
20 Schwartzman at the winning bid price of \$1.59 million and, if the sale did not close with
21 the winning bidder, approving the sale of the property to back-up bidder Steven Ozburn at
22 the price of \$1.58 million. *See* ECF No. 614. The Court hereby incorporates by reference
23 the background discussion contained in its earlier order granting the sale of the property to
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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 the winning bidder regarding how the property came into the receivership, and the efforts
2 made by the Receiver and broker to market the property. *See* ECF No. 614 at 5-6.

3 In the Second Mission Blvd. Motion, the Receiver explains that the sale did not close
4 with either the winning bidder or the back-up bidder. ECF No. 653-1 at 6. Accordingly,
5 both bidders lost their earnest money deposits, totaling \$105,000. *Id.* The former winning
6 bidder Mauricio Schwartzman (“Buyer”) continued to express serious interest in the
7 property, however, and several other prospective purchasers also submitted Letters of
8 Intent to Purchase or otherwise sent emails showing interest in the property after the sale
9 fell through. *Id.* at 6-7. Through Broker, the Receiver negotiated terms with all prospective
10 buyers and afforded them an opportunity to submit a highest and best offer subject to
11 overbid. *Id.* at 7. Ultimately, the property once again went into escrow with Buyer Mauricio
12 Schwartzman on or around April 19, 2021, at a new sale price of \$1.36 million. *Id.* Buyer
13 has deposited \$30,000 into escrow. *Id.*

14 Even though the new sale agreement was with the previously approved buyer and
15 high bidder at the first auction, the property sale was once more subject to the notice and
16 auction process under the relevant statutory scheme. Therefore, in the Second Mission
17 Blvd. Motion, the Receiver proposed compliance with 28 U.S.C. §§ 2001 and 2002 by
18 publishing notice in the San Diego Union-Tribune once a week for four weeks of a public
19 auction for the property on May 20, 2021. ECF No. 653 at 11-12. Potential bidders were
20 invited to qualify for the auction by submitting a signed purchase and sale agreement, an
21 earnest money deposit of \$33,000, and proof of funds by May 17, 2021. *Id.*

22 The Court set a deadline of May 3, 2021 to file any response in opposition to the
23 Second Mission Blvd. Motion, and ordered the Receiver to file a notice of non-receipt of
24 overbids if no qualified overbids were received by May 17, 2021. ECF No. 654. No
25 opposition to the Second Mission Blvd. Motion was filed, and no overbids were received
26 by the deadline. *See* ECF No. 668. Accordingly, the Court vacated the hearing and took
27 the matter under submission without oral argument. ECF No. 669. Being fully advised, and
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1 noting the lack of opposition to the Second Mission Blvd. Motion, the Court will **GRANT**
2 the motion.

3 **B. Proposed Procedures and Distribution**

4 As described in the Court's prior order, the 3816 Mission Blvd. property is
5 encumbered by a loan and deed of trust in favor of Axos Bank. ECF No. 614 at 7. The
6 Receiver still intends to use the proceeds of the sale of the property to pay off the loan and
7 estimates the amount required to do so will be approximately \$485,000, assuming a May
8 2021 closing. ECF No. 653-1 at 7. The Receiver also estimates that approximately \$1,000
9 will be owed to the receivership estate as a small property tax credit. *Id.* The Receiver
10 estimates that costs of sale including escrow, title and recording fees will be approximately
11 \$9,000. *Id.* The Broker's fee pursuant to the listing agreement is 4% of the sale price, or
12 \$54,400. *Id.* Based on these figures, the Receiver estimates in the Second Mission Blvd.
13 Motion that the net sale proceeds to be returned to the receivership estate will be
14 approximately \$812,000. *Id.*

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

16 The Court has reviewed the documents submitted by the Receiver in support of the
17 Second Mission Blvd. Motion, and finds the proposed sale to be fair and reasonable.

18 Although the new sale price of \$1.36 million falls short of Buyer's previously
19 approved high bid of \$1.59 million, it exceeds Buyer's first agreed-upon purchase price of
20 \$1,210,000, as reflected in the original sale motion. *See* ECF No. 586-1 at 6. Additionally,
21 neither Buyer nor the previous back-up bidder (who bid \$1.58 million) followed through
22 with their bids, instead opting to forfeit their earnest money deposits. Both bidders'
23 unwillingness to close the sale in that higher range, coupled with the fact that no overbids
24 were received over the new sale price of \$1.36 million, suggest that the high bids at the
25 auction may have exceeded the reasonable value of the property. And in any event, the
26 Receiver took care to protect the assets of the receivership by including the earnest money
27 forfeiture provisions in the Form Purchase and Sale Agreements signed by the winning and
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1 back-up bidders after the original auction, thus ensuring some additional return to the estate
2 despite the ultimate failure of either bidder to close the sale.

3 Moreover, as discussed in the Court's prior order, the Court is satisfied that Broker
4 diligently and broadly marketed the property, and Broker's proposed commission of 4% of
5 sale price is consistent with industry standards. Significantly, the notice and auction
6 procedures set forth in the statutory scheme governing sales of real property in a
7 receivership are in place to ensure that the best and highest price is obtained. The Receiver
8 carried out the notice and auction process a second time after entering into the new
9 agreement with Buyer, which once more indicates to the Court that the Receiver has likely
10 secured the best and highest price for the property, in fulfillment of the intent of the
11 statutory scheme.

12 Finally, the new sale price is more than double the March 2015 \$618,000 purchase
13 price of the property, representing a return of \$742,000, plus the forfeited earnest money
14 deposit of \$55,000 submitted by the back-up bidder to participate in the first auction. *See*
15 ECF No. 604-2 at 4. Even taking into account the need to pay off the loan on the property
16 from the sale proceeds, the anticipated return to the receivership estate is substantial.

17 Based on these considerations, and noting the lack of any opposition to the Second
18 Mission Blvd. Motion, the Court finds the Receiver has established that the proposed sale
19 of the 3816 Mission Blvd. Property and proposed distribution of the sale proceeds are
20 consistent with principles of equity and the goal of a receivership to ensure the orderly and
21 efficient administration of the estate for the benefit of creditors. *Hardy*, 803 F.2d at 1038.

22 **IV. CONCLUSION**

23 Having considered the Receiver's Second Motion for Approval of Sale of 3816
24 Mission Blvd. Property (ECF No. 653), the Court **GRANTS** the motion. Accordingly, it is
25 **ORDERED** as follows:

26 (1) The sale of property located at 3816 Mission Blvd., San Diego, California
27 92109, as described in Exhibit A to the Declaration of Krista L. Freitag in support of the
28 Second Motion for Approval of Sale of 3816 Mission Blvd. Property (ECF No. 653-3), by

1 Krista L. Freitag, as Receiver, to Mauricio Schwartzman or his designee (“Buyer”), is
2 confirmed and approved;

3 (2) The purchase price of \$1,360,000, to be paid by Buyer for the 3816 Mission
4 Blvd. Property, is confirmed and approved;

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

8 (4) The Receiver is authorized to pay the property tax amount due from the seller
9 at closing, which in this instance is actually expected to be a small credit owed to seller of
10 approximately \$1,000 (with the exact amount to be determined at closing);

11 (5) The Receiver is authorized to pay broker Compass Realty a commission of
12 4% of the sale price;

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

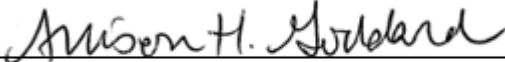
15 (7) After the aforementioned estimated amounts are paid, the net sale proceeds,
16 which are estimated to be approximately \$812,000 (with the exact amount to be determined
17 at closing), shall be paid to the receivership estate; and

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

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

23 **IT IS SO ORDERED.**

24 Dated: May 25, 2021

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