

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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SECURITIES AND EXCHANGE  
COMMISSION,

Case No. 2:13-CV-1658 JCM (CWH)

## ORDER

**Plaintiff(s),**

V.

EDWIN YOSHIHIRO FUJINAGA and MRI  
INTERNATIONAL, INC., et al.,

Defendant(s).

Presently before the court is SEC v. Fujinaga et al, case no. 2:13-cv-01658. Receiver Robb Evans & Associates LLC’s (“receiver”) filed a motion requesting the court to authorize the sale of certain real and personal property, as described below. (ECF No. 437). Relief defendant June Fujinaga filed a response (ECF No. 445), to which the receiver replied, (ECF No. 447).

The receiver's motion requests this court to issue an order (1) authorizing, approving, and confirming sale of real property located at 9009 Greensboro Lane ("the real property") and sale and overbid procedures and for related relief; (2) authorizing sale of personal property located therein ("the personal property"); and (3) granting relief from Local Rule 66-5 pertaining to notice of creditors. (ECF No. 437).

The receiver further requests an order authorizing and confirming the sale of the real property on an “as is” basis by private sale either (a) to Nanced LLC or their assignee at a purchase price of \$2,000,000.00 pursuant to the offer and acceptance agreement and earnest money receipt, or (b) to such higher qualified overbidder who hereafter submits the highest qualified overbid at a subsequent overbid session to be conducted under the terms and conditions more fully set forth herein and approved by the court, which sale the receiver requests be approved and confirmed

**James C. Mahan  
U.S. District Judge**

1 without further notice, hearing or order. (ECF No. 437). The overbid procedures are detailed fully  
2 in the receiver's motion. Id.

3 28 U.S.C. § 2001(b) reads,

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

18 Id. (emphasis added).

19 28 U.S.C. § 2004 reads, “[a]ny personality sold under any order or decree of any court of  
20 the United States shall be sold in accordance with section 2001 of this title, unless the court orders  
21 otherwise.” Id.

22 On September 21, 2017, this court held that “the receiver's proposed appraisals  
23 presumptively satisfy the statutory requirement of three appraisals prior to the proposed sale of the  
24 real property. 28 U.S.C. § 2001.” (ECF No. 449) (emphasis added). The receiver obtained two  
25 valuations from accredited appraisers and one valuation from a real estate broker. The relevant  
26 statute does not specify who must conduct appraisals, except that it must be “three disinterested  
27 persons to appraise such property.” See 28 U.S.C. § 2001(b). The court held that “the valuations  
28 submitted by the receiver can constitute appraisals for the purpose of satisfying the statutory  
requirements.” (ECF No. 449) (emphasis added). However, the court was unable to determine  
whether these three proposed individuals met the requirements of 28 U.S.C. § 2001(b) without in  
camera review of the valuations and the credentials of the individuals.

29 Accordingly, this court ordered the receiver to “file with this court within seven (7) days a  
30 proposed order as referenced in its filings. (See ECF No. 437 at 22). The proposed order must  
31 explicitly appoint the three proposed appraisers by name, among the other required findings of  
32 fact, conclusions of law, and orders therein.” (ECF No. 449). Further, the court ordered the

1 receiver to, “within seven (7) days, submit to the court for in camera review copies of: the appraisal  
2 performed by Tammy L. Howard and Matthew J. Lubway, the appraisal performed by W. Snow,  
3 and the written opinion of Greg Clemens as to the value of the property.” Id.

4 The receiver submitted for this court’s in camera review the three valuations of the real  
5 property as requested. Upon review of these documents, this court finds that the receiver has not  
6 provided this court with “**three disinterested persons to appraise**” the property. The first two  
7 submissions are appraisals that clearly comply with the requirements of 28 U.S.C. § 2001(b).

8 However, the third submission fails to comply with statutory requirements on multiple  
9 levels. It is a broker price opinion or comparative market analysis of the broker, Greg Clemens,  
10 who is selling the real property at issue here, not an appraisal conducted by a disinterested person,  
11 as required by statute.

12 Greg Clemens is not a “disinterested person,” as is required by 28 U.S.C. § 2001(b) because  
13 he is the broker hired to sell this property. (ECF No. 437 at 9). Also, this court cannot construe  
14 this valuation as an appraisal for the purposes of 28 U.S.C. § 2001(b) because the face of Mr.  
15 Clemens’s written valuation explicitly disclaims any reliance on it as an “appraisal.” The top of  
16 the first page of this document reads:

17 This is a broker price opinion or comparative market analysis and should not be  
18 considered an appraisal. In making any decision that relies upon my work, you  
19 should know that I have not followed the guidelines for development of an appraisal  
or analysis contained in the Uniform Standards of Professional Appraisal Practice  
of the Appraisal Foundation.

20 Therefore, the court is bound by 28 U.S.C. § 2001(b) to deny the motion to approve the  
21 sale of real property. The court is unable to appoint Greg Clemens as a “disinterested person to  
22 appraise” the property. Thus, the receiver has failed to comply with the statute’s requirement of  
23 obtaining three disinterested persons for this court to appoint to appraise the real property before  
24 its private sale.

25 Furthermore, there is no exception to the requirement that the court must appoint “three  
26 disinterested persons to appraise” the property before a receiver’s private sale of real property. See  
27 28 U.S.C. § 2001(b). The clause allowing the court to “order the sale of such realty . . . at a private  
28 sale for cash for cash or other consideration and upon such terms and conditions as the court

1 approves, if it finds that the best interests of the estate will be conserved thereby,” is an affirmative  
2 grant of power to the court to approve a private sale, but does not relieve the explicit requirement  
3 that, “[b]efore the confirmation of any private sale, the court shall appoint three disinterested  
4 persons to appraise such property . . . .” See *id.* Although caselaw makes clear that the district  
5 court has extremely broad power to supervise an equity receivership, see SEC v. Hardy, 803 F.2d  
6 1034, 1037 (9th Cir. 1986), Congress has explicitly constrained this equitable discretion here, by  
7 statute, in requiring the court to first appoint “three disinterested persons to appraise” before the  
8 court may confirm the private sale of the property. See 28 U.S.C. § 2001(b). This has not occurred  
9 in this case.

10 Finally, this court rejects the receiver’s argument that the defendants here have agreed to  
11 waive the requirements of 28 U.S.C. § 2001 based on the prior filings of other parties. The  
12 receivers argue that in a prior joint motion, “at recital X” (presumably referring to the January 20,  
13 2017 joint motion, ECF No. 379 at 9), the defendants agreed to waive all requirements set forth in  
14 28 U.S.C. § 2001 et seq. that apply to the receiver’s sale of all real property in this case, including  
15 future sales of real property conducted in the course of the same receivership. (See ECF No. 379  
16 at 9, recital “X” (stating “[d]efendants hereby waive all requirements set forth in 28 U.S.C. § 2001  
17 et seq. that apply to the [r]eceiver’s sale of real property in this case.”). Even if this court assumed,  
18 without deciding, that parties may stipulate or otherwise agree to waive the requirements of 28  
19 U.S.C. § 2001(b), the record shows that parties to present motion and response simply have not  
20 done so. (See ECF Nos. 437, 445).

21 The prior joint motion to which the receiver directs the court, filed on January 20, 2017,  
22 involved the sale of different property and involved different parties. (ECF No. 379). The parties  
23 who joined the motion were not the same as the parties to the present motion and response; they  
24 included the receiver, defendants Edwin Fujinaga, MRI International, Inc., and relief defendant  
25 CSA Service Center, LLC. (ECF No. 379 at 1). This list does not include the relief defendants  
26 objecting to the instant motion, June Fujinaga and the Yunju Trust, who claim to have an interest  
27 in the sale of the real property presently at issue. (ECF No. 445). Therefore, as the receiver has  
28 not pointed this court to any stipulation or waiver of the 28 U.S.C. § 2001(b) requirements by the

1 specific defendants objecting to this motion—June Fujinaga and the Yunju Trust—the  
2 requirements of 28 U.S.C. § 2001 still apply.

3 The motion is denied because the receiver has not provided three disinterested persons to  
4 appraise the property for the court to appoint, as 28 U.S.C. § 2001(b) requires before the court may  
5 confirm the private sale of real property in a receivership. However, the court grants leave to the  
6 receiver to refile a motion for approval for the sale of this real property after coming into  
7 compliance with the requirements of 28 U.S.C. § 2001(b). Further, the request for relief from the  
8 notice requirements pertaining to the motion to approve this sale is denied as moot.<sup>1</sup>

9 Accordingly,

10 IT IS HEREBY ORDERED that the motion to approve the sale of real property, personal  
11 property, and for relief from the notice requirements of Local Rule 66-5 (ECF No. 437) is  
12 DENIED, consistent with the foregoing.

13 DATED October 2, 2017.

14   
15 UNITED STATES DISTRICT JUDGE

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25 <sup>1</sup> Regarding the proposed sale of the personal property listed in Exhibit 3 of M. Val Miller's  
26 declaration (ECF No. 438 at 35–40), this court held in its last order that the receiver has satisfied  
27 the statutory requirements for the sale. (ECF No. 449 at 4). This holding still stands, however,  
28 the receiver's proposed order approving the sale of this personal property is contained in the same  
document as the proposed order approving the sale of the real property, which this court does not  
approve. (ECF No. 450). If the receiver wishes to proceed with the sale of the personal property  
before receiving authorization from this court to sell the real property, it may submit a new  
proposed order pertaining to the personal property, specifically, for this court's approval.