

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 14-cv-80468-MIDDLEBROOKS/BRANNON**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JCS ENTERPRISES INC. d/b/a JCS  
ENTERPRISES SERVICES INC., T.B.T.I. INC.,  
JOSEPH SIGNORE, and PAUL L. SCHUMACK, II,

Defendants.

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**ORDER**

This CAUSE comes before the Court upon the Receiver's Verified Motion for Entry of an Order Authorizing the (1) Asset Purchase Agreement, Including the Overbid and Auction Procedures Consisting of a Break-Up Fee and Expense Reimbursement; (2) Form and Manner of Notice of Sale, Bidding Procedures, and Auction; and (3) Sale of the Receivership Estate's Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests ("Motion") [DE 151], and upon the Receiver's Request for a Hearing on the Motion [DE 152], filed November 24, 2014. Defendant Joseph Signore filed a Response in opposition to the Motion on December 8, 2014, [DE 157], which Laura Grande-Signore joined on December 11, 2014 [DE 165]. The Receiver filed a Reply [DE 176] on December 15, 2014. Plaintiff, the Securities and Exchange Commission, filed a Response in support of the Motion [DE 177] on December 16, 2014, in compliance with the Court's Order [DE 169].

**I. BACKGROUND**

On May 20, 2014, the United States Attorney's Office for the Southern District of Florida ("USAO") filed a motion to intervene in this case requesting that the Court stay the SEC case

pending the final resolution of parallel criminal proceedings against Defendants Signore and Schumack and others. [DE 75]. The USAO did not request that the Court stay the instant Receivership. On June 17, 2014, the Court granted the USAO's motion, stayed the SEC matter, and ordered the Receiver to continue to carry out the Receivership Order. [DE 98]. Specifically, the Receivership Order instructs the Receiver, among other things, to:

Take immediate possession of all property, assets and estates of every kind of JCS and T.B.T.I., whatsoever and whosoever located belonging to or in the possession of JCS and T.B.T.I., including but not limited to all offices maintained by JCS and T.B.T.I., rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of JCS and T.B.T.I., wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court.

[*Id.* at ¶ 1]. The Receivership Order also provides that “title to all property, real or personal, all contracts, rights of action, and all books and records of [the Receivership Entities] and their principals, wherever located within or without this state, is vested by operation of law in the Receiver.” [*Id.* at ¶ 17].

The Receiver and his professionals have made substantial efforts to garner interest in the Receivership Estate's assets from potential purchasers. [DE 151 at ¶ 11]. “As a result of the Receiver's efforts, he has conditionally entered into an Asset Purchase Agreement (the ‘APA’) to sell, grant, transfer, assign, and convey (‘sell’) the majority of the non-cash assets remaining in the Estate to Atomic Paintball, Inc. a/k/a Atomic World Media (‘Buyer’).” [*Id.* at ¶ 12]. The Receiver believes “the purchase price in the APA, which is \$1,536,971.75, is reasonable, represents fair value for the property, and is in the Estate's best interests.” [DE 151 at 2].

Defendant Joseph Signore opposes the Motion on the grounds that: (1) “it is premature to liquidate the Receivership Assets until Mr. Signore's criminal action is tried and there has been

final adjudication of whether Mr. Signore is liable for any violation of the law;” (2) “the Receiver has failed to comply with the statutory requirements for a sale of receivership assets and is instead seeking authorization to sell the assets of the receivership entities at a fire sale price to a purchaser that has ties to a former client of the Receiver’s law firm and a former consultant to Defendant JCS Enterprises;” (3) “the Receivership Assets are material exculpatory evidence needed for Mr. Signore’s criminal defense;” and (4) “should Mr. Signore ultimately prevail in this litigation, he cannot be adequately recompensed by whatever cash proceeds the Receiver obtains in the sale and will suffer irreparable and permanent harm.” [DE 157 at 2-3].

In Reply, the Receiver contends that “Defendant [Signore] now makes numerous unverified factual allegations in an attempt to support four (4) flawed arguments . . . . Most troubling are Defendant Signore’s repeated, unsupported factual assertions that JCS and Gee Bo were ‘legitimate business operations,’” when neither had “any meaningful source of incoming revenue,” and were utilized “to operate a Ponzi scheme.” [DE 176 at 2, 7]. The Receiver argues that the Court should reject each of the Defendant’s arguments for the following reasons:

First, this Court may order the Receiver’s approval of the auction and sale of Receivership assets at any time irrespective of the timing of Defendant’s pending criminal and civil fraud cases. Second, contrary to the Defendant’s assertion, the Receiver has not failed to comply with the statutory requirements for the sale of receivership assets. Third, Defendant Signore will not be denied due process in his criminal trial if the Court approves the requested relief. Finally, regardless of whether the Defendant ultimately prevails in this SEC civil enforcement case and in his parallel criminal case, the proposed auction and sale will preserve value for all court-approved creditors.

[DE 176 at 3]. The Securities and Exchange Commission “fully concurs with the authorization the Receiver seeks.” [DE 177 at 1].

## **II. DISCUSSION**

The court appointing the receiver is granted wide discretion in setting the terms and conditions for judicial sales. The discretion granted in connection with the sale of assets is consistent with the broad discretion accorded to the court sitting in equity in receivership proceedings to make orders concerning the administration and supervision of the estate that will promote equity, efficiency, and cost-effectiveness in the estate's administration. *See generally, SEC v. Elliot*, 953 F.2d 1560, 1566 (11th Cir. 1992).

Defendant Signore first argues that "it is premature to liquidate the Receivership Assets until Mr. Signore's criminal action is tried and there has been final adjudication of whether Mr. Signore is liable for any violation of the law." As the Receiver notes:

Defendant's criminal trial, . . . may not commence on February 2, 2015 because one of his co-defendants was severed from the case, has no bearing on the Receivership Order. . . . Regardless of the resolution of his criminal trial (and any subsequent appeals), the stay on this action will presumably be lifted in the future and the SEC's case (including any trial and appeals) will likely extend far more than a year.

[DE 178 at 3]. By then, the Receiver continues, "the potential buyer will be long gone, the assets will have significantly (or completely) diminished in value, and the Estate will have spent an enormous amount of its funds, which would otherwise be available for court-approved creditors, to pay on-going carrying costs to store the assets." [*Id.* at 3-4]. The Court agrees that given the depreciating value of some of the assets, the relief the Receiver seeks is not premature and is well within the broad discretion granted to him by the Receivership Order [DE 18] to maximize the value of the estate for the benefit of the aggrieved investors.

Defendant Signore also argues that "the Receiver has failed to comply with the statutory requirements for a sale of receivership assets and is instead seeking authorization to sell the assets of the receivership entities at a fire sale price to a purchaser that has ties to a former client of the Receiver's law firm and a former consultant to Defendant JCS Enterprises." [DE 157 at

2]. Specifically, Signore states that it appears that the Receiver has only obtained one appraisal on the tangible assets that were discovered in the offices of JCS and Gee Bo, although the Receiver “is required by statute to obtain three appraisals unless the court orders otherwise.” [*Id.* at 7]. Pursuant to 28 U.S.C. §§ 2001 and 2004, after all interested parties receive notice and a hearing, “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.” Section 2001(b) expressly states:

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. . . .

28 U.S.C. § 2001(b). While Section 2001 governs the sale of realty, Section 2004 provides that “[a]ny personalty sold under any order or decree of any court of the United States shall be sold in accordance with section 2001 of this title, *unless the court orders otherwise.*” 28 U.S.C. § 2004 (emphasis added). As the Receiver notes, “Congress drafted § 2004 to permit courts to depart from § 2001, which governs the sale of real property, and order that the sale of personalty be administered ‘otherwise,’ including without three appraisals.” [DE 176 at 4]. Here, the overbid and auction procedures, as well as the sale of the assets through an Asset Purchase Agreement, are expressly conditioned on Court approval. Given that under the auction procedures set forth in the APA, anyone may participate, that the Receiver has been widely advertising the sale, and that nothing in the record suggests a defect in the one appraisal that was performed, the Court finds deviation from § 2004 to be acceptable in this instance.

Turning to Defendant Signore’s final argument that selling the assets would deny him due process, the Receiver alleges that he “has granted nearly all of Defendant Signore’s requests

for access to unprivileged information so as not to impede his criminal defense.” Having reviewed the Motion and the record in this case, there is no indication that this sale would deny Defendant Signore his due process rights. As the Court finds granting the Motion to be in the Receivership Estate’s best interests, it is hereby

**ORDERED AND ADJUDGED** as follows:

1. The Receiver’s Verified Motion for Entry of an Order Authorizing the (1) Asset Purchase Agreement, Including the Overbid and Auction Procedures Consisting of a Break-Up Fee and Expense Reimbursement; (2) Form and Manner of Notice of Sale, Bidding Procedures, and Auction; and (3) Sale of the Receivership Estate’s Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests [DE 151] is **GRANTED**;
2. The Asset Purchase Agreement (“APA”), including the overbid and auction procedures consisting of a break-up fee and expense reimbursement (Exhibit 1 to the Sales Procedures Motion), is approved;
3. The form and manner of notice of the sale, bidding procedures, and auction (Exhibit 2 to the Sales Procedures Motion) is approved;
4. Appraisals are not necessary under 28 U.S.C. §§ 2001 and 2004 in light of the Receiver’s efforts in marketing the Assets, the ability for qualified bidders to make offers at a public auction, and the notices provided;
5. The Receiver is relieved from the statutory requirements under 28 U.S.C. §§ 2001 and 2004 as the Court orders otherwise as herein.
6. The Auction as described in the APA shall commence and take place on or before **February 20, 2015** at the offices of Sallah Astarita & Cox, LLC, 2255 Glades

Road, Ste. 300E, Boca Raton, FL 33431 pursuant to the terms and conditions of this Order;

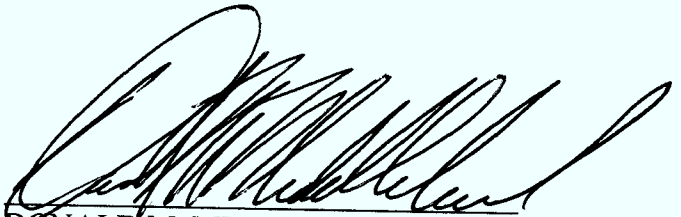
7. Except as otherwise provided in the APA or this Bid Procedures Order, the Receiver reserves the right, as he may reasonably determine to be in the best interests of the Receivership Estate to: (a) determine which bidders are pre-qualified bidders, other than the Buyer; (b) determine which bids are qualified Overbids, other than Buyer's bid in the APA; (c) determine which qualified Overbid is the highest and best Overbid and which is the next highest and best Overbid; (d) reject any Overbid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Overbid Procedures or (iii) contrary to the best interests of the Receivership Estate; (e) elect to sell the Assets at the Auction to one or more bidders if each is a qualified Overbid and the aggregate purchase price would constitute a qualified Overbid and a higher and better bid than the APA, and (f) adopt and modify rules for bidding at the Auction that will better promote the goals of the bidding process and are not otherwise inconsistent with any order of the Court of the Overbid Procedures, as determined by the Receiver;
8. The Receiver is authorized to sell to the Successful Bidder at the Auction on the terms and conditions set forth in such Successful Bidder's offer, and authorizing the Receiver to sell to the next higher Overbidder, on the terms and conditions set forth in such Overbidder's offer or the APA, in the event that the sale to the Successful Bidder fails to close;
9. The Receiver is authorized to convey, transfer and assign the Assets to the Successful Bidder;



10. The Receiver is authorized and empowered to take such steps, incur and pay such costs and expenses from the Receivership Estate, and do such things as may be reasonably necessary to implement and effect the terms and requirements of this Bid Procedures Order; and

11. The Receiver's Request for a Hearing on the Motion [DE 152] is **DENIED AS MOOT.**

**SO ORDERED** in Chambers at West Palm Beach, Florida this 5 day of January, 2015.



DONALD M. MIDDLEBROOKS  
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record