

Authorizing Expedited Discovery and Granting Other Emergency Relief (the “Asset Freeze”). Thereafter, at the preliminary injunction hearing on December 13, 2005, the Court entered its Agreed Order of Preliminary Injunction and other Equitable Relief as to Defendants Travis Correll & Company, Inc., Net Worth Group, Inc., and TNT Office Supply, Inc., and Relief Defendants Banner Shield, LLC, Hospitality Management Group, Inc., Creative Wealth Ventures, LLC and JTA Enterprises (“TNT Preliminary Injunction”).

1.3 Pursuant to the authority set forth in the Receiver Order, the Receiver has sold some of the assets of Defendant TNT Office Supply Co., Inc., (“TNT”) to American Business Solutions (“ABS”). ABS is a corporation owned by previous employees of TNT. At the time that the Receiver took possession of the assets of TNT, the Receiver learned that Defendant Gregory W. Thompson (“Thompson”) had previously commenced negotiations with the individuals who ultimately became ABS, prior to December 7, 2005. On January 13, 2006, the sale of some of TNT’s assets to ABS pursuant to the Receiver’s authority under the Receiver Order, closed in San Antonio. At the same time, the Receiver entered into an earnest money contract with ABS (the “Contract”) for the sale of the physical building of TNT, generally described as Lot 20, Block 38, NCB 13494, 281 North Park Subdivision, and a 0.109 acre tract of land being out of Lot 13, Block 38, NCB 13494, Beacon Circle Industrial Subdivision, both in the City of San Antonio, Bexar County, Texas, and commonly known as 311 and 313 North Park Blvd., San Antonio, Texas (the “Property”). A true and correct copy of the Contract is attached hereto as Exhibit “A” and incorporated by reference herein for all purposes. ABS originally proposed to purchase the Property for \$285,000.00. As can be seen at Exhibit “A”, however, by amendment dated March 8, 2006, ABS increased the purchase price to \$300,000.00. Additionally, ABS has agreed to extend the time it will collect TNT’s trailing receivables (which it

was originally collecting as part of a partial asset sale to ABS) from 60 days until the receivables are either all collected, or the parties agree that the remaining receivables are not collectable.

1.4 As the court is aware, 28 U.S.C. § 2001(b) requires three appraisals of real property in order to proceed to a private sale. The Bexar County Appraisal District has appraised the Property as having a value of \$314,000.00. In addition, the Receiver has secured a Broker's Opinion of Market Value ("BOMV") of the Property, which sets the market value at \$425,000.00. A true and correct copy of the BOMV is attached hereto as Exhibit "B" and is incorporated by reference herein, for all purposes. Additionally, ABS has obtained an appraisal of the Property. The appraisal was conducted by Southwest Appraisal Group, LLC, and reflects the market value of the Property as being \$355,000.00. A true and correct copy of the buyer's appraisal is attached hereto as Exhibit "C". Finally, the Receiver obtained an appraisal of the Property from Stouffer & Associates. A true and correct copy of this appraisal is attached hereto as Exhibit "D" and incorporated by reference herein for all purposes. This appraisal sets the market value of the Property as \$385,000.00.

1.5 Based upon the average of the three appraisals already obtained, the market value of the Property is \$388,333.34. 28 U.S.C. § 2001(b) requires that any private sale be for no less than two thirds of the appraised value of the property. Two thirds of this value would be \$260,183.34. Since the Contract price is \$300,000.00, plus valuable services to be provided to the Receivership Estate in the way of collection activities (not quantified but valuable nonetheless), at closing the Receivership Estate should realize (after closing costs and prorated taxes) approximately \$285,000.00, well in excess of the statutory requirement for completing a private sale. The Property has not been listed on the market by a listing agent. Accordingly, the estate is avoiding real estate commissions which would equal approximately \$18,000.00. Additionally, the Property has roof leaks and an antiquated HVAC system in need of repair/replacement. ABS, however, is willing to

purchase the Property, “as is, where is, and with all faults”, effectively relieving the Receivership Estate from any potential liabilities for any defects in the Property. Accordingly, the Receiver, believes that the sale of this Property, consistent with the terms of the Contract, is in the best interest of the Receivership Estate.

1.6 As part of his duties, and pursuant to 28 U.S.C. § 2001(b), the Receiver requests that the court approve the Contract and authorize the Receiver to proceed to sell the Property¹, free and clear of all liens, claims and encumbrances, by virtue of a private sale. Pursuant to the requirements of 28 U.S.C. § 2001, the Court must authorize the Agent to hire appraisers. In the interest of saving time, this has already been done. Accordingly, the Receiver requests that the Court order the Receiver to pay the appraisers out of the closing proceeds of the sale. Pursuant to 28 U.S.C. § 2001(b), the time, date and location of the hearing, must be advertised for ten days in San Antonio, prior to the hearing and closing of the sale. The Earnest Money Contract seeks to close on March 31, 2006. Accordingly, the Receiver requests that the Court further order the Receiver to advertise the terms of this sale consistent with the foregoing and set a hearing for the approval and closing of the Contract.

II.

ARGUMENTS AND AUTHORITIES

2.1 The ultimate purpose of the Receiver’s appointment is to provide a vehicle through which assets can be held, and preserved to make a potential fund for the payment of the defrauded investors who are the victims of the Ponzi scheme described in the Complaint. Allowing the

¹Subject to Court approval which will be sought at an evidentiary hearing, to be set by the court, pursuant to this motion.

Property to be sold by virtue of a private sale will both further and expedite the process. It will also allow the Receivership Estate to avoid ongoing liabilities for taxes, insurance, and maintenance.

2.2 A district court's power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad. *SEC v.*

Hardy, 803 F.2d 1034, 1038 (9th Cir. 1986). It is a recognized principle of law that the district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership.

SEC v. Lincoln Thrift Association, 577 F.2d 600, 606 (9th Cir. 1978). See *SEC v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982)(court overseeing a receivership is accorded "wide

discretionary power" in light of "the concern for orderly administration"). A primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district

court for the benefit of creditors. See *SEC v. Wencke (Wencke II)*, 783 F.2d 829, 837 n.9 (9th Cir. 1986).

2.3 To guide courts in this purpose, 28 USA § 2001 governs the sale of real property by order of court by both public and private sale. Subsection (a) sets out the terms of a public sale and

Subsection (b) sets out the procedure for a private sale. Subsection (b) provides as follows:

After a hearing, of which notice to all 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....No private sale shall be confirmed at a price less than two-thirds of the appraisal 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 (emphasis added).

Taken in its entirety, Section 2001 provides safeguards to prevent the sale of realty through the use of unfair price or value procedures.

2.4 The district court has wide discretion in judging whether a sale is fair in terms and result and serves the best interests of the estate. *Fleet National Bank v. H&D Entertainment, Inc.*, 96 F.3d 532 (1st Cir. 1996), citing *United States v. Peter*, 777 F.2d 1294, 1298 n.6 (7th Cir. 1985) and *United States v. Branch Coal*, 390 F.2d 7, 10 (3rd Cir.), cert. Denied, 391 U.S. 966, 88 S.Ct. 2034 (1968). The court has broad discretion in setting the terms of conditions of a sale under 28 USC §2001. *United States v. Hundwardsen*, 39 F.Supp.2d 1157 (N.D. Iowa 1999), citing *United States v. Branch Coal Corp.*, 390 F.2d 7, 10 (3rd Cir.), cert. Denied, 391 U.S. 966, 88 S.Ct. 2034 (1968); see *United States v. Garcia*, 474 F.2d 1202, 1206 (5th Cir. 1973). The court must decide whether, based on the record made by the parties, the best interest of the estate will be served by a public or a private sale. *Id.* However, section 2001(b) limits the Receiver's ability to sell property at a private sale for an unfair price by setting in place appraisal procedures and acceptable price limits. *United States v. Stonehill*, 83 F.3d 1156 (9th Cir. 1996). Section 2001 "contemplates compliance with certain procedures designed to protect the best interest of the estate" *Tanzier v. Huffines*, 412 F.2d 221 (3rd Cir. 1969).

2.5 In general, the court has broad discretion to set the terms of a public sale; whereas it must generally follow the procedures in place for a private sale. See *Tanzier v. Huffines*, 412 F.2d 221 (3rd Cir. 1969). In cases involving the private sale of realty, the courts have consistently adhered to the procedures outlined in section 2001(b). See *United States v. Garcia*, 474 f.2d 1202 (5th Cir. 1973)(court scrupulously adhered to statutory requirements of section 2001 for judicial sale of realty); *U.S. v. "A" Manufacturing Company*, 541 F.2d 504 (5th Cir. 1976)(affirming court

confirmation of realty sale for greater price than highest appraisal value). Consequently, broad discretion of the court does not include bypassing the specific procedures set out in section 2001(b).

2.6 In order for a receiver to sell property in a private sale he must first obtain permission from the Court to do so and then he must comply with 28 U.S.C. §2001, which provides in part, that the Court appoint three disinterested persons to appraise the property and that confirmation of sale of the property be at a price no less than two-thirds of the appraised value. In addition, the statute provides that the terms of the sale shall be published in a newspaper of general circulation as the Court directs at least ten (10) days before confirmation of the sale. The Receiver intends to publish the terms of the sale in the official publication for legal notices in San Antonio.

2.7 Accordingly, the Receiver respectfully requests that he be authorized to market the Property for private sale. As noted above, three appraisals have already been obtained, and the Receiver requests that the Court ratify these appraisers as being acceptable to the Court. Additionally, the Receiver prays that a hearing, near the closing date, be set. The Contract is presently set for closing on March 31, 2006. Accordingly, the Receiver requests the Court grant this motion without hearing, and that the Court set a hearing to confirm the sale of the Property during the week of March 20, 2006, and that at said hearing, the Court authorize the Receiver to proceed to close the Contract.

WHEREFORE, PREMISES CONSIDERED, the Receiver prays that the court ratify the Receiver's action in entering into the Contract at Exhibit "A", set a hearing for a confirmation of the sale during the week of March 20, 2006, pursuant to 28 U.S.C. §§2001 and 2002, and for such other and further relief as the Court may deem appropriate under all fo the circumstances.

Respectfully submitted,

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Case 4:05-cv-00472-RAS Document 49-1 Filed 03/09/2006 Page 8 of 9

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ATTORNEYS FOR S. GREGORY HAYS,
RECEIVER

CERTIFICATE OF CONFERENCE

I certify that on March 7, 2006, I conferred with counsel for TNT Office Supply and Greg Thompson, Scott R. Baker with regard to the relief sought herein. No agreement could be reached, so this matter is submitted to the court for resolution.

/s/ Clark B. Will

Clark B. Will

CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2006, true and correct copy of the foregoing document was served on the following parties:

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Case 4:05-cv-00472-RAS Document 49-1 Filed 03/09/2006 Page 9 of 9

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