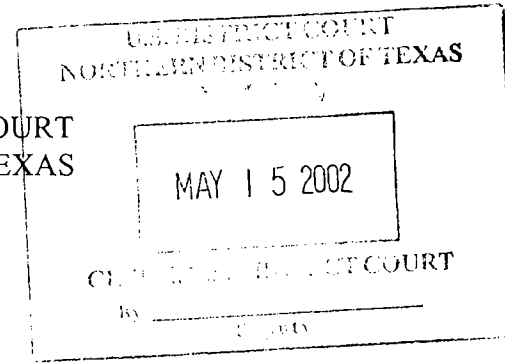


IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

VS.

FUNDING RESOURCE GROUP, a/k/a FRG Trust, et al,

Defendants,

and

HOWE FINANCIAL TRUST, an Indiana corporation,
et al,

Defendants Solely for Purposes
of Equitable

CIVIL ACTION NO.
3:98-CV-2689-M

**RECEIVER'S UNOPPOSED MOTION TO SELL REAL PROPERTY AT PRIVATE
SALE FREE AND CLEAR OF ALL LIENS, CLAIMS AND
ENCUMBRANCES AND BRIEF IN SUPPORT
(MAIN STREET)**

TO THE HONORABLE JEFF KAPLAN, UNITED STATES MAGISTRATE JUDGE:

COMES NOW, Michael J. Quilling ("Receiver"), and files his Unopposed Motion to Sell Real Property at Private Sale Free and Clear of all Liens, Claims and Encumbrances and Brief in Support (Main Street) and in support of such would respectfully show unto the Court as follows:

Background Facts

1. On November 13, 1998, the United States Securities and Exchange Commission ("SEC") initiated these proceedings and, in connection therewith, sought the appointment of a receiver. On November 13, 1998, the Court issued an Order appointing Michael J. Quilling Receiver as to the Defendants and the Equity Relief Defendants named in the Complaint at that time

("Receivership Order"). One of the entities to which the Receivership Order applies is Howe Financial Trust ("Howe").

2. Subsequent to his appointment, the Receiver has taken control and possession of certain real property in which Howe has an interest located in Elkhart County, Indiana, having a street address of 1721-1725 South Main Street, Elkhart, Indiana, more particularly described in Exhibit "1" attached hereto (the "Property").

3. On May 17, 2001 the Receiver filed his Unopposed Motion to Sell Property at Private Sale and to Appoint Appraisers and Brief in Support. By Order dated June 22, 2001, the Court authorized the Receiver to begin efforts to sell the Property through a private sale.

4. The Receiver has received an offer from North East Real Estate, LLC to purchase the Property for \$50,000.00, which the Receiver has accepted subject to court approval. The written contract for sale is the result of substantial arms-length negotiation between the Receiver and the proposed buyer. Pursuant to the Contract for Sale, real estate commissions and normal closing costs are to be deducted from the gross sale proceeds at closing.

5. The Property is currently occupied by Jimmy Zayas. Mr. Zayas has been paying the Howe Financial Trust ("Howe") receivership estate rent on a monthly basis. In addition, Mr. Zayas has claimed that he has an agreement with Howe to purchase the property. However, despite numerous and repeated requests by the Receiver to produce some evidence of this agreement, Mr. Zayas has failed to produce any documentation supporting his claim.

6. One of the investors in Howe, Nancy Sims, has claimed an interest in the property. Pursuant to this Court's Order, dated September 21, 2001, the net proceeds from the sale of the Property will be used to satisfy one portion of her claim against the Howe Receivership Estate.

Argument and Authorities

7. 28 U.S.C. § 2001 provides that a Receiver may sell property at private sale if certain conditions are satisfied. First, a sale must be for at least two-thirds of the appraised value as established by three disinterested persons appointed by the Court to appraise the Property. The appointment of those appraisers is the subject of the Receiver's Motion which was filed on May 17, 2001 and granted on June 22, 2001. Pursuant to that Order, the Receiver engaged the services of appraisers and each of them have provided written appraisals, attached hereto as Exhibit "2", to the Receiver. The average amount of the three appraisals is \$64,866.67. Accordingly, the proposed sale price (\$50,000.00) is well within the allowable two-thirds range.

8. The Court must also find that the proposed sale is such that the best interests of estate will be conserved thereby. This condition is easily satisfied because of the proposed sale. A sale now will allow future maintenance and insurance costs as well as taxes to be avoided by the estate.

9. The Court cannot confirm the private sale until the terms of the sale are published in a newspaper of general circulation. The Receiver is advised that the newspaper of general circulation in the area is *The Elkhart Truth*. The Receiver requests that the Court direct and order that the terms of the proposed private sale of the Property be published in *The Elkhart Truth* for 10 days. In that regard, the Receiver proposes to use the language in the form set forth in Exhibit "3" attached hereto.

10. 28 U.S.C. § 2001 also provides that the sale cannot be approved if a bona fide offer is received which is at least 10% more than the proposed published sale price. The Receiver requests that if no such increased offer is received after publication of the proposed sale that he be allowed to close the proposed sale.

11. The district court has wide discretion in judging whether a receiver's 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 foreclosed 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).

12. 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)(federal statute expresses preferential course to be followed in connection with a court authorized sale of *personal property* and district court should not order otherwise except *under extraordinary circumstances*). 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). To bypass the stringent requirements of 2001(b), the court can order a public sale under 2001(a) and set the terms and conditions as it so desires.

WHEREFORE, PREMISES CONSIDERED, the Receiver respectfully prays that upon final hearing and consideration of this matter that the Court approve a private sale of the real Property located at 1721-1725 South Main Street, Elkhart, Indiana, free and clear of all liens, claims and encumbrances, and that the Receiver be authorized to publish the proposed sale in *The Elkhart Truth*, and for such other and further relief, general or special, at law or in equity, to which the Receiver may show himself to be justly entitled.

Respectfully submitted,

QUILLING, SELANDER, CUMMISKEY
& LOWNDS, P.C.
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By: 

Michael J. Quilling, SBN 16432300
D. Dee Raibourn, III, SBN 24009495

ATTORNEYS FOR RECEIVER

CERTIFICATE OF CONFERENCE

I have conferred with Robert Brunig of the SEC regarding the relief requested in this motion and he does not oppose the relief requested.



D. Dee Raibourn

CERTIFICATE OF SERVICE

I certify that on the 15th day of May, 2002, a true and correct copy of the foregoing was served via United States mail, first-class, postage pre-paid, on:

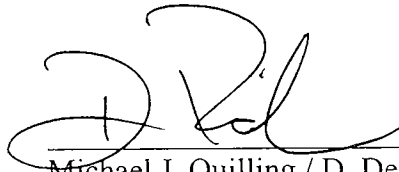
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