

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

SECURITIES AND EXCHANGE §
COMMISSION, §
§
Plaintiff, §
§ Civil Action No. 3:07-CV-1188-D
VS. §
§
AMERIFIRST FUNDING, INC., §
et al., §
§
Defendants. §

MEMORANDUM OPINION
AND ORDER

The court-appointed temporary receiver ("Receiver") has applied to the court for approval to sell six tracts of land within the receivership estate ("Six Tracts").¹ Only defendant Dennis W. Bowden ("Bowden") objects to the proposed sale. For the reasons that follow, and subject to compliance with the publication requirement addressed below, the court grants the application.²

I

The Receiver has retained the services of a real estate appraiser, Crosson Dannis, Inc. ("Crosson Dannis"), to appraise the

¹The Six Tracts are located at 633 W. Division Street, Arlington, Texas 76011; 815 Bayonne Street, Dallas, Texas 75212; 621 Fabrication Street, Dallas, Texas 75212; 717 Singleton Blvd., Dallas, Texas 75212; 1616 Singleton Blvd., Dallas, Texas 75212; and 2720 Sylvan Avenue, Dallas, Texas 75212.

²Although for purposes of this decision the court need not set out the background facts of this receivership proceeding, they can be found in sources such as *SEC v. AmeriFirst Funding, Inc.*, 2008 WL 282275 (N.D. Tex. Feb. 1, 2008) (Fitzwater, C.J.) (civil contempt decision).

Six Tracts. The Receiver has also entered into two sales contracts for the sale of the Six Tracts. The sales price of these two contracts—\$2,550,000—exceeds by more than \$800,000 Crosson Dannis' appraised value of the Six Tracts. Bowden objects to the proposed sale, contending that the sales price is \$461,000 below market value.³ No other interested party or person affected by the sale has objected to the application.

II

The court has authority to authorize the sale of real estate within the receivership estate. *SEC v. Am. Capital Invs., Inc.*, 98 F.3d 1133, 1144-45 (9th Cir. 1996), *abrogated in part by Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83 (1998)). But this power is limited by 28 U.S.C. § 2001. See *id.* at 1137 (applying § 2001 to the receiver's proposed sale of real estate within receivership estate in SEC enforcement action); *Kirkland v. Sunset Bay Club, Inc.*, 2006 WL 3627557, at *2 (M.D. Fla. Dec. 11, 2006) (same).

Section 2001(b), which governs court-ordered private real estate sales, provides:

After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or

³Unlike the Receiver's application, Bowden does not submit any expert opinions concerning the fair market value of the Six Tracts. Instead, he bases his opinion of their fair market value on his own experience buying and selling real estate in the relevant areas.

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 interest of the estate will be conserved thereby. 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. 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 the conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

Bowden's opposition to the Receiver's proposed sale of the Six Tracts would ordinarily entitle him to a hearing on the issue of the fair market value of the Six Tracts. But the court perceives no need for a hearing in this case, because even if the fair market value of the Six Tracts is what Bowden asserts it to be in his opposition brief—\$3,011,000—the proposed sales price for the Six Tracts is 84.7% of fair market value, well above the two-thirds statutory minimum.

Moreover, based on the evidence submitted in the Receiver's evidentiary appendix, the court finds that the proposed sale of the Six Tracts for \$2,550,000 is in the best interests of the receivership estate. Although Bowden challenges Crosson Dannis' ultimate opinion of the fair market value of the Six Tracts, he

acknowledges Crosson Dannis' qualifications and professionalism. Crosson Dannis concluded that the Six Tracts have a fair market value of \$1,744,000. Thus the proposed sales price is nearly 1½ times the expert appraisal. Furthermore, the Receiver has submitted evidence that the relevant taxing authorities have appraised the Six Tracts as being worth \$1,440,637.00. Bowden opposes the Receiver's evidence with his own, non-expert opinion that the Six Tracts are worth \$3,011,000.00. The court concludes that the Receiver's proposed sale of the Six Tracts for \$2,550,000 is in the best interests of the receivership estate.⁴

III


By filing his January 14, 2008 application for the sale of the Six Tracts, the Receiver has satisfied the requirement of § 2001(b) that all interested parties be given notice of the proposed sale before confirmation. The Receiver must also fulfill the last requirement of § 2001(b) and publish the terms of the proposed sale in a newspaper of general circulation, as the court directs, at least ten days before confirmation. The court therefore directs the Receiver to publish the terms of the proposed sale of the Six Tracts in *The Daily Commercial Record*. If after 10 days of such publication no bona fide offer is made that exceeds by 10% the

⁴Although § 2001(b) requires that there be three independent appraisals, because the proposed sales price of the Six Tracts is within two-thirds of what Bowden—the only party to oppose the Receiver's application—asserts they are worth, obtaining more appraisals is unnecessary.

current sales price of \$2,550,000, and the Receiver establishes this fact through a filing made with the court, the court will authorize the Receiver to proceed with the sale of the Six Tracts under the terms of the two sales contracts.

SO ORDERED.

March 11, 2008.



SIDNEY A. FITZWATER
CHIEF JUDGE