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Diane A. Thompson*

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**AMERICAN PENSION SERVICES, INC.,
a Utah Corporation and CURTIS L.
DeYOUNG, an individual,**

Defendants.

**RECEIVER'S SECOND MOTION AND
MEMORANDUM FOR AN ORDER
AUTHORIZING THE SALE OF REAL
PROPERTY HELD BY APS FOR THE
BENEFIT OF APS ACCOUNT
HOLDERS**

Case No.: 2:14-cv-00309-RJS-DBP

**Judge Robert J. Shelby
Magistrate Judge Dustin B. Pead**

Diane Thompson ("Receiver"), Court-appointed Receiver for American Pension Services, Inc. ("APS"), by and through undersigned counsel, hereby respectfully moves the

Court to authorize the sale of real properties held in four APS accounts to satisfy the loss allocation per the Receiver's Amended Modified Plan of Liquidation.

RELIEF SOUGHT AND GROUNDS FOR MOTION

By this Motion, the Receiver seeks Court approval to sell real property held by APS account owners (Account Numbers 5767, 6362, 8791, and 11342) through a sheriff's sale or public auction pursuant to 28 U.S.C. § 2001(a) and as described in the Court-approved Receiver's Amended Modified Plan of Liquidation ("Liquidation Plan") (Dkt. 458 and 458-1).

MOTION AND MEMORANDUM

On April 24, 2014, the Securities and Exchange Commission ("SEC") filed suit against APS and Curtis L. DeYoung, alleging, among other claims, that DeYoung, as president and CEO of APS, misappropriated over \$24 million of APS account owner funds from APS's master trust account. (Complaint (Dkt. 1), ¶ 1). That same day, the Receiver was appointed and tasked to promote the orderly and efficient administration of the Receivership Estate. (Order Appointing Receiver, Freezing Assets, and Other Relief (Dkt. 9) ("Receivership Order").

On February 27, 2015, the Court approved the Receiver's proposed Liquidation Plan. The Liquidation Plan provides that the loss in the total value of the APS Account Owners' assets shall be divided among the accounts on a pro rata basis, resulting in an approximate loss of ten percent (10%) to each account. Under the Liquidation Plan, if an Account Owner fails to pay a loss allocation and transfer to Equity Trust Company ("Equity") by December 31, 2015, the Receiver may take certain action, including any of the following: (1) resigning as administrator and issuing an IRS Form 1099-R for tax reporting of the distribution of the total balance of the account; (2) imposing a lien for the amount of the applicable loss allocation on IRA Account

Owner assets; (3) pursuing collection; or (4) liquidating account assets sufficient to meet the loss allocation requirement. (Liquidation Plan at p. 46).

The Receiver has carefully considered the costs associated with pursuing the liquidation of account assets of non-compliant IRA account owners and developed a plan for ensuring the greatest recovery to the Receivership Estate. At the time of this filing, there are fifty-three (53) accounts remaining at APS. Of the fifty-three (53) remaining accounts, four (4) are the subject of this motion, twenty-seven (27) will be the subject of future motions to be filed with the Court or are the subject of a motion filed concurrently herewith, seventeen (17) have been the subject of previous motions, two (2) are in the process of funding their loss allocation, and three (3) will be assigned by the Receiver as authorized in previous motions.¹

By this Motion, the Receiver seeks authorization to liquidate real property held by APS Account Numbers 5767, 6362, 8791, and 11342 through a sheriff's sale or public auction, as described in 28 U.S.C. § 2001(a), and after notice of the sale of real property has been given to account beneficiaries.

¹ The three (3) accounts to be assigned contain LLCs organized under the laws of Arizona, Colorado, and Michigan. In these particular states, judicial dissolution is available when a member files a motion in the court for the county in which the registered office of the LLC is located, and only when the LLC is unable to carry on business in conformity with the LLC articles of organization and operating agreement. ARIZ. REV. STAT. ANN. § 29-785 (2016) (West); COLO. REV. STAT. ANN. § 7-80-810(3) (West 2016); MICH. COMP. LAWS § 450.4802 (West 2016). Alternatively, in Colorado and Michigan, a judicial dissolution is available on the grounds that the LLC acted in an unlawful manner only upon application by the attorney general. COLO. REV. STAT. ANN. § 7-80-810(1) (West 2016); MICH. COMP. LAWS § 450.4803 (West 2016). Based on the statutory requirements for a judicial dissolution, the Receiver believes it is more economically sound to resign as administrator and assign these assets to the clients with the accompanying tax documents.

BACKGROUND FACTS

1. On August 22, 2014 the Receiver filed a motion for Court approval of the Liquidation Plan.
2. The Receiver provided notice of the Liquidation Plan to all Account Owners by mail, e-mail, and posting on the Receivership website at www.apsreceiver.com. (Dkt. 221; Dkt. 316 at p. 2).
3. The Receiver responded to a significant number of written objections from APS account owners regarding the proposed Liquidation Plan. (Dkt. 425 at p. 10). The Receiver filed a summary of these objections with the Court on November 11, 2014. (Dkt. 316). The Receiver then filed a response to APS account owner objections with the Court on December 3, 2014. (Dkt. 356).
4. The Court held a hearing on the Receiver's proposed Liquidation Plan on December 17, 2014, and afforded APS account owners the opportunity to be heard on the proposed Liquidation Plan in oral argument.
5. This Court approved the Liquidation Plan on February 27, 2015. (Dkt. 458). The Receiver provided notice of the approved Liquidation Plan to each Account Owner by mail, e-mail, and posting on the APS Receivership website at www.apsreceiver.com.
6. The Liquidation Plan required that Account Owners provide a loss allocation equal to ten percent (10%) of the total value of their accounts as of April 24, 2014. (Dkt. 458-1 at p. 44). This loss allocation applied to clients regardless of the form in which their assets within their account were held. (*Id.*). Account Owners were required to fund their loss allocation by May 27, 2014. (*Id.*).

7. The Liquidation Plan allowed clients with illiquid assets to preserve those assets by funding their loss allocation by direct payment of the loss allocation to the Receiver. In order to resolve potential tax reporting issues, the Receiver also sought a Private Letter Ruling (“PLR”) from the IRS. (Liquidation Plan at 40–41). Clients that were awaiting the outcome of the PLR were allowed to defer their loss allocation until a determination on the PLR was made. (*Id.*).

8. Furthermore, the Liquidation Plan authorized the Receiver to take certain actions if the Account Owner failed to fund their loss allocation. (Liquidation Plan at p. 46). Under the Liquidation Plan, the Receiver is authorized to: (1) resign as administrator and issue an assignment of assets and IRS Form 1099-R reporting a full distribution based on the recorded value of account assets of April 25, 2014; (2) impose a lien on APS account owners’ assets; (3) pursue collection from APS account owners who refuse to comply with the Liquidation Plan; (4) liquidate assets sufficient to meet the loss allocation requirement; or (5) any combination of the above. (*Id.*).

9. On July 2, 2015, the IRS declined to issue a PLR for procedural reasons. (Dkt. 592 at p. 4). As a result, the Receiver proposed, and this Court approved, an alternative method for reporting a cash payment to fund a loss allocation and requiring all remaining APS account owners to transfer their accounts by September 15, 2015. (Dkt. 592).

10. The Liquidation Plan recognized that some APS account owners required additional time to liquidate or otherwise fund a loss allocation. (Liquidation Plan at p. 45). Thus, the Liquidation Plan required all loss allocations be funded by December 31, 2015. (*Id.*).

11. On February 10, 2016, the Receiver filed a motion seeking to force transfer certain remaining APS account owners. (Dkt. 705). For that motion, the Receiver evaluated over 1,100 APS accounts and determined that, based on a cost-benefit analysis, 786 accounts had loss allocation amounts that did not justify the cost of liquidation and therefore transferred those accounts to the successor custodian. (*Id.*). The Court approved this motion on February 19, 2016, concluding that the transfer of these 786 accounts “would further implement the purpose and intent of the Liquidation Plan.” (Dkt. 720). Those APS account owners that were transferred without a loss allocation forfeited “any opportunity to participate in future recoveries” made by the Receiver. (*Id.*). The Receiver then transferred the 786 APS accounts.

12. The Receiver has taken actions permitted by the Liquidation Plan and subsequent Court orders to collect required loss allocation payments from noncompliant accounts, including sweeping accounts of cash, and liquidating foreign currency, gold, silver, coins, and brokerage accounts.

13. APS records contained limited information regarding certain assets. In an effort to ascertain additional information, and to evaluate whether liquidation of assets was justified from a cost-benefit standpoint, the Receiver issued subpoenas and a cover letter to remaining APS account owners. The subpoena and cover letter explained the APS account owners’ obligations to comply with the Liquidation Plan and other Court orders. The subpoenas requested a number of financial records and other documents related to the APS account owners’ assets.

14. The owner of Account Number 5767 is a resident of the State of Utah.

15. The owner of Account Number 5767 was served a subpoena at his residence on August 4, 2016. As of this filing, the owner of Account Number 5767 has not responded to the subpoena.

16. The owner of Account Number 6362 is a resident of the State of Utah.

17. The owner of Account Number 6362 was served at his residence on July 27, 2016. As of this filing, the owner of Account Number 6362 has not responded to the subpoena.

18. The owner of Account Number 8791 is a resident of the State of Idaho.

19. The owner of Account Number 8791 was served at her residence on May 12, 2016. The owner of Account Number 8791 has responded to the subpoena. After a review of the documents supplied with the subpoena, the Receiver believes the owner of Account Number 8791 has sufficient assets to fund her loss allocation.

20. The beneficiary of Account Number 11342 is a resident of the State of Texas.

21. The beneficiary of Account Number 11342 was served a subpoena at his residence on October 17, 2016, and has not responded to the subpoena.

22. In addition to service of a subpoena and cover letter, the beneficiaries of Account Numbers 5767, 6362, 8791, and 11342 were mailed and e-mailed a copy of the Liquidation Plan on or about February 27, 2015, and were provided notice of additional court orders via the Receivership website at www.apsreceiver.com.

23. Account Number 5767 holds seven pieces of real property located in Utah, Idaho, and Oklahoma with a reported aggregate value of \$207,578.73.² Account Number 5767 has a

² Account Number 5767 holds additional assets in addition to the promissory note. Those assets will be the subject of separate motions filed by the Receiver.

loss allocation of \$21,493.32 and owes \$3,042.96 in outstanding management fees. Real property can be liquidated to fund the loss allocation and outstanding management fees for Account Number 5767.

24. Account Number 6362 holds two pieces of real property in Utah with a reported aggregate value of \$15,226.26.³ Account Number 6362 has a loss allocation of \$13,557.48, has made partial payments totaling \$2,322.02, and owes \$0.00 in outstanding management fees. Real property can be liquidated to fund the loss allocation and outstanding management fees for Account Number 6362.

25. Account Number 8791 holds real property located in Arizona with a reported value of \$80,000.00.⁴ Account Number 8791 has a loss allocation of \$40,605.96, has made partial payments totaling \$6,477.04, and owes \$0.00 in outstanding management fees. Real property can be liquidated to fund the loss allocation for Account Number 8791.

26. Account Number 11342 holds real property located in Texas with a reported value of \$134,092.68. Account Number 11342 has a loss allocation of \$14,623.75, has made partial payments totaling \$7,894.51, and owes no management fees. Real property can be liquidated to fund the loss allocation for Account Number 11342.

27. The Receiver seeks to liquidate real property assets in Account Numbers 5767, 6362, 8791, and 11342 to fund the respective loss allocations and outstanding management fees for the accounts per the Liquidation Plan. (Liquidation Plan at p. 46).

³ Account Number 6362 holds additional assets in addition to the promissory note. Those assets will be the subject of separate motions filed by the Receiver.

⁴ Account Number 8791 holds additional assets in addition to the promissory note. Those assets will be the subject of separate motions filed by the Receiver.

28. The Receiver will incur fees and costs associated with the liquidation of the real property from APS Account Numbers 5767, 6362, 8791, and 11342.

ARGUMENT

I. The Receiver Has Authority to Sell Assets Within APS Accounts.

The district court has broad powers and wide discretion to determine relief in an equity receivership. *SEC v. Vescor Capital Corp.*, 599 F.3d 1189, 1194 (10th Cir. 2010). “When a district court creates a receivership, its focus is to . . . achiev[e] a final, equitable distribution of the assets.” *Id.* The district court has authority to accomplish the goal of an equitable distribution, including the liquidation of assets from individual accounts. *See, e.g., In re Comm’r of Banks and Real Estate*, 764 N.E.2d 66, 86 (Ill. App. Ct. 2001); *see also SEC v. Bilzerian*, 378 F.3d 1100, 1103 (D.C. Cir. 2004) (holding a district court has personal jurisdiction over non-resident that holds property subject to receivership in another jurisdiction). Furthermore, no preference should be given to some account holders to the detriment of others. *See generally Cunningham v. Brown*, 265 U.S. 1 (1924); *Rosenberg v. Collins*, 624 F.2d 659 (5th Cir. 1980); *see also Reichert v. Fidelity Bank & Trust Co.*, 245 N.W. 808, 810 (Mich. 1932); *In re Comm’r of Banks and Real Estate*, 764 N.E.2d at 101; 5 Scott on Trusts § 519. This Court recognized the Receiver’s authority to “pursue collection from APS clients who refuse to cooperate with th[e] Liquidation Plan and, if necessary, liquidate the assets and deposit the client’s proportionate share of the loss allocation with the balance, if any, transferred to the Successor [custodian] on behalf of the APS client” when it approved the Receiver’s Liquidation Plan. (Plan of Liquidation at p. 46).

Pursuant to the Liquidation Plan, the Receiver now seeks approval from this Court to liquidate real property from Account Numbers 5767, 6362, 8791, and 11342 to satisfy the loss allocations and outstanding management fees for the respective accounts. Account Number 5767 has a loss allocation of \$21,493.32 and owes \$3,042.96 in outstanding management fees. Account Number 6362 has a loss allocation of \$13,557.48, has made partial payments totaling \$2,322.02, and owes \$0.00 in outstanding management fees. Account Number 8791 has a loss allocation of \$40,605.96, has made partial payments totaling \$6,477.04, and owes \$0.00 in outstanding management fees. Account Number 11342 has a loss allocation of \$14,623.75, has made partial payments totaling \$7,894.51, and owes \$0.00 in outstanding management fees. Real property can be liquidated in each of these accounts to fund the respective loss allocations and outstanding management fees.

The Receiver has reached out to each of the beneficiaries on numerous occasions to pay their loss allocations. The Receiver has obtained additional Court orders requiring these beneficiaries to pay their respective loss allocations and transfer their accounts. *See, e.g.*, Order Requiring All Remaining APS Account Holders to Transfer Within 30 Days (Dkt. 592). Despite the Receiver's numerous communications, each of the above account holders has failed to cooperate with the Receiver to resolve their loss allocation. Ultimately, the Receiver issued subpoenas to the beneficiaries of APS Account Numbers 5767, 6362, 8791, and 11342 in order to compel cooperation. Only one of the four beneficiaries responded to the Receiver's subpoena. While the beneficiaries of each of the accounts may believe they are being punished (and most assuredly, the beneficiaries are victims of Curtis DeYoung's misappropriation), the loss

allocation is the product of a lawful court order, and the beneficiaries are in violation of this Court's order. *See In re Comm'r of Banks and Real Estate*, 764 N.E.2d at 123.

The United States Code describes the procedure for selling real property assets. 28 U.S.C. § 2001(a). According to 28 U.S.C. § 2001(a), "Property in the possession of a receiver . . . appointed by one or more district courts shall be sold at public sale in the district wherein any such receiver was first appointed, at the courthouse of the county, parish, or city" where the property is located, "or on the premises" of the property. The Receiver seeks the approval of this Court to sell real property held within Account Numbers 5767, 6362, 8791, and 11342. Should this Court approve, the Receiver intends to hold a public sale or auction that will bring the highest and best value for the real property. The Receiver requests the Court grant the Receiver authority to sell the parcels of real property by sheriff's sale or public auction, whichever the Receiver determines will bring the highest and best value. Regardless of the method of sale, the Receiver will strive to obtain a minimum bid equal to the loss allocation and outstanding management fees owed by each of the respective accounts, and reasonable fees and costs associated with liquidating the properties in the respective accounts. Should a minimum bid not be obtained, the Receiver will strive to liquidate the assets for the highest and best value. The Receiver should be awarded her reasonable costs and fees associated with the liquidation of the real property assets as this Motion is necessary only because these account owners have completely disregarded this Court's orders. Furthermore, those clients that have willingly complied with this Court's orders should not be harmed by subsidizing the costs incurred by the Receiver in executing against non-compliant clients.

Should the Receiver elect to hold a sheriff's sale, the Receiver will follow the procedure for a sheriff's sale for the county in which she elects to conduct the sale. *See, e.g.*, UTAH CODE ANN. § 57-1-25. The typical process involves a payment of a fee to the sheriff's office, and providing the sheriff's office with a court order authorizing the sale, the amount due at the sale (a minimum bid), and a legal description of the property. *Id.* The sheriff's office will then publish notice of the sale in the newspaper and other public places. *Id.* Typically, notice is published three weeks prior to the sale.⁵ *Id.*

Alternatively, the Receiver seeks authorization to engage an auctioneer to publicize and conduct the sale of the real property. The Receiver has successfully used an auctioneer in this matter to liquidate other Receivership Assets. An auctioneer will publicize a notice of sale in both newspapers and online in an effort to maximize the number of potential purchasers.

The Receiver will deposit any funds from the liquidation of the assets into the respective APS accounts. Following the deposit to accounts, the Receiver will fund the loss allocation and outstanding management fees, as well as reasonable fees and costs associated with the liquidation of real property from the account. The loss allocation asset will be represented by a Contingent Repayment Agreement.⁶ (Plan of Liquidation at p. 44). As the opportunity to transfer the accounts to Equity Trust Company has expired, the Receiver will then resign as administrator of the account and distribute the Contingent Repayment Agreement and any excess

⁵ The Receiver will comply with any statutes applicable in the jurisdiction in which the property is sold, including any statutory timelines or additional notice requirements.

⁶ The Contingent Repayment Agreement will represent only the value of the loss allocation and will not include any management fees or reasonable fees associated with the liquidation of the account assets.

funds to the client with a letter explaining the resignation and the account holder's right to rollover the account assets. The client will be issued an IRS Form 1099-R for the amount of the distribution, which would include the face value of the Contingent Repayment Agreement.

II. Due Process Has Been Afforded to the Account Holder.

“Due process requires notice and an opportunity to be heard.” *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). Due process ensures a “claimant[’s] interests [are] adequately safeguarded.” *Id.* The beneficiaries of each of the accounts have been, and will be, afforded due process.

In *In re Comm’r of Banks and Real Estate*, a Receiver sought to dissolve and liquidate a custodian of investment trust assets. 764 N.E.2d 66 (Ill. App. Ct. 2001). In affirming the Receiver’s authority to liquidate assets from individual trust accounts, the Court addressed due process considerations, and found that account holders had “both actual and constructive notice . . . in the form of publication of pleadings, orders, the receiver’s recommendations, etc.” on the receiver’s website. *In re Comm’r of Banks and Real Estate*, 764 N.E.2d at 92. The Court noted that each of the account holders had been mailed notice of the receivership, which advised account holders that “a substantial portion of cash . . . was missing and it was the priority of the receiver to determine the amount of money missing and how the beneficiaries would be affected by the missing cash,” and that notice was posted to the receiver’s website. *Id.* The Court then noted that account holders received notice of other court filings by mail and website postings, and that account holders “were afforded ample opportunity to participate in the court’s proceedings,” including the ability to “file extensive pleadings . . . including objections and

suggestions . . . to the receiver’s initial recommendation[s], . . . objections and oppositions to the proposed final order,” and other filings. *Id.* at 93–94.

In addition to the initial notice of the Receivership, APS account owners were mailed notice of the Receiver’s proposed Liquidation Plan and afforded an opportunity to make suggestions and objections. APS account owners were also mailed the Court-approved Liquidation Plan. Additionally, the Receiver has posted all substantive pleadings to the Receiver’s website at www.apsreceiver.com. As to each of the Account Numbers 5767, 6362, 8791, and 11342, the Receiver has issued and served subpoenas with cover letters explaining the loss allocation and the need to comply with the Court’s orders. The cover letter to the subpoena explicitly stated that each client was “in violation of Court orders by failing to pay [their] loss allocation.” The cover letter also stated that, pursuant to the Liquidation Plan, the Receiver may take certain actions, including “liquidat[ing] assets sufficient to meet the loss allocation.”

Furthermore, upon approval of this Motion, the Receiver will post a copy of this Motion and the Court’s order to the Receivership website. The Receiver will also send each of the respective account owners a copy of this Motion, the Court’s order, and notice of the date of sale via certified mail or other verifiable delivery method to the address where each were served by subpoena. Clients seeking to redeem their real property and avoid a sale may do so five days before the date of sale. A cover letter will accompany the mailing of the Court’s order, this Motion, and notice of the sale date to each client explaining their redemption rights and the process for handling the accounting and distribution of any excess funds. Thus, each of the beneficiaries has been and will be afforded due process.

CONCLUSION

The Receiver requests that this Court approve the Receiver's request to liquidate real property assets from APS Account Numbers 5767, 6362, 8791, and 11342 through either a sheriff's sale or public auction, as authorized by statute and the Liquidation Plan.

DATED this 18th day of January, 2017.

/s/ Jeffrey D. Enquist

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct of copy of the foregoing **RECEIVER'S SECOND MOTION AND MEMORANDUM FOR AN ORDER AUTHORIZING THE SALE OF REAL PROPERTY HELD BY APS FOR THE BENEFIT OF APS ACCOUNT HOLDERS** was served to the following this 18th day of January, 2017, in the manner set forth below:

Through the CM/ECF System for the U.S. District Court

Hand Delivery

U.S. Mail, postage prepaid

E-mail: olivera@sec.gov; #slro-docket@sec.gov; ahardenbrook@swlaw.com; docket_slc@swlaw.com; jpollard@swlaw.com; miller@millertoone.com; mahoney@millertoone.com; miller@ecf.inforuptcy.com; miller.blaked@gmail.com; moric@sec.gov; howe@millertoone.com; danny_quintana@yahoo.com; dleta@swlaw.com; wsmart@swlaw.com; dsbyers@hollandhart.com; bknoble@hollandhart.com; gdoctorman@parsonsbehle.com; ecf@parsonsbehle.com; ghofmann@cohnekinghorn.com; dhaney@cohnekinghorn.com; jthorsen@cohnekinghorn.com; jsteed@kmclaw.com; mglauser@kmclaw.com; jchandler@djplaw.com; cfrandsen@djplaw.com; judsonpitts@hotmail.com; judson@wimmerpitts.com; justin@hsblegal.com; krw@scmlaw.com; ec@scmlaw.com; intakeclerk@scmlaw.com; markjgregersen@hotmail.com; saltlakedocketclerk@ballardspahr.com; feindtp@sec.gov; pmoxley@djplaw.com; cwatters@djplaw.com; jadamson@kunzlerlaw.com; robert_hunt@fd.org; geri_wynhof@fd.org; utx_ecf@fd.org; steve@skclawfirm.com; jen@skclawfirm.com; sara@actionlawutah.com; tburns@djplaw.com; rpahnke@djplaw.com; speck@djplaw.com; utfedcourt@djplaw.com; rwing@rqn.com; mpugsley@rqn.com; jparrish@rqn.com; bwride@rqn.com; EDonohue@hinshawlaw.com; ben@BBG-Law.com; colemere@wronalawfirm.com; armand@hwmlawfirm.com; jerrym@mooneylaw.com

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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**AMERICAN PENSION SERVICES, INC.,
a Utah Corporation and CURTIS L.
DeYOUNG, an individual,**

Defendants.

**ORDER APPROVING RECEIVER'S
SECOND MOTION FOR AN ORDER
AUTHORIZING THE SALE OF REAL
PROPERTY HELD BY APS FOR
BENEFIT OF CLIENTS**

Case No.: 2:14-cv-00309-RJS-DBP

**Judge Robert J. Shelby
Magistrate Judge Dustin B. Pead**

Before this Court is the Receiver's Motion and Memorandum for an Order Authorizing the Sale of Real Property Held by APS for the Benefit of APS Account Holders ("Motion"). For

good cause appearing, and for the reasons stated in the Motion, the Court hereby GRANTS the Receiver's motion.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. This Court approved the Receiver's Liquidation Plan on February 27, 2015. (Dkt. 458).
2. This Court has jurisdiction to authorize the sale of real property assets pursuant to 28 U.S.C. § 754 and 1692. *See SEC v. Bilzerian*, 378 F.3d 1100, 1103 (D.C. Cir. 2004).
3. The liquidation of assets is authorized by statute, 28 U.S.C. §§ 754, 1692, and by the Liquidation Plan.
4. The liquidation of assets from APS Account Numbers 5767, 6362, 8791, and 11342 will further the purpose of the Receivership to treat all account owners equitably.
5. The liquidation of assets from APS Account Numbers 5767, 6362, 8791, and 11342 is fair and reasonable and necessary to allow the Receivership to be administered to a conclusion.
6. The beneficiaries of APS Account Numbers 5767, 6362, 8791, and 11342 received notice of the Liquidation Plan by mail, e-mail, and by posting of the Liquidation Plan to the Receiver's website at www.apsreceiver.com.
7. The beneficiaries of APS Account Numbers 5767, 6362, 8791, and 11342 have not complied with the Liquidation Plan, approved by this Court on February 27, 2015. (Dkt. 458).
8. The beneficiaries of APS Account Numbers 5767, 6362, 8791, and 11342 were served a subpoena with a cover letter explaining that they had not complied with the Liquidation

Plan. The cover letter also explained that the Liquidation Plan authorized the Receiver to liquidate assets within their accounts.

9. Account Number 5767 has a loss allocation of \$21,493.32 and owes \$3,042.96 in outstanding management fees.

10. Account Number 6362 has a loss allocation of \$13,557.48, has made partial payments totaling \$2,322.02, and owes \$0.00 in outstanding management fees.

11. Account Number 8791 has a loss allocation of \$40,605.96, has made partial payments totaling \$6,477.04, and owes \$0.00 in outstanding management fees.

12. Account Number 11342 has a loss allocation of \$14,623.75, has made partial payments totaling \$7,894.51, and owes \$0.00 in outstanding management fees.

13. Proceeds from the sale of real property assets in each of APS Account Numbers 5767, 6362, 8791, and 11342 will be utilized to satisfy each account's loss allocation, outstanding management fees, and reasonable fees and costs associated with liquidation of the asset.

14. Any excess funds available as a result of the public sale of the real property will be deposited to the respective accounts of the beneficiaries. These excess funds, as well as any other assets, including a Contingent Repayment Agreement as described in the Liquidation Plan, will be distributed to the beneficiary. The Receiver will also issue appropriate documents for the purpose of tax reporting, including but not limited to an IRS Form 1099-R.

15. Statute requires that real property in possession of a receiver be sold at public sale in the district wherein any such receiver was first appointed, at the courthouse of the county,

parish or city in which the property is located, or on the premises of the property. 28 U.S.C. § 2001(a).

16. The Receiver is authorized to conduct the sale of real property held by APS Account Numbers 5767, 6362, 8791, and 11342 by public sale in a manner the Receiver believes will bring the highest and best value for the property, whether by sheriff's sale or through a public auction.

17. After due diligence, should the Receiver believe a public auction will bring the highest and best value, the Receiver is authorized to engage an auctioneer or auction house for the purpose of conducting a public auction.

18. The Receiver shall promptly publish a copy of this Order to the Receivership website at www.apsreceiver.com.

19. The Receiver shall also mail a copy of her Motion, this Order, and notice of the final date of the sale of the property to the beneficiaries of APS Account Numbers 5767, 6362, 8791, and 11342 by certified mail or other verified delivery method to the address at which each of the individuals was served a subpoena.

20. The minimum bid for each of the parcels of real property shall be the loss allocation, any outstanding management fees, and reasonable fees and costs associated with liquidating the real properties.

21. The respective beneficiaries of APS Account Numbers 5767, 6362, 8791, and 11342 shall have the opportunity to fund their loss allocation and pay outstanding APS management fees up to five (5) days before the public sale of the real property. If the beneficiary

of the account fully satisfies their loss allocation for their respective account, the public sale shall not be performed and shall be cancelled.

DATED this ____ day of January, 2017.

Honorable Robert J. Shelby
United States District Court