

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 20-CIV-21964-CMA**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

TCA FUND MANAGEMENT GROUP CORP.,  
*et al.*,

Defendants.

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**RECEIVER'S OMNIBUS MOTION TO APPROVE SALE OF RECEIVERSHIP  
ENTITIES' PERSONAL PROPERTY**

Jonathan E. Perlman, Esq., court-appointed Receiver (the "Receiver") of the Receivership Entities,<sup>1</sup> by and through undersigned counsel, hereby files this Omnibus Motion to Approve Sale of Receivership Entities' Personal Property (the "Motion") and states as follows:

**BACKGROUND**

On May 11, 2020, the Securities and Exchange Commission ("SEC") filed its Complaint for Injunctive Relief against TCA Fund Management Group, Corp. ("FMGC"), TCA Global Credit Fund GP, LTD. ("GP"), ("Receivership Defendants"), and TCA Global Credit Fund, LP ("Feeder LP"), TCA Global Credit Fund, LTD. ("Feeder Ltd."), and TCA Global Credit Master Fund, LP ("Master Fund") ("Relief Defendants") (collectively, "Defendants"). [ECF No. 1]. The SEC also

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<sup>1</sup> All terms not specifically defined herein have the meaning ascribed to them in the SEC's Motion for Appointment of Receiver [ECF No. 3], the Court's Appointment Order [ECF No. 5], and the Court's First Expansion Order [ECF No. 16].

filed an Expedited Motion for Appointment of Receiver. [ECF No. 3]. On the same day, the Court granted the motion and appointed Jonathan E. Perlman, Esq., of the law firm Genovese Joblove & Battista, P.A. (“GJB”), as permanent Receiver over the Receivership Entities (“Appointment Order”). [ECF No. 5].

Pursuant to the Appointment Order, the Receiver “may, without further Order of the Court, transfer, compromise, or otherwise dispose of any Receivership Property, other than real estate, in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such Receivership Property.” [*Id.* at § IX ¶ 31].

As set forth in the Receiver’s First and Second Quarterly Status Reports, after his appointment and pursuant to his responsibilities with which he is charged, the Receiver took control of certain personal property owned and in the possession of the Receivership Entities, including but not limited to used office furniture, used office equipment, decorative artwork, and used electronics. [ECF Nos. 48, 70]. The personal property of the Receivership Entities is currently located in storage units in Miami-Dade County, Florida, and in New York.

The Receiver seeks authorization to sell, liquidate, or otherwise dispose of the personal property using commercially reasonable efforts without further order from this Court. The Receiver will explore various options to maximize the return to the Receivership Estate. Absent such authorization, the personal property will continue to depreciate and the Receiver will incur additional storage costs. If the Receiver is unable to sell any of the personal property following reasonable commercial efforts, he plans to donate or otherwise dispose of the personal property in a manner that minimizes the cost to the Receivership Estate.

## ARGUMENT

### **1. The Court Has Broad Power Over This Receivership, and the Sale of the Personal Property is in the Receivership Estate's Best Interest**

The Court's power to supervise and administer an equity receivership is extremely broad. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) ("The district court has broad powers and wide discretion to determine relief in an equity receivership); *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court's wide discretion derives from its inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566. A court imposing a receivership assumes custody and control of all assets and property of the receivership, and it has broad equitable authority to issue all orders necessary for the proper administration of the receivership case. *See SEC v. Credit Bancorp Ltd.*, 290 F.3d 80,82-83 (2d Cir. 2002); *SEC v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980). The court may enter such orders as may be appropriate and necessary for a receiver to fulfill his duty to preserve and maintain the property and funds within the receivership estate. *See, e.g., Official Comm. Of Unsecured Creditors of Worldcom, Inc. v. SEC*, 467 F.3d 73, 81 (2d Cir. 2006). Given these principles, the relief sought by the Receiver in this Motion falls squarely within the power of this Court.

### **2. The Requirements of 28 U.S.C. §§ 2001 and 2004 Should Be Waived**

28 U.S.C. §§ 2001 and 2004 set forth the requirements for the sale of real property and personalty generally. Pursuant to 28 U.S.C. § 2004, "[a]ny personal property sold under 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). 28 U.S.C. § 2001 imposes relatively onerous and costly procedures, including a hearing with notice "to all interested parties . . . by publication or otherwise as the court directs;" court appointment of three independent appraisers to value the property; and publication of the sale terms in at least one newspaper. *See*

28 U.S.C. § 2001(b). Because of the costs and other burdens imposed by 28 U.S.C § 2001, under the authority conveyed by 28 U.S.C. § 2004, courts often waive 28 U.S.C. § 2001's procedures. *See e.g., FTC v. E.M. Systems & Service, LLC*, No. 8:15-cv-1417-T-23EAJ, 2016 WL 11110381 (M.D. Fla. March 4, 2016) (receiver excused from judicial sale procedures of 28 U.S.C. §§ 2001 and 2004 and allowed to sell property in a commercially reasonable manner); *SEC v. Billion Coupons, Inc.*, No. CIV 09-00068 JMS-LEK, 2009 WL 2143531, at \*4 (D. Haw. July 13, 2009) (recommending receiver be given discretion to sell items at best price without court confirmation), *report and recommendation adopted*, 2009 WL 2365696 (D. Haw. July 29, 2009).

Here, the Receiver seeks authority to sell the Receivership Entities' personal property for the benefit of the Receivership Estate. The personal property items proposed to be sold consist mainly of used office furniture, used office equipment, decorative artwork, and used electronics which appear to contain no significant individual value, and are not necessary to the Receivership Entities' remaining business operations. The continued costs of storing and securing the personal property constitute significant and unnecessary drain on the Receivership Estate. Additionally, compliance with the requirements of 28 U.S.C. §§ 2001 and 2004 would create costly, time-consuming and burdensome procedures that would likely exceed the liquidation value of the personal property. The Receiver sought and received a preliminary property valuation and auction quote for the inventory from Moecker Auctions. According to Moecker, much of the property to be sold would cost more to sell in an auction than the expected sale proceeds.

The Receiver believes that if he were required to petition the Court for authority to sell each item of personal property on an item-by-item basis, the additional expense incurred by the Receivership Estate in drafting and filing a multiplicity of motions for authority to sell would not

be in the best interest of the Receivership Estate. This scenario would increase the expense of administering the Receivership Estate and, as a result, would not benefit the Receivership Estate.

Additionally, the Receiver is sufficiently experienced in the disposition of a very broad range of personal property and other assets in receiverships that he is well-positioned to appropriately value the personal property, and full compliance with 28 U.S.C. §§ 2001 and 2004 would result in unnecessary expenditures by the Receivership Estate. The Receiver will use commercially reasonable efforts to try to sell each piece of personal property, and if those efforts fail or are likely to cost equal to or more of the pertinent personal property's sale price, then the Receiver will take other steps to liquidate or otherwise dispose of the personal property that minimizes the costs of the Receivership Estate.

Lastly, as detailed herein, the Receiver will act in the Receivership Estate's best interests. If he believes the best price offered for any of the personal property is materially below the fair market price and the Receivership likely will receive a higher return if the sale is postponed, then he will postpone the sale; or if he believes commercially reasonable sale efforts for a particular piece of personal property are likely to cost the Receivership more than the proceeds of the sale, then he will dispose of the asset in another way that will limit the Receivership's costs, including possibly by donating it.

Accordingly, the Receiver requests approval to sell the personal property of the Receivership Entities

### **CONCLUSION**

For the reasons detailed herein, the Receiver respectfully requests that this Court enter an order authorizing him to sell or otherwise dispose of, using commercially reasonable efforts as

detailed in this Motion, personal property of the Receivership Entities without further order from this Court.

WHEREFORE, the Receiver, Jonathan E. Perlman, Esq., by and through undersigned counsel, respectfully request that this Court grant the Receiver's Omnibus Motion to Approve Sale of Receivership Entities' Personal Property, and for such other relief as this Court deems just and proper.

**CERTIFICATION PURSUANT TO S.D. FLA. L.R. 7.1(A)(3)**

Undersigned counsel hereby certifies that counsel for the Receiver conferred with counsel for the SEC via email regarding the relief requested herein, and is authorized to represent that the SEC has no objection to the relief sought in this Motion.

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a copy of the foregoing was served via CM/ECF Notification and/or U.S. Mail to all parties and notification of such filing to all CM/ECF participants in this case on the 19th day of January, 2021.

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**[PROPOSED] ORDER GRANTING RECEIVER’S OMNIBUS MOTION TO APPROVE  
SALE OF RECEIVERSHIP ENTITIES’ PERSONAL PROPERTY**

THIS CAUSE, having come before the Court upon Jonathan E. Perlman, as Court-Appointed Receiver’s (“Receiver”) Omnibus motion to Approve Sale of Receivership Entities’ Personal Property (“Motion”) [ECF No. \_\_]. The Court having considered the Motion and being duly advised in the premises, it is ORDERED AND ADJUDGED that:

The Motion is GRANTED. The Receiver is authorized to sell or otherwise dispose of, using commercially reasonable efforts as detailed in the Motion, personal property of the Receivership Entities without further order from this Court.

DONE AND ORDERED, in chambers at Miami, Florida, this \_\_ day of January, 2021.

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**CECILIA M. ALTONAGA**  
UNITED STATES DISTRICT JUDGE  
DISTRICT COURT FOR THE SOUTHERN  
DISTRICT OF FLORIDA