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UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION,

Plaintiff(s)

Case No: 11-cv-00574-MJD-FLN

v.

JASON BO-ALAN BECKMAN, et al.,

**RESPONSE TO MOTION**

Defendant(s)

R.J. Zayed,

Receiver.

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**RESPONSE IN OPPOSITION TO MOTION TO CONFIRM SALE OF GOLF DRIVE**

**PROPERTY**

The Defendant, Jason Bo-Alan Beckman, respectfully moves the court to deny the request to *Confirm the Sale of Golf Drive Property*.

A. On March 8, 2011, R.J. Zayed was appointed as Receiver in the case of SEC v. Beckman et al, No. 11-cv-00574 (March 7, 2011) for Jason Bo-Alan Beckman and Hollie Beckman and all entities under their control, including The Oxford Private Client Group, LLC (*order appointing receiver, 11-cv-00574, Docket No. 10*).

B. The real estate property of 7432 Golf Drive, Mission TX 78572 (Golf Drive), legally described as LOT 122, GOLF DRIVE ESTATES PHASE NO. 2. was included in the Beckman asset that were frozen and placed into Receivership. (See order *Imposing Asset Freeze*

*And Other Ancillary Relief and Setting Hearing on Motion For Preliminary Injunction, Beckman Docket No. 9 at 6).*

C. On August 4, 2011 the Receiver reached an agreement to sell the Golf Drive property for \$112,500. The offer is for all cash, including earnest money. The agreement has set a closing date of September 23, 2011. The Agent representing the property for sale, Mr. Holland, has agreed to reduce his commission from 6% to 5%. On August 4, 2011, the Receiver and the buyer, Daniel Conrad, entered into a purchase agreement and addendums to purchase agreement concerning the sale

D. The Offer is higher than the two-thirds of the average appraised value of the property.

#### **I. Appropriateness for Preservation of the Estate**

In defendant's response in Opposition re [93] MOTION to *Authorize the Hiring of Real Estate Agents and to Public Notice of Offers for Sale, Doc. 107*, caution was expressed pertaining to the timeliness of real estate transactions in the current real estate environment. To promote consistency with the Receivers' duty to preserve the estate, the defendant moved that such manner be denied due to the possible loss to the estate in this particular environment. In the same housing development or directly adjacent (next door and across the street), three similar properties are currently listed for sale with an average asking price of \$187,000, (See exhibits A-C). The receiver is requesting that the court approve the sale of an equal or similar home for \$112,000, a 67% discount. Their argument is based on the fact that the suggested sale is within two-thirds of the average of the appraisal values. To accept a sale merely because it is only a

20% discount from an average appraisal and more than 60% less than comparable listings is not in the best interest to protect and preserve the estate or a responsible market action.

In this particular area, there are significant differences in values from one street to the next, as they can include executive homes on one block leading to single bedroom flats or trailer homes on the next. To bring consistency of measure pertaining to valuations, a basis needs to be established to represent realistic valuations beyond square footage and age comparisons. The accurate comparison lies within the specific community or a reflection of sales relative to a common consistent value assessment model that lacks the subjectivity that appraisals provide, despite their attempt to be objective. As an example, the appraisals do not lack subjectivity due to locations selected as indicated in the reports. To create a valid base, you remove the most geographically remote comparison and the too expensive comparative. We find an average tax assessed value of similar properties of \$88,250 (range of \$79,000-\$98,000 from those properties provided in the appraisals, see exhibits D-G) and the average sale price of those properties of \$120,375 (also from the appraisal reports) equating to an average percentage of sale over the tax assessed value of an estimated 26% (see exhibit I). The subject property has a tax assessed value almost 30% greater than the comparatives at \$114,000 (Exhibit H). While the comparatives have sold for an average of 26% over their tax assessed value, the Receiver suggests liquidating the asset of the *Golf Drive Property* at a value less than even its tax assessed value. The valuation model suggests, with even a mere 20% increase (less than that of the comparisons) would result in a fair market value of \$143,640 (see exhibit I). This is a realistic increase of over 28% of the suggested sale price of \$112,000.

The only argument the Receiver makes is that it has complied with 28 U.S.C. 2001(b), and the offer to purchase is greater than two-thirds of the appraised value, *Declaration of Brian*

*Hayes in Support of Receiver Motion to Confirm Sale of Golf Drive Property, Doc. 163.* The responsibility of the receiver is greater than merely complying with various statutes as a matter of course, it also carries the responsibility to protect the interests of the estate; “to take such actions as necessary and appropriate to prevent the dissipation of any funds or assets or for the preservation of any such funds and assets of the Receiver Estates”. *Order Appointing Receiver, No. 11-cv-574, Doc. 10.* The action of the receiver is not in accord with their directive, as the sale of the property well below market value is a dissipation of an asset well below market value and an action of non-preservation.

The Receiver has argued that they are requesting the permission of the court on the grounds that it will “further the objective of the estate (*see Declaration of Brian Hayes in Support of Receiver’s Motion to Confirm Sale of Golf Drive Property, DOC. No. 163*), as the Receiver does not have the unilateral right to “liquidate” assets as stated in his argument with reference to *Ex Parte Statutory Retraining Order, No. 09-cv-3332* (“CFTC” Case) as the defendant is not a party to that action. In addition, the Receiver has an “obligation to maximize the value of the Receivership assets” *See Scholes v. Lehman, 56 F.3d 750, 755 (7<sup>th</sup> Cir. 1995)*. This action is a suggested immediate remedy while not upholding the receivers’ duty to preserve and maximize the estate when reasonable alternatives or considerations are available.

## **II. Cost to Maintain**

The subject property has no mortgage and requires very little maintenance. The Utilities and real estate taxes would amount to an estimated \$4,000 per annum. In this particular community and with winter fast approaching it is an ideal candidate for rental that far exceeds its monthly costs. One term rental (6 months) will support the expenses of the property for at least

one (1) year while providing the opportunity to entertain additional offers to purchase at a fair market price.

### CONCLUSION

While the receiver has met certain burdens to solicit and execute the sale of the Golf Drive property, the court has authority to assess the situation as best suited for the estate. Based on the options available to the Receiver and the below fair value offer to purchase and clear violation of its responsibility to the estate, the defendant respectfully request a denial of the Receivers *Motion to Confirm Sale of the Golf Drive Property*.

September 8, 2011

s/ Jason B. Beckman

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