

FACTS

On November 24, 2009, this Court appointed R.J. Zayed, Carlson, Caspers, Vandenburg and Lindquist as Receiver in this action. *See* Declaration of Brian W. Hayes (“Hayes Decl.”, Ex. 1 (Docket No. 18, November 24, 2009 *Order Appointing Receiver*)). Part of the Receiver’s duties included “to take custody, control and possession of all the funds, property, premises, leases and other assets of or in the direct or indirect control of the Receiver Estates, to manage, control, operate and maintain the Receiver Estates, to use income, earnings, rents and profits of the Receiver Estates.” *Id.*, p.3.

In accordance with these objectives, the Receiver conducted an appraisal of all personal property in the residences at 1900 LaSalle Ave., Minneapolis, MN, 55403 and 12644 Tiffany Court, Burnsville, MN, 55337 – both of which were covered by the Court’s *Order Imposing Asset Freeze And Other Ancillary Relief*. Hayes Decl., Ex. 2 (Docket No. 14, November 23, 2009 Order). Following this appraisal, the Receiver now wishes to sell certain personal property found in these residences by retaining the services of Luther Auctions, 2556 East 7th Ave., North St. Paul, MN 55109. The exact inventory of the personal property Luther Auctions would sell is attached to the Hayes Declaration as Exhibit 3.

Luther Auctions is willing to sell the listed items to the highest bidder by public auction, and has promised to provide substantial public advertising of the sale items in order to maximize the revenue from the sale. Hayes Decl., ¶ 7. The auctions conducted by Luther Auctions are held weekly, and the plan would be to

introduce the items from Exhibit 3 gradually over a course of several auctions.

Id., ¶ 8. The Receiver has negotiated a flat 20% commission rate on all sales by Luther Auctions of the items listed in Exhibit 3, with the remaining portion going to the Receiver. This 20% fee covers the cost of staffing for the sale, advertising, website hosting and recycling of non-salable goods such as antiquated personal computers. Id., ¶ 9.

ARGUMENT

The public sale of personal property by the receiver is governed by 28 U.S.C. § 2004, which directs the sale of any “personalty” sold under order or decree of the United States to be in accordance with section 2001 of the same title.

The pertinent section of 28 U.S.C. § 2001(a) reads as follows:

Property in the possession of a receiver or receivers 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 situated therein in which the greater part of the property in such district is located, or on the premises or some parcel thereof located in such county, parish, or city, as such court directs, unless the court orders the sale of the property or one or more parcels thereof in one or more ancillary districts.

As indicated by the facts section, *supra*, the Receiver respectfully requests that the Court authorize Luther Auctions to conduct a public sale of the items listed in Exhibit 3 of the Hayes Declaration at 2556 East 7th Ave., North St. Paul, MN 55109. The sale of these items would be conducted in such a fashion as to maximize revenue, and accordingly the Receiver asserts that this sale would further the objectives of the Receivership.

Dated: January 12, 2010

Respectfully submitted,

s/ R.J. Zayed

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