

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE  
COMMISSION,  
  
Plaintiff,  
  
v.  
  
LOUIS V. SCHOOLER and FIRST  
FINANCIAL PLANNING  
CORPORATION d/b/a WESTERN  
FINANCIAL PLANNING  
CORPORATION,  
  
Defendants.

Case No.: 3:12-CV-02164-GPC-JMA  
  
**ORDER APPROVING SALE OF  
DAYTON I PROPERTY**  
  
**[ECF No. 1668]**

Before the Court is the Receiver’s Motion for Approval of Sale of Dayton I.<sup>1</sup> ECF No. 1668. The Dayton I property (“Property”) is approximately 797.5 acres of undeveloped land located in Lyon County, Nevada. ECF No. 1668-1 at 2. Prior to being transferred to the Qualified Settlement Fund set up to hold receivership properties, the Dayton I property was held by four General Partnerships: Dayton View Partners, Par

---

<sup>1</sup> The procedural history and factual background of this case has been well documented in the Court’s previous orders granting the Receiver’s motions for approval of property sales. *See, e.g.*, ECF Nos. 1652, 1663.

1 Four Partners, Fairway partners, and Green View Partners. Hebrank Decl., ECF No.  
2 1668-2 ¶ 2.

3 In 2013, with the Court's authorization, the Receiver obtained an appraisal of the  
4 Property estimating the value to be \$200,000. Ex. A to Xpera Report, ECF No. 1405. In  
5 2015, the Receiver obtained an appraisal of the Property, with the Court's authorization,  
6 estimating the value to be \$360,000. *Id.* In early 2016, Xpera Group valued the Property  
7 between \$431,000 - \$558,000, and recommended that the Property be sold now, as is. *Id.*

8 In late 2016, without a broker engaged for the Property, the Receiver received an  
9 unsolicited, all cash offer to purchase the Property for \$475,000 from The Lansing  
10 Companies, LLC. Hebrank Decl. ¶ 2. Pursuant to the Modified Orderly Sale Procedures,  
11 ECF No. 1309, the Receiver provided notice of the offer from Lansing to investors  
12 shortly after it was received. Hebrank Decl. ¶¶ 3, 6. No substantive responses were  
13 received. *Id.* ¶ 6. The Receiver entered into negotiations with Lansing. The Receiver  
14 and Lansing agreed to a purchase price of \$550,000. In February 2017, the Receiver and  
15 Lansing executed a Purchase and Sale Agreement and Joint Escrow Instructions  
16 ("Agreement"), subject to overbid and Court approval. *Id.* ¶ 3.

17 In May 2017, with the due diligence approaching, Lansing requested an additional  
18 90 days. The Receiver agreed and the parties signed the First Amendment to the  
19 Agreement. In July 2017, Lansing requested an additional ten months to put together a  
20 development plan for the Property. Because of the favorable purchase price and  
21 opportunity to sell the Property without paying a broker commission, the Receiver agreed  
22 and the parties executed the Second Amendment. In May 2018, Lansing requested an  
23 additional four months and offered to remove its contingencies as to \$10,000 of its  
24 deposit. The Receiver agreed and the parties executed the Third Amendment.

25 On October 1, 2018, Lansing removed all contingencies, except for Court  
26 approval, and assigned the Agreement to Genus, L.P. ("Buyer"), pursuant to an  
27 Assignment and Assumption Agreement. Hebrank Decl. ¶ 4.

28

1 On October 12, 2018, the Receiver filed its Motion for Approval of Sale. ECF No.  
2 1668. Pursuant to the proposed Agreement, Buyer will purchase the Property for  
3 \$550,000 in cash, on an “as is, where is” basis, and closing shall occur within 15 days of  
4 entry of the Court order approving the sale. ECF No. 1668-1 at 3. Moreover, the  
5 Receiver asserted that it will follow the publication of notice, qualification of bidders,  
6 and public auction under 28 U.S.C. § 2001. ECF No. 1668-1 at 2-3.

7 On October 22, 2018, the SEC filed a Statement of Non-Opposition to Receiver’s  
8 Motion, asserting that it supports the motion because the sale terms appear reasonable  
9 and in the best interests of the Receivership estate and investors. ECF No. 1670. No  
10 opposition was filed in response to the Receiver’s motion. On November 7, 2018, the  
11 Receiver filed a Notice of Non-Receipt of Qualified Overbids. ECF No. 1674. The  
12 Receiver asserted that it published notice of the sale in the Reno Journal-Gazette as  
13 required by 28 U.S.C. § 2002, and no qualified overbids were submitted.

14 The Court finds that the purchase price of \$550,000 is reasonable. The Property  
15 was appraised at \$200,000 in 2013, and \$360,000 in 2015. The purchase price falls  
16 within the high end of Xpera Group’s valuation range of \$431,000 - \$558,000.  
17 Moreover, the sale does not require payment of a broker commission.

18 The Court is also satisfied that the Receiver has complied with the modified  
19 Orderly Sale procedures. The Receiver’s notice of the sale adhered to the modified  
20 Orderly Sale procedures—which require that notice of the sale be published “in the  
21 county, state, or judicial district of the United States *wherein the realty is situated*,” 28  
22 U.S.C. § 2002 (emphasis added)—by publishing notice in the Reno Journal-Gazette and  
23 by providing notice to the investors. Accordingly, and given that no opposition to the  
24 present Motion has been filed or raised, and no qualified overbid was received, the Court  
25 **GRANTS** Receiver’s motion for approval of sale.

26 **ORDER**

27 The Motion for Approval of Sale of Dayton I Property by Receiver Thomas C.  
28 Hebrank (“Receiver”), the Court-appointed receiver for First Financial Planning

1 Corporation d/b/a Western Financial Planning Corporation, its subsidiaries and the  
2 General Partnerships listed in Schedule 1 to the Preliminary Injunction Order entered on  
3 March 13, 2013, having been reviewed and considered by this Court, the Receiver having  
4 notified the Court that no qualified overbids were received, and for good cause appearing  
5 therefore, the Court finds as follows:

6 1. The Motion is granted;

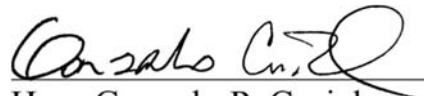
7 2. The sale of the Property known as the Dayton I property, as described on  
8 Exhibit A to the Declaration of Thomas C. Hebrank in support of the Motion  
9 (“Property”), by Thomas C. Hebrank, as receiver for Dayton View Partners, Par Four  
10 Partners, Fairway Partners, and Green View Partners, to Genus, L.P. is confirmed and  
11 approved;

12 3. The purchase price of \$550,000 for the Property is confirmed and approved;  
13 and

14 4. The Receiver is immediately authorized to complete the sale transaction,  
15 including executing any and all documents as may be necessary and appropriate to do so.

16 **IT IS SO ORDERED.**

17 Dated: December 5, 2018

18   
19 Hon. Gonzalo P. Curiel  
20 United States District Judge  
21  
22  
23  
24  
25  
26  
27  
28