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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-2164-GPC-JMA

ORDER APPROVING:

**SALE OF FERNLEY I PROPERTY
AND AUTHORITY TO PAY
BROKER'S COMMISSION**

[ECF No. 1701]

Before the Court is the Receiver's Motion for (A) Approval of Sale of Fernley I Property, and (B) Authority to Pay Broker's Commission ("Motion"). ECF No. 1701. No opposition was filed. Based upon a review of the moving papers and the applicable law, the Court **GRANTS** the Receiver's motion.

BACKGROUND

A. The SEC Enforcement Action

On January 21, 2016, the Court granted the SEC's motion for final judgment against Defendant Louis V. Schooler. ECF No. 1170. The SEC had initiated this civil

1 action against Defendant Schooler and Western Financial Planning Corporation
2 (“Western”) four years earlier, on account of their practice of defrauding investors into
3 purchasing unregistered securities. *Id.* (citing Second Summary Judgment Order, ECF
4 No. 1081). To carry out the scheme, Defendant Western bought undeveloped real estate,
5 with cash or through financing, and simultaneously formed one or more General
6 Partnerships (“GPs”) to own the land. First Summary Judgment Order, ECF No. 1074 at
7 10. Western then sold General Partnership units to investors and sold the undeveloped
8 real estate to the General Partnerships. *Id.* at 10. In total, Western raised approximately
9 \$153 million from almost 3,400 investors through implementing this scheme. *Id.*

10 **B. The Decline of the General Partnership Assets**

11 In 2013, the Court-appointed Receiver, Thomas Hebrank, engaged licensed
12 appraisers to value the 23 properties owned by the General Partnerships. ECF No. 203 at
13 2. Those professionals determined that the land was worth \$16,328,000 and that the net
14 appraised value (appraised value less outstanding balances on all mortgages) of the
15 properties was \$12,860,661. *Id.* The net appraised value represented just 8.41% of the
16 total funds that the general partners had invested in the land. *Id.* The Receiver further
17 estimated that, based on the then-current appraised values of the land, the average GP
18 investor would suffer an 88.40% loss if the GP properties were sold in 2013. *Id.*

19 Three years later, soon after final judgment was entered, the Receiver moved for
20 authority to conduct an Orderly Sale of the General Partnership Properties (“Orderly
21 Sale”). Motion for Orderly Sale, ECF No. 1181-1. In the Motion, the Receiver indicated
22 that the aggregate value in the GP accounts had been steadily decreasing while litigation
23 was ongoing. *See id.* In September 2012, the Receivership had assets of \$6.6 million.
24 *Id.* at 1. By the end of 2015, the assets had dropped to \$3.5 million, and the Receiver had
25 reason to believe that the value of the Receivership would continue to drastically
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1 decrease through the end of 2016.¹ This decline, he noted, was due to three main factors:
2 (1) 14 of the 23 properties were not appreciating in value²; (2) the properties were not
3 worth enough to cover the costs of the GPs carrying the properties; and (3) low levels of
4 investor contributions to pay GP administrator fees, tax preparation fees, property taxes,
5 property insurance premiums, and notes owed to Western. *See id.* at 1-2. In other words,
6 the Receiver concluded, because the money being spent to hold the GP properties was
7 disproportionately high in relation to the value of the GP's real estate assets, the
8 Receivership was in a steady decline. *Id.*

9 In order to prevent the value of the Receivership from falling into further decline,
10 the Receiver proposed that the GP properties be sold in accordance with Court-approved
11 orderly sale procedures. *Id.* The Receiver's proposal explained that the best way to
12 maximize the value of all of the GP assets for the benefit of all investors, irrespective of
13 any given investors' direct property interest, was to initiate an orderly sale of the GP
14 properties. *Id.* The Receiver estimated that the Receivership, after conducting sales of
15 the GP properties, Western's properties and asset recovery, would be worth \$21,804,826.
16 *Id.* at 16.

17 **C. The Receiver's Motion for Orderly Sale**

18 On May 20, 2016, the Court held a hearing on the Receiver's Motion for Orderly
19 Sale, at which time the Court heard from the SEC, Defendant, the Receiver, and the
20 investor-intervenors — that is, those investors who were granted permission under Rule
21 23 to intervene to oppose the Receiver's Motion. *See* ECF No. 1298. A short time
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25 ¹ The Receiver provided the Court with projections that the Receivership would further decline to \$1.8
26 million by the end of 2016. Indeed, the Receiver's projection has since proved to be accurate. The
27 Twentieth Interim Status Report submitted by the Receiver indicates that the Receivership's current cash
28 and cash equivalent balance is \$666,113. ECF No. 1505 at 17.

² By way of example, the Receiver notes that the value of these 14 properties in 2016, \$3,732,815, was
about \$400,000 less than their value in 2013, \$4,137,000. *Id.* at 2.

1 thereafter, on May 25, 2016, the Court approved, in part, the Receiver's Orderly Sale
2 process.³ ECF No. 1304.

3 In approving the Orderly Sale, the Court addressed and evaluated the concerns
4 expressed by the Receiver, the SEC, and myriad investors, all of whom held differing
5 positions on whether the Orderly Sale would benefit the Receivership estate. *See*
6 *generally* ECF Nos. 1181 (Motion for Orderly Sale), 1232 (SEC Response), 1234 (Dillon
7 Investors' Response), 1235 (Graham Investors' Response); *see also, e.g.*, ECF Nos. 1240,
8 1242, 1244, 1249-1257 (Letters from Investors). The Court also took into consideration
9 the recommendations of the investors' experts, as set forth in the Xpera Report. *See* ECF
10 No. 1304 at 16. The Xpera Report, the Court noted, substantially agreed with the
11 Receiver on how to maximize the value of the Receivership estate and, for the most part,
12 agreed on the appraised value of the various GP properties. *Id.* As such, the Court
13 directed the Receiver, where feasible, to incorporate the recommendations of the Xpera
14 Report into his ultimate Orderly Sale proposal. *Id.* at 19.

15 On July 22, 2016, the Receiver moved for permission to engage CBRE, a real
16 estate brokerage firm, as a consultant in order to weigh the pros and the cons of the Xpera
17 Report. ECF No. 1341-1. The Court granted the Receiver's motion on August 30, 2016.
18 ECF No. 1359. CBRE presented its findings on the GP properties on October 24, 2016.
19 ECF No. 1419 (filed under seal). On November 22, 2016, the Receiver submitted a
20 report evaluating the Xpera Report recommendations. ECF No. 1405. The Court
21 reviewed the Receiver's report and adopted the recommendations contained therein on
22 December 12, 2016. ECF No. 1423.

23 **D. Fernley I Property**

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27 ³ The Court directed the Receiver to file a Modified Orderly Sale Process that incorporated the public
28 sale process consistent with the requirement of 28 U.S.C. § 2001. ECF No. 1304. The Receiver filed a
modified proposal on June 8, 2016 (ECF No. 1309) and the Court approved the modified proposal on
August 30, 2016 (ECF No. 1359).

1 Fernley I Property (the “Property”) is a parcel of approximately 78.84 acres of
2 undeveloped land located in an unincorporated portion of Lyon County, Nevada. ECF
3 No. 1701-1 at 2. Prior to being transferred to the Qualified Settlement Fund, the Property
4 was held by two General Partnerships that are included in the receivership—Clearwater
5 Bridge Partners and High Desert Partners. *Id.*

6 In 2013, the Receiver obtained an appraisal of the Property estimating the value to
7 be \$230,000. *Id.* Two years later, in 2015, the Receiver obtained an appraisal of the
8 Property estimating the value to be \$210,000. *Id.* In early 2016, Xpera Group valued the
9 Property between \$315,000 and \$365,000, along with the recommendation that an
10 engineer be engaged to provide a new subdivision map for the Property. *Id.* In late 2016,
11 CBRE evaluated the Property. CBRE estimated the value to be \$1,000,000 and agreed
12 with Xpera's recommendation to hire an engineer and obtain a new subdivision map. *Id.*

13 The Receiver received an unsolicited, all-cash offer from The Lansing Companies,
14 LLC (“Lansing”) to purchase the Property for \$950,000. *Id.* at 3. Considering that the
15 offer was higher than both the 2013 and 2015 appraisals and the Xpera Group valuation
16 range, and was in line with CBRE’s valuation, the Receiver gave notice of the offer to
17 investors and executed a purchase and sale contract with Lansing. *Id.* During the due
18 diligence process, however, Lansing determined that its intended development of the
19 Property would be too costly, and therefore it canceled the purchase and sale contract. *Id.*

20 The Receiver then had CBRE (“Broker”) evaluate Lansing’s conclusions and, if
21 appropriate, reassess the value of the Property. *Id.* Broker concurred with Lansing's
22 conclusions and therefore reduced its estimate of the value to between \$350,000 and
23 \$400,000. *Id.* The Receiver then engaged Broker to list the Property for sale with a list
24 price of \$390,000. *Id.* Shortly thereafter, Lansing offered to purchase the Property for
25 \$350,000, and the Receiver again gave notice of the offer to investors. *Id.* With no other
26 offers having been received, the Receiver and Lansing entered into negotiations and, in
27 January 2019, executed a Purchase and Sale Agreement and Joint Escrow Instructions
28 (“Agreement”), subject to overbid and Court approval, with a purchase price of \$390,000.

1 *Id.* Lansing placed an earnest money deposit of \$10,000 into escrow as required under
2 the Agreement. *Id.* On February 13, 2019, Lansing removed all contingencies (other
3 than Court approval). *Id.* Lansing then assigned the Agreement, with the Receiver's
4 consent, to an affiliated entity Lansing formed to take title, Fernley Clearwater Estates,
5 LLC. *Id.* On March 27, 2019, the Receiver notified the Court that no qualified overbids
6 had been received for the Property. ECF No. 1705.

7 **E. Conclusion**

8 The Court finds that the purchase price of \$390,000 is reasonable in light of the
9 fact that it exceeds the 2013 and 2015 appraised values of the Property (\$230,000 and
10 \$210,000, respectively) and the Xpera Group valuation range (\$315,000–\$365,000).
11 Moreover, after evaluating Lansing’s conclusions regarding the costs to develop the
12 Property, CBRE reduced its estimate of the value to be between \$350,000 and \$400,000,
13 and it recommended a list price of \$390,000.

14 The Court is also satisfied that the Receiver’s notice of the sale adhered to the
15 modified Orderly Sale procedures—which require that notice of the sale be published “in
16 the county, state, or judicial district of the United States *wherein the realty is situated,*”
17 28 U.S.C. § 2002 (emphasis added)—by publishing notice in the Reno Journal-Gazette, a
18 newspaper of general circulation in Lyon County, Nevada, and by providing notice to the
19 investors.

20 Accordingly, and given that no opposition to the present Motion has been filed or
21 raised, and no qualified overbid was received, the Court **GRANTS** Receiver’s motion for
22 approval of sale.

23 **ORDER**

24 The Motion for (A) Approval of Sale of Fernley I Property, and (B) Authority to
25 Pay Broker's Commission ("Motion") filed by Thomas C. Hebrank (“Receiver”)—the
26 Court-appointed receiver for First Financial Planning Corporation d/b/a Western
27 Financial Planning Corporation ("Western"), its subsidiaries, and the General
28 Partnerships listed in Schedule 1 to the Preliminary Injunction Order entered on March

1 13, 2013—having been reviewed and considered by this Court, the Receiver having
2 notified the Court that no qualified overbid has been received, and for good cause
3 appearing therefore, the Court finds as follows:

4 1. The Motion is **GRANTED**;

5 2. The sale of the Property known as the Fernley I Property (“Property”), as
6 described on Exhibit A to the Declaration of Thomas C. Hebrank in support of the
7 Motion, by Thomas C. Hebrank, as receiver, to The Lansing Companies, LLC and its
8 permitted assignee is confirmed and approved;

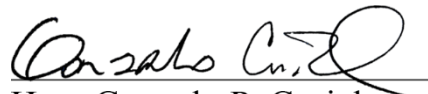
9 3. The purchase price of \$390,000 for the Property is confirmed and approved;

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

13 5. The Receiver is authorized to pay, upon closing of the sale, a commission of
14 6% of the final purchase price to broker CBRE.

15 **IT IS SO ORDERED.**

16 Dated: June 14, 2019

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18 Hon. Gonzalo P. Curiel
19 United States District Judge
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