

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

SECURITIES & EXCHANGE COMMISSION,

CASE NO.: 10-22078-cv-Moreno/Torres

Plaintiff,

vs.

ESTATE OF KENNETH WAYNE MCLEOD,  
F&S ASSET MANAGEMENT GROUP, INC. and  
FEDERAL EMPLOYEE BENEFITS GROUP, INC.,

Defendants.

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**RECEIVER'S MOTION FOR AUTHORITY TO ENTER INTO AN EXCLUSIVE  
LISTING AGREEMENT WITH CANTRELL AND MORGAN, INC.  
TO MARKET AND SELL INDUSTRIAL LAND OWNED BY  
FEBG AND TO MODIFY SALE PROCEDURES**

Michael I. Goldberg, (the "Receiver") in his capacity as Receiver of Federal Employee Benefits Group, Inc. ("FEBG") and F&S Asset Management Group, Inc. ("FSAMG") (jointly, the "Receivership Entities"), and as curator for the Estate of Kenneth Wayne McLeod, <sup>1</sup>files this motion for authority to enter into an exclusive listing agreement with Cantrell and Morgan, Inc. to market and sell industrial land owned by FEBG and to modify the sale procedures. In support of this Motion, the Receiver states as follows:

1. On June 24, 2010, the United States Securities and Exchange Commission ("SEC") initiated these proceedings and, in connection therewith, sought the appointment of a receiver. That same day, the Court entered an Order appointing Michael I. Goldberg as the Receiver for Defendants, FEBG and FSAMG (the "Receivership Order") [D.E. 11].

2. The Receivership Order authorizes the Receiver to take immediate possession of all property, assets and estates of the Receivership Entities, including all real property and

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<sup>1</sup> Filed in the Probate Division of the Circuit Court in and for St. Johns County, Florida, File No. CP 10-375.

administer such assets to comply with the directions of the Receivership Order. See Receivership Order, ¶1.

3. The Receiver has identified five parcels of real property (the "Properties") owned by the Defendants. One of the Properties, which were owned by FEBG, consists of approximately 3 acres of commercial land located at 2690 Port Industrial Drive, Jacksonville, Florida (the "Property"). The Property lies adjacent to the Port Jax Trade Center and is zoned for industrial use.

4. Currently, a recorded mortgage exists on the Property and is held by Wells Fargo Bank (formerly Wachovia Bank, hereinafter, the "Lender") in the amount of \$237,500. The Lender filed a claim in the Probate Case relating to the mortgage claiming a total amount owed of \$202,579.43. The Property is also encumbered by the 2010<sup>2</sup> and 2011 real property taxes, in the approximate sum of \$27,000. Nevertheless, the Receiver believes that equity exists in the Property above the amounts of the encumbrances and seeks to market and sell the Property for the benefit of the creditors of the Receivership Entities.

5. The Receiver has conferred with Julie A. Bohn ("Ms. Bohn") of Cantrell & Morgan, Inc. ("C&M" or the "Broker"), a full service commercial real estate brokerage firm, to market and sell the Property. C&M is consistently ranked in the top 10 brokerage firms in Northeast Florida. Ms. Bohn is certified in Florida as a broker and a general real estate appraiser. Ms. Bohn has previously worked with properties in receivership and specializes in bank owned and special asset property.

6. The Receiver seeks authority from the court to enter into an Exclusive Listing Agreement to retain the Broker on an exclusive basis to negotiate the sale of the Property for a

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<sup>2</sup> The 2010 real property taxes are currently owed to a tax certificate holder.

period of ninety (90) days. (The exclusive right of sale commences upon the date the Court approves this motion.)

7. The Broker has recommended that the property be listed for \$369,000.

8. The Broker has provided the Receiver with a proposal for brokerage services and a confidential valuation of the Property. The Broker has agreed to a commission calculated at five (5%) percent of the gross sale price if there is a cooperating broker, and four (4%) if C&M is the sole broker.

9. The Receiver also seeks to modify the sale procedures set forth in 28 U.S.C. § 2001 and authorize a private sale of the Property based on the procedures set forth in this motion.

10. The Receiver has consulted with the Lender's representative, who insists on a private sale of the Property. The Lender believes that the Receiver will obtain a higher sale price through a private sale, which it believes will assure that its mortgage is satisfied. Moreover, the Lender has agreed to postpone foreclosure of the Property pending the Receiver's prompt sale of the Property.

#### **MEMORANDUM OF LAW**

The district court has broad powers and wide discretion to determine relief in an equity receivership. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). These powers include the authority to approve the sale of property of the Receivership Entities. Clark on Receivers § 482 (3d ed. 1992) (citing *First Nat'l Bank v. Shedd*, 121 U.S. 74, 87, 7 S.Ct. 807, 814, 30 L.Ed. 877 (1887)) (A court of equity having custody and control of property has power to order a sale of the property in its discretion). Moreover, 28 U.S.C. § 2001 provides procedures for the sale of real property under any order or decree of any court of the United States. Section 2001

recommends that property in the possession of a district court-appointed receiver shall be sold at public sale in the district where the receiver was first appointed, at the courthouse of the county where the property is located or as the court directs. *See* 28 U.S.C. § 2001(a).

However, after notice and hearing, the court may order the sale by private sale upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. The procedures in Section 2001 include: (1) before confirmation of any private sale, the court shall appoint three disinterested persons to appraise the property; (2) no private sale shall be confirmed at a price less than two-thirds of the appraised value; (3) before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation; and (4) the private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 percent increase over the price offered in the private sale. *Id.* Moreover, Section 2002 of Title 28 provides that a public sale of realty under any order of any court of the United States shall not be made without notice published once a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state, or judicial district of the United States wherein the realty is situated. *See* 28 U.S.C. § 2002.

Good cause exists for this court to modify the sale procedures. The intent of the statute will be accomplished by the actions of the Broker in marketing the Property for sale. Waiving the requirement for formal appraisals will reduce the costs of the sale and conserve estate resources without impeding the integrity of the sale. As previously stated, the Lender favors a private sale and has agreed to postpone foreclosure of the Property pending a prompt sale. Moreover, the exclusivity of the Listing Agreement will expire in ninety days. In the event the

Broker in unsuccessful, the parties can revisit and revise the terms and conditions of the sale. Finally, no sale will be approved without notice to all interested parties and further order of this court. For the foregoing reasons, it is in the best interest of receivership estate to modify the statutory procedures for sale of property

**WHEREFORE** the Receiver respectfully requests that this Court enter an order granting the Receiver authority to enter into an exclusive listing agreement with the Broker, to modify the sale procedures, and for such other relief this Court may deem just and proper.

**LOCAL RULE 7.1 CERTIFICATION OF COUNSEL**

Pursuant to Local Rule 7.1, undersigned counsel hereby certifies that the Receiver has conferred with counsel for the Securities & Exchange Commission who has no objection to the relief requested herein.

Respectfully submitted,

/s/ Joan Levit

Joan Levit, Esq.  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 19th day of October, 2012, I electronically filed the foregoing Receiver's Motion for Authority to Enter Into An Exclusive Listing Agreement with Cantrell and Morgan, Inc. to Market and Sell Industrial Land Owned By FEBG with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served on this day on all counsel of record on the attached Service List via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Joan Levit  
Joan Levit, Esq.

**1:10-cv-22078-FAM**

Notice has been electronically mailed to:

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representing **United States of America**