

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 17-CV-61937 WPD

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

STUDENT DEBT DOCTOR LLC, a Florida  
limited liability company,

and

GARY BRENT WHITE, JR., individually and  
as an officer of Defendant Student Debt Doctor LLC,

Defendants.

---

**RECEIVER'S UNOPPOSED MOTION FOR  
AUTHORITY TO LIQUIDATE ACCOUNTS IN THE NAME OF  
RECEIVERSHIP ENTITY FIDELITY ASSET HOLDINGS LIMITED  
PARTNERSHIP, WITH SUPPORTING MEMORANDUM OF LAW**

Pursuant to Section XI.B.2 of the Stipulated Preliminary Injunction [DE 24] (the "PI") and Section 2 of the Order Granting Receiver's Unopposed Motion to Expand Receivership to Include Additional Entities as Receivership Entities [DE 62], Robert Carey, not individually, but solely in his capacity as the Court-appointed receiver (the "Receiver") for Student Debt Doctor LLC ("SDD"), Fidelity Debt Reserve LLC ("Fidelity Debt"), Fidelity Credit Repair LLC ("Fidelity Credit"), Fidelity Reserve Loans LLC ("Fidelity Reserve"), G White Enterprises LLC ("G White"), and Fidelity Asset Holdings Limited Partnership ("Fidelity Asset Holdings"), moves, on an unopposed basis, for authority to liquidate two accounts at Merrill Lynch in the name of newly-

added Receivership Entity Fidelity Asset Holdings which hold pre-receivership equities and mutual funds (as well as cash).<sup>1</sup>

Undersigned counsel hereby certifies that he has conferred with counsel for both Plaintiff Federal Trade Commission (the “FTC”) and Mr. White. The FTC and Mr. White have no objection to this Motion.

### **INTRODUCTION**

The Receiver recently moved, on an unopposed basis, to expand the receivership over five entities related to SDD – *i.e.*, (1) Fidelity Debt; (2) Fidelity Credit; (3) Fidelity Reserve; (4) G White; and (5) Fidelity Asset Holdings – for the various reasons discussed in the Receiver’s Unopposed Motion to Expand Receivership to Include Additional Entities as Receivership Entities [DE 61]. This Court immediately granted the Receiver’s Motion for the benefit of the Receivership Estate [DE 62].

Fidelity Debt, Fidelity Credit, and Fidelity Reserve had frozen pre-receivership accounts at Bank of America. The Receiver promptly instructed Bank of America to transfer the frozen funds to him (for deposit in the Receiver’s receivership accounts for each entity), which Bank of America has done. In total, Bank of America recently transferred \$57,952.70 to the Receiver.

Although there are no frozen funds at any bank in the name of G White, there are assets and/or claims for G White’s benefit that will be addressed as the receivership continues. Therefore, no financial institution needed to transfer any G White funds at this time.

---

<sup>1</sup> As of the last Merrill Lynch statements through February 28, 2018 produced to the Receiver, there was \$118,696.25 in cash in account ending 02235 and no cash in account ending 02236. The Receiver has requested that Merrill Lynch transfer to the Receiver (for deposit in the Receiver’s Fidelity Asset Holdings receivership account) the cash amount, which Merrill Lynch is in the process of doing.

The fifth newly-added Receivership Entity – Fidelity Asset Holdings – had two pre-receivership WCMA accounts at Merrill Lynch. The Receiver had immediately served the *Ex Parte* Temporary Restraining Order with Asset Freeze, Appointment of a Receiver, and Other Equitable Relief, and an Order to Show Cause Why a Preliminary Injunction Should Not Issue [DE 9] (the “TRO”) on Merrill Lynch on October 4, 2017 (the date the Receiver secured the business premises), and Merrill Lynch froze assets valued as of that date in the amount of \$1,041,761.00 in two WCMA accounts in the name of Fidelity Asset Holdings. As of the last produced February 2018 statements, the total amount has increased to \$1,085,285.50 and consist of cash, equities, and mutual funds (as stated above, there was approximately \$119,000 in cash as of February 2018, so the accounts consist of primarily equities and mutual funds).

Because there are equities and mutual funds, such positions must be liquidated to monetize same for the benefit of the Receivership Estate. The Receiver has evaluated the mechanics and best manner to liquidate the two accounts for the benefit of the Receivership Estate, and seeks the Court’s authority to liquidate all open positions of equities and mutual funds in the two Fidelity Asset Holdings Merrill Lynch accounts using his business judgment and discretion.

### **PROCEDURAL BACKGROUND**

On October 2, 2017, the FTC filed a Complaint for Permanent Injunction and Other Equitable Relief alleging that Defendants were violating Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC’s Telemarketing Sales Rule, 16 C.F.R. Part 310, in connection with Defendants’ marketing and sale of student loan debt relief services. The FTC also sought the TRO.

On the following day (*i.e.*, October 3, 2017), this Court granted the relief sought by the FTC and issued the TRO. Shortly thereafter, Defendants stipulated to the PI, which essentially incorporated the terms of the TRO, as well as other relevant terms.

As a result of the FTC's efforts, this Court appointed the Receiver for SDD and the other Receivership Entities. In part, this means that this Court ordered the Receiver to assume full control of the Receivership Entities and to secure, conserve, hold, manage, and prevent the loss of the Receivership Entities' assets.

Since his appointment, the Receiver and his professionals have been working tirelessly, yet efficiently, to effectuate his obligations under the TRO (and now the PI). As further discussed below, this work has primarily involved identifying and freezing significant accounts and assets of the Receivership Entities and Mr. White himself, as well as securing three business suites in which the Receivership Entities operated and preserving all relevant books and records (both hard copy and voluminous electronically-stored information ("ESI")).

In addition, the Receiver has served multiple subpoenas on financial institutions to forensically investigate where company funds were spent and/or transferred, as well as several subpoenas on pre-receivership legal counsel and accountants to obtain their files, billing records, any remaining retainer amounts, documents/information regarding assets, and any other related receivership documents. The subpoena productions, which have begun and will continue, will assist the Receiver in, among other things, tracing of funds and analyzing potential third-party claims to file, namely fraudulent transfer claims, for recovery-based ancillary litigation.

As more fully discussed in the First and Second Receiver's Reports [DE 25-1 and DE 52-1], the Receiver has accomplished much for the benefit of the Receivership Estate and consumers since his appointment. Such accomplishments have been listed in recent filings (and therefore need not be repeated herein), including the recently-granted Receiver's Unopposed Motion to Expand Receivership to Include Additional Entities as Receivership Entities [DE 61].

## MEMORANDUM OF LAW

### **A. The PI**

Section XI.B.2 of the PI authorizes the Receiver “to liquidate or close out any open securities or commodity futures positions of the Receivership Entities.” Therefore, the Receiver has the undisputed authority to liquidate the open positions in the subject two Merrill Lynch accounts in the name of newly-added Receivership Entity Fidelity Asset Holdings. However, for purposes of full transparency, and to ensure the record is crystal-clear on this important liquidation issue, the Receiver is filing this Motion and requests that this Court issue the proposed Order attached as Exhibit A.<sup>2</sup>

### **B. The Court’s Broad Equitable Receivership Powers**

The Court’s power to supervise an equity receivership and determine the appropriate action to be taken in the administration of the receivership is extremely broad. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11<sup>th</sup> Cir. 1992); *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989). The Court’s wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566 (citing *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5<sup>th</sup> Cir. 1982)). These powers include the authority to approve the sale of property of the Receivership Entities. *Clark on Receivers* § 482 (3<sup>rd</sup> ed. 1992) citing *First National 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). Indeed, courts appointing a receiver “should see that the business is liquidated as economically and speedily as possible, unless its continuance is demonstrably beneficial to creditors.” *Jones v. Village of Proctorville*, 290 F.2d 49, 50 (6<sup>th</sup> Cir. 1961) (citation omitted).

---

<sup>2</sup> In addition to the parties, Merrill Lynch, through its in-house counsel at parent company Bank of America, has reviewed and approved of the attached proposed Order.

### C. Statutory Authority for the Sale

Pursuant to the PI and 28 U.S.C. § 754, the Receiver has complete jurisdiction of the assets at issue and, subject to this Court's approval, has authority to sell such assets. *See SEC v. American Capital Investments Co.*, 98 F.3d 1133, 1144 (9<sup>th</sup> Cir. 1996) (providing under Section 754, a receiver is "vested with complete jurisdiction and control of all such property and selling such property is simply an exercise of that control."). Moreover, a receiver's sale of personal property is governed by 28 U.S.C. § 2004, which directs that any personal property sold under order of this Court be sold in accordance with 28 U.S.C. § 2001, unless the Court orders otherwise. Section 2001, in turn, provides that real property shall be sold either at public sale or private sale, on terms and conditions set by the statute.

Unless otherwise ordered, 28 U.S.C. § 2001(b) requires that three separate appraisals be conducted, that the sale terms are published in a circulated newspaper ten days prior to sale, and that the sale price is not less than two-thirds of the appraised value. The undersigned has been able to locate limited authority referencing deviation from the applicable statutes. As set forth in a Report and Recommendation by the Honorable Karla R. Spaulding, United States Magistrate Judge, adopted by the Honorable John Antoon II, United States District Judge for the Middle District of Florida:

There is no controlling law regarding deviation from the requirements of § 2001(b). One of the few courts to address the issue ruled that the statutory scheme expresses a preferential course to be followed in connection with a court authorized sale of property and that the district court should not order otherwise except under extraordinary circumstances.

*SEC v. Kirkland*, Case No. 6:06-cv-183-Orl-28KRS (M.D. Fla. August 20, 2008) (Docket Entry 581), quoting *Tanzer v. Huffines*, 412 F.2d 221, 222 (3d Cir. 1969); *SEC v. Kirkland*, 2008 U.S. Dist. LEXIS 69241 (September 12, 2008) (adopting the Report and Recommendation).

Other than *Tanzer*, there is additional authority regarding deviation from the requirements

of § 2001(b) selling personalty, including DE 46 in this case regarding the authorized auction of personalty at the premises and other similar cases. *See Leidel v. Project Investors, Inc. d/b/a Cryptsy*, Case No. 16-cv-80060-Marra (S.D. Fla. Aug. 16, 2017) (Docket Entry 126) (“The Receiver is not required to sell the Personalty pursuant to 28 U.S.C. § 2001 and/or 28 U.S.C. § 2004”); *SEC v. Morris*, 2014 U.S. Dist. LEXIS 45861 (E.D. Mo. Apr. 2, 2014) (waiving the statutory requirements for a receiver to sell shares of a business); *SEC v. Goldfarb*, 2013 U.S. Dist. LEXIS 118942 (N.D. Cal. Aug. 21, 2013) (selling interests in a limited liability company); *United States v. Brewer*, 2009 U.S. Dist. LEXIS 52265 (M.D. Fla. June 19, 2009) (authorizing vehicle consignment sale). While the undersigned has found a number of cases requiring that receivers adhere to the statutory requirements of § 2001(b), all of these cases involve the sale of vessels or real property, which typically maintain value for an extended period of time. *See Stooksbury v. Ross*, 2014 U.S. Dist. LEXIS 123152 at \*5-7 (E.D. Tenn. Sept. 4, 2014) (waiving statutory requirements from appraisal of real property for a receiver); *SEC v. T-Bar Res., LLC*, 2008 U.S. Dist. LEXIS 87880 at \*9-10 and fn.4 (N.D. Tx. October 28, 2008) (“Congress thus considered deviating from the rigors of § 2001(b)’s procedures in relaxing the process for the sale of personalty”); *Bollinger & Boyd Barge Serv., Inc. v. Captain Claude Bass*, 576 F.2d 595, 597 (5<sup>th</sup> Cir. 1978); *United States v. Garcia*, 474 F.2d 1202, 1204 (5<sup>th</sup> Cir. 1973); *Acadia Land Co. v. Horuff*, 110 F.2d 354, 354-55 (5<sup>th</sup> Cir. 1940).

Here, the Receiver is proposing to liquidate the subject assets consisting of various equities and mutual funds by simply trading same for their current market/trading value at various times using his business judgment and discretion. In other words, this is not the typical sale of receivership assets to a third party where appraisals or publication for notice for overbids are relevant. Therefore, the Receiver does not believe that 28 U.S.C. § 2001 and/or § 2004 are applicable here, but for purposes of transparency, has included the subject legal discussion.

Alternatively, the Receiver requests that the Court use its statutorily-granted discretion to depart from the statute and order otherwise to approve the proposed sale of equities and mutual funds in the two Merrill Lynch accounts pursuant to the Receiver's business judgment and discretion requested in this Motion. *See Tanzer*, 412 F.2d at 222.

**D. Goal of Best Value under the Circumstances**

The goal of a receiver charged with liquidating assets is to obtain the best value for the estate available under the circumstances. *Fleet Nat'l Bank v. H & D Entertainment, Inc.*, 926 F. Supp 226, 239-240 (D.C. Mass. 1996), *citing Jackson v. Smith*, 254 U.S. 586 (1921). Further, the paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See, e.g., In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8<sup>th</sup> Cir. 1997). "When a sale of receivership assets is ordered by the court, the assets should be sold at the 'best price under the circumstances.'" *SEC v. Schooler*, 2013 U.S. Dist. LEXIS 162559 (S.D. Cal. Nov. 14, 2013) (citations omitted).

**E. The Receiver's Request to Liquidate Using His Business Judgment and Discretion**

The Receiver seeks the authority to liquidate using his business judgment and discretion all of the pre-receivership equities and mutual funds in the two Merrill Lynch accounts in the name of Fidelity Asset Holdings. These positions must be monetized at some point in time for the benefit of the Receivership Estate. Given the inherent volatility of the stock market, as well as the recent surge in the market beginning last year, such liquidation should likely occur sooner rather than later.

The Receiver is prepared to liquidate all of the subject Fidelity Asset Holdings equities and mutual fund positions in the two Merrill Lynch accounts on dates and times for each position using

his business judgment and his ultimate discretion for each position.<sup>3</sup> Here, the market price will simply dictate the sale or liquidation price for each position at the time of the liquidation of each position.<sup>4</sup> In addition, the liquidation should not affect market values of any position in any way because the Receiver understands that the daily trading volume for each position is large. Once the liquidation is complete, the Receiver will instruct Merrill Lynch to transfer the monetized funds to the Receiver and to close the two accounts.

### **CONCLUSION**

Based on the above, this Court should authorize the Receiver to liquidate all open positions, including equities and mutual funds, in the Fidelity Asset Holdings accounts at Merrill Lynch using the Receiver's business judgment and sole discretion.

### **CERTIFICATION**

Pursuant to Local Rule 7.1.A.3, undersigned counsel hereby certifies that he has conferred with counsel for the FTC and Mr. White, who have no objection to this Motion.

As also stated above, a proposed Order granting this Motion is attached as Exhibit A.

WHEREFORE, the Receiver respectfully requests that this Court enter the proposed Order, attached as Exhibit A, authorizing and approving the liquidation of all open positions, including equities and mutual funds, in the Fidelity Asset Holdings accounts at Merrill Lynch using the Receiver's business judgment and sole discretion.

---

<sup>3</sup> The Receiver and his professionals have significant experience with equities and mutual funds given their securities background, and the Receiver's professionals will assist him with this process as well.

<sup>4</sup> Merrill Lynch will obviously receive its mandatory, pre-set account fees (which are anticipated to be minimal) upon liquidation of the positions.

Dated: March 29, 2018

Respectfully submitted,

**SALLAH ASTARITA & COX, LLC**  
*Counsel for the Receiver*  
3010 North Military Trail, Suite 210  
Boca Raton, FL 33431  
Tel.: (561) 989-9080  
Fax: (561) 989-9020

/s/Patrick J. Rengstl  
**James D. Sallah, Esq.**  
Fla. Bar No. 0092584  
Email: [jds@sallahlaw.com](mailto:jds@sallahlaw.com)  
**Jeffrey L. Cox, Esq.**  
Fla. Bar No. 0173479  
Email: [jlc@sallahlaw.com](mailto:jlc@sallahlaw.com)  
**Patrick J. Rengstl, P.A.**  
Fla. Bar No. 0581631  
Email: [pjr@sallahlaw.com](mailto:pjr@sallahlaw.com)  
**Joshua A. Katz, Esq.**  
Fla. Bar No. 0848301  
Email: [jak@sallahlaw.com](mailto:jak@sallahlaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on March 29, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s:/Patrick J. Rengstl  
Patrick J. Rengstl

**SERVICE LIST**

Hans Clausen, Esq.  
R. Michael Waller, Esq.  
Federal Trade Commission, Southeast Region  
225 Peachtree Street, N.E., Suite 1500  
Atlanta, GA 30303  
Telephone: 404.656.1361  
Facsimile: 404.656.1379  
[hclausen@ftc.gov](mailto:hclausen@ftc.gov)  
[rwaller@ftc.gov](mailto:rwaller@ftc.gov)

David A. Ray, Esq.  
David A. Ray, P.A.  
1330 Southeast 4<sup>th</sup> Avenue, Suite I  
Fort Lauderdale, FL 33316  
Telephone: 954.399.0105  
[dray@draypa.com](mailto:dray@draypa.com)

Justin Infurna, Esq.  
The Infurna Law Firm, P.A.  
121 South Orange Street  
Orlando, FL 32801  
Telephone: 1.800.774.1560  
[justin@infurnalaw.com](mailto:justin@infurnalaw.com)

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 17-CV-61937 WPD

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

STUDENT DEBT DOCTOR LLC, a Florida  
limited liability company,

and

GARY BRENT WHITE, JR., individually and  
as an officer of Defendant Student Debt Doctor LLC,

Defendants.

---

**ORDER GRANTING RECEIVER'S UNOPPOSED MOTION  
FOR AUTHORITY TO LIQUIDATE ACCOUNTS IN THE NAME OF  
RECEIVERSHIP ENTITY FIDELITY ASSET HOLDINGS LIMITED PARTNERSHIP**

THIS CAUSE came before the Court upon the Receiver's Unopposed Motion for Authority to Liquidate Accounts in the Name of Receivership Entity Fidelity Asset Holdings Limited Partnership [DE 65] (the "Motion"), and the Court having reviewed the Motion and being otherwise duly advised in the premises, it is hereby **ORDERED and ADJUDGED**:

The Motion is **GRANTED**. The Receiver is authorized to liquidate all open positions, including equities and mutual funds, in the Fidelity Asset Holdings Limited Partnership accounts at Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") (ending 02235 and 02236) using the Receiver's business judgment and sole discretion. Pursuant to the Stipulated Preliminary Injunction [DE 24], the Order Granting Receiver's Unopposed Motion to Expand Receivership to Include Additional Entities as Receivership Entities [DE 62] and this Order,

Merrill Lynch shall cooperate with the Receiver during the process and shall accept instructions from the Receiver for liquidating the positions in the above two accounts. Merrill Lynch is authorized to deduct its standard fees related to the liquidation and/or transfer of assets in the above two accounts pursuant to this Order. In addition, pursuant to the above collective Orders, Merrill Lynch shall promptly transfer the monetized funds in the above two accounts to the Receiver pursuant to his instructions and shall thereafter promptly close the two accounts.

**DONE and ORDERED** in Chambers in Fort Lauderdale, Broward County, Florida on this \_\_\_ day of \_\_\_\_\_, 2018.

**WILLIAM P. DIMITROULEAS**  
**UNITED STATES DISTRICT JUDGE**

Copies to:  
*Counsel of record*