

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-cv-60082-DIMITROULEAS/SNOW

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

FREDERIC ELM f/k/a FREDERIC ELMALEH, et al.,

Defendants,

and

AMANDA ELM f/k/a AMANDA ELMALEH,

Relief Defendant.

_____)

**RECEIVER'S UNOPPOSED MOTION TO APPROVE SALE OF
PERSONAL PROPERTY (COMPUTER EQUIPMENT AND SAFE)**

Grisel Alonso, not individually, but solely in her capacity as the Court-appointed receiver ("Receiver") for Elm Tree Investment Advisors, LLC, Elm Tree Investment Fund LP, Elm Tree "e"Conomy Fund LP, and Elm Tree Motion Opportunity LP (collectively, the "Receivership Entities"), respectfully files this unopposed Motion to approve the sale of personal property which was purchased and paid for with funds from the Receivership Entities.

The Securities Exchange Commission, Defendant Frederic Elm, and Relief Defendant Amanda Elm do not object to the relief sought herein.

BACKGROUND

1. On January 16, 2015, the Court entered an order appointing Ms. Alonso as the Receiver (the "Receivership Order"). [D.E. 13].

2. The Receivership Order provides, among other things, that: the assets and property of the Receivership Entities, whatsoever and wherever located, are to be placed in the

Receiver's control [D.E. 13 at ¶ 1]; and the Receiver has sole title to the assets and property, including but not limited to all books, papers, codes, records, data, bank accounts, savings accounts, securities, supplies, equipment, and other real property [D.E. 13 at ¶¶ 1, 17].

3. Pursuant to the Receivership Order, the Receiver took possession and control of, among other property, the leased premises for Myecco located at 2530 North Federal Highway, Ft. Lauderdale, FL 33305 (the "Myecco Office Space") and the equipment and office furniture contained therein.

4. The Myecco Office Space was leased and paid for by Elm Tree Investment Advisors, LLC ("ETIALLC"), a Receivership Entity. *See* D.E. 114, at Exhibit 1.

5. The Receiver promptly made an inventory of the items contained in the Myecco Office Space. In connection therewith, Defendant Frederic Elm ("Elm"), who was the guarantor on the Office Lease, set aside for the Receiver certain furniture and computer equipment items, among other property, in the Myecco Office Space which Elm does not dispute were purchased with Receivership Entity and/or investor funds. On September 1, 2015, the Receiver filed an unopposed Motion seeking approval to sell certain furniture taken from the Myecco Office Space [D.E. 114], which this Court granted on September 2, 2016. [D.E. 116].

6. The Receiver also took possession of certain computer equipment and related items from the Myecco Office Space and Elm's residence, described in detail on the attached **Exhibit "1"** (the "Computer Equipment").

7. The Receiver has identified payments made by Elm Tree Motion Opportunity, LP and Elm Tree Investment Advisors, LLC, Receivership Entities, to Tiger Direct, Office Depot and Best Buy for the purchase of the Computer Equipment.

8. In addition to the Computer Equipment, the Receiver took possession of a safe installed in Elm's home, American Security Model TF5924E, Serial Number TKS134346 (the "Safe"), pursuant to this Court's Order on Emergency *Ex Parte* Motion for Turnover of Safe and Contents of Safe in the Home of Defendant Frederic Elm. [D.E. 27].

9. The Receiver's records reflect that the Safe was purchased on August 31, 2014 from All Service Locksmith d/b/a Anthony Lock and Safe with funds derived from an account in the name of Elm Tree Investment Advisors, LLC, a Receivership Entity.

10. Accordingly, the Computer Equipment and Safe, having been purchased with Receivership Entity funds, are property of the Receivership Estate. [D.E. 13 at ¶¶ 1, 17].

11. The Computer Equipment and Safe are being stored in Broward County, Florida.

12. The Receiver's appraiser has estimated the liquidated value of the Computer Equipment and Safe to be approximately \$1,500.00.

13. The Receiver desires to sell the Computer Equipment and Safe for the benefit of the Receivership Estate at a public auction or private sale, in accordance with 28 U.S.C. § 2004.

MEMORANDUM OF LAW

Judicial sales of personalty such as the sale of the Computer Equipment and Safe are governed by 28 U.S.C. § 2004, which states that any personalty sold under order or decree of any court of the United States shall be sold in accordance with 28 U.S.C. § 2001, unless the court orders otherwise. 28 U.S.C. § 2004. This Court has authority to approve a private sale of personal property, and has significant discretion in setting the terms and conditions for such sale, provided that the Court believes the sale is in the best interest of the Estate. *See U.S. v. Branch Coal Corp.*, 390 F.2d 7, 9-10 (E.D. Pa. 1968) ("There can be no doubt that Congress has authorized the federal judiciary to use sound discretion in setting the terms and conditions for

judicial sales."). The *Branch Coal* case also provides that "[i]t is a well settled rule that, except in cases of abuse, appellate courts will not disturb the exercise of a district court's discretion in setting the terms and conditions for a judicial sale and the confirmation thereof." *See id.* Further, the Court can waive the specific requirements of 28 U.S.C. § 2001 where it believes that the receiver has substantially complied with the requirements of the statute in connection with the sale of the property. *See SEC v. Kirkland*, 2009 WL 1439087, *2 (M.D. Fla. May 22, 2009) (waiving certain requirements of 28 U.S.C. § 2001 where the Court believed that the receiver had substantially complied with the requirements of the statute in the sale of the property).

The Receiver respectfully submits that it is in the best interest of the Receivership Estate to sell the Computer Equipment and Safe. If the Receiver determines that she will receive the best and highest sale price for the Computer Equipment and Safe in a private sale as opposed to a public auction, then the Receiver respectfully requests that the Court waive the requirements of 28 U.S.C. § 2001 to obtain three independent appraisals and publish the terms of a proposed sale in a "newspaper or newspapers of general circulation as the court directs at least ten days before confirmation" in order to conserve the resources of the Receivership Estate. *See S.E.C. v. Billion Coupons, Inc.*, 2009 WL 2143531, *3 (D. Haw. July 13, 2009) (finding good cause in deviating from the requirements of 28 U.S.C. § 2001).

Accordingly, the Receiver respectfully requests that the Court approve the sale of the Computer Equipment and Safe through a public or private sale to be conducted in accordance with 28 U.S.C. § 2001 and, if the sale is to take place through a private sale, that the Court waive the requirements of 28 U.S.C. § 2001 to obtain three independent appraisals and publish the terms of the sale in a newspaper.

The Receiver has conferred with counsel for the Elms, and the Elms do not object to the relief requested herein. The Securities and Exchange Commission does not object to the relief requested in this Motion.

CONCLUSION

Based on the above, the Receiver respectfully requests that the Court enter an Order approving the sale of the Computer Equipment and Safe through a public or private sale to be conducted in accordance with 28 U.S.C. § 2001 and, if the sale is to take place through a private sale, waiving the requirements to obtain three independent appraisals and publish the terms of the sale in a newspaper; and granting any other relief the Court deems just and proper.

Respectfully submitted,

BROAD AND CASSEL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 25, 2016, a true and correct copy of the foregoing was served via electronic transmission on all counsel or parties of record on the Service List below.

By: s/Daniel S. Newman
Daniel S. Newman, P.A.

SERVICE LIST

<p>Patrick R. Costello, Esq. Katharine Zoladz, Esq. costello@sec.gov zoladzK@sec.gov U.S. Securities and Exchange Commission 801 Brickell Avenue Suite 1800 Miami, FL 33131 <i>Counsel for U.S. Securities and Exchange Commission</i></p>	<p>David R. Chase, Esq. david@davidchaselaw.com David R. Chase, P.A. 1700 East Las Olas Boulevard Suite 305 Fort Lauderdale, FL 33301 <i>Counsel for Defendant Frederic Elm and Relief Defendant Amanda Elm</i></p>
<p>Christopher Bruno, Esq. cbruno@brunodegenhardt.com Bruno & Degenhardt 10615 Judicial Drive Suite 703 Fairfax, VA 22030 <i>Counsel for Defendant Frederic Elm and Relief Defendant Amanda Elm</i></p>	<p>Grisel Alonso, Esq. galonso@moecker.com Michael Moecker & Associates, Inc. 3613 North 29th Avenue Hollywood, FL 33020 <i>Receiver</i></p>

EXHIBIT "1" – COMPUTER EQUIPMENT

1 each HP ENVY Touchsmart 23se All-In-One PC (s/n: 3CR3381D5S) w/AC adaptor
1 each HP ENVY m7 Notebook PC (boxed & unopened) (s/n: 5CD4456GK0)
1 each Dell Inspiron #3647 computer (service tag: 7NDG322; express service code: 16650783866)
1 each Dell Inspiron #3647 computer (service tag: CNDG322; express service code: 27534695546)
1 each Dell Inspiron #3647 computer (service tag: BMDG322; express service code: 25297447034)
8 each Dell keyboards; 3 different models: SK-8115 (1), KB113p (5), KB113t (2)
7 each Dell mice; 2 different models: MS111-L (3), MS111-P (4)
20 each power cords, 8 each VGA cables, 4 each HDMI/DVI cables, 1 each DVI/DVI cable
3 each Dell computer boxes, 2 each Dell monitor boxes, 1 each keyboard box, 4 pieces internal packing material
14 each Dell 24" flat screen monitors, model #OVJH96
2 each Dell 24" flat screen monitors, model #OVJH96 (boxed, sealed)
1 each Dell Inspiron #3847 computer (service tag: GV6SW12; express service code: 36714394406)
1 each Dell Inspiron #3847 computer (service tag: GZGRW12; express service code: 36973008614)
1 each Dell Inspiron #3847 computer (service tag: 2R2HX12; express service code: 5990346614)
1 each Dell Inspiron #3847 computer (service tag: GY9SW12; express service code: 36900831782)
1 each RTM 019 3D optical mouse
1 each Dell 24" flat screen monitor, model #OVJH96; s/n: CN-OVJH96-74445-4A6-183U
1 each Dell 24" flat screen monitor, model #OVJH96; s/n: CN-OVJH96-74445-4A6-195U
1 each Dell Inspiron #3847 computer (service tag: 2PYTX12; express service code: 5923721846)
1 each Dell Inspiron #3647 computer (service tag: 9NDG322; express service code: 21004348538)