

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

TRIAL/IAS, PART 3
NASSAU COUNTY

In the Matter of the Application of
NILS YOUNGWALL a Member of
Youngwall Realty, LLC,

INDEX No. 022266/07

Petitioner,

MOTION DATE: Dec. 1, 2008
Motion Sequence # 003, 004

-against-

YOUNGWALL REALTY, LLC and
PERRY YOUNGWALL, a Member of
Youngwall Realty, LLC,

Respondents.

For dissolution of YOUNGWALL REALTY, LLC,
pursuant to LLCL §§701(a)(5) and 702, and for
related relief.

The following papers read on this motion:

Notice of Motion.....	XX
Affirmation in Opposition.....	X
Supplemental Affirmation in Support.....	X
Reply Affirmation	X
Affirmation in Response.....	XX

This motion, by the receiver of Youngwall Realty, LLC, George Esernio, Esq., for an order approving (1) the contract for the sale of the premises located at 80 Crossways Park Drive, Woodbury, New York, (2) the broker's listing agreement, (3) the broker's commission agreement, (4) the attorney retainer agreement; all of the above submitted herewith, together

with such other and further relief as may be appropriate under the circumstances; and a motion, by said receiver, for an order approving (1) the contract for the sale of the premises (the "Premises") located at 80 Crossways Park Drive, Woodbury, New York, (2) authorizing the closing of title to the Premises, (3) authorizing an escrow to be held by the Receiver for the payment of broker's commissions in an amount to be determined by this Court, (4) approving the retainer agreement of the Receiver's attorney, and authorizing an escrow to be held by the Receiver for the payment of his attorneys' fees and (5) authorizing the payment of commissions to be paid to the Receiver, together with such other and further relief as may be appropriate under the circumstances, are **both** determined as hereinafter set forth.

The receiver was appointed by this Court, by short form order of March 14, 2008 to wind up the affairs of Youngwall Realty, LLC. The sole asset of the company is the property and building located at 80 Crossways Park Drive in Woodbury, New York, and the duties of the receiver include the sale of the premises. He obtained the services of a licensed real estate appraiser, who valued the property at \$3.5 million. Subsequently, the receiver retained a licensed real estate broker, Goldstein Realty Organization, to market and sell the property. That retainer is dated May 30, 2008. Subsequently, a purchaser named RH at 80 Crossways Park Drive LLC was obtained for the sum of \$3.3 million, all cash. The receiver retained an attorney, Henry E. Green, on June 17, 2008, and the Receiver and RH agreed to convey the premises to RH by a contract dated June 23, 2008. The contract is subject to the approval of this Court. Paralleling these agreements is a Brokerage Agreement between the Receiver, Goldstein Realty Organization, Hunt Corporate Services, Inc. and Brody Realty Corp., in which it was agreed to equally divide the 6% Brokerage Commission between the latter three entities.

The petitioner's counsel asserts that the petitioner does not object to the sale, but would prefer that the sale generate the highest possible net price and, in turn, would generate the highest possible distribution to the members of the LLC. Counsel also expresses the petitioner's desire to complete an expeditious conclusion. Counsel seeks judicial scrutiny of the fees and commission for the real estate broker and receiver's counsel.

The receiver has submitted a supplemental affirmation, in which he explains that he had preliminary discussions with Goldstein Realty Organization prior to his receipt of an appraisal. He asserts that he has expended \$143,000 for maintenance, taxes, utilities and insurance for the property and an expeditious sale will lessen the financial burden on the members.

The respondent's attorney avers that his client offers \$3,300,000 for the property with no contingency; he opposes the broker's fees and attorney's fees as unnecessary and questionable.

As to the second motion, the receiver avers that, he has received an offer to purchase from an entity known as Kailyn Realty II LLC for the sum of \$3,500,000, and has received a contract for that amount and seeks approval of such contract. He reiterates the history of the retention of the broker, the Goldstein Realty Organization, and avers that Kailyn Realty II LLC is controlled by the respondent, which conveyed that offer if the respondent was unsuccessful on his appeal from this Court's Short Form Order of March 14, 2008. Thereafter, the purchase offer was confirmed and the contract was prepared with the representation that, while Goldstein Realty Organization did not deal with Kailyn to bring about the sale, Goldstein and Harlowe Realty claim a commission; that \$210,000 will be held in escrow until the brokerage claims are resolved; and that the Receiver is requesting that that \$210,000 be withheld from the sales proceeds, charging one half each to the petitioner and one half to the respondent. The receiver also seeks attorney's fees of \$11,000 one half to each party; and his own commissions; and an order that he pay out of proceeds all adjustments, taxes and fees.

The petitioners' attorney, in response, does not object, generally, to the Kailyn contract, only to certain specific terms, i.e., the fees and commissions to the Receiver, Receiver's attorney and the broker's commission. Counsel argues that the Receiver should not receive the full commission and then also seek compensation to the managing agent, attorney and real estate brokers; that the latter professionals performed the bulk of the work entailed. Additionally, counsel objects to fees paid to such appointees who lack appointment pursuant to the Rules. Counsel asserts that the instant motion be granted, with the Kailyn contract being approved, so as to maximize the return to the members of the LLC on the sale of its sole asset. Alternatively, he asserts that failing the approval of the Kailyn contract, the Receiver should disclose all relevant information about the third purchase offer that he received. Counsel argues that because neither party herein, Nils Youngwall and Perry Youngwall, received a proposed stipulation relative to the issues in the Addendum to the contract, then the Addendum should be nullified, in that the petitioner would net only 1/4 of the net proceeds of the \$3,500,000 sale. Alternatively, counsel argues that the petitioner would gain a higher net by a Kailyn purchase of the full purchase price and then the funds would be disbursed, by stipulation. Counsel also objects that a firm closing date is not set forth in the contract; that there is a contradiction as to the selling broker's commission and participation.

In reply, the Receiver avers that his labors warrant the approval of his fee and details his efforts in conferences, solicitations with purchasers and preservation of the property so as to provide a basis for the settlement of this litigation. He concedes that paragraph 10 of the addendum was inadvertently left in and should be excluded. He further avers that his intent and that of the Court is not to remit only one half of the net proceeds to the petitioner after allowing the purchaser a credit of one half the purchase price after adjustments. He asserts that this motion was necessitated by the failure of the parties to reach a stipulation. He further asserts that both Mr. Green and the Goldstein Organization are in the process of being added to the list; and argues that the petitioner's assertions are mere haggling over price without a legal or practical basis.

DECISION

The initial motion by the Receiver, to approve the contract with RH at 80 Crossways Park Drive LLC, is **denied**; the Receiver is bound to accept the greater of the purchase offers, which is also most advantageous to the LLC, in that the second motion herein seeks approval of a sale to an entity controlled by the respondent, and such approval will serve the interests of justice in promoting the settlement of this litigation.

With respect to the second motion before the Court, the Receiver concedes that paragraph 10 of the Addendum is inapplicable and such is a determination of this Court. Similarly determinative is the Receiver's response that the distribution of the net proceeds will not be as set forth in Petitioner's affirmation, paragraphs 7 and 8. Relative to the objection regarding the Part 36 eligibility of Henry Green, Esq. and The Goldstein Realty Organization, this Court has appointed Mr. Green and The Goldstein Realty Organization nunc pro tunc to June 17, 2008 and May 30, 2008, respectively. The Court also notes that both appointees now are Part 36 eligible.

Accordingly, the initial motion is **denied** and the second motion is **granted** and the contract with Kailyn is approved except as to those provisions delineated hereinabove.

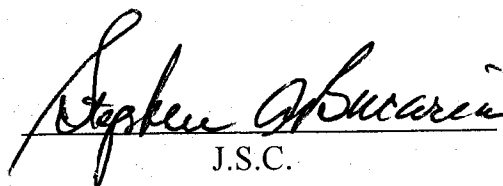
The parties are directed to proceed to a closing within 20 days after service of a copy of this order, by the Receiver, upon the attorneys for the parties.

With respect to the attendant issues of the Receiver's commission, counsel fees and broker's commissions, the Receiver is directed to escrow sufficient funds for said expenses, pending further order of the Court; and he shall provide the Court and parties with an itemized statement of such prior to the conference now scheduled for February 26, 2009 at 9:30 a.m.

Dated JAN 29 2009

ENTERED

FEB 02 2009


J.S.C.