

Joseph M.R. Covey (7492) (jcovey@parrbrown.com)
Cynthia D. Love (14703) (clove@parrbrown.com)
PARR BROWN GEE & LOVELESS, P.C.
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Telephone: (801) 532-7840
Facsimile: (801) 532-7750

Attorneys for Jonathan O. Hafen as Receiver

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

COMMODITY FUTURES TRADING
COMMISSION, and

STATE OF UTAH DIVISION OF
SECURITIES, through Attorney General
Sean D. Reyes

Plaintiffs,
v.

RUST RARE COIN INC., a Utah corporation,
GAYLEN DEAN RUST, an individual,
DENISE GUNDERSON RUST, an individual,
and JOSHUA DANIEL RUST, an individual

Defendants;

and

ALEESHA RUST FRANKLIN, an individual,
R LEGACY RACING INC, a Utah
corporation, R LEGACY ENTERTAINMENT
LLC, a Utah limited liability company, and R
LEGACY INVESTMENTS LLC, a Utah
limited liability company.

Relief Defendants.

**MOTION FOR HEARING TO
CONFIRM PRIVATE SALE OF
PROPERTY RELATED TO 2815 W.
GORDON AVENUE IN LAYTON,
UTAH**

Civil No. 2:18-cv-00892-TC

Judge Tena Campbell

Magistrate Judge Dustin B. Pead

Jonathan O. Hafen, the Court-Appointed Receiver, hereby submits this Motion for Hearing to Confirm Private Sale of property related to 2815 W. Gordon Avenue in Layton, Utah (this “Motion”).

INTRODUCTION

The Receiver is the owner of approximately 7.77 acres of real property located at 2815 W. Gordon Avenue, Layton, Utah 84041, also described as Parcel Nos. 12-109-0365 and 12-109-0366, and four shares of Davis & Weber Counties Canal Company water stock (the “Property”). The Receiver has entered into a Real Estate Purchase Contract for the sale of the Property (the “Purchase Agreement”) with Symphony Development Corporation (the “Buyers”) for a sale price of \$1,600,000, subject to Court approval. A copy of the Purchase Agreement and all amendments are attached hereto as **Exhibit A**. The Receiver asks this Court for an order setting a hearing at which the Court may consider and confirm the sale. The Receiver has met all of the statutory requirements under 28 U.S.C. § 2001 to sell the Property. Specifically, the Receiver has secured three independent appraisers to value the Property, the sale price exceeds two-thirds of the appraised value, and the Receiver has published notice of the sale at least 10 days in advance of the sale’s confirmation.

MEMORANDUM

This Court’s November 27, 2018 Order Appointing Receiver and Staying Litigation, Dkt. No. 54 (the “Order”), authorizes and directs the Receiver to take control of Defendants’ assets and provides: “Upon further Order of this Court, pursuant to such procedures as may be required by this Court and additional authority such as 28. U.S.C. § 2001 and 2004, the Receiver will be authorized to sell, and transfer clear title to, all real property to the Receivership Estates.” Order,

Dkt. No. 54, at 15 ¶ 38. The Order also contemplates that the Receiver would employ professionals to assist him in discharging his duties, including financial and business advisers as well as real estate agents:

To engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, securities traders, registered representatives, financial or business advisers, liquidating agents, real estate agents, forensic experts, brokers, traders or auctioneers

Order, Dkt. No. 54 at 5 ¶ 8(F).

The Receiver requests that this Court confirm the proposed sale of the Property as required by 28 U.S.C. § 2001. Section 2001(b) authorizes a court to order the sale of real property at a private sale if the court finds that the sale is in the best interest of the estate after considering the evaluation of three court-appointed appraisers (the sale may not be less than two-thirds of the appraised value); the terms of the sale are published in a newspaper of general circulation at least 10 days before confirmation; and notice of the hearing is published to all interested parties.

(b) After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. 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. 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 per centum increase over the price offered in the private sale.

28 U.S.C. §§ 2001(b).

To comply with his duties under the Order and 28 U.S.C. § 2001, the Receiver filed a motion seeking this Court's approval to engage three independent appraisers to value the Property, which this Court granted. Dkt. No. 137. These appraisals are attached hereto as **Exhibits B, C, and D**. As reflected in these exhibits, appraiser Chad Rigby of Rigby & Company, valued the Property at \$2,060,000; Darrin Liddell of Integra Realty Resources, Inc. valued the Property at \$1,810,000; and Matt Limpert of VanDrimmelen & Associates, Inc. valued the Property at \$1,675,000. The contemplated sale price of \$1,600,000 exceeds two-thirds of the average appraised price of \$1,848,333.33, thus satisfying the sale price required by 28 U.S.C. § 2001(b).

Even though the sale price is below the appraised values, the Receiver believes the price reflects the Property's market value because (i) it has been actively marketed by a capable, reputable, commercial broker for over two months; (ii) during marketing of the Property, significant challenges related to the running of sewer, storm drain and land drain on the Property were uncovered and disclosed to potential buyers, and (iii) over a dozen different offers were made and the offer presented to the Court is the highest offer that the Receiver believes will actually close in light of the aforementioned issues.

On Friday, June 11, 2021, the Receiver published notice of the sale's terms (the "Notice") in the *Deseret News*, a newspaper of general circulation throughout Layton, Utah and Davis County generally, which is where the Property is located. Proof of publication and a copy of the Notice is attached hereto as **Exhibit E**. The Notice identifies the Property, lists the sale price, and invites any higher or better offers. The Receiver's real estate broker made contact with those who had made offers on the Property to see if any of them were interested in making a high offer, but no offers were made. Ten days have expired since the Receiver first published the Notice, and the

Receiver has not received any offer to purchase the Property for an amount at least 10% above the sale price.

Once the Court sets a hearing date, the Receiver will ensure that all interested parties receive notice of the hearing by publishing this Motion on the Receiver's website (rustrarecoinreceiver.com) and by emailing the hearing date to all those listed on the Receiver's master mailing matrix.

The Property appears to be encumbered by deeds of trust and other liens in favor of Bary Jones and his entity Jonesco Enterprises, LLC, as well as Central Bank as custodian for the benefit of Bary Jones IRA 20825 (together, the "Property Liens"). The Receiver disputes the validity of some or all of the Property Liens. In order to avoid delaying the closing of the Property, Mr. Jones, Central Bank and the Receiver have agreed that the Property will be sold free and clear of the Property Liens, with the Property Liens attaching to the sale proceeds in the same amount, priority and subject to the same claims and defenses as existed before the closing. The parties will work to consensually resolve any disputes regarding the Property Liens, and will petition the Court for assistance in the event issues regarding the Property Liens cannot be resolved consensually.

CONCLUSION

Based on the foregoing, the Receiver believes that he has satisfied all of the requirements of 28 U.S.C. § 2001. Accordingly, the Receiver respectfully requests that the Court set a hearing at which the Court will grant this Motion. A proposed Order is attached hereto.

DATED this 9th day of July 2021.

PARR BROWN GEE & LOVELESS

/s/ Joseph M.R. Covey
Joseph M.R. Covey
101 South 200 East, Suite 700
Salt Lake City, UT 84111
(801) 532-7840
jcovey@parrbrown.com
Attorney for Receiver Jonathan O. Hafen

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **MOTION FOR HEARING TO CONFIRM PRIVATE SALE OF 7.77 ACRES AT 2815 W. GORDON AVENUE IN LAYTON, UTAH** was (1) electronically filed with the Clerk of the Court through the CM/ECF system on July 9th, 2021, which sent notice of the electronic filing to all counsel of record, (2) posted on the Receiver's website (rustrarecoinreceiver.com), and (3) emailed to all those on the Receiver's master mailing matrix.

Kristen R. Angelos UTAH FEDERAL DEFENDER OFFICE 46 W BROADWAY STE 110 SALT LAKE CITY, UT 84101 (801)524-4010 kris_angelos@fd.org	Walter F. Bugden BUGDEN & ISAACSON LLC 445 E 200 S STE 150 SALT LAKE CITY, UT 84111 (801)467-1700 wally@bilaw.net
Jennifer Juniper Chapin COMMODITY FUTURES TRADING COMMISSION 4900 MAIN ST STE 500 KANSAS CITY, MO 64112 (816)960-7746 jchapin@cftc.gov	P. Matthew Cox SNOW CHRISTENSEN & MARTINEAU 10 EXCHANGE PLACE 11TH FL PO BOX 45000 SALT LAKE CITY, UT 84145-5000 (801)521-9000 pmc@scmlaw.com
Andrew G. Deiss DEISS LAW PC 10 W 100 S STE 425 SALT LAKE CITY, UT 84101 (801)433-0226 adeiss@deisslaw.com	Sean N. Egan SOUTH TEMPLE TOWER STE 1505 136 E SOUTH TEMPLE SALT LAKE CITY, UT 84111-1139 (801)363-5181 (801)363-5184 (fax) seannegan@sneganlaw.com
Paula Woodland Faerber UTAH ATTORNEY GENERALS OFFICE 160 E 300 S 5TH FLOOR SALT LAKE CITY, UT 84114 (801)366-0248 pfaerber@agutah.gov	Jacob L. Foncesbeck SMITH WASHBURN LLP 8 E BROADWAY STE 320 SALT LAKE CITY, UT 84111 (801)584-1800 jfonnesbeck@smithwashburn.com
Robert K. Hunt UTAH FEDERAL DEFENDER OFFICE 46 W BROADWAY SUITE 110 SALT LAKE CITY, UTAH 84101	Jennifer R. Korb UTAH ATTORNEY GENERAL'S OFFICE 160 E 300 S 5TH FL SALT LAKE CITY, UT 84114

(801)524-4010 robert_hunt@fd.org	(801)366-0310 jkorb@agutah.gov
Thomas M. Melton UTAH ATTORNEY GENERAL'S OFFICE 160 E 300 S STE 500 SALT LAKE CITY, UT 84111 (801)366-0320 tmelton@agutah.gov	Corey Drew Riley DEISS LAW PC 10 W 100 S STE 425 SALT LAKE CITY, UT 84101 (801)433-0226 criley@deisslaw.com
John Robinson, Jr. DEISS LAW PC 10 W 100 S STE 425 SALT LAKE CITY, UT 84101 (801)433-0226 jrobinson@deisslaw.com	Thomas L. Simek COMMODITY FUTURES TRADING COMMISSION 4900 MAIN ST STE 500 KANSAS CITY, MO 64112 (816)960-7760 tsimek@cftc.gov
Jessica Stengel 46 W BROADWAY STE 110 SALT LAKE CITY, UT 84101 (801)524-4010 jessica_stengel@fd.org	Richard A. Van Wagoner SNOW CHRISTENSEN & MARTINEAU 10 EXCHANGE PLACE 11TH FL PO BOX 45000 SALT LAKE CITY, UT 84145-5000 (801)521-9000 rvanwagoner@scmlaw.com
D. Loren Washburn SMITH WASHBURN LLP 8 E BROADWAY STE 320 SALT LAKE CITY, UT 84111 (801)584-1800 lwashburn@smithwashburn.com	Steven T. Waterman DORSEY & WHITNEY LLP 111 S MAIN ST 21ST FL SALT LAKE CITY, UT 84111-2176 (801)933-7360 waterman.steven@dorsey.com
Brenda E. Weinberg DEISS LAW PC 10 W 100 S STE 425 SALT LAKE CITY, UT 84101 (801)933-226 bweinberg@deisslaw.com	Robert G. Wing UTAH ATTORNEY GENERAL'S OFFICE (160-5-140872) 160 E 300 S 5TH FLOOR PO BOX 140872 SALT LAKE CITY, UT 84114-0872 (801)599-6891 rwing@agutah.gov

/s/ Joseph M.R. Covey