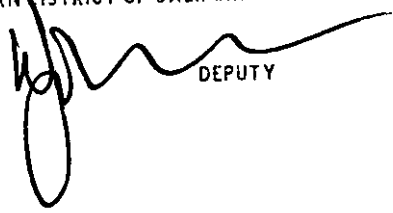


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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY:



DEPUTY

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

WHITE PINE TRUST CORPORATION,  
a California corporation; RICHARD  
MATTHEWS, an individual; and  
STEPHAN BAERE, an individual,

Defendants,

LUCIA MATTHEWS, an individual,  
Relief Defendant.

Civil No. 04cv2093 J (NLS)

**ORDER:**

**(1) GRANTING IN PART  
RECEIVER'S MOTION FOR  
ORDER APPROVING SALE OF  
REAL AND PERSONAL  
PROPERTY;**

**(2) GRANTING IN PART  
RECEIVER'S MOTION TO  
MODIFY STATUTORY SALE  
PROCEDURES; AND**

**(3) APPROVING PROCEDURE FOR  
LIMITED NOTICE THEREOF**

Before the Court is court-appointed Receiver Robb Evans & Associates' ("the Receiver") Motion regarding the sale of personal and real property presently owned by Defendant Richard Matthews and/or his wife, Relief Defendant Lucia Matthews. [Doc. No. 46.] Both Plaintiff Commodity Futures Trading Commission ("the CFTC") and Defendant Richard Matthews have filed Statements of Non-Opposition. [Doc. Nos. 44, 54.] Both parties are represented by counsel. The Court has determined that the issues presented herein are appropriate for decision without oral argument. *See* Civil Local Rule 7.1.d.1. For the reasons discussed below, the Court **GRANTS** the Receiver's Motion **IN PART**.



1 *Legal Standard*

2 The private sale of real property subject to federal court authority is governed by 28  
3 U.S.C. § 2001(b). The §2001 provisions are applicable to personal property, at the court's  
4 discretion, pursuant to 28 U.S.C. § 2004. Under §2001(b), a district court may tailor the  
5 conditions and terms of a private judicial sale to satisfy the best interests of the estate. However,  
6 the statute sets forth procedural requirements that must be met before the court may confirm a  
7 private sale. Specifically, the court must (1) appoint three disinterested persons to appraise the  
8 property; and (2) require publication of the sale terms in a general circulation newspaper at least  
9 ten days before confirmation. 28 U.S.C. §2001(b). Additionally, the court must not confirm a  
10 sale where the price is less than two-thirds of the appraised value or where a bona fide offer that  
11 is more than ten percent greater than the offer price is presented. *Id.*

12 *Discussion*

13 The Receiver requests permission to modify the statutory sale procedures for purposes of  
14 selling three pieces of real property and various items of personal property, including gold coins  
15 and jewelry. The proposed sale conditions will supposedly avoid superfluous expenses  
16 associated with appraiser appointments, application preparation, newspaper publications, and  
17 confirmation hearings. (Kane's Decl. ¶¶ 3,4.)

18 In support, the Receiver refers the Court to case law supporting the proposition that  
19 district courts have discretion in setting the terms and conditions of a judicial sale. *See SEC v.*  
20 *American Capital Investments, Inc.*, 98 F.3d 1133, 1144 (9th Cir. 1996); *Gockstetter v. Williams*,  
21 9 F.2d 354, 357 (9th Cir. 1925). However, these cases do not establish that a trial court may  
22 disregard the statutory terms pertaining to sale confirmation. On this specific issue, the  
23 Receiver's only cited authority comes from the Third Circuit, which is not binding on this Court.  
24 *See U.S. v. Branch Coal Corp.*, 390 F.2d 7 (3rd Cir. 1968).

25 In contrast, Ninth Circuit authority suggests that district courts do not have discretion  
26 regarding confirmation. In *U.S. v. Stonehill*, the property owners appealed the district court's  
27 final order confirming the sale, arguing that the trial court failed to comply with the statutory  
28 requirements. 83 F.3d 1156, 1161 (9th Cir. 1996). Specifically, the appellants claimed that the

1 three appraisers were not disinterested. *Id.* The circuit court affirmed the district court's finding  
2 that the appraisers were satisfactorily disinterested under the statute. *Id.* By conducting an  
3 analysis on this issue, the appellate court indicated that the statutory requirements for judicial  
4 sale confirmation are not discretionary.

5 Additionally, a California district court has considered the legal consequences from  
6 failing to comply with §2001(b). *See Bank of America Nat'l Trust and Savings Assoc. v. Fogle*,  
7 637 F.Supp. 305 (N.D. Cal. 1985). There the issue was whether the non-compliance affected a  
8 mortgagee's right to recover a deficiency judgment. *Id.* at 307. The court opined that §2001(b)  
9 prescribes "important procedural protections that Congress has seen fit to accord mortgagors,"  
10 and noted that the statute is silent on the legal effect of non-compliance. *Id.* at 308. The court  
11 further determined that in the absence of federal law on point, state law would govern. *Id.* at  
12 307-08. Again, without directly addressing whether the §2001(b) confirmation requirements are  
13 mandatory, the court's analysis implied that they are.

#### 14 ***Conclusion and Order***

15 In light of the foregoing, this Court finds that it lacks the discretion to modify the  
16 statutory requirements for sale confirmation. Although the parties here concur that a less  
17 cumbersome process would benefit all involved, a literal reading of §2001(b) prohibits the  
18 proposed alternative. As such, the Court **DENIES** the Receiver's request as to the real property.  
19 However, because §2004 does permit the Court to order different conditions for the sale of  
20 personal property, the Court **GRANTS** the Receiver's request with respect to the gold coins and  
21 jewelry.

22 Therefore, the Court hereby **ORDERS** the following:

23 Relief from Civil Local Rule 66.1(f) is granted, such that the Receiver is relieved of its  
24 duty to give notice of the Motion and this Court's Order thereon to all known creditors of the  
25 Receivership Estate.

#### 26 Sale of Real Property

27 The Receiver is authorized to sell by private sale the parcels of real property located at:

28 (1) 5435 Calumet Avenue, La Jolla, California 92037;

1 (2) 1568 Oliver Avenue, Unit D, San Diego, California 92109; and

2 (3) An island situated in the Stann Creek District of Belize.

3 The Receiver shall ask the Court by motion to confirm the sale in accordance with the  
4 requirements provided by 28 U.S.C. § 2001(b).

5 Sale of Personal Property

6 (1) The Receiver is authorized to sell the Gold Coins – 6,279 Gold one-ounce  
7 Kruggerands and 25 Gold one-ounce Austrian Philharmonics – to a legitimate buyer at their  
8 current market sale price. The sale shall be for cash only, on an “as is” basis, with no  
9 representations or warranties on the part of the Receiver. Additionally, the Receiver is  
10 authorized to pay a commission of between one-half percent (0.5%) and one percent (1%) to the  
11 Receiver’s selling agent. Such commission is to be deducted from the proceeds of sale and paid  
12 to the selling agent upon finalizing the sale transaction and without further order of the Court.

13 (2) The Receiver is authorized to sell the jewelry more fully described in the Revised  
14 Exhibit A to the Motion for private sale. [Doc. No. 62.] The Receiver will ensure that the  
15 jewelry is marketed sufficiently and that any requested information regarding any item of the  
16 jewelry is provided to any interested party. The Receiver may, in its discretion, list any of the  
17 items for sale on e-Bay and post notice of its intention to sell the jewelry on the Receiver’s  
18 website at <http://www.robbevans.com/html/whitepine.html>. The notice, if posted, will include a  
19 provision that interested purchasers may submit offers to the Receiver. All jewelry sales will be  
20 subject to overbids. Upon the Receiver’s determination that an offer comprising a fair purchase  
21 price has been obtained, the Receiver may finalize the sale transaction without further order of  
22 the Court. The details of all jewelry sales shall be included in the Receiver’s reports filed with  
23 this Court.

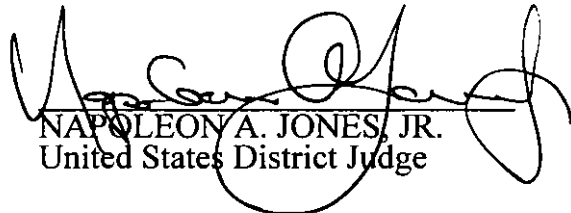
24 Depreciating Assets

25 By Order dated October 28, 2004, the Court authorized the Receiver to sell Depreciating  
26 Assets. It is further ordered that depreciating assets that are not real property may be sold by  
27 obtaining two brokers’ opinions of value and two appraisals. The Receiver is permitted to sell  
28 each item for a gross sale price of 80% of the average appraised value without further order of

1 the Court. Sale of depreciating assets that are real property must be conducted in accordance  
2 with the requirements of 28 U.S.C. § 2001(b).

3 **IT IS SO ORDERED.**

4 Dated: May 3, 2005

  
NAPOLEON A. JONES, JR.  
United States District Judge

6 cc: Magistrate Judge Stormes  
All Counsel of Record

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