

Mark R. Gaylord (#5073)  
Melanie J. Vartabedian (#10148)  
Tesia N. Stanley (#13367)  
Jeffrey D. Enquist (#14634)  
Scott S. Humphreys (*admitted pro hac vice*)  
BALLARD SPAHR LLP  
One Utah Center, Suite 800  
201 South Main Street  
Salt Lake City, Utah 84111-2221  
Telephone: (801) 531-3000  
Facsimile: (801) 531-3001  
gaylord@ballardspahr.com  
vartabedianm@ballardspahr.com  
stanleyt@ballardspahr.com  
enquistj@ballardspahr.com  
humphreyss@ballardspahr.com

*Attorneys for Court-appointed Receiver,  
Diane A. Thompson*

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

---

**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**v.**

**AMERICAN PENSION SERVICES, INC.,  
a Utah Corporation and CURTIS L.  
DeYOUNG, an individual,**

**Defendants.**

**ORDER APPROVING RECEIVER'S  
SECOND MOTION FOR AN ORDER  
AUTHORIZING THE SALE OF REAL  
PROPERTY HELD BY APS FOR  
BENEFIT OF CLIENTS**

**Case No.: 2:14-cv-00309-RJS-DBP**

**Judge Robert J. Shelby  
Magistrate Judge Dustin B. Pead**

---

Before this Court is the Receiver's unopposed Motion and Memorandum for an Order  
Authorizing the Sale of Real Property Held by APS for the Benefit of APS Account Holders

(“Motion”). (Dkt. 852.) For good cause appearing, and for the reasons stated in the Motion, the Court hereby GRANTS the Receiver’s motion.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. This Court approved the Receiver’s Liquidation Plan on February 27, 2015. (Dkt. 458.)
2. This Court has jurisdiction to authorize the sale of real property assets pursuant to 28 U.S.C. § 754 and 1692. *See SEC v. Bilzerian*, 378 F.3d 1100, 1103 (D.C. Cir. 2004).
3. The liquidation of assets is authorized by statute, 28 U.S.C. §§ 754, 1692, and by the Liquidation Plan.
4. The liquidation of assets from APS Account Numbers 5767, 6362, 8791, and 11342 will further the purpose of the Receivership to treat all account owners equitably.
5. The liquidation of assets from APS Account Numbers 5767, 6362, 8791, and 11342 is fair and reasonable and necessary to allow the Receivership to be administered to a conclusion.
6. The beneficiaries of APS Account Numbers 5767, 6362, 8791, and 11342 received notice of the Liquidation Plan by mail, e-mail, and by posting of the Liquidation Plan to the Receiver’s website at [www.apsreceiver.com](http://www.apsreceiver.com).
7. The beneficiaries of APS Account Numbers 5767, 6362, 8791, and 11342 have not complied with the Liquidation Plan, approved by this Court on February 27, 2015. (Dkt. 458).
8. The beneficiaries of APS Account Numbers 5767, 6362, 8791, and 11342 were served a subpoena with a cover letter explaining that they had not complied with the Liquidation

Plan. The cover letter also explained that the Liquidation Plan authorized the Receiver to liquidate assets within their accounts.

9. Account Number 5767 has a loss allocation of \$21,493.32 and owes \$3,042.96 in outstanding management fees.

10. Account Number 6362 has a loss allocation of \$13,557.48, has made partial payments totaling \$2,322.02, and owes \$0.00 in outstanding management fees.

11. Account Number 8791 has a loss allocation of \$40,605.96, has made partial payments totaling \$6,477.04, and owes \$0.00 in outstanding management fees.

12. Account Number 11342 has a loss allocation of \$14,623.75, has made partial payments totaling \$7,894.51, and owes \$0.00 in outstanding management fees.

13. Proceeds from the sale of real property assets in each of APS Account Numbers 5767, 6362, 8791, and 11342 will be utilized to satisfy each account's loss allocation, outstanding management fees, and reasonable fees and costs associated with liquidation of the asset.

14. Any excess funds available as a result of the public sale of the real property will be deposited to the respective accounts of the beneficiaries. These excess funds, as well as any other assets, including a Contingent Repayment Agreement as described in the Liquidation Plan, will be distributed to the beneficiary. The Receiver will also issue appropriate documents for the purpose of tax reporting, including but not limited to an IRS Form 1099-R.

15. Statute requires that real property in possession of a receiver be sold at public sale in the district wherein any such receiver was first appointed, at the courthouse of the county,

parish or city in which the property is located, or on the premises of the property. 28 U.S.C. § 2001(a).

16. The Receiver is authorized to conduct the sale of real property held by APS Account Numbers 5767, 6362, 8791, and 11342 by public sale in a manner the Receiver believes will bring the highest and best value for the property, whether by sheriff's sale or through a public auction.

17. After due diligence, should the Receiver believe a public auction will bring the highest and best value, the Receiver is authorized to engage an auctioneer or auction house for the purpose of conducting a public auction.

18. The Receiver shall promptly publish a copy of this Order to the Receivership website at [www.apsreceiver.com](http://www.apsreceiver.com).

19. The Receiver shall also mail a copy of her Motion, this Order, and notice of the final date of the sale of the property to the beneficiaries of APS Account Numbers 5767, 6362, 8791, and 11342 by certified mail or other verified delivery method to the address at which each of the individuals was served a subpoena.

20. The minimum bid for each of the parcels of real property shall be the loss allocation, any outstanding management fees, and reasonable fees and costs associated with liquidating the real properties.

21. The respective beneficiaries of APS Account Numbers 5767, 6362, 8791, and 11342 shall have the opportunity to fund their loss allocation and pay outstanding APS management fees up to five (5) days before the public sale of the real property. If the beneficiary

of the account fully satisfies their loss allocation for their respective account, the public sale shall not be performed and shall be cancelled.

SO ORDERED this 23<sup>rd</sup> day of February, 2017.

A handwritten signature in black ink, appearing to read 'RJS', is written above a horizontal line.

Honorable Robert J. Shelby  
United States District Court