

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

SECURITIES AND EXCHANGE)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
KEVIN B. MERRILL, et al.,)
)
Defendants.)

Case No.: 1:18-cv-02844-RDB

**RECEIVER GREGORY S. MILLIGAN’S MOTION FOR ENTRY
OF AN ORDER AUTHORIZING RETENTION AND EMPLOYMENT OF
SUPERYACHT SALES AND CHARTER LLC AS BROKER**

Receiver Gregory S. Milligan, of the firm Harney Management Partners, LLC (the “Receiver”), with the consent of the Securities and Exchange Commission (the “SEC”), the Office of the United States Attorney (the “U.S. Attorney’s Office”), and Defendant Kevin Merrill (“Merrill”), respectfully submits this Motion for Entry of an Order Authorizing Retention and Employment of Superyacht Sales and Charter LLC (“Superyacht”) as Broker (the “Motion”). The facts and circumstances supporting this Motion are set forth in the Declaration of Gregory S. Milligan (the “Milligan Declaration”), attached hereto as **Exhibit A**, and the Declaration of Neil Emmott (the “Emmott Declaration”), attached hereto as **Exhibit B**. In further support of this Motion, the Receiver states as follows:

I. BACKGROUND

1. Pursuant to the Receiver’s Initial Preservation Plan, the Receiver has identified a 2018 Formula 350 Crossover Bowrider Port Cruiser, Hull No. TNRD1491C818 (the “Vessel”) as property of the Receivership Estate.¹ See Dkt. No. 54 at 21. The Vessel is owned and titled

¹ Capitalized terms herein shall have the same meaning as used in the First Amended Order

solely in the name of Merrill. *See* Milligan Declaration at ¶ 7. By this Motion, the Receiver seeks to employ and retain Superyacht to market and sell the Vessel.

2. The above-identified Vessel is not appreciating in value such that holding the Vessel in storage for any period of time would result in a greater sale price at a later date as opposed to being sold today. Rather, the monthly costs for maintaining the Vessel are approximately \$500.00 to \$1,000.00 per month, assuming the Vessel is being operated on a regular basis. Failure to operate the Vessel on a regular basis and perform regular maintenance will result in a greater decline in value than if the boat is being operated and maintained on a regular basis. *See* Emmott Declaration at ¶ 6. Additionally, the annual premium for the Vessel's insurance policy is approximately \$3,500.00. *See* Milligan Declaration at ¶ 12.

3. The Receivership Order requires the Receiver to “manage, control, operate, and maintain the Receivership Estate and hold in his possession, custody, and control all Receivership Assets pending further Order of this Court.” Dkt. No. 62 at ¶ 8(D).

4. The Receivership Order further requires the Receiver to “take such action as necessary and appropriate for the preservation of Receivership Assets or to prevent the dissipation or concealment of Receivership Assets.” Dkt. No. 62 at ¶ 8(G).

5. The Receivership Order provides in relevant part that:

[T]he receiver is authorized to solicit persons and entities (“Retained Personnel”) to assist him in carrying out the duties and responsibilities described in this Order. With the exception of the retention of counsel to represent him in this matter, the Receiver shall not engage any Retained Personnel without first obtaining an Order of the Court authorizing such engagement.

Dkt. No. 62 at 63.

Appointing Temporary Receiver (the “Receivership Order”) (Dkt. No. 62) unless otherwise noted.

II. RELIEF REQUESTED

6. The Receiver seeks to retain Superyacht to represent the Receiver as the exclusive sales agent and broker for the marketing and sale of the Vessel.² The Receiver wishes to employ Superyacht in accordance with the terms and conditions set forth in the proposed Listing Agreement for Brokerage Vessel (the “Listing Agreement”) attached to the Emmott Declaration as **Exhibit 1**.

7. The Receiver has numerous assets to manage, preserve, and liquidate for the benefit of the Receivership Estate, including the Vessel. Pursuant to the Receivership Order, the Receiver is to take such action as necessary and appropriate for the preservation of all Receivership Assets and, upon approval from the Court, to oversee an orderly liquidation of the Receivership Assets. Dkt. No. 62 at 40, 42. The Receiver requires the knowledge and experience of Superyacht in the yacht market to effectively market and sell the Vessel. *See* Milligan Declaration at ¶ 10.

8. Superyacht consists of a group of highly experienced leisure yachting professionals that provide service and experience in all areas of luxury yacht ownership, management, and charter. The Receiver’s representation will be managed by Neil Emmott, Managing Director for Superyacht, who maintains an office at 1515 SW 20th Street, Fort Lauderdale, Florida 33315. The Receiver believes that Superyacht and its team are qualified to represent the Receiver in the marketing and sale, upon Court Order, of the Vessel for the benefit of the Receivership Estate based on their experience and knowledge of the yacht market. *See* Milligan Declaration at ¶ 9.

² In accordance with the Receivership Order, the Receiver will file a motion with this Court seeking approval of any sale contemplated herein.

9. The professional services that Superyacht will render to the Receiver shall include providing advice and assistance in the marketing and sale of the Vessel. *See* Milligan Declaration at ¶ 11.

10. The Receiver requests approval of the compensation and reimbursement for services rendered by Superyacht without need of further Court approval.

11. The Listing Agreement contains the proposed fee arrangements between the Receiver and Superyacht regarding the Vessel. Further, any sale contemplated herein will be free and clear of all liens, liability claims, ownership claims, and encumbrances, unless the Court orders that such liens, claims, or encumbrances shall attach to the proceeds of such sale.

12. As detailed in the Listing Agreement, upon the sale of the Vessel, Superyacht will be authorized to be paid a commission (the “Commission”) in an amount equal to 10% of the gross purchase price for the Vessel. As part of his due diligence, the Receiver has researched the compensation structure of a number of yacht brokers. The Receiver believes that Superyacht’s compensation structure is fair market value for such services. The Receiver believes that engaging Superyacht is in the best interests of the Receivership Estate. *See* Milligan Declaration at ¶ 13.

13. In the Receiver’s business judgment, the Commission proposed by Superyacht is fair market value for such services and will result in a net benefit to the Receivership Estate and will reduce the administrative cost to the Receivership Estate. If Superyacht was required to submit fee applications, the burden of preparing those fee applications would fall on the Receiver’s professionals and would increase the financial burden on the Receivership Estate. Accordingly, the Receiver requests final approval of Superyacht’s Commission without need of further Court approval. *See* Milligan Declaration at ¶ 14.

14. The Receiver's proposed retention of Superyacht will provide substantial benefits with respect to liquidating the Vessel for the benefit of the Receivership Estate.

III. CONCLUSION

WHEREFORE, the Receiver respectfully requests that this Court enter an order (i) granting this Motion; (ii) authorizing the Receiver to employ Superyacht Sales and Charter LLC as broker for the Receiver pursuant to the Listing Agreement; (iii) approving payment of Superyacht Sales and Charter LLC's Commission upon entry of an Order authorizing the sale of the Vessel; and (iv) granting such other relief as the Court deems just and proper.

Date: April 22, 2019.

Respectfully Submitted,

/s/ Lynn H. Butler

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Counsel for Receiver Gregory S. Milligan

CERTIFICATE OF SERVICE

On April 22, 2019, I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court for the District of Maryland, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically through the Court's CM/ECF filing system for all parties who have registered to receive electronic service. Additionally, the foregoing document was served on the following parties not registered for Court's CM/ECF filing system as indicated below:

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/s/ Lynn H. Butler

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