

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

CASE NO. 26-10443

Appeal from a Final Order of the United States
District Court for the Southern District of Florida
Case No. 0:25-cv-61909-RS

FEDERATED FOUNDATION TRUST,

Appellant,

v.

DANIEL J. STERMER,
as Receiver/Termination Trustee
for the Heron Pond
Condominium Association, Inc.,

Appellee.

BRIEF OF APPELLANT FEDERATED FOUNDATION TRUST

STATEMENT REGARDING ORAL ARGUMENT

As per prior filings by the parties, oral argument has been waived.

CORPORATE DISCLOSURE STATEMENT

Appellant Federated Foundation Trust is a trust. The district court docket reflects the trustee entity as “FEDERATED FOUNDATION TR, KIRSCHBAUM LAW OFFICE LLC TRSTEE.” (Doc. 69 at 1.) Federated has no parent corporation, and no publicly held corporation owns 10% or more of Federated.

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STATEMENT OF JURISDICTION

A. District Court Jurisdiction.

The district court exercised jurisdiction over a removed receivership action and approved a receivership sale under its equitable powers and Rule 66. The Receiver's Sale Motion asserted the court's authority to approve the sale and administer the receivership estate after removal, referencing Fed. R. Civ. P. 66 and 28 U.S.C. § 754. (Doc. 47 at 13–14 ¶¶32.) The district court found that “[u]pon removal under 12 U.S.C. §1452(f), this Court succeeded to administration of the receivership and related relief.” (Doc. 62 at 6 ¶16.)

B. Court of Appeals Jurisdiction.

This Court has jurisdiction under 28 U.S.C. § 1291 because Federated appeals from a final order granting the Sale Motion, overruling objections, and administratively closing the case. (Doc. 62 at 8 ¶¶23–25; Doc. 62 at 12 ¶39.) Alternatively, jurisdiction exists under 28 U.S.C. § 1292(a)(2) because the order concerns the administration and disposition of property in a receivership. (Doc. 62 at 8 ¶¶23–27.)

C. Timeliness.

The district court's Amended Sale Order was entered January 8, 2026. (Doc. 62 at 1.) Federated filed its Notice of Appeal on February 6, 2026. (Doc. 69 at 1–2.)

STATEMENT OF THE ISSUES

- I. Whether the district court abused its discretion and denied due process by approving the receivership sale (Doc. 62) and overruling Federated’s Objection (Doc. 44) where the sale depended on a disputed, hyper-technical “Qualified Bidder” disqualification that excluded Federated from bidding. (Doc. 44 at 4–6; Doc. 62 at 6 ¶14; Tr. 24:15–25:22.)
- II. Whether the January 7 hearing transcript demonstrates coercive and inequitable procedures inconsistent with Rule 66 fairness norms and meaningful opportunity to be heard, including threats of incarceration/perjury consequences and an immediate all-or-nothing funding ultimatum. (Tr. 50:6–50:23; Tr. 70:1–70:7; Tr. 75:14–75:16.)
- III. Whether this Court should vacate and remand with instructions requiring a fair, ownership-based “auction credit” reflecting Federated’s ownership of approximately 115 of 304 units and a reasonable funding timeline (e.g., 30 days), to restore competition and maximize value. (Tr. 77:9–77:23; Doc. 62 at 8 ¶25.)

STATEMENT OF THE CASE

A. Course of district court proceedings.

1. The Receiver/Termination Trustee moved to approve a sale of the unified condominium property to Integra for \$20,500,000. (Doc. 47 at 1–3; Doc. 62 at 2–3 ¶4.)
2. Federated filed an “Objection to Proposed Sale to Integra Real Estate, LLC and Memorandum of Law,” invoking Rule 66 and the court’s equitable supervisory authority, and objecting to the lack of transparency and meaningful competitive process. (Doc. 44 at 1; Doc. 44 at 4–6 ¶¶10–18; Doc. 44 at 9–10.)
3. The Receiver filed the Sale Motion seeking approval of the Integra transaction and findings that the process complied with the Bid Procedures Order and produced the highest or otherwise best value. (Doc. 47 at 12–14 ¶¶27–32; Doc. 62 at 6–7 ¶¶18–20.)
4. The district court held a hearing on Jan. 7, 2026. (Doc. 62 at 1; Tr. 4:1–4:8.)
5. The district court entered an Amended Order granting the Sale Motion, overruling objections, and administratively closing the case. (Doc. 62 at 8 ¶¶23–27; Doc. 62 at 12 ¶¶38–39.)
6. Federated appealed to this Court from the Sale Order and all orders merging into it. (Doc. 69 at 1.)

B. Disposition of the district court.

The district court granted the Sale Motion, adopted the stipulated order, and overruled “any objection,” including Federated’s Objection (Doc. 44). (Doc. 62 at 8 ¶¶23–25.) The district court administratively closed the case. (Doc. 62 at 12 ¶39.)

C. Statement of the relevant facts

1. Federated objected to the proposed sale on the ground that the receiver had not made the sale process transparent and had not provided appraisal/valuation evidence or meaningful market exposure and opportunity for interested parties to participate, resulting in a potentially depressed sale price. (Doc. 44 at 4–5 ¶¶10–14.) Federated requested the court defer approval, require disclosure, and direct a transparent, court-supervised process allowing competing bids. (Doc. 44 at 9–10.)
2. The Receiver asserted that “as of the Qualified Bid Deadline, there were no additional Qualified Bids.” (Doc. 47 at 7 ¶11.) The district court adopted that predicate. (Doc. 62 at 6 ¶14.)
3. Receiver’s counsel stated that the “remaining issue” was Federated’s disqualification as a “Qualified Bidder,” and argued it was inappropriate to reopen the auction. (Tr. 8:22–9:6; Tr. 9:20–10:9.)
4. Federated’s counsel stated Federated was not objecting to the concept of a sale but to the disqualification process excluding it from bidding, and

requested a fair and inclusive process. (Tr. 24:15–25:22.) Federated’s counsel represented that Federated “would have bid and can bid and will bid 22 million right now.” (Tr. 42:1–42:3.)

5. The court demanded that if Federated’s principal was serious, he should deposit the entire sum on an expedited basis; otherwise the sale would proceed with Integra. (Tr. 42:12–43:6; Tr. 50:6–50:23.) The court stated that if Mr. Patel was sworn and did not have the funds, he should be prepared to be taken into custody. (Tr. 75:14–75:16.) The court also warned that lying under oath would subject him to prison for perjury. (Tr. 74:18–74:20.)
6. The record reflects Federated’s position that it owned approximately 115 units and sought consideration/credit in the bidding mechanics. (Tr. 77:9–77:16.) The court rejected the request and proceeded. (Tr. 77:16–77:23.)

SUMMARY OF ARGUMENT

The Sale Order should be vacated because it rests on a contested, hyper-technical “Qualified Bidder” disqualification that excluded Federated from bidding and thereby eliminated competitive tension, while the district court overruled Federated’s Objection (Doc. 44) without providing procedures adequate to resolve disputed facts.

Eleventh Circuit law recognizes broad equitable discretion in receiverships, but it does not permit a receivership court to short-circuit due process. Under *S.E.C. v. Torchia*, 922 F.3d 1307 (11th Cir. 2019) and *S.E.C. v. Elliott*, 953 F.2d 1560 (11th Cir. 1992), summary receivership proceedings must still provide notice and a meaningful opportunity to be heard, including a chance to present evidence when material facts are disputed.

The January 7 transcript further demonstrates the lack of equitable process: the district court’s “all-or-nothing” funding ultimatum and threats of custody/perjury consequences replaced ordinary judicial-sale safeguards and ensured Federated could not fairly compete. (Tr. 50:6–50:23; Tr. 75:14–75:16.)

This Court should vacate and remand with instructions that the district court implement a fair, court-supervised auction process that includes an ownership-based “auction credit” and a reasonable time (e.g., 30 days) to fund and close, subject to objective estate protections.

ARGUMENT

I. THE DISTRICT COURT ABUSED ITS DISCRETION AND DENIED DUE PROCESS BY APPROVING A RECEIVERSHIP SALE THAT DEPENDED ON A HYPER-TECHNICAL BIDDER-QUALIFICATION DISQUALIFICATION, AND BY OVERRULING FEDERATED'S OBJECTION (DOC. 44) WITHOUT PROCEDURES ADEQUATE TO RESOLVE DISPUTED FACTS.

Standard of review: Receivership sale approvals and administration orders are generally reviewed for abuse of discretion, but due-process adequacy of summary receivership procedures requires meaningful opportunity to be heard and is evaluated under governing constitutional principles. *S.E.C. v. Elliott*, 953 F.2d 1560 (11th Cir. 1992); *S.E.C. v. Torchia*, 922 F.3d 1307 (11th Cir. 2019).

A. Federated's Objection (Doc. 44) squarely preserved a process-based challenge under Rule 66 and due process.

Federated objected that the sale process lacked transparency, valuation support, and meaningful opportunity for stakeholders to participate, and requested a court-supervised competitive process. (Doc. 44 at 4–5 ¶¶10–14; Doc. 44 at 9–10.) The Sale Order overruled “any objection,” which necessarily includes Doc. 44. (Doc. 62 at 8 ¶25.)

B. The “no Qualified Bids” predicate was a contested gatekeeping determination that required meaningful procedures to resolve disputed facts.

The Receiver's motion and the Sale Order treated the absence of “Qualified Bids” as dispositive. (Doc. 47 at 7 ¶11; Doc. 62 at 6 ¶14.) Yet the hearing record

shows disputed factual positions about whether Federated’s bid package complied and demonstrated the ability to close. (Tr. 16:21–17:12; Tr. 27:16–29:4.)

Under *S.E.C. v. Torchia*, 922 F.3d 1307 (11th Cir. 2019), receivership courts may use summary proceedings, but they must still afford due process—including a meaningful opportunity to challenge the receiver’s determinations where those determinations materially affect property rights. Under *S.E.C. v. Elliott*, 953 F.2d 1560 (11th Cir. 1992), summary proceedings are not per se unconstitutional, but due process is satisfied only if affected parties receive notice and a meaningful opportunity to be heard, including the ability to present evidence when material facts are disputed.

C. The Sale Order’s sweeping “fair process” findings cannot stand when the dispositive qualification dispute was never adjudicated through procedures adequate to reduce error risk.

The district court found that notice and a “reasonable opportunity to object and be heard” were afforded and that the receiver provided a “full, fair and reasonable opportunity to qualify.” (Doc. 62 at 4–5 ¶¶10, 12.) But the record shows the core dispute—Federated’s exclusion as non-qualified—was outcome-determinative and hotly contested. (Tr. 24:15–25:22; Tr. 27:16–29:4.)

Due process requires “notice” and a “meaningful opportunity to be heard” at a meaningful time and in a meaningful manner. See *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950); *Armstrong v. Manzo*, 380 U.S. 545

(1965). And, absent extraordinary circumstances, the opportunity to be heard must precede the deprivation of significant property interests. *Fuentes v. Shevin*, 407 U.S. 67 (1972).

Here, the Sale Order approved a final sale and foreclosed competitive bidding based on a receiver-determined “qualification” conclusion that Federated contested. (Doc. 62 at 6 ¶14; Tr. 24:15–25:22.) Under *Torchia* and *Elliott*, that required more than an after-the-fact overruling of objections.

D. *Wells Fargo* confirms the limits of receivership power to extinguish or impair pre-existing property rights through procedural mechanisms.

The Sale Order did more than approve a sale; it overruled all objections and authorized transfer “free and clear” with liens transferring to proceeds. (Doc. 62 at 8–10 ¶¶25–33.) The Eleventh Circuit has cautioned that a receivership court cannot, through a claims process or procedural mechanism, extinguish a creditor’s pre-existing in rem property rights merely due to noncompliance with court-ordered procedure. *S.E.C. v. Wells Fargo Bank, N.A.*, 848 F.3d 1339 (11th Cir. 2017). Although Federated is not here asserting a secured creditor’s lien right, the same structural due-process principle applies: a receivership court may not use hyper-technical procedural gatekeeping to eliminate substantive participation rights in an outcome-determinative sale process without constitutionally adequate procedures.

II. THE JANUARY 7 HEARING TRANSCRIPT SHOWS COERCIVE AND INEQUITABLE PROCEDURES—THREATS OF JAIL/PERJURY AND AN IMMEDIATE “ALL-OR-NOTHING” FUNDING ULTIMATUM—UNDERSCORING THE DENIAL OF MEANINGFUL OPPORTUNITY TO BE HEARD

Standard of review: The court’s management of receivership proceedings is reviewed for abuse of discretion; the question whether procedures were so coercive or deficient as to deprive due process is assessed under *Torchia/Elliott* due-process standards. *S.E.C. v. Torchia*, 922 F.3d 1307 (11th Cir. 2019); *S.E.C. v. Elliott*, 953 F.2d 1560 (11th Cir. 1992).

A. The transcript reflects coercion rather than structured judicial-sale safeguards.

The district court demanded that a very large sum be deposited on an extremely compressed timeline, stating repeatedly “all or nothing.” (Tr. 50:6–50:23.) The court warned that a sworn bidder who did not deposit the money should “be prepared to be taken into custody.” (Tr. 75:14–75:16.)

Those conditions are inconsistent with the notion of a “meaningful opportunity” to participate and be heard; they functionally ensured that Federated could not cure disputed qualification questions through normal channels.

B. *Elliott* and *Wencke* emphasize that summary proceedings are permissible only if the party can show how fuller procedures would protect its interests; here, the transcript shows why they would.

Elliott recognizes summary proceedings may satisfy due process, but only where procedures provide meaningful opportunity, including the ability to present

evidence when facts are disputed, and the appellant must show prejudice. *S.E.C. v. Elliott*, 953 F.2d 1560 (11th Cir. 1992).

The transcript itself supplies the prejudice: the court refused to reopen bidding or allow a meaningful qualification cure period; instead, it substituted an immediate ultimatum enforced by threats of custody/perjury consequences. (Tr. 70:1–70:7; Tr. 75:14–75:16; Tr. 77:16–77:23.) That is not “process” under *Elliott*; it is coercion.

Other circuits recognize the permissibility of summary procedures only if they remain reasonable and parties are not prejudiced. See *S.E.C. v. Wencke*, 783 F.2d 829 (9th Cir. 1986); *S.E.C. v. Hardy*, 803 F.2d 1034 (9th Cir. 1986); *Liberte Capital Grp., LLC v. Capwill*, 462 F.3d 543 (6th Cir. 2006).

III. REMAND INSTRUCTIONS SHOULD REQUIRE A FAIR, OWNERSHIP-BASED “AUCTION CREDIT” AND A REASONABLE TIME (E.G., 30 DAYS) TO FUND AND CLOSE

Standard of review: The propriety of equitable relief and procedural directives in receivership administration is reviewed for abuse of discretion, constrained by due process. *S.E.C. v. Elliott*, 953 F.2d 1560 (11th Cir. 1992); *S.E.C. v. Torchia*, 922 F.3d 1307 (11th Cir. 2019).

A. Federated’s ownership-based credit request was squarely presented and rejected.

The transcript reflects Federated’s position that it owned approximately 115 units and sought consideration/credit in the auction mechanics. (Tr. 77:9–77:16.)

The court refused and insisted on full funding. (Tr. 77:16–77:23.)

B. *Mathews* balancing confirms that additional safeguards—auction credit and reasonable time—would reduce error risk without undermining legitimate estate interests.

Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), the value of additional safeguards is high where the risk of erroneous deprivation is high. Here, an ownership-based credit and a reasonable funding window would directly address the claimed basis for exclusion—ability to close on the relevant timeline—without preventing a sale.

C. Statutory judicial-sale safeguards reinforce the need for structured process when approving private sales of receivership real property.

Federal statutes governing sales of realty by receivers include appraisal and notice safeguards. 28 U.S.C. § 2001; 28 U.S.C. § 2002. The Receiver’s motion sought approval of a real-property sale “free and clear” with liens transferring to proceeds. (Doc. 47 at 12–14 ¶¶27–32; Doc. 62 at 8–10 ¶¶23–33.) Where the process is contested and competition is allegedly chilled by disqualification, equity requires careful, structured safeguards rather than coercive ultimatums.

Relief sought.

Federated respectfully requests that this Court vacate the Sale Order, Doc. 62, and remand with instructions requiring:

1. A court-supervised auction process that applies bidder-qualification requirements in a non-hyper-technical manner and includes a reasonable, transparent cure mechanism;
2. An ownership-based “auction credit” mechanism tied to Federated’s ownership of approximately 115 units; and
3. A reasonable time to fund and close (e.g., 30 days), subject to reasonable objective estate protections (escrow, forfeiture terms, etc).

CONCLUSION

For the foregoing reasons, this Court should vacate the district court’s Amended Order approving the sale (Doc. 62), reverse the overruling of Federated’s Objection (Doc. 44), and remand with instructions to conduct a fair, court-supervised competitive sale process that includes a reasonable ownership-based auction credit and a reasonable funding period for Federated (e.g., 30 days).

Respectfully Submitted,

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Dated: Feb. 24, 2026

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a), I certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a) because it contains no more than **3,138** words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a).

This brief complies with the typeface requirements of Fed. R. App. P. 32 and the type style requirements of Fed. R. App. P. 32 because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman, 14, double-spaced.

/s/ Solomon M Radner
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CERTIFICATE OF SERVICE

I hereby certify that on Feb. 24, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notice of such filing to all registered CM/ECF users, and I certify that all participants in this case are registered CM/ECF users and will be served via the CM/ECF system.

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