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.
_____/

APPELLEE'S ANSWER BRIEF

Brian G Rich
Florida Bar No. 38299
Michael J. Niles
Florida Bar No. 107203
Paul A. Avron
Florida Bar No. 50814
BERGER SINGERMAN LLP
313 N. Monroe Street, Ste. 301
Tallahassee, FL 32301
Telephone: (850) 561-3010
Facsimile: (850) 561-3013

Counsel for Appellee, Daniel J. Stermer as Receiver/Termination Trustee of the Heron Pond Condominium Association, Inc.

STATEMENT REGARDING ORAL ARGUMENT

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE

CASES

STATUTES AND OTHER AUTHORITIES

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Whether the District Court properly exercised its discretion in upholding the Receiver's determination that Federated Foundation Trust was not a "Qualified Bidder" under the court-approved bidding procedures.

Federated Foundation Trust identifies three issues on appeal in its initial brief ("Initial Brief") [ECF No. 13]. Neither the second nor third issues were identified by Federated's counsel at the Sale Hearing (or in its Civil Appeal Statement) and should be deemed waived. Also not identified was the first issue to the extent Federated Foundation Trust claims it was denied due process by approval of the Sale. Federated's counsel explicitly disclaimed any objection to approval of the sale at the Sale Hearing.

STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal from the District Court's *Amended Order Granting Receiver/Termination Trustee's Motion to Approve Sale of Condominium Property and Granting Related Relief*, entered on January 7, 2026 ("Sale Order"). Appellant, Federated Foundation Trust ("Federated"), seeks to overturn the District Court's Order approving the sale of the Heron Pond Condominium Property ("Condo Property") to Integra Real Estate, LLC ("Integra") for $20,500,000 ("Sale").

This appeal arises out of proceedings to terminate and sell a distressed condominium property consisting of 19 residential buildings and 304 units over 25 acres in Pembroke Pines, Florida. The Condo Property was deemed unsafe by the City of Pembroke Pines and fully vacated by August 2024, with power and water disconnected, and the site has remained shuttered since that time. Daniel J. Stermer, as Receiver and Termination Trustee ("Receiver"), was appointed by the state court to oversee the orderly termination of the condominium and sale of the Condo Property through a court-supervised marketing and bidding process.

Due to an unequivocal statement by Federated's counsel at the sale hearing ("Sale Hearing"), the ***only*** issue before this Court is whether the District Court properly exercised its discretion in upholding the Receiver's determination that Federated did not satisfy the requirements to be a "Qualified Bidder" under the Bid Procedures Order: "Your Honor, ***let me be clear from the outset,*** Federated and Mr. Patel [Federated's principal] are ***not*** objecting to the sale itself; we're objecting to the process in which we were disqualified as bidders." The issues on appeal identified by Federated in its Civil Appeal Statement and in its Initial Brief go well beyond its counsel's unequivocal statement at the sale hearing, improperly identifying the issue in its Civil Appeal Statement as whether the District Court erred in overruling Federated's Objection to the proposed Sale, ***and*** the District Court's subsequent approval of the Sale. Likewise, Federated's counsel made no reference

to any due process concerns, part of the first issue identified in its Initial Brief. Federated certainly did not raise an issue about purported coercive and inequitable procedures, or remand instructions, in its Civil Appeal Statement or through its counsel's representation to the District Court at the Sale Hearing.

This Court should find that Federated waived the right to raise these extraneous issues on appeal, and that the only issue properly before this Court is whether the District Court properly exercised its discretion in upholding the Receiver's determination that Federated was not a Qualified Bidder. Given Federated's counsel "important" admission "that Federated and Mr. Patel did not strictly comply with every directive in the bidder's submission package[,]" that is, they elected to act in accordance with "***a historical course of conduct in situations like these***," there should be no question that the District Court acted well within the broad scope of its discretion in upholding the Receiver's determination that Federated was not a Qualified Bidder.

This is especially the case since the crux of the determination that Federated was not a Qualified Bidder was its clear and acknowledged failure to meet the bidding procedures' unremarkable requirement that Federated had the financial wherewithal to consummate the proposed Sale. Federated's repeated reference to a purported "hyper-technical bidder-qualification disqualification" as the foundation for its argument that its right to due process was violated is baseless. This was not a

technical, let alone a "hyper-technical," determination. It is commonplace in court-approved bid procedures in receivership and analogous bankruptcy cases where property is being sold for prospective bidders, like Federated under the Bid Procedures Order, to have to demonstrate their financial ability to close a transaction in order to be deemed a qualified bidder with the right to participate in the sale process. Federated does not and cannot dispute this.

And even if the District Court abused its discretion in upholding the Receiver's determination that Federated was not a Qualified Bidder (it did not), any such abuse constituted harmless error. This is because, at the Sale Hearing, the Court afforded Federated ***a further opportunity*** to participate in the sale process but its principal (who inexplicably elected not to attend in person, but was nevertheless allowed to testify telephonically), could not confirm that sufficient funds were on hand to exceed the amount of the stalking horse bid within the ***further extended deadline*** afforded Federated. These further opportunities afforded Federated renders the due process case law it cites from the Supreme Court, ***none of which involves a sales process including bidding procedures like at issue here***, inapposite.

And to the extent the Court considers argument regarding the propriety of the Sale Order, for the reasons more fully set forth herein, the District Court properly exercised its broad equitable discretion in approving the Sale after determining that the Receiver conducted a full and fair marketing process, a process Federated's

counsel explicitly acknowledged. Specifically, Federated's counsel acknowledged the Receiver's "***vigorous marketing***" of the Condo Property and stated that "[t]he bid procedures were public, ***the data room was robust***, and ***the broker outreach was broad***." And because bid procedures routinely require prospective bidders to demonstrate their financial bona fides, this Court should summarily reject Federated's contention that that requirement somehow violated its right to due process. This Court should affirm the District Court's approval of the Receiver's determination that Federated was not a Qualified Bidder (and, to the extent necessary, the District Court's approval of the Sale and that there was no due process violation) as a determination made well within the broad scope of the District Court's discretion.

B. Course of Proceedings and Disposition Below[1]

On April 26, 2024, Daniel J. Stermer was appointed Receiver for the Heron Pond Condominium Association, Inc. by The Honorable (ret.) Jack Tuter in the

[1] Citations to documents in the record before the District Court shall be to "R-__" and "R-__-___" for citations to a specific page in a document. Part of the record is comprised of proceedings before the state court prior to removal, see ECF No. 1; citations to these documents shall be to "R-1, Part __" to reflect the specific documents to which the Receiver is citing, and "R-1, Part __-___" for citations to a specific page in a document documents to which the Receiver is citing. On December 11, 2025, the District Court entered an Order consolidating the Removed Termination Case (No. 25-cv-61909) with the directly related Removed Receivership Case (No. 25-cv-61931). (R-42). Citations to documents in the consolidated action that were in the Removed Receivership Case that were attached as exhibits to the Notice of Removal shall be cited to as "R-1 [Removed

Broward County, Florida Circuit Court, No. CACE-24-005243 ("Receivership Action"). (R-1, Part 5, 49)

On October 18, 2024, the Receiver filed his *Complaint for Judicial Termination of Condominium* in the state court, Case No. CACE-24-015112 ("Termination Action"). (R-1, Parts 3-6) The Receiver subsequently filed a motion for summary judgment seeking termination of the condominium pursuant to Florida Statute § 718.118. (R-1, Parts 19-23)

On July 30 and 31, 2025, the state court held a two-day hearing on the Receiver's Motion for Summary Judgment in the Termination Action. (R-1, Part 34)

On August 13, 2025, the state court entered an *Amended Final Judgment of Termination of Condominium and Approval of Plan of Termination and Exhibits* ("Termination Judgment"), *nunc pro tunc* to July 31, 2025. (R-1, Part 35) The termination of the Heron Pond Condominium was effective upon the recording of the Termination Judgment in the Public Records of Broward County, Florida, which occurred on August 14, 2025. *Id.*

On June 6, 2025, the Receiver filed an *Amended Motion for Entry of an Order (A) Approving Certain Bidding and Sale Procedures and the Form and Manner of Notice Thereof; (B) Scheduling Dates to Conduct Auction and Hearing to Consider*

Receivership Case], Ex. __" and "R-1 [Removed Receivership Case], Ex. __at __" for citations to a specific page in a document.

Sale of the Property; and (C) Setting Related Deadlines ("Bid Procedures Motion"). (R-1 [Removed Receivership Case], Ex. 6)

On June 19, 2025, the state court entered its *Order Granting Receiver's Amended Motion Approving Bidding and Sale Procedures* ("Bid Procedures Order"), which approved certain bidding procedures and auction procedures for the Condo Property. (R-1 [Removed Receivership Case], Ex. 7) No objections were filed to the Receiver's Amended Bid Procedures Motion or the Bid Procedures Order in state court. *See* (R-1 [Removed Receivership Case], Ex. 6. (State Court Docket)). Pursuant to the Bid Procedures Order, the Receiver marketed the Condo Property through court-approved marketing specialists, Avison Young-Florida, LLC and Fisher Auction Co., Inc. ("Avison Young-Fisher"), established a data room, actively marketed the Condo Property, and solicited bids from prospective purchasers. (R-65 [Sale Hr'g Transcript] – 14, 21-22, 26-27 (Federated's counsel acknowledged the Receiver's "vigorous marketing" of the Condo Property, and that the court-approved bid procedures "were public, the data room was robust, and the broker outreach was broad."); (R-1 [Removed Receivership Case], Ex. 7, ¶¶ 12, 22); (R-48-11 n.10)

On August 4, 2025, the Receiver filed a *Notice of Filing Stalking Horse Purchase and Sale Agreement and Marketing Report*, identifying Integra as the Stalking Horse Bidder with a bid of $20,500,000. (R-1, Part 33)

The Bid Procedures Order provided that September 23, 2025, at 5:00 p.m., was the deadline for interested parties to submit a Qualified Bid to purchase the Property ("Bid Deadline"). (R-1 [Removed Receivership Case], Ex. 7, ¶ E) The Bid Procedures Order further provided that September 24, 2025, at 5:00 p.m., was the deadline for the Receiver to identify whether a Bidder was a Qualified Bidder and able to participate in the Auction ("Qualified Bid Deadline"). *Id.* at 2.

On September 24, 2025, the Federal Home Loan Mortgage Corporation ("Freddie Mac") filed a *Notice of Removal of Action Under 12 U.S.C. § 1452(f)*, removing the Removed Termination Case to Federal Court in the District Court for the Southern District of Florida, initiating Case No. 0:25-cv-61909-RS. ("Removed Termination Case") (R-1, Part 1)

On September 25, 2025, Freddie Mac filed a *Notice of Removal of Action Under 12 U.S.C. § 1452(f)*, removing the Receivership Case to Federal Court in the District Court for the Southern District of Florida, initiating Case No. 25-CV-61931-RS. ("Removed Receivership Case") (R-1, Part 1)

On December 8, 2025, the Receiver, Freddie Mac, Federal National Mortgage Association ("Fannie Mae," with Freddie Mac, "Enterprises"), and Integra filed an *Amended Joint Stipulation and Order* to resolve the Enterprises' objections to the Termination Judgment and Plan and to facilitate an orderly and final resolution for the sale of the Condo Property. (R-36)

On December 10, 2025, the District Court entered an order, pursuant to a *sua sponte* motion, consolidating the Removed Termination Case and the Removed Receivership Case determining that each cases involved the same subject matter which were material to proceed together. (R-42)

On December 11, 2025, Federated Foundation Trust filed its Objection to Proposed Sale to Integra Real Estate, LLC and Memorandum of Law. (R-44)

On January 7, 2026, the District Court held a hearing on the Receiver/Termination Trustee's Motion to Approve Sale of Condominium Property and related matters ("Sale Hearing"). (R-65 [Sale Hr'g Transcript]) At the Sale Hearing, the District Court approved the Amended Joint Stipulation and overruled Federated's Objection, entering its *Order Granting Receiver/Termination Trustee's Motion to Approve Sale of Condominium Property and Granting Related Relief*. (R-61) The next day the Clerk of the Court docketed the *Amended Order Granting Receiver/Termination Trustee's Motion to Approve Sale of Condominium Property and Granting Related Relief* ("Sale Order"). (R-62)

On February 6, 2026, Federated Foundation Trust filed its Notice of Appeal seeking to overturn the Sale Order. (R-69)

C. Statement of Facts

1. The Termination of the Condominium

The Heron Pond Condominium Association, Inc. ("Association") operated as a residential condominium community consisting of 19 buildings, 304 units over 25 acres in the City of Pembroke Pines, Florida. (R-1, Part 3, pg. 2) On April 26, 2024, Daniel J. Stermer was appointed as Receiver over the Association by the state court. *Id.*, pg. 3.

The Condo Property was deemed unsafe by the City of Pembroke Pines and was ultimately fully vacated by August 2024 under directives from the City of Pembroke Pines. *Id.*, pg. 2. Power and water were disconnected, and the site has remained shuttered since that time. *Id.*

The Receiver conducted an extensive evaluation with engineers and entitlement professionals regarding the rehabilitation and the prospects of rehabilitation for the property. *Id.*, pg. 7-10. Rehabilitation was deemed economically unviable due to the prolonged vacancy, mold, moisture intrusion, and extensive construction and structural deficiencies. (R-1, Part 3, Pgs. 6-9) The Receiver ultimately made the decision to seek termination of the condominium association pursuant to Florida Statute § 718.118. (R-1, Part 3); (R-65 [Sale Hr'g Transcript] - 14)

On July 30 and 31, 2025, the state court held a two-day hearing on the Receiver's Motion for Summary Judgment. (R-1, Part 34) On August 13, 2025, the state court entered the *Amended Final Judgment of Termination of Condominium and Approval of Plan of Termination*. (R-1, Part 35) The termination of the Heron Pond Condominium was effective upon the recording of the Termination Judgment in the Public Records of Broward County, Florida on August 14, 2025. *Id.*

Upon termination, fee simple title to the Condo Property, free and clear of all liens, judgments, and monetary encumbrances, vested in the Termination Trustee, and all rights, claims, interests, liens, judgments, and monetary interests in specific Units were transferred to the proceeds of the sale of the Condo Property. *Id.* pg. 4.

2. The Sale Process

Acting under court supervision, the Receiver sought and obtained approval to retain marketing professionals to market the property as a whole. (R-47, pg. 3); (R-65 (Sale Hr'g Transcript) - 14) The Receiver retained the firms of Avison Young-Florida LLC and Fisher Auction Co., Inc. which were approved by the state court in September 2024. *See Id.* The firms were retained to provide assistance to the Receiver in the marketing and sale of the Condo Property to obtain the maximum market value achievable through market experts. *Id.*

On June 6, 2025, the Receiver filed the Amended Bid Procedures Motion seeking court approval of a marketing and sale process. (R-1 [Removed

Receivership Case], Ex. 6) On June 19, 2025, the state court entered the Bid Procedures Order approving certain bidding procedures and auction procedures for the Condo Property. (R-1 [Removed Receivership Case], Ex. 7) No party-in-interest, ***including Federated***, filed an objection to the Bid Procedures Motion or the Bid Procedures Order. *See* (R-1 [Removed Receivership Case], Ex. 9 (State Court Docket))

Pursuant to the Bid Procedures Order, the Receiver marketed the Condo Property through the court-approved marketing specialists and established a data room to provide due diligence information to prospective purchasers. (R-47; R-48-3) The marketing efforts included national and international outreach. (R-47; R-48-3-4) As of September 19, 2025, Avison Young and Fisher Auctions had contacted 9,484 potential purchasers to present the Condo Property for sale. (R-47; R-48-11 n.10) Of those potential purchasers, over 100 signed confidentiality agreements to review the Receiver's data room pertaining to the Property's due diligence reports and information. *Id.* The Receiver and his professionals advertised the Property in the Wall Street Journal, Daily Business Review, South Florida Business Journal, Sun Sentinel, Miami Herald, El Nuevo Herald, and various online platforms. *Id.* On August 4, 2025, the Receiver filed a Notice of Filing identifying Integra as the Stalking Horse Bidder with a bid of $20,500,000 ("Stalking Horse Bid"). (R-1, Part

33) This Stalking Horse Bid set the minimum purchase price for the Condo Property at Auction on September 25, 2025. *Id.*

3. The Determination that Federated Foundation Trust was not a Qualified Bidder

In order to be considered as a "Qualified Bidder" under the Bid Procedures Order, a Bidder was required to, among other things: (i) complete and submit a Bidder Pre-Registration Form; (ii) complete and sign the Return of Bidder Deposit Form; (iii) complete and sign the Acknowledgment of Review of Purchase and Sale Agreement, Bid Procedures, and Court Order; (iv) submit a fully executed Purchase and Sale Agreement in an amount not lower than $20,730,000; (v) wire to Berger Singerman an amount equal to 5% of the Purchase Price; and (vi) provide written evidence that the Bidder has the financial ability to consummate the purchase of the Property. *See* (R-1 [Removed Receivership Case], Ex. 7 at 4-6 (Section "F," Qualified Bid Requirements); (R-48-7 n.6)

The Bid Procedures Order provided that September 23, 2025, at 5:00 p.m., was the deadline for interested parties to submit a Bid ("Bid Deadline"), and September 24, 2025, at 5:00 p.m., was the deadline for the Receiver to identify whether a Bidder was a Qualified Bidder ("Qualified Bid Deadline"). *See* (R-1 [Removed Receivership Case], Ex. 7 at 4 (Section "E," Bid Deadline) and [Ex. 7 at 2 (Summary of Key Sales Process Dates))

Federated submitted a last-minute bid package on September 23, 2025, the day of the Bid Deadline. (R-65 [Sale Hr'g Transcript] - 22, 35-36) The Receiver reviewed the documentation submitted by Federated and determined that Federated did not meet the qualifications to be a Qualified Bidder. *Id.* at 15-16, 20 (listing requirements). While Federated provided a signed purchase agreement and the required 5% deposit, the financial documents Federated submitted did not demonstrate its ability to close on a $20.5 million transaction. *Id.* at 16-17, 22-23; (R-48-6-7, ¶¶2-3)

Specifically, Federated provided three bank statements that showed less than $5 million and a purported financing term-sheet commitment from Morgan Stanley bank. (R- 52 [Sale Hr'g Transcript] -16-17) The Morgan Stanley letter was dated June 2025, but the documentation was submitted in September 2025. *Id.* The term sheet that was provided by Federated had an expiration date that had long passed, and it was for a refinance of an unrelated property for a company that was not even the named bidder, and did not provide any evidence of Federated's ability to produce the $20.5 million. *Id.*, and *id.* at 37-38.

The term sheet itself stated that it "***constitutes neither an offer nor a commitment for financing***" ***and was for an entirely different asset***, the Holiday Inn Express/Cass Hotel in Chicago. *See id.* at 37:20-38:2-3. The term sheet had an outside closing date of 60 days from June 9, 2025, meaning September 9, 2025, but

the bid materials were submitted two weeks later on September 24, 2025. *See id.* at 38. In an effort to allow Federated to be a Bidder, and in the exercise of his reasonable business judgment, the Receiver and his representatives reached out to the Federated team to request additional documentation to support Federated's ability to qualify as a Qualified Bidder. *See id.* at 17. The Receiver even allowed Federated to go beyond the court-imposed deadline to provide this additional documentation. *Id.* However, Federated was unable to provide sufficient documentation, and the Receiver, in the exercise of his reasonable business judgment, and pursuant to the Bid Procedures Order, made the final decision that Federated was not a Qualified Bidder. *Id.*

The decision to not deem Federated a Qualified Bidder was not made by the Receiver alone; it was an objective analysis by the Receiver and his team of professionals, including Avison Young and Fisher Auction, who have conducted thousands of auctions, qualified thousands of bidders, and evaluated thousands of bid packages. *See id.* at 15-17, 19, 22-23, 37-38.

As of the Qualified Bid Deadline, there were no additional Qualified Bids submitted pursuant to the Bid Procedures Order. *See id.* at 21. Accordingly, on September 24, 2025, the Receiver filed a Notice That No Qualified Bids Were Received and cancelled the Auction scheduled for September 25, 2025. (R-62-5, ¶ 15)

4. The Court's Approval of the Sale

On January 7, 2026, the District Court held the Sale Hearing on the Receiver/Termination Trustee's Motion to Approve Sale of Condominium Property. *See* (R-65 [Sale Hr'g Transcript]) At the hearing, the Receiver proffered testimony from Daniel J. Stermer, the Receiver and Termination Trustee, as well as from Lamar Fisher of Fisher Auction Company, Inc. and John Crotty of Avison Young-Florida LLC. *See* (R-65 [Sale Hr'g Transcript] - 11:23-12:16 (Federated objected to introduction of witness testimony by the Receiver; however, the District Court authorized the Receiver to proceed by proffer which form of evidence Federated said was acceptable) and 13:1-24:2 (proffer of testimony by Receiver, Mr. Crotty, and Mr. Fisher). The District Court afforded Federated the opportunity to cross-examine each of the witnesses on their proffered testimony but Federated expressly declined the invitation. *See id.* at 18:9-12 (as to the Receiver) and 24:4-6 (as to Messers. Crotty and Fisher).

Federated's counsel acknowledged at the hearing that Federated and its principal Mr. Patel were "not objecting to the sale itself" but rather "to the process in which we were disqualified as bidders." *Id.* at 24:16-19. The Receiver noted that Federated had been deemed not a Qualified Bidder back in September 2025 and had taken no action before any court, neither the state court nor the District Court, to

seek a determination that they should have been deemed a Qualified Bidder. *Id.* at 39.

The District Court also noted Federated had ample opportunity to provide the necessary information to demonstrate that they were a Qualified Bidder, as the bid procedures were approved in June 2025. *Id.* at 39. Federated waited, as a strategic decision, until the day before the deadline to submit their qualifications, and even then, they did not have the required documentation. *Id.* at 37-39.

5. The District Court Gave Federated an Additional Opportunity to Participate at the Sale Hearing

Despite finding that Federated had not complied with the Bid Procedures and had waived any arguments regarding its disqualification, the District Court gave Federated an additional opportunity to participate in the sale process at the Sale Hearing. *See* (R-65-41-60) (lengthy colloquy between District Court and counsel for Federated, Receiver, and Integra, regarding a proposed $22 million offer by Federated during sale hearing).

The District Court inquired whether Federated was willing to deposit $22,000,000 as a nonrefundable deposit to be forfeited if Federated failed to close. *See id.* at 44-45, 50-51. The District Court initially offered Federated until Friday (two days after the hearing) to deposit $23,950,000 (which increased amount accounted for monies due the Enterprises per the Stipulation and Buyer's Premium, *id.* at 69, 70, but Federated's counsel stated that his client "can't get it by Friday."

Id. at 52:4-6. The Court then extended the deadline, stating: "I'll give him the entire six days" until January 13, 2026, at noon, to deposit $23,950,000 as a cashier's check, nonrefundable. *Id.* at 71:3-20.

When Mr. Patel, Federated's principal, was placed under oath telephonically (because he elected not to attend in person), he acknowledged the requirements but then made additional excuses, stating that his "funds are right now tied up into the stock exchange" and asked: "Can I get until Monday to confirm?" *Id.* at 75:18-20. The Court denied this request, stating: "It's all or nothing." *Id.* at 75:21.

The District Court effectively found that this additional opportunity to participate afforded Federated made any alleged error in its prior disqualification harmless; that is, the Court gave Federated the opportunity to put up funds to participate in the sale process notwithstanding the Receiver's prior determination that Federated was not a Qualified Bidder, but Federated failed to establish that it had sufficient funds do so. *See Id.* at 73-77.

The District Court concluded the Sale Hearing by addressing Federated's principal directly:

> I gave you the opportunity. We gave you the numbers. And now you're asking for less the deposit. That runs afoul to these people [i.e., the unit owners], and I think it's offensive to them as well. All right?
>
> So moving forward for these People, to bring closure, we're going to move forward [with the sale to Integra]. …
> …

Thank you. Court is adjourned.

Id. at 77:15-24.

6. The Sale Order

On January 8, 2026, the District Court entered *the Amended Order Granting Receiver/Termination Trustee's Motion to Approve Sale of Condominium Property and Granting Related Relief*. (R-62) The Court found that the Receiver afforded interested potential purchasers a full, fair, and reasonable opportunity to qualify and submit their highest or otherwise best offer to purchase the Condo Property and provided potential purchasers sufficient information to enable them to make an informed judgment on whether to bid on the Condo Property. (R-62-4-5, ¶12 - 6, ¶20(d))

The District Court further found, among other things, that (a) adequate notice of the Sale Motion and proposed sale to Integra was provided, *id.* at 4, ¶ 10; (b) the Receiver (i) "demonstrated good, sufficient, and sound business purposes, business judgment, and justifications for the sale of the Condo Property" and that "Integra and all parties, including the Receiver/Termination Trustee, have acted in good faith[,]" *id.* at 4, ¶ 11, and (ii) "conducted the Sale process in accordance with, and has otherwise complied in all respects with, the Bid Procedures Order and the Plan of Termination[,]" *id.* at 4, ¶ 12; (c) "[t]he Purchase Price, upon the terms and conditions set forth in the Agreement: (i) is the highest or otherwise best offer

received by the Receiver/Termination Trustee as a result of the sale process; (ii) is fair and reasonable; (iii) is in the best interests of the receivership estate and its creditors; and (iv) constitutes full and adequate consideration and reasonably equivalent value for the Condo Property[,]" *id.* at 5, ¶18; (d) "[t]he [Receiver], in a reasonable exercise of his business judgment, demonstrated a sufficient basis and the existence of reasonable, appropriate, and compelling circumstances requiring him to enter into the Purchase and Sale Agreement, to sell and transfer the Condo Property, and such actions are fair and appropriate exercises of the [Receiver's] reasonable business judgment and in the best interest of the Unit Owners and Other Interested Parties[,]" *id.* at 5, ¶19; and (e) the Receiver "and his advisors (i) conducted a fair, extensive, and open sale process that complied with the Bidding Procedures and the Bidding Procedures Order in all respects" which "obtained the highest or otherwise best value for the Condo Property for the Unit Owners and Other Interested Parties," and that "the Purchaser has put forth the highest or otherwise best offer for the Condo Property pursuant to the terms of the Bidding Procedures Order." *Id.* at 6-7, ¶ 20(i), (iii).

STANDARD OF APPELLATE REVIEW

District Courts have authority to interpret their orders, which interpretation is accorded deference on appeal and reviewed for an abuse of discretion. *In re Managed Care,* 756 F.3d 1222, 1234 (11th Cir. 2014). This would include the

District Court's Bid Procedures Order (defined below).[2] *See id.*; *In re Bigler, LP*, 443 B.R. 101, 113 (Bankr. S.D. Tex. 2010) ("[I]t is the province of this Court ... to interpret its orders," including bid procedures) (quotation and citations omitted); *see also In re Gould*, 977 F.2d 1038, 1041-42 (7th Cir. 1992) (bankruptcy court's rebidding procedures reviewed for abuse of discretion); *In re Wintz Cos.*, 230 B.R. 840, 844, 846-47 (B.A.P. 8th Cir. 1999) (bankruptcy court has discretion in implementing bidding procedures and will only be reversed for an abuse of that discretion).

This Court reviews the Sale Order for an abuse of discretion.[3] *See* Lonnie E. Griffith, Jr., 65 *Am. Jur. 2d Receivers* § 206 (Feb. 2026 Update) ("The court's action confirming or denying a receiver's sale is an exercise of the court's discretion, subject to review only for an abuse of discretion and de novo review for errors of

[2] "After removal, orders issued by the state court are considered orders of the district court." *Johnson v. Tampa Sports Auth.*, 530 F.3d 1320, 1324 (11th Cir. 2008) (citation omitted).

[3] As explained below and in the Receiver's Response to Appellant's Civil Appeal Statement [ECF No. 11], the only issue properly before this Court on appeal based on an unqualified, affirmative representation made by counsel for Federated Foundation Trust made to the District Court at the Sale Hearing (defined below) is whether the District Court properly exercised its discretion in upholding the Receiver's determination that Federated was not a "Qualified Bidder" under the Bid Procedures Order (defined below). However, to the extent the Court considers argument by Federated that the District Court erred in approving the Sale, then the Receiver sets forth the applicable standard of review and addresses the propriety of that approval herein. The Receiver addresses herein other issues improperly raised by Federated in for the first time on appeal in the event the Court is inclined to consider them.

law.") (footnotes omitted), *id.* § 208 (same); *see also, e.g.*, *S.E.C. v. Barton*, 135 F.4th 206, 223 (5th Cir. 2025) (holding that district court did not abuse its discretion in confirming sales of properties in receivership proceeding); *Penn. Public Utility Comm'n v. Gangi*, 874 F.3d 33, 37 (1st Cir. 2017) (same). The same abuse of discretion standard of review applies in analogous bankruptcy proceedings.[4] *See, e.g.*, *In re Rosa Dairy Farm, Inc.*, 622 B.R. 806, 813 (B.A.P. 1st Cir. 2020) ("Generally, a bankruptcy court's order authorizing the use, sale, or lease of property of the estate under § 363 is reviewed for an abuse of discretion.") (citation omitted). As this Court explained in *United States v. Frazier*, 387 F.3d 1244, 1259 (11th Cir. 2004) (en banc):

> By definition ... under the abuse of discretion standard of review there will be occasions in which we affirm the district court even though we would have gone the other way had it been our call. That is how an abuse of discretion standard differs from a *de novo* standard of review. As we have stated previously, the abuse of discretion standard allows "a range of choice for the district court, so long as that choice does not constitute a clear error of judgment."

Id. (quotation omitted). "Thus, when employing an abuse-of-discretion standard, [this Court] must affirm unless [it] find[s] that the district court has made a clear error of judgment or has applied the wrong legal standard." *Id.* (citation omitted).

[4] Bankruptcy law is analogous to Receivership law and instructive in receivership cases because "a primary purpose of both receivership and bankruptcy proceedings is to promote the efficient and orderly administration of estates for the benefit of creditors." *S.E.C. v. Wells Fargo Bank, N.A.*, 848 F.3d 1339, 1344 (11th Cir. 2017).

Findings of fact made by the District Court are reviewed for clear error. *See Riolo v. United States*, 38 F.4th 956, 967 (11th Cir. 2022). As this Court recently explained in *In re Wagner*, 115 F.4th 1296, 1303 (11th Cir. 2024):

> A finding of fact is clearly erroneous "when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Anderson v. City of Bessemer City*, 470 U.S. 564, 573, 105 S.Ct. 1504, 84 L.Ed.2d 518 (1985) (internal quotation marks omitted) (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395, 68 S.Ct. 525, 92 L.Ed. 746 (1948)). Therefore, "[w]here there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *Id.* at 574, 105 S.Ct. 1504 (citing *United States v. Yellow Cab Co.*, 338 U.S. 338, 342, 70 S.Ct. 177, 94 L.Ed. 150 (1949)). The clearly erroneous standard "does not entitle a reviewing court to reverse the finding of the trier of fact simply because it is convinced that it would have decided the case differently." *Id.* at 573, 105 S.Ct. 1504.

Id.

Finally, this Court "may affirm the district court where the judgment entered is correct on any legal ground regardless of the grounds addressed, adopted or rejected by the district court." *Bonanni Ship Supply, Inc. v. United States*, 959 F.2d 1558, 1561 (11th Cir. 1992) (citations omitted); *Lucas v. WW Grainger, Inc.*, 257 F.3d 1249, 1256 (11th Cir. 2001) (this Court may affirm the district court's "judgment 'on any ground that finds support in the record.'") (quoting *Jaffke v. Dunham*, 352 U.S. 280, 281 (1957)).

SUMMARY OF ARGUMENT

Given an affirmative, unqualified representation made by Federated to the District Court at the Sale Hearing, the only issue properly before this Court on appeal is whether the District Court acted within its discretion in upholding the Receiver's determination that Federated was not a Qualified Bidder under the Bid Procedures Order. Given Federated's candid admission that it did not comply with the requirements to be a Qualified Bidder and instead acted according to a self-proclaimed "historical course of conduct," the District Court acted well within its discretion in upholding the Receiver's determination that Federated was not a Qualified Bidder.

Even if the District Court abused that discretion (it did not), any such abuse constituted harmless error. This is because, at the Sale Hearing, the Court afforded Federated a further opportunity to participate in the sale process telephonically, but its principal could not confirm that sufficient funds were on hand to exceed the amount of the stalking horse bid within the extended deadline afforded Federated.

To the extent necessary despite Federated's representation to the District Court regarding the limited scope of its objection, this Court should approve the District Court's approval of the proposed Sale to Integra. The Court's findings of fact were amply supported by the proffers of testimony of the Receiver and two court-approved brokers, which testimony was admitted without objection.

Of note, Federated declined the District Court's invitation to cross-examine the Receiver's witnesses on their proffered testimony. And while it had the opportunity to do so, Federated made no request to introduce evidence of its own at the Sale Hearing despite having received a witness list from the Receiver prior to the Sale Hearing.

Relatedly, because it is undisputed that the Receiver provided notice of the Sale Hearing to Federated, and Federated had (and took advantage of) the opportunity to be heard, the Court can and should summarily reject Federated's baseless contention that its due process rights were violated, including specifically as it relates to the requirement that it demonstrate it possessed the financial wherewithal to fund the purchase of the Condo Property. This is because it is standard fare for bid procedures orders in receivership and analogous bankruptcy cases involving sales of property for prospective bidders having to establish their financial bona fides in order to participate in the sale process. In short, a prospective bidder's failure to satisfy qualification requirements to participate in a sale process is not an unconstitutional deprivation of property rights—it is simply a direct consequence of Federated's failure to meet conditions of participation.

Complaints by Federated regarding the District Court's statements regarding a topping bid at the Sale Hearing being an "all or nothing" proposition is devoid of merit. Unlike Federated, Integra complied with all requirements in submitting its

(highest and best) bid, and nothing short of an amount of money that would top that bid, including covering additional costs identified by Receiver's counsel at the Sale Hearing, including $600,000 due the Enterprises based on a prior stipulation (R-65 [Sale Hr'g Transcript] – 43:6-8, 13-16), would have been a non-starter.

The District Court's statements regarding possible incarceration of Federated's principal were based on potential perjury ties directly to the possibility that Federated might not have sufficient funds he might testify Federated would put up by the court-imposed deadline. There was nothing improper about the District Court advising Federated's principal of what might transpire if he perjured himself. By focusing on these statements, it is clear Federated is grasping at straws in prosecuting this appeal which the Receiver deems frivolous. This is why, contemporaneously herewith, the Receiver is filing a motion seeking Rule 38 sanctions.

ARGUMENT

I. Federated Waived Any Challenge to the Sale and Failed to Preserve Its Objections

This Court should affirm the Sale Order on threshold grounds of waiver and non-preservation of any purported error.

First, Federated's counsel expressly conceded at the January 7, 2026, Sale Hearing that Federated "is not objecting to the sale itself; we're objecting to the process in which we were disqualified as bidders." (R-65 (Sale Hr'g Transcript) -

24:16-19) The Receiver confirmed this was his understanding, too. *Id.* at 8:15-17 ("based upon discussions with [Federated's] counsel, their issue is that they were not deemed a qualified bidder to be at the auction."). This representation by Federated to the District Court at the Sale Hearing waives any substantive challenge to the merits of the Sale, the purchase price, or the determination that the Sale to Integra constituted the highest and best offer and served the best interests of the receivership estate. *See Douse v. Metro Storage*, LLC, 770 F. App'x 550, 551 (11th Cir. 2019) (per curiam) ("a party waives his right to challenge on appeal an argument that he failed to raise before the district court.") (citing *Bryant v. Jones*, 575 F.3d 1281, 1296 (11th Cir. 2009)) ("Arguments not raised in the district court are waived.") (quoting *Johnson v. United States,* 340 F.3d 1219, 1228 n.8 (11th Cir. 2003)).

Second, Federated failed to object to the Bid Procedures Order during the more than three months between its entry in June 2025 and the Bid Deadline in September 2025. Critically, no party-in-interest, ***including Federated***, objected to the Bid Procedures Motion or the Bid Procedures Order. As the District Court emphasized: "Why didn't they do that back in September? Why are we here today hearing these arguments? These could have been resolved months ago." (R-65 [Sale Hr'g Transcript] - 39:3-5) Federated also failed to seek judicial review of its disqualification at any time between September 24, 2025, when it was notified of its disqualification, and January 7, 2026, the date of the Sale Hearing. *Id.*

Third, Federated did not argue that its due process rights were violated by enforcement of the Bid Procedures Order's financing ability requirement at the Sale Hearing. *See* (R-65 [Sale Hr'g Transcript]) By failing to raise this purported due process violation below, Federated has waived it for purposes of this appeal. *See Douse*, 770 F. App'x at 551; *Bryant*, 575 F.3d at 1296; *Johnson*, 340 F.3d at 1228 n.8. The Receiver acknowledges that in its Objection, Federated made argument that there was an absence of notice to Unit Owners, creditors, and potential purchasers which violated them of due process (R-44, ¶¶ 19-20), which will be addressed below, but Federated did ***not*** tie that argument to the Bid Procedure Order's requirement that prospective bidders demonstrate their financial ability to consummate a sale of the Condo Property which is the argument it raises on appeal. *See id.*

Fourth, likewise for argument raised for the first time in its Initial Brief that the District Court's statements regarding a topping bid at the Sale Hearing being an "all or nothing" proposition. *See Douse*, 770 F. App'x at 551; *Bryant*, 575 F.3d at 1296; *Johnson*, 340 F.3d at 1228 n.8. Unlike Federated, Integra complied with all requirements in submitting its bid, and nothing short of an amount of money needed to top that bid (plus additional costs identified by Receiver's counsel at the Sale Hearing), would have been a non-starter.

Fifth, Federated did not identify in its statement to the District Court or in its Civil Appeal Statement an issue regarding statements by the Court of possible

incarceration based on potential perjury, specifically as it concerned the possibility that Federated's principal might not possess or have access to the required funds by a court-imposed deadline. So Federated has waived that issue, too. *See id.*

Sixth, Federated never raised the issue of the scope of a possible remand like it does in its Initial Brief so it waived that issue for appeal, too. *Id.*

Based on the foregoing, the Court should find that Federated waived the right to present argument on the foregoing issues on appeal, and that it is limited to its contention that the District Court abused its discretion in upholding the Receiver's determination that Federated failed to meet the requirements to be a Qualified Bidder.

II. Federated Failed to Satisfy the Court-Approved Qualification Requirements

The undisputed record evidence demonstrates that Federated failed to meet the requirements of the Bid Procedures Order, specifically including the requirement to provide written evidence of financial ability to close on a $20.5 million transaction.

Federated submitted a last-minute bid package on September 23, 2025. While Federated provided a signed purchase agreement and the required 5% deposit, its financial documentation was fundamentally deficient. Federated provided three bank statements showing less than $5 million and an expired Morgan Stanley term sheet that (i) expressly stated it "constitutes neither an offer nor a commitment for

financing"; (ii) was for an entirely different asset—the Holiday Inn Express/Cass Hotel in Chicago; (iii) was for a different company, not the named bidder; and (iv) had expired on September 9, 2025, two weeks before Federated submitted its bid materials.

The Receiver afforded Federated multiple opportunities to cure these deficiencies, even extending the court-imposed deadline to provide additional documentation. However, Federated was unable to provide sufficient documentation. The determination that Federated was not a Qualified Bidder was an objective analysis by the Receiver and his team of professionals—including Avison Young and Fisher Auction, who have conducted thousands of auctions and qualified thousands of bidders—based on the court-approved qualification requirements.

Significantly, Federated's own counsel admitted at the Sale Hearing that Federated "did not strictly comply with every directive in the bidder's submission package[,]" that is, it acted in accordance with "a historical course of conduct in situations like these[.]" (R-65 [Sale Hr'g Transcript] - 29:5-9). Counsel explained this admitted non-compliance was a "calculated move" by Mr. Patel "to minimize…the public impact of his interest in the property, given [Federated's principal's] reputation as a shrewd real estate buyer." *Id.* at 29:15-19. A bidder like Federated cannot deliberately choose not to comply with court-approved bid procedures and then claim error when those procedures are enforced against it.

Based on the foregoing, the District Court did not abuse its discretion in upholding the Receiver's determination that Federated was not a Qualified Bidder under the Bid Procedures Order.

For its part, Federated argues that the requirement under the Bid Procedures Order that it demonstrate its financial wherewithal is "hyper-technical" in nature. Initial Brief at 11, 14. This argument is meritless. In fact, that requirement is standard fare for bid procedures orders in receivership and analogous bankruptcy cases.[5]

[5] *See, e.g.*, [**Receivership Cases**]: *The Prudential Ins. Co. of Am. v. ACDF, LLC*, No. 1:24-cv-01102-KES-SAB, 2026 WL 237750, at *28 (E.D. Cal. Jan. 29, 2026) (bid procedure order provided that "[a] Qualified Bid must be accompanied by evidence of the bidder's financial ability to close unconditionally in form and substance satisfactory to the Receiver in his discretion in consultation with Plaintiffs."); *X-Caliber Capital LLC v. Charleston HHC, LLC*, No. 24-2034, 2025 WL 4067323, at *2 (C.D. Ill. Apr. 17, 2025) ("All bids must include sufficient information, as reasonably determined by the Receiver, to allow the Receiver to determine, in his reasonable business judgment, whether the interested party has the financial wherewithal to consummate the sale."); *Farmer's & Merchants State Bank v. Direct Scaffold Svcs., Co., LLC*, No. 3:09–0376, 2009 WL 3673052, at *2 (M.D. Tenn. Oct. 30, 2009) (prospective bidder required to provide Receiver "sufficient information" to allow it "to determine that the bidder has the financial wherewithal to close a sale of the Assets on which the bidder intends to bid, including…a signed commitment for any debt or equity financing, a bank account statement showing the ability of a Potential Bidder to pay cash for the designated Assets, and current audited financial statements (or such other form of financial disclosure and credit-quality support or enhancement acceptable to the Receiver) of the Potential Bidder or those entities that will guarantee the obligations of the Potential Bidder."); [**Bankruptcy Cases**]: *In re Barnes*, 615 B.R. 514, 518 (Bankr. D. Conn. 2020) ("To qualify as an eligible bidder, an interested party was required to demonstrate an ability to immediately tender: (1) $250,000 in good funds…, and (2) a letter from a bank president, or upper level management equivalent, indicating that the interested party had the financial wherewithal to consummate the contemplated transaction…."); *In re Teltronics, Inc.*, No. 8:11-bk-

Moreover, the deficiencies in Federated's submissions were substantive, unrebutted and fundamental: bank statements showing less than $5 million for a $20.5 million transaction, and an expired, unrelated Morgan Stanley term sheet that by its own terms "constitutes neither an offer nor a commitment for financing." These are not technical deficiencies. Instead, they go to the core requirement of demonstrating financial ability to consummate the prospective sale transaction which, as reflected in the cited cases, Note 5, *supra*, is a standard requirement in bid procedure orders.

Unsurprisingly, Federated fails to cite a single case in which a court before which a receivership or analogous bankruptcy case is pending entered a bid procedures order which did not require a prospective bidder to demonstrate its financial bona fides. Federated's failure to make that showing was the principal, if

---

12150-KRM, 2012 WL 425676, at *3 (Bankr. M.D. Fla. Feb. 6, 2012) (requiring prospective bidder to provide "financial information satisfactory to the Debtor…demonstrating the Bidder's financial ability to close and to consummate an acquisition of the New Equity Interests or the Assets" in order to be a Qualified Bidder "entitled to then submit a Bid for the New Equity Interests or the Assets."); *In re Taylor, Bean & Whitaker Mtg. Corp.*, No. 3:09-bk-07047-JAF, 2010 WL 11827594, at *2 (Bankr. M.D. Fla. Nov. 3, 2010) (bid procedures order requiring prospective bidders to provide "financial documentation demonstrating, to the satisfaction of Debtor in consultation with the Committee, the bidder's ability to close the transaction"); *In re Capmark Fin. Grp., Inc.*, No. 09-13684 (CSS), 2010 WL 11821926, at *3 (Bankr. D. Del. Feb. 23, 2010) (prospective bidder required to represent it was "financially capable of consummating the transactions contemplated by the modified APA" and include with its bid "such financial and other information that will allow the Sellers to make a reasonable determination as to the bidder's financial…capabilities to consummate the transactions contemplated by the Modified APA").

not exclusive, basis for the Receiver's determination that Federated was not a Qualified Bidder. That determination was entirely appropriate based on the Bid Procedures Order's unambiguous terms and conditions, and, more fundamentally, the District Court's decision to uphold that determination was one made well within the broad scope of its discretion. This Court should summarily reject Federated's argument that there was error, let alone an abuse of discretion, in the District Court's determination that Federated failed to demonstrate it was a Qualified Bidder.

And as explained above, even if there were error (there was not), it was harmless given the additional opportunity the District Court afforded Federated to participate in the sales process at the Sale Hearing. It is inconceivable that Federated's principal decided to not attend (and participate) in the Sale Hearing in person. Nevertheless, the District Court afforded Federated's principal the opportunity to testify telephonically to confirm Federated had or could put together by the further extended deadline the funds necessary to make a topping bid to that submitted by Integra. This Court should summarily reject the suggestion, to the extent being made, that Federated was not given sufficient time within which to attempt to gather the required funds.

Absent from Federated's Initial Brief is an acknowledgment of the long delay and prejudice that the Unit Owners had already endured. *See* Initial Brief. But it was something that the District Court acknowledged. *See* (R-65 [Sale Hr'g Transcript] –

42:16 ("you're not going to play with these people's money") - 43:24-44:4 (advising the parties that if $22 million was put up as a deposit and Federated failed to close those funds, as well as the $20.5 million Integra was to pay, would go to the Unit Owners) - 57:14-23 (District Court explained to Unit Owner advocating in support of a higher purchase price by Federated that the sale process would not be delayed, that disposition of the Condo Property "has been going on for a couple of years…and we need to move on," that the "goalposts" keep getting moving and the Court didn't "want to get [the Unit Owners'] hopes up, [is Federated] going to do something when they're not."); *see also id.* at 59:1-22 (Receiver's counsel explaining that if Federated's principal thought this was an important matter he would have attended the Sale Hearing in person, or sent his counsel to the Hearing with a cashier's check, and that Receiver's counsel had no faith in any representation by Federated's principal regarding funds that might be available for a topping bid, and that further delay only harmed and prejudiced the Unit Owners).

Federated's failure to confirm it would have the necessary funds at the Sale Hearing was the principal basis for the District Court not further extending the already extended deadline it had given Federated to provide a topping bid. Given Federated's principal's inability to confirm Federated had or could put together the required funds by the extended deadline, there was no error, let alone an abuse of discretion, in the District Court not providing even more time for Federated to do so.

Federated highlighting of the District Court's statement that putting together the required funds was an "all or nothing" proposition does not change the analysis. The "all or nothing" ultimatum was actually an extraordinary accommodation: the District Court was giving Federated an additional chance to participate in the sale process that it was not entitled to given its prior non-compliance with the Bid Procedures Order and resulting waiver.

Likewise for references to purported threats of incarceration made by the District Court. The Sale Hearing transcript reflects that the District Court was making clear to Federated's principal that he might be incarcerated if he testified falsely that Federated possessed or had access to the funds necessary to make a topping bid but was unable to come up with the funds by the extended deadline. *See* (R-65 [Sale Hr'g Transcript] – 67:16-18, 69:25-70:6, and 74:11-20) There is nothing untoward about a district court Judge advising a testifying witness of the possible consequences of perjuring himself or herself. And more to the point, those statements in no way amounted to coercion as argued by Federated. There is no explanation as to *how* the District Court's admonitions coerced Federated's principal into testifying or not testifying any particular way. Stated differently, if Federated had the required funds on hand to make a topping bid or could get them within the extended deadline, then Federated's principal would have so testified. His failure to testify was based on his lack of confidence that Federated could, in fact, produce the

necessary funds. At bottom, the references to consequences for testifying falsely do not change the analysis.

Federated argues that its due process rights were violated by enforcement of the Bid Procedures Order's requirement, self-servingly characterized as "hyper-technical," that prospective bidders demonstrate their financial ability to consummate the proposed sale transaction. As an initial matter, the series of Supreme Court cases cited by Federated are inapposite. These cases stand for the unremarkable proposition that due process requires notice and an opportunity to be heard; critically, none involve facts even remotely similar to those before this Court.[6]

[6] *See Fuentes v. Shevin*, 407 U.S. 67 (1972) (holding that state court prejudgment replevin statutes worked deprivation of property without due process of law given denial of owners' right to be heard prior to seizure of property); *Matthews v. Eldridge*, 424 U.S. 319 (1976) (holding that evidentiary hearing is not required prior to termination of social security disability benefits, and that administrative procedures for termination comport with due process); *Armstrong v. Manzo*, 380 U.S. 545 (1965) (holding that failure of mother and her successor husband to notify divorced biological father of pendency of proceedings to adopt daughter deprived biological father of due process of law which rendered adoption decree constitutionally invalid and affording him a subsequent hearing on his motion to set aside the decree did not cure the constitutional deprivation); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) (holding that state law statutory publication notice of settlement of pooled accounts held by trustee to beneficiaries was constitutionally deficient as to known present beneficiaries with a known place of residence). One note regarding *Matthews, supra*, is in order given Federated's "balancing" suggestion. *See* Initial Brief at 17. The private interest at stake (Federated's interest as a bidder, not a right-holder) is minimal. On the other hand, the governmental / judicial interest in efficient administration and finality and enforceability of court-approved sale procedures is high, while the risk of erroneous

In fact, Federated was provided notice of the Sale Hearing (R-54), which is confirmed by its counsel's attendance at that hearing. Likewise for the Unit Owners or their representatives, some of which attended the Sale Hearing and, with the District Court's permission, made statements to the District Court. *See, e.g.*, (R-65 [Sale Hr'g Transcript] – 60-64, 68-69) This notice afforded Federated with the opportunity to be heard in opposition to the proposed Sale of the Condo Property to Integra, an opportunity for which Federated took full advantage. Of note, Federated's counsel declined the District Court's express invitation to cross-examine the witnesses whose testimony was proffered by the Receiver. *See* (R-65 [Sale Hr'g Transcript) at 18:9-12 (as to the Receiver) and 24:4-6 (as to Messers. Crotty and Fisher). Moreover, Federated was free to seek to put on its own evidence, but it never sought to do so despite having previously received a witness list from the Receiver giving Federated actual knowledge that the Receiver intended to put on evidence in support of the prospective sale to Integra at the scheduled Sale Hearing, yet Federated elected to rely solely on argument of its counsel (which of course is not evidence[7]). *See* (R-65 [Sale Hr'g Transcript])

---

deprivation low given the objective, documented (and admitted) nature of Federated's failure to meet its obligations under the Bid Procedures Order.

[7] *See Bryant v. U.S. Steel Corp.*, 428 F. App'x 895, 897 (11th Cir. 2011) (per curiam) (disregarding unsupported argument by plaintiff's lawyer because "counsel's argument is not evidence") (citing *Skyline Corp. v. NLRB*, 613 F.2d 1328, 1337 (5th Cir.1980)).

The Court should summarily reject Federated's contention that its due process rights were violated by enforcement of the so-called "hyper-technical" requirement in the Bid Procedures Order that Federated demonstrate its financial bona fides in order to be a Qualified Bidder, *see* Initial Brief at 13-14, based on the caselaw cited in Note 5, *supra*.

Federated's argument about the absence of meaningful procedures to resolve disputed facts concerning whether its bid package complied with the Bid Procedures Order, Initial Brief at 11-12, is unavailing. This is because the District Court overruled Federated's objection to the introduction of evidence at the Sale Hearing. *See* (R-65 [Sale Hr'g Transcript] – 11:18-12:1-9), such that Federated itself could have, but inexplicably elected not to, introduce evidence to support its position. *See* (R-65 [Sale Hr'g Transcript]) Having made that strategic litigation decision, Federated's argument that it was denied due process by enforcement of the Bid Procedures Order should be summarily rejected.

Federated's reliance upon *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), for the proposition that receivership courts may use summary proceedings, but only if interested parties receive notice and a meaningful opportunity to be heard, including presentation of evidence, Initial Brief at 13, is misplaced. Again, Federated was offered the opportunity to cross-examine the Receiver's witnesses but declined the invitation,

and Federated's counsel did not seek to put on any evidence of its own, specifically including evidence it now baldly asserts would have supported its contention that the bid package it submitted was compliant with the Bid Procedures Order. These facts alone warrant rejection of Federated's argument. Of course, Federated's argument flies in face of its candid admission that it did not comply with the Bid Procedures Order. *See* (R-65 [Sale Hr'g Transcript] – 29:5-6 ("It's important to note that Federated and Mr. Patel did not strictly comply with every directive in the bidder's submission package.")) Moreover, as explained below, *Torchia* and *Elliott* are, in actuality, cases for the Receiver.

Torchia involved an objection to a Magistrate Report and Recommendation relating to the disposition of a claim filed by a former employee of the receivership entity; the employee filed a claim and briefing in support of his position which the district court ultimately rejected. If anything, *Torchia* supports the Receiver's position with respect to the District Court's determination that Federated was not a Qualified Bidder and ultimately approving the Sale of the Condo Property to Integra: *Torchia* states in relevant part that "[A] 'district court has broad powers and wide discretion to determine relief in an equity receivership'". *Torchia*, 922 F.3d at 1316 (quotation omitted).

Elliott involved an appeal of a receiver's plan of distribution of the assets of the receivership companies, including a claims resolution procedure which afforded

claimants the right to file objections to the Receiver's proposed treatment of their claims. This Court explained that "[i]n granting relief, it is appropriate for the district court in receivership proceedings] to use summary proceedings." *Elliott*, 953 F.2d at 1566 (citation omitted). Importantly, this Court then explained that

> Summary proceedings are inappropriate when parties would be deprived of a full and fair opportunity to present their claims and defenses. The appellants ***must show how they were prejudiced by the summary proceedings and how they would have been better able to defend their interests in a plenary proceeding***.

Id. at 1567 (internal and external citations omitted) (emphasis supplied).[8] Continuing, the *Elliott* court rejected argument by the investor-claimants that explained that summary jurisdiction was unconstitutional, explaining that they "failed to show how the summary proceedings differed from the process they would have received in a plenary proceeding[,]" and that "a district court does not generally abuse its discretion if its summary procedures permit parties to present evidence when the facts are in dispute and to make arguments regarding those facts." *Id.*

Here, Federated had the right to, and in fact did, file a written objection including a memorandum of law to the proposed Sale of the Condo Property to Integra (R-44) and presented substantial argument at the Sale Hearing, including extensive colloquy with the District Court regarding the possibility of continued

[8] Federated's citation to out-of-circuit caselaw from the Ninth and Sixth Circuits as standing for the same proposition recognized by this Court in a published opinion, *see* Initial Brief at 16, doesn't add to the analysis.

participation in the sale process, and testimony offered through Federated's principal. *See* (R-65 (Sale Hr'g Transcript) – 11-12, 24-34, 41-46 (also including argument by Receiver's counsel), 52-53, 58, 70-71, 74-77). Again, Federated was invited to cross-examine the Receiver's witnesses as to their proffered testimony but declined. And Federated could have, but elected not to, present its own evidence—even after the District Court allowed its principal (who elected not to attend the hearing in person) to testify telephonically and could have had him testify in support of Federated's position. So, like the investors in *Elliott,* Federated cannot show, and it hasn't even attempted to show how the process it received differed from what it would have received in a plenary or more fulsome proceeding. Stated differently, Federated has not shown how the proceeding employed by the District Court violated its due process rights and how a more fulsome proceeding would have better protected those rights. *See Elliott,* 953 F.2d at 1571.

Federated acknowledges its burden to establish prejudice under this Court's case law. Initial Brief at 15. It cites to the transcript of the Sale Hearing, stating that the District 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." *Id.* at 16. But as discussed herein, the District Court bent over backwards to provide Federated a further opportunity to participate in the sale process (despite its failure to comply with the Bid Procedures Order) by

providing a topping bid, even giving Federated additional time to come up with the necessary funds. In short, Federated was not entitled to some open-ended period to further prolong this already long-running matter, to come up with the required funds. At some point, the sale process had to come to a conclusion to bring finality and there was no error, let alone an abuse of discretion, in the District Court putting an already-extended time limit on Federated's ability to come up with the required funds.

In sum, *Torchia* and *Elliott* actually support the Receiver: together they hold that summary proceedings satisfy due process so long as parties receive notice and a meaningful opportunity to be heard which, contrary to Federated's contention, is precisely what occurred here.

And Federated's reliance upon *S.E.C. v. Wells Fargo Bank, N.A.*, 848 F.3d 1339 (11th Cir. 2017), for the proposition that a receivership court may not use a "procedural mechanism" (presumably referring to enforcement of the Bid Procedures Order) to eliminate substantive property rights, Initial Brief at 14, is misplaced. As noted by Federated itself, *Wells Fargo* involved the extinguishment of a secured creditor's pre-existing *in rem* lien rights, *id.*, which is inapposite here given Federated's concession that it is not a secured creditor asserting such lien rights. *Id.* For the reasons explained herein, and the cases cited in Note 5, *supra*, Federated's contention that a district court cannot use "hyper-technical procedural

gatekeeping to eliminate substantive participation rights in an outcome-determinative sale process without constitutionally adequate procedures[,]" *id.*, is simply wrong.

Based on the foregoing, the Court should reject Federated's argument that the summary proceeding employed by the District Court violated its right to due process.[9]

III. The District Court Afforded Federated an Additional Opportunity to Participate, Which Federated Declined

Even after determining that Federated had failed to comply with the Bid Procedures Order and had waived its objections, the District Court nevertheless afforded Federated an extraordinary additional opportunity to participate in the sale process. This additional opportunity afforded Federated squarely refutes its contention that the determination that it was not a Qualified Bidder was "outcome-

[9] Federated also cites to 28 U.S.C. §§ 2001 and 2002. Initial Brief at 17. Federated's reliance upon those statutes is misplaced. They govern judicial sales of real property by receivers generally, but do not mandate the specific procedures Federated requests, and importantly, Section 2001 provides, in part, that sales or real property "shall be upon such terms and conditions as the court directs." 28 U.S.C. § 2001(a). This is exactly what transpired here as reflected in the Bid Procedures Order and the District Court's enforcement thereof. Federated's reference to "an after-the-fact overruling of objections," Initial Brief at 14, is curious given it filed a written objection to the proposed sale to Integra, the fact that it was allowed to make extensive argument at the Sale Hearing in opposition to that sale, and the District Court had every right to consider and uphold the Receiver's determination that Federated was not a Qualified Bidder but nonetheless afforded it a further opportunity to participate in the sale process which it squandered by not having sufficient funds already in place or available by the District Court's extended deadline.

determinative". Initial Brief at 13. More specifically, the Court offered Federated the opportunity to deposit $23,950,000 as a nonrefundable deposit, initially giving Federated until Friday (two days after the hearing) to do so. When Federated's counsel stated that his client "can't get it by Friday," (R-65 (Sale Hr'g Transcript) – 52:4-6), the Court further extended the deadline to January 13, 2026, six days later.

Mr. Patel, placed under oath telephonically at the Sale Hearing (since he inexplicably elected not to attend in person), acknowledged the requirement to put up the full amount, but stated that his "funds are right now tied up into the stock exchange," *id.* at 76:18-19 and requested additional time. The District Court properly denied this request given the extreme length of time that elapsed in this case and the further prejudice the Unit Owners might face if Federated was unable to come up with the required funds. Federated's inability to deposit those funds when given this additional opportunity, after claiming for months that it had the financial ability to close, confirmed the Receiver's original determination that Federated lacked sufficient proof of closing capacity and thus was not a Qualified Bidder under the Bid Procedures Order.

This additional opportunity renders any alleged error in disqualifying Federated harmless. As the District Court explained, "I gave them an opportunity. I think it was a fair opportunity to do so. And now I keep hearing different things moving and goalposts as well." (R-65 (Sale Hr'g Transcript) – 58:19-21)

Based on the foregoing, any error in disqualifying Federated as a Qualified Bidder constituted harmless error.

IV. Reopening the Auction Would Undermine the Integrity of the Judicial Process

Courts have consistently recognized that preserving the integrity of judicial sale procedures is paramount, even when reopening might theoretically generate additional proceeds. As explained in by the court *In re Bigler*:

> [T]he Court must also always keep one eye cocked on promoting and preserving the integrity of the judicial process. Reneging on clearly established and properly conducted procedures in order to generate some additional dollars for the estate undermines the integrity of the judicial process. . . . A court order reopening the auction process when procedures were clearly established, when the auction was conducted without fraud or collusion and in compliance with the procedures, and when an adequate bid was accepted, will undercut such confidence and faith in the system.

In re Bigler, 443 B.R. at 115.

Here, the Bid Procedures were clearly established and publicly noticed; the process was conducted without fraud or collusion and in compliance with court-approved procedures; and an adequate bid was accepted from Integra, which posted a seven-figure deposit and, ***unlike Federated***, played by the court-approved rules. Reopening the auction to accommodate a bidder who admittedly did not comply with the court-approved procedures would undermine confidence in the judicial system and prejudice market participants who relied on the finality of the process. This Court should not allow that process to effectively restart from square one.

V. The District Court's Findings in Authorizing the Sale Were Supported by Substantial Evidence

While unnecessary given Federated's unqualified representation to the District Court at the Sale Hearing regarding the scope of its objection, the Receiver will nevertheless address the propriety of the District Court's findings of fact in the Sale Order, all of which were amply supported by the record. Specifically, the Court found as follows:

> The Receiver/Termination Trustee demonstrated good, sufficient, and sound business purposes, business judgment, and justifications for the sale of the Condo Property. Integra and all parties, including the Receiver/Termination Trustee, have acted in good faith.
>
> The Receiver/Termination Trustee conducted the Sale process in accordance with, and has otherwise complied in all respects with, the Bid Procedures Order and the Plan of Termination. At multiple hearings in the State Court case, the court and all parties-in-interest were apprised of the marketing efforts and the competitive sale process conducted by the Receiver/Termination Trustee and his advisors, in accordance with the Bid Procedures Order. The Receiver/Termination Trustee afforded interested potential purchasers a full, fair and reasonable opportunity to qualify and submit their highest or otherwise best offer to purchase the Condo Property and provided potential purchasers sufficient information to enable them to make an informed judgment on whether to bid on the Condo Property.
>
> The Purchase Price, upon the terms and conditions set forth in the Agreement: (i) is the highest or otherwise best offer received by the Receiver/Termination Trustee as a result of the sale process; (ii) is fair and reasonable; (iii) is in the best interests of the receivership estate and its creditors; and (iv) constitutes full and adequate consideration and reasonably equivalent value for the Condo Property.

(R-62, ¶¶ 11, 12, and 18)

These findings are amply supported by the uncontested proffers of testimony admitted ***without objection by Federated*** at the Sale Hearing. These findings are entitled to deference on appeal and are not erroneous, let alone clearly erroneous. The marketing process was comprehensive: Avison Young and Fisher Auctions contacted 9,484 potential purchasers; over 100 signed confidentiality agreements to review the data room; and the property was advertised in the Wall Street Journal, Daily Business Review, South Florida Business Journal, Sun Sentinel, Miami Herald, El Nuevo Herald, and various online platforms. Federated acknowledged the comprehensive scope of the marketing process undertaken by the Receiver and his professionals. Specifically, Federated's counsel acknowledged the Receiver's "vigorous marketing" of the Condo Property, and that the court-approved bid procedures "were public, the data room was robust, and the broker outreach was broad." (R-65 (Sale Hr'g Transcript) at 26:1, 27:4-5) Despite this extensive outreach, the Receiver received no Qualified Bids other than the conforming one from Integra.

Based on the foregoing, and only to the extent necessary, the District Court acted well within its discretion in approving the Sale of the Condo Property to Integra.

VI. Because affirmance is the correct result, the Court can and should ignore Federated's Request for Relief on Remand

Federated requests that this Court vacate the Sale Order and, on remand, (i) the District Court be required to employ a court-supervised auction process applying

bid qualifications "in a non-hyper-technical manner," (ii) that Federated be given a so-called "ownership-based 'auction credit,'" and (iii) a "reasonable" time to fund and close. Initial Brief at 17-18. For the reasons explained above, this Court should affirm the Sale Order in all respects which would render these requests irrelevant.

In all events, and for the sake of completeness, the District Court did not err, and it certainly committed no abuse of discretion, in applying the plain and unambiguous terms and conditions in the Bid Procedures Order, especially given the prevailing caselaw requiring prospective bidders like Federated to provide sufficient documentation establishing their ability to consummate a sales transaction. And the District Court most certainly did not commit an abuse of discretion in declining to afford Federated a so-called ""ownership-based 'auction credit'" based on proceeds it would derive from a sale of the Condo Property. This is because, in order to have that right, Federated would have had to meet the requirements to be a Qualified Bidder in the first instance which, as discussed herein, it failed to do. Finally, there is also no basis for Federated to be given more time than it was already provided by the District Court (beyond that in the Bid Procedures Order) to procure the funds required to make a topping bid.

CONCLUSION

For the foregoing reasons, the District Court acted well within the scope of its discretion in affirming the Receiver's determination that Federated was not a

Qualified Bidder and, to the extent necessary, approving the Sale of the Condo Property to Integra. Federated expressly disclaimed any objection to the Sale itself, it failed to timely object to the Bid Procedures Order or challenge its disqualification, conceded it did not comply with the court-approved bid procedures, and declined the extraordinary additional opportunity afforded it by the District Court to participate in the sale process by failing to deposit the required funds. This Court should affirm the Sale Order in all respects.

Dated February 26, 2026

Respectfully submitted,

BERGER SINGERMAN LLP
313 N. Monroe Street, Ste. 301
Tallahassee, FL 32301
Telephone: (850) 561-3010
Facsimile: (850) 561-3013

By: */s/ Brian G. Rich*
Brian G. Rich
Fla. Bar No. 38229
brich@bergersingerman.com
Michael J. Niles
Fla. Bar. No. 107203
mniles@bergersingerman.com
Paul A. Avron
Fla. Bar No. 50814
pavron@bergersingerman.com

Attorneys for Appellee Daniel J. Stermer as Receiver/Termination Trustee of the Heron Pond Condominium Association, Inc.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Answer Brief complies with the typeface and type style requirements set forth in Federal Rule of Appellate Procedure 32(a)(5)(A) and 32(a)(6). I FURTHER CERTIFY that the foregoing Answer Brief complies with Federal Rule of Appellate Procedure 32(a)(7)(B)(i) in that it contains 11,985 words, as counted by the word-processing system used to prepare this Answer Brief.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Court's CM/ECF System upon Solomon Rader, Esq., Radner Law Group PLLC, *Attorneys for Appellant*, 17515 West Nine Mile Rd., Ste. 1050, Southfield, MI 48075, on this 26th day of February, 2026.

/s/ Brian G. Rich
Brian G. Rich