**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.

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# REPLY BRIEF OF APPELLANT FEDERATED FOUNDATION TRUST

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### Introduction

The district court approved a receivership sale on the predicate that there were "no additional Qualified Bids," while Federated maintained it was excluded by a contested qualification determination and sought a fair opportunity to compete.

The core question is whether the summary procedures employed provided a meaningful opportunity to be heard on disputed, outcome-determinative issues.

Under controlling receivership due-process law, they did not. See *S.E.C. v. Elliott*, 953 F.2d 1560 (11th Cir. 1992); *S.E.C. v. Torchia*, 922 F.3d 1307 (11th Cir. 2019).

### I. Appellee's waiver framing overreads the hearing statement and does not cure the due-process defect.

Appellee recasts Federated's position as a wholesale abandonment of any challenge that could affect the sale. But Federated's hearing statement was that it was not objecting to the concept of a sale; it objected to the disqualification process that removed it from bidding and thereby dictated the sale outcome. That is a process-based objection to a dispositive gatekeeping ruling.

Even in equity receiverships, "summary proceedings" are permitted only so long as parties receive adequate notice and a meaningful opportunity to be heard, including the ability to present evidence where material facts are disputed. *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 party's attempt to cabin its objection to the dispositive process issue cannot be transformed into a forfeiture of the very due-process protections that *Elliott* and *Torchia* require.

## II. *Elliott* and *Torchia* are not "for the Receiver" here; they require meaningful process on disputed, dispositive issues.

Appellee argues *Elliott* and *Torchia* support affirmance because Federated declined cross-examination and did not present evidence. But the question is not whether summary proceedings are ever permissible; it is whether the procedures used were adequate to adjudicate disputed, outcome-determinative facts.

*Elliott* holds summary proceedings do not per se violate due process, but they must still provide a meaningful opportunity to be heard and to present evidence when facts are in dispute; the appellant must also show prejudice. *S.E.C. v. Elliott*, 953 F.2d 1560 (11th Cir. 1992). *Torchia* likewise confirms that summary receivership administration must satisfy due process, including a meaningful opportunity to present claims and defenses. *S.E.C. v. Torchia*, 922 F.3d 1307 (11th Cir. 2019).

Here, the prejudice is straightforward: the "no Qualified Bids" predicate extinguished competition and dictated the sale result, while Federated contested the qualification determination and sought a fair opportunity to participate. That is exactly the kind of dispositive, fact-dependent question that *Elliott* recognizes may require more than streamlined handling.

### III. Fundamental due process requires a meaningful opportunity to object before a final deprivation; the procedures used here were not meaningfully corrective.

Due process requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner. *Mullane v. Central Hanover Bank & Trust Co*., 339 U.S. 306 (1950); *Armstrong v. Manzo*, 380 U.S. 545 (1965). *Armstrong* further underscores that an after-the-fact proceeding does not "cure" a due-process violation if it does not restore the party to the position, it would have occupied had proper process been afforded initially. *Armstrong v. Manzo*, 380 U.S. 545 (1965).

The sale hearing did not function as a structured adjudication of the contested qualification issue.

Instead, it culminated in an "all-or-nothing" immediate funding ultimatum and coercive warnings tied to incarceration/perjury consequences.

That is not a substitute for procedures calibrated to resolve disputed qualification facts with reduced error risk, as contemplated by *Elliott* and *Torchia*.

## CONCLUSION

The order approving the sale should be vacated and remanded because the court-approved outcome turned on a contested, dispositive qualification gatekeeping determination, yet the procedures employed did not provide the meaningful opportunity to be heard required in summary receivership proceedings. *S.E.C. v. Elliott*, 953 F.2d 1560 (11th Cir. 1992); *S.E.C. v. Torchia*, 922 F.3d 1307

(11th Cir. 2019); *Mullane v. Central Hanover Bank & Trust Co*., 339 U.S. 306 (1950); *Armstrong v. Manzo*, 380 U.S. 545 (1965).

Respectfully Submitted,

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Dated: Feb. 27, 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 ***1,063*** 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.

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**CERTIFICATE OF SERVICE**

I hereby certify that on Feb. 27, 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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