

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil No. 11-460 WJ/KK

ROBERT NIPPER, SHEILA NIPPER,
JOHN A. KIRSCHKE, and
CAROLYN KIRSCHKE,¹

Defendants.

ORDER REGARDING
ORDER OF SALE

THIS MATTER comes before the Court after having granted Plaintiff's Motion to Terminate the receivership in this matter. Having granted Plaintiff's motion to terminate the receivership. *See* Doc. 95, the Court grants the specific requested relief in the form of an Order of Sale, and therefore ORDERS as follows:²

ORDER FOR SALE

1. Patsy Gustin is removed as Receiver of the property legally described as

The South Half (S1/2) of Section 34, Township 2 North, Range 5 East,
N.M.P.M., Torrance County, New Mexico (the "Property").
2. The Internal Revenue Service's Property Appraisal & Liquidation Specialist (defined as "PALS") is authorized and directed under 28 U.S.C. §§ 2001, 2002 and 2004, to offer for public sale and to sell the Property (with the exception of the forty acre plot upon which the Nippers

¹ Robert and Sheila Nipper are owners of the subject property. Defendants, John A. Kirschke and Carolyn Kirschke are the sellers of a Real Estate Contract for the subject property, and as such are made a party pursuant to 26 U.S.C. § 7403(b).

² The United States attached to its motion to terminate receivership (Doc. 88) a proposed Order of Sale for the Court's review, which the Court adopts herein, finding that it fully complies with the terms of the Summary Judgment Order and with 28 U.S.C. §§ 2001, 2002 and 2004. *See* Doc. 77 (Crt. Mem. Opin. & Order).

now reside) (the “subject property”), together with any improvements, buildings and appurtenances thereon;

3. The PALS is authorized to have free access to the subject property and to take all actions appropriate to preserve the subject property, until the deed thereto is delivered to the successful purchaser;

4. The terms and conditions of the sale are as follows:

a. The sale of the subject property will be free and clear of all liens or other claims of any party to this proceeding;

b. The sale will be subject to building lines (if established), all laws, ordinances, and governmental regulations (including building and zoning ordinances) affecting the subject property and easements and restrictions of record, if any;

c. The sale of the subject property by public auction, will be held on the front steps of the Torrance County Courthouse, New Mexico, or on the above foreclosed Property, in accordance with the provisions of 28 U.S.C. §§ 2001, 2002 and 2004, and without right of redemption;

d. The date and time for sale is to be announced by the PALS;

e. After the PALS has determined the date and time for sale, they must insert the same in the Notice of Sale and must promptly mail a copy of the Notice of Sale, by regular mail and by certified mail, return receipt requested, to each of the following:

Curtis C. Smith
Trial Attorney, Tax Division
U.S. Department of Justice
717 N. Harwood, Suite 400
Dallas, Texas 75201
Attorney for United States

Thomas G. Rice
Thomas G. Rice, P.C.

4801 Lang Avenue, Ste 110
Albuquerque, NM 87109

f. The date and time of such public auction sale must also be announced by the PALS by advertising the Notice of Sale, once each week for four consecutive weeks before the sale in at least one newspaper regularly issued and of general circulation in Torrance County, New Mexico, and at the discretion the PALS by any other notice that the PALS deems appropriate. The Notice of Sale will contain a description of the Property and the terms and conditions of the sale in this order of sale;

g. The minimum bid will be determined by the PALS and must be inserted into the Notice of Sale. If the minimum bid is not met or exceeded, the PALS may, without further permission of this Court, and under the terms and conditions in this order of sale, hold a new public sale, if necessary, and reduce the minimum bid;

h. Each successful bidder will be required to deposit at the time of the sale with the PALS a minimum of ten percent (10%) of the bid, with the deposit to be made by certified check or cashier's check, payable to the United States District Court, immediately upon the real Property being struck off and awarded to the highest and best bidder. Before being permitted to bid at the sale, bidders must display to the PALS proof that they are able to comply with this requirement. No bids will be received from anyone who has not presented that proof;

i. The balance of the purchase price for the Property must be paid to the PALS within thirty days after the date the bid is accepted, by a certified or cashier's check, payable to the United States District Court. If the bidder fails to fulfill this requirement, the deposit will be forfeited and will be applied to cover the expenses of the sale, with any amount remaining to be applied to the federal tax liabilities at issue of defendants Robert and Sheila Nipper. The Clerk will distribute the deposit as directed by the PALS, by check made payable to the "United States

Treasury.” The subject property will be again offered for sale under the terms and conditions of the order of sale or, in the alternative, sold to the second highest bidder. The United States may bid as a credit against its judgment without tender of cash;

j. The Clerk of the Court shall receive and deposit all funds collected as a result of the foreclosure and sale of this Property, into the registry of the Court. Such funds shall then be deposited by the Clerk of the Court into an interest bearing account for later distribution. **A party must provide the Court with the following information to be integrated into a Court order before disbursement of funds will be made:**

- **the payee’s name, address and Social Security number or tax identification number;**
- **the amount of principal; and**
- **the amount of interest**

k. The sale of the subject property will confirm itself within thirty-five days from the date of sale, unless someone objects to the sale. Upon this confirmation of the sale, the IRS will execute and deliver a deed conveying the subject property to the purchaser. On confirmation of the sale, all interests in, liens against, or claims to, the subject property that are held or asserted by any parties to this action are discharged and extinguished;

l. The sale is ordered under 28 U.S.C. §§ 2001, 2002 and 2004 and is made without right of redemption;

5. After the sale is confirmed, the Court will distribute the proceeds of the sale, with the first distribution being made for any costs or fees owing to the Clerk.³ The

³ The Government also requests distribution by the Court to the IRS for the costs of the sale; ad valorem taxes that are due, and to the United States of America with respect to the unpaid federal tax debts of Robert and Sheila Nipper. However, the Court will not be involved in making any determinations concerning these amounts, and the Government is directed to enlist the help of a special master, at the Government’s own expense, if calculations and

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6. The Clerk of Court will immediately mail a copy of this order to all counsel and parties of record.

SO ORDERED.


UNITED STATES DISTRICT JUDGE

determinations need to be made on these issues. The Government may then seek a Court Order permitting disbursement based on supporting documentation for those categories.