

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 2:07-cv-11469

v.

JOSEPH J. O'CALLAGHAN, MICHIGAN
DEPARTMENT OF TREASURY, BRENDA
JOHNSON, PAUL LONGTON, NBD
MORTGAGE COMPANY, WAYNE COUNTRY
TREASURER, FIRST ALLIANCE
INVESTMENT MANAGEMENT CORP.,
JEANETTE COLBERT, PATRICIA NIELSEN-
BEATTY, GOLDFARB BONDING AGENCY,
And TINA NIELSEN, as representative of the
Estate of Don Nielsen,

Defendants.

ORDER OF SALE

This matter has come before the Court upon the United States of America's Unopposed Motion for Order of Sale. On October 15, 2008, the Court entered a Final Judgment in favor of the Plaintiff, United States of America, and against Defendant Joseph J. O'Callaghan for unpaid income tax and trust fund penalty

liabilities in the total amount of \$383,439.17, plus interest. Docket No. 33. The judgment also ordered that the United States' federal tax liens for these liabilities are foreclosed on the real property located at 27680 Elba Drive, Grosse Ile, Michigan ("Elba Property"), and that the United States may sell the Elba Property and distribute the proceeds to the parties in this case in accordance with their lawful priorities. Docket No. 33.

The legal description of the Elba Property is:

Property in the Township of Grosse Ile, County of Wayne, and State of Michigan to-wit: Lot 60, of Subdivision of Elba, as Recorded in Liber 23, Page 65 of Plats, Wayne County Records.

The Court now ORDERS that the Elba Property be sold pursuant to 26 U.S.C. §§ 7402(a), 7403.

For good cause is shown, it is hereby ORDERED as follows:

1. The Internal Revenue Service Property Appraisal and Liquidation Specialists ("PALS") is authorized to offer for public sale and to sell the Elba Property.
2. **Terms and Conditions:** The terms and conditions of the sale are as follows:
 - a. The sale shall be free and clear of all rights, titles, claims, liens, and interests of all parties to this action, including the United States, all defendants, and any successors in interest or transferees of those parties;

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

Sale location

c. The sale of the Elba Property shall be held either on the Elba Property's premises or at the courthouse of Wayne County, Michigan;

Notice of Sale

d. The PALS shall announce the date and time for the sale;

e. Notice of the sale shall be published once a week for at least four consecutive weeks before the sale in at least one newspaper regularly issued and of general circulation in Wayne County, Michigan, and by any other notice PALS deems appropriate. The notice shall contain an adequate description of the Elba Property, but need not contain the full legal description, and shall contain the terms and conditions of sale set forth in this Order of Sale;

Minimum Bid

f. The PALS shall set, and may adjust, the minimum bid. If the minimum bid is not met or exceeded, the PALS may, without further permission of this Court, and under the terms and conditions of this Order of Sale, hold a new public sale, and may reduce the minimum bid;

Payment of Deposit and Balance

g. At the time of the sale, the successful bidder(s) shall deposit with the PALS, by money order or by certified or cashier's check payable to the "U.S. District Court for the Eastern District of Michigan," a deposit in an amount between five (5) and twenty (20) percent of the minimum bid, as specified by the PALS in the published notice of sale. Before being permitted to bid at the sale, potential bidders shall show the PALS proof that they are able to comply with this requirement. No bids will be accepted from any person(s) who have not presented proof that, if they are the successful bidder(s), they can make the deposit required by this Order of Sale;

h. The successful bidder(s) shall pay the balance of the purchase price for the Elba Property within forty-five (45) days following the date of the sale. The certified or cashier's check payable to the U.S. District Court for the Eastern District of Michigan shall be given to PALS who will deposit the funds with the Clerk of the Court. If the bidder fails to fulfill this requirement, the deposit shall be forfeited and shall be applied to cover the expenses of the sale, with any amount remaining to be applied to the liabilities of O'Callaghan at issue herein. The Elba Property shall be again offered for sale under the terms and conditions of this Order of Sale or, in the alternative, sold to the second highest bidder, at the sole discretion of the United States;

i. The Clerk of the District Court is directed to accept the deposit and sale proceeds and deposit them into the Court's registry for distribution pursuant to further order of this Court;

Confirmation of Sale

j. The sale of the Elba Property shall be subject to confirmation by this Court. On confirmation of the sale, ownership, and possession of the Elba Property shall transfer to the successful bidder(s), and all interests in, liens against, and titles and claims to, the Elba Property that are held or asserted by the parties to this action are discharged and extinguished;

k. After the confirmation of the sale, the IRS shall execute and deliver a deed under the authority of this Court conveying the Elba Property, effective as of the date of the confirmation of the sale, to the successful bidder(s). The successful bidder(s) is responsible for recording the deed and paying any documentary stamps and registry fees as provided by law;

l. All rights to rents of or from the Elba Property arising after this Order of Sale is entered and before the confirmation of the sale of the Elba Property shall constitute proceeds of the Elba Property and such rents shall be turned over to, and paid to, the PALS for deposit and distribution in the same manner as the proceeds of the sale of the Elba Property. On confirmation of the sale of the Elba Property, all rights to product, offspring, rents, and profits of or from the Elba Property

arising thereafter shall transfer to the successful bidder(s) and all risks of losses associated with the Elba Property shall transfer to the successful bidder(s); and

Redemption

m. The sale of the Elba Property is ordered pursuant to 26 U.S.C. § 7403 and is made without right of redemption.

3. **Preservation of the Property:** Until the Elba Property is sold, O’Callaghan shall take all reasonable steps necessary to preserve the Elba Property (including all buildings, improvements, fixtures, and appurtenances on each property) in its current condition including, without limitation, maintaining a fire and casualty insurance policy on the Elba Property. O’Callaghan shall neither commit waste against the Elba Property, nor cause or permit anyone else to do so. O’Callaghan shall neither do anything that tends to reduce the value or marketability of the Elba Property nor cause or permit anyone else to do so. O’Callaghan shall not record any instrument, publish any notice, or take any other action (such as running newspaper advertisements, posting signs, or making internet postings) that may directly or indirectly tend to adversely affect the value of the Elba Property or that may tend to deter or discourage potential bidders from participating in the public auction, nor shall O’Callaghan cause or permit anyone else to do so. Violation of this paragraph shall be deemed contempt and shall be punishable as such.

4. **Vacating the Property:** All persons occupying the Elba Property shall vacate the property permanently within sixty (60) days of the date of this Order of Sale, each taking with them his or her personal property (but leaving all improvements, buildings, fixtures, and appurtenances to the Elba property). The United States may, in writing and in its sole discretion, extend the time to vacate.

If any person fails or refuses to vacate the Elba Property by the date specified in this Order of Sale, or as extended by the United States, the United States, including the PALS and/or the U.S. Marshals Service, is authorized to take all actions that are reasonably necessary to have those persons ejected or excluded. The U.S. Marshals Service is authorized and directed to take any and all necessary actions, including but not limited to the use of reasonable force, to enter and remain on the premises, which includes, but is not limited to, the land, buildings, vehicles, and any other structures located thereon, for the purpose of executing this Order of Sale. The U.S. Marshals Service is further authorized and directed to arrest or evict (and, if necessary, re-evict), from the premises any persons who obstruct, attempt to obstruct, or interfere or attempt to interfere, in any way with this Order of Sale.

5. **Abandoned Personal Property:** Any personal property remaining on the Elba Property sixty (60) days after the date of this Order of Sale (or as extended in writing by the United States) is deemed forfeited and abandoned, and the PALS is

authorized to dispose of it in any manner they see fit, including discarding or selling, in which case the proceeds of the sale are to be applied first to the expenses of sale and the balance to the parties as directed by the Court. Checks for the purchase of personal property shall be made out to the “Clerk of District Court for the Eastern District of Michigan,” and the Clerk is directed to accept these checks and deposit them into the Court’s registry for distribution pursuant to further order of this Court.

6. **PALS’ Access to the Property:** Once the occupants vacate the Elba Property 60 days from the date of this Order, whichever comes first, through confirmation of sale, the IRS, PALS and any other representative of the United States are authorized to have free and full access to the premises in order to take any and all actions necessary to preserve the Elba Property, including, but not limited to, retaining a locksmith or other person to change or install locks or other security devices on any part of the Elba Property.

7. **Forwarding Address:** No later than two (2) business days after vacating the Elba Property, pursuant to the deadline set forth in paragraph (4) above, O’Callaghan, or an agent thereof shall notify counsel for the United States in writing of a forwarding address where O’Callaghan can be reached. Notification shall be made by contacting the attorney for the United States, Wendy J. Kisch, at Wendy.J.Kisch@usdoj.gov.

8. **Distribution of Sale Proceeds:** After the Court confirms the sale of the Elba Property, absent any showing to the contrary, the sale proceeds deposited with the Clerk of this Court shall be distributed in the following order of priority:

a. First, to the United States Treasury, for the expenses of the sale, including any expenses incurred to secure or maintain the Elba Property pending sale and confirmation by the Court, including title insurance;

b. Second, to the Wayne County Treasurer for real property taxes and other local assessments due, and owing if any, to the extent entitled to priority under 26 U.S.C. § 6323(b)(6);¹

c. Third, to the United States of America for application to O’Callaghan’s unpaid federal tax liabilities for the individual income tax liabilities for the tax years 1994-1996, 1998-2000, and 2002, and trust fund recovery penalties for the quarterly periods ending March 31, 1996, through December 31, 1999;² and

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¹ As of March 31, 2024, the total amount due to Wayne County Treasurer is \$25,583.41.

² As of June 16, 2024, the total amount due to the United States for America for unpaid federal taxes subject to the Judgment entered on October 15, 2008 is \$842,892.92, plus interest.

d. Fourth, the remaining funds, if any, shall be distributed to O'Callaghan.³

SO ORDERED, ADJUDGED, AND DECREED.

s/ Linda V. Parker

LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: May 22, 2024

³ No other parties to this action are entitled to any of the proceeds. All other parties either defaulted in the action, stipulated that they are not entitled to any proceeds, or the Court determined that they are not entitled to proceeds. Doc. Nos. 13, 19, 22, and 32.