

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

<b>CITY OF BANGOR,</b>	)	
	)	
<b>PLAINTIFF</b>	)	
	)	
<b>v.</b>	)	<b>Civil No. 00-152-B-H</b>
	)	
<b>M/V RIVER DOG, ET AL.,</b>	)	
	)	
<b>DEFENDANTS</b>	)	

**ORDER SETTING ASIDE AUCTION SALE**

Confidence in court-supervised auction sales is best inspired by “confirmation of a sale made to the highest bidder at a fairly conducted public auction,” Munro Drydock, Inc. v. M/V HERON, 585 F.2d 13, 14 (1st Cir. 1978), and therefore courts must exercise “extreme caution” in setting aside an auction sale. Wong Shing v. M/V MARDINA TRADER, 564 F.2d 1183, 1188 (5th Cir. 1977). But this policy is overcome in a case where the sales price is “grossly inadequate.” Munro Drydock, 585 F.2d at 14-15. “[G]ross inadequacy is said to exist when apart from situations involving fraud or unfairness . . . there is a substantial disparity between the highest bid and the appraised or fair market value, and there is a reasonable degree of probability that a substantially better price will be obtained by a resale.” Id. at 15. (internal quotations marks omitted); accord Latvian Shipping Co. v. Baltic Shipping Co., 99 F.3d 690, 692-93 (5th Cir. 1996).

Here, the vessel M/V RIVER DOG sold at the U.S. Marshal’s auction for

\$5,000, only 4% of the lowest appraised value of \$125,000. Moreover, there is now a firm offer of \$20,000, four times the auction price. Other courts have set aside sales where the auction price was 1% of fair market value, First Nat'l Bank v. M/V LIGHTNING POWER, 776 F.2d 1258, 1259-60 (5th Cir. 1985), and where it was less than half the fair market value and an upset bid had come in 75% higher than the auction price. Ghezzi v. Foss Launch & Tug Co., 321 F.2d 421, 426-27 (9th Cir. 1963). I conclude that under these circumstances—where there is in hand a firm upset bid four times higher than the auction price and the auction price was only 4% of the fair market value—confirmation would be inappropriate.

Accordingly, it is appropriate to reopen the bidding. The Magistrate Judge shall confer with counsel for the plaintiff, the individual who submitted the winning bid on the vessel at the auction sale, and the individual/entity who has submitted the upset bid, and establish a fair procedure for reopening the bidding process.

**SO ORDERED.**

**DATED THIS 19TH DAY OF JANUARY, 2001.**

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**D. BROCK HORNBY**  
**UNITED STATES CHIEF DISTRICT JUDGE**

**U.S. DISTRICT COURT  
DISTRICT OF MAINE (BANGOR)  
CIVIL DOCKET FOR CASE #: 00-Cv-152**

**BANGOR, CITY OF  
PLAINTIFF**

**MICHAEL KAPLAN  
PRETI, FLAHERTY, BELIVEAU,  
PACHIOS & HALEY, LLC  
PO BOX 9546  
PORTLAND, ME 04112-9546  
(207) 791-3000**

**v.**

**RIVER DOG M/V, IN REM  
DEFAULT DEFENDANT**

**MARINE TRANSPORTATION, INC  
DEFAULT DEFENDANT**

**MARINE TRANSPORTATION, INC  
DONALD OLSON, PRESIDENT  
P.O. BOX 372355  
SATELLITE BEACH, FL 32937  
(321) 779-9942**

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**DORIAN S KLAM  
INTERESTED PARTY**

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