

**IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR MIAMI-DADE COUNTY,
FLORIDA**

CASE NO. 07-43672 (CA 09)

STATE OF FLORIDA, OFFICE OF FINANCIAL
REGULATION,

Plaintiff,

v.

BERMAN MORTGAGE CORPORATION,
a Florida corporation, M.A.M.C. INCORPORATED,
a Florida corporation, DANA J. BERMAN,
as Owner and Managing Member,

Defendant.

and

DB ATLANTA, LLC, a Florida limited liability
company, et al.,

Relief Defendants.

NOTICE TO ALL LENDERS
IN THIS MOTION, THE RECEIVER REQUESTS THAT YOU BE PROVIDED WITH 90-DAYS TO REDEEM YOUR FINAL DISTRIBUTION PAYMENT. OTHERWISE, YOUR CHECK WILL BE VOIDED AND YOUR PAYMENT WILL BE DISTRIBUTED TO THE OTHER LENDERS ON A PRO RATA BASIS.

**RECEIVER'S MOTION FOR AUTHORITY TO (I) MAKE A FINAL
DISTRIBUTION TO LENDERS ON A PRO RATA BASIS; (II) DISTRIBUTE
UNCLAIMED FUNDS TO ALL LENDERS ON A PRO RATA BASIS;
(III) DESTROY RECORDS; AND (IV) CLOSE CASE, AND FOR ENTRY OF AN
ORDER DISCHARGING RECEIVER UPON CLOSURE OF CASE**

Michael I. Goldberg, the receiver (the "Receiver") for Defendants Berman Mortgage Corporation ("BMC"), M.A.M.C. Incorporated ("MAMC"), and Relief Defendants DB Atlanta,

LLC, *et al.*, hereby files this *Motion to for Authority to (I) Make a Final Distribution to Lenders on a Pro Rata Basis; (II) Distribute Unclaimed Funds on a Pro Rata Basis; (III) Destroy Records; and (IV) Close Case, and for the Entry of an Order Discharging the Receiver Upon Closure of Case* (the “Motion”). In support of this Motion, the Receiver states as follows:

Introduction

The Receiver has administered the assets of the receivership estate, resolved all of the legal disputes, disposed of the real properties and made multiple distributions from the monies recovered from the proceeds of litigation and sale of properties.¹ The Receiver is now ready to close the receivership.

A. Background

1. BMC was a licensed mortgage lender whose primary role was to broker hard money, high interest, high risk loans to various real estate ventures. MAMC was also a licensed mortgage lender whose primary role was to act as loan servicing agent for the loans. MAMC would raise capital to make the loans brokered by BMC.

2. BMC and MAMC obtained at least \$192 million from more than 700 individual investors (the “Lenders”). The Lenders’ monies were used to fund the acquisition and construction of commercial real estate projects, many of which were incomplete or in default.

3. On December 11, 2007, the Florida Office of Financial Regulation filed a complaint (the “Complaint”) in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Case No. 07-43672 CA 09, styled *State of Florida, Office of Financial Regulation v. Berman Mortgage Corporation, et al.* seeking an injunction against

¹ The Receiver’s Final Report provides more detailed information on the Receiver’s accomplishments on behalf of the Lenders.

BMC, MAMC, Mr. Berman and other related entities (the “Relief Defendants”) and requesting the appointment of a receiver.

4. The Complaint alleged that BMC and MAMC sold unregistered securities in the form of fractionalized interests in mortgages, operated as an unregistered securities dealer, made misrepresentations to investors, and misapplied investors’ monies in connection with the funding of approximately forty commercial mortgage loans.

B. Appointment of the Receiver

5. On December 11, 2007, the Court entered a *Temporary Injunction and Agreed Order Appointing Receiver* (“Receivership Order”) appointing Michael Goldberg as the receiver for BMC and MAMC and the Relief Defendants (collectively, the “Receivership Defendants”) to prevent the waste and dissipation of the Receivership Defendants’ assets to the detriment of the Lenders.

6. Pursuant to the Receivership Order, the Court took exclusive jurisdiction and possession of the assets of the Receivership Defendants.

7. The Receivership Order directs and authorizes the Receiver to, among other things, take such action as he deems advisable or proper for the marshalling, maintenance or preservation of the receivership assets; conduct the business operations of the Receivership Defendants and any entity it controls; receive and collect all sums of money due and owing to the Receivership Defendants; to institute, defend, or compromise pending and hereafter instituted proceedings in state or federal courts and file actions against any persons or entities to recover property of the Receivership Defendants.

8. The Receivership Order further authorizes the Receiver to apply to the Court for issuance of such other orders as may be necessary and appropriate to carry out the mandate of the Receivership Order.

C. Relief Requested

9. The Receiver has resolved all of the legal matters and sold all of the real properties. The Receiver has made distributions to the Lenders based on the proceeds of the sale of the properties in which the Lenders had an interest and, where there was no equity in the property or the Lenders' interests were otherwise extinguished, from a pro rata distribution of the proceeds of funds obtained from litigation.

10. The Receiver has held back \$2,358,899 in funds to cover costs arising from the administration of the receivership estate. After the Receiver completes the final administration of the receivership estate, he seeks authority to make a pro rata distribution of the remaining funds to the Lenders (the "Final Distribution").

11. The Receiver holds an additional sum in the approximate amount of \$50,000 as a result of distribution checks that have not been redeemed by the Lenders. Upon further review, the Receiver has learned that some of the checks were not cashed because the Lender had passed away and the amount of the check was deemed too small to re-open the probate estate. Other Lenders have merely ignored the payment.

12. The Receiver estimates that if the same Lenders fail to redeem their Final Distribution, there will be an additional sum of approximately \$21,000 in unclaimed funds. The Receiver seeks authority to provide the Lenders with 90 days to redeem their Final Distribution. Thereafter, the checks will be void and the Receiver shall distribute those funds to the other Lenders on a pro rata basis. In order to provide sufficient notice to all of the Lenders, a copy of

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this Motion will be served by both e-mail and U.S. Mail to the last known addresses of the Lenders.²

13. The Receiver is in possession of records and data in file cabinets, boxes, computers, hard drives, and servers relating to the Receivership Defendants. These records and electronic data are more than ten years old and no longer serve any purpose to the Receiver. The Receiver seeks authority to destroy these records and use a portion of the funds in his possession to cover the costs of destroying the records.

14. After the Receiver has concluded the tasks of winding down the receivership estate, paying the administrative costs and fees, and making a final distribution to the Lenders, the Receiver seeks to be discharged from his role and to close the receivership without additional Order of the Court.

15. Moreover, except as provided herein, the Receiver, his agents, employees, independent contractors, attorneys and representatives seek to be: (a) discharged; (b) released from all claims and liabilities arising out of and/or pertaining to the Receiver's actions taken in his role as the Receiver in the receivership; and (c) relieved of all duties and responsibilities pertaining to the receivership previously established in this action.

WHEREFORE, Michael I. Goldberg, in his capacity as Receiver of MAMC and related entities, respectfully requests this Court authorize the Receiver to make a final distribution to the Lenders, destroy records, close the case, discharge the Receiver upon closure of the case and to grant such further relief as is just and proper.

² The administrative staff has made a good faith effort to maintain up-to-date contact information for each of the Lenders.

Respectfully submitted,

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By: /s/ Joan Levit

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this July 23, 2020, a true and correct copy of the forgoing was furnished to all parties who receive notice from the Florida Court's e-portal and to the Lenders by U.S. Mail and e-mail. A copy of this Motion will also be posted on the receivership web-page.

/s/ Joan Levit