

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

STATE OF FLORIDA, OFFICE OF
FINANCIAL REGULATION,

Plaintiff,

CASE NO. 07-43672 CA 09

vs.

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

Defendants,

and

DB ATLANTA, LLC, a Florida Limited
Liability Company, *et al.*

Relief Defendants.

**ORDER GRANTING RECEIVER'S MOTION FOR APPROVAL
OF SETTLEMENT AGREEMENT AND ENTRY
OF BAR ORDER CONDITIONALLY ENJOINING LENDERS FROM
PROSECUTING CLAIMS AGAINST DANA J. BERMAN**

This matter came before the Court on March 31, 2009, upon the hearing on the Motion for Approval of Settlement Agreement and Entry of Bar Order Conditionally Enjoining Lenders From Prosecuting Claims Against Defendant Dana J. Berman (the "Motion"), filed by Michael I. Goldberg, as State Court Appointed Receiver over Defendants Berman Mortgage Corporation ("BMC") and M.A.M.C. Incorporated

("MAMC") and Relief Defendants DB Atlanta, LLC, *et al.*¹ The Court, having reviewed the Motion and the Settlement Agreement, heard argument of counsel, finding good cause exists for the entry of this Order, and being otherwise fully advised in the premises, the Court makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. By Order dated December 11, 2007 (the "Receivership Order"), Michael I. Goldberg was appointed as Receiver over the assets of BMC, MAMC and the Relief Defendants (hereinafter, the "Receivership Defendants").

B. Dana J. Berman ("Berman") was the principal of the Receivership Defendants.

C. There are approximately 700 individual investors (the "Lenders") who allege that their monies were used by the Receivership Defendants to fund the acquisition and construction of commercial real estate projects.

D. The Court finds that the Receiver has the authority to enter into the Settlement Agreement with Berman.

E. The Court finds that the Settlement Agreement, a copy of which is attached to the Motion as Exhibit A, is in the best interest of the Receivership Defendants and the Lenders.

F. The Court finds that notice of the Motion, Settlement Agreement and the proposed entry of the Order Permanently Enjoining Prosecution of Claims Against Dana

¹ The Relief Defendants are DB Atlanta, LLC, DB Durham, LLC, Normandy Holdings II, LLC, Normandy Holdings III, LLC, Acquisitions, LLC, DBKN Gulf Incorporated, Oceanside Acquisitions, LLC, DB Biloxi, LLC, DB Biloxi II, LLC, DB Biloxi III, LLC, DBDS Vero Beach, LLC, DB Tampa, LLC, DB Simpsonville, LLC, DBDS North Miami, LLC, Redlands Ranch Holdings, LLC, DBDS Biscayne Park, LLC and DB Carroll Street, LLC.

J. Berman (the "Bar Order") have been provided to the Lenders who would be enjoined pursuant to the Bar Order (collectively, the "Noticed Parties").

G. The Court finds that prior to approval of the Motion and entry of this Order, the Lenders had an opportunity to review the Motion and the relief requested therein, discuss the matters addressed in the Motion with their attorney, attend the Court hearing on approval of the Motion and provide the Court with their comments and/or objections.

H. The Court finds that this Order is necessary and appropriate in order to achieve the finality and repose that is contemplated and an essential term of the Settlement Agreement and that good cause therefore exists for the entry of this Order.

I. Accordingly, the terms of the Settlement Agreement as modified herein and this Order are binding on the Receiver, Berman and the Lenders, and inure to the benefit of the employees, agents, registered representatives, associated persons, predecessors in interest, successors in interest, heirs and assigns of the Receiver, Berman and the Lenders and it is

ORDERED and ADJUDGED that:

1. The Motion is GRANTED. The Settlement Agreement, as modified by this Order, is approved and ratified and its terms are incorporated herein.

2. The Receiver is further authorized to execute any documents and take any actions reasonably necessary to consummate the transactions contemplated therein.

3. Pursuant to the Settlement Agreement, Berman shall turn over to the Receiver all assets listed on the Financial Affidavit attached to the Settlement Agreement, which Berman shall update through the date of this Order, including Berman's interest in

any and all real estate investments in any real estate projects related to the BMC and MAMC.

4. Berman shall also sit for a polygraph examination by a qualified examiner to be mutually selected by the Receiver (in consultation with the creditors' committee) and Berman, pursuant to which Berman shall be examined with respect to the truthfulness and completeness of his financial disclosure.

5. Should Berman pass this examination so that the examiner concludes that Berman has no other assets other than those listed on the Financial Affidavit or that no third person or entity is holding assets for his legal or equitable benefit, Steve Berman shall receive \$35,000 from the bank account holding \$100,000 which was previously frozen by this Court ("Frozen Account") and the Receiver shall receive \$65,000 from the Frozen Account, together with any excess funds.

6. Additionally, if Berman passes the polygraph examination, the Receiver shall provide Berman with a limited release of any and all claims he has against Berman, in the form attached to the Settlement Agreement as Exhibit 2, and this Court shall enter the Bar Order in the form attached to the Motion as Exhibit D.

7. Within five business days after Berman passes the polygraph examination, the Receiver shall file an Affidavit of Compliance and shall submit the Bar Order for execution by the Court without further notice or hearing. If Berman fails the polygraph examination, Berman shall not receive a release and the Bar Order shall be null and void. Moreover, in such event, the Receiver shall retain ownership of all of the assets disclosed on the Financial Affidavit, and all of the funds (\$100,000 plus interest) in the Frozen Account.

8. The implementation of the Bar Order is conditioned upon Berman fulfilling all of his obligations under the terms of the Settlement Agreement.

9. Nothing contained in this Order or any other order entered in connection with the Receiver's Motion for Approval of Settlement Agreement and Entry of Bar Order Conditionally Enjoining Lenders from Prosecuting Claims Against Defendant Dana Berman shall bar or preclude the following claims:

a) Contribution and/or indemnification claims asserted against any settling party by a non-settling party that is sued for any reason by either the Receiver, the Lenders or any other party based on claims arising out of or in way related to the activities of Berman Mortgage, MAMC or any related entity. Such contribution and indemnity claims are in no way affected by this Order and are expressly preserved;

b) Civil or criminal claims of the government or any of its agencies including any restitution claims subsequently awarded in any criminal proceeding in favor of the government or any victim;

c) Any claims of wrongdoing against Berman which are or may be covered by the insurance policies of MAMC Incorporated (Insurance policy No. 1008-00084188C (and its preceding policies)) and/or Berman Mortgage Corp. (Insurance policy 629641 (and its preceding policies));

d) Any claims by parties other than Lenders including but not limited to the claims of Atlantic Lending, LLC, Financial Markets, LLC, Turnberry Bank, Hobo's Marina and Johns Manville Corporation or Mallah Furman; and

e) Any non-Lender claims of Deborah Berman arising out of the dissolution of her marriage to Dana Berman.

10. Nothing in this Order is intended in any way to affect the Receiver's or Lenders' claims against BMC's or MAMC's insurers or against Mallah Furman.

11. The Court reserves jurisdiction to enforce and interpret the Settlement Agreement and enter any other related Orders.

DONE AND ORDERED in Chambers on this ____ day of _____,
2009.

Conformed Copy

APR 22 2009

Circuit Court Judge

Thomas S. Wilson, Jr.
Circuit Court Judge

Copies:

Michael I. Goldberg, Receiver

Charles Throckmorton, Counsel to Dana Berman

The Receiver shall serve a copy of this Order to all attorneys of record and to all parties defined herein as the Noticed Parties and shall file a Certificate of Service of this order in the court file.