

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,

vs.

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

Defendants,

and,

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

Relief Defendants.

**RECEIVER'S MOTION FOR A COURT ORDER APPROVING THE SETTLEMENT
AGREEMENT RESOLVING THE CLAIMS OF DAREN SCHWARTZ AND PATRICIA
MARQUES AND FOR AN ORDER AUTHORIZING RECEIVER TO DISTRIBUTE
THE REMAINING FUNDS OF NORMANDY HOLDINGS II, LLC.**

Michael I. Goldberg ("Receiver"), as a court-appointed receiver for M.A.M.C. Incorporated ("MAMC") and Relief Defendant Normandy Holdings II, LLC, files this Motion for a Court Order Approving the Settlement Agreement Resolving the Claims of Daren Schwartz and Patricia Marques and for an Order Authorizing Receiver to Distribute the Remaining Funds of Normandy Holdings II, LLC, and in support of the Motion, the Receiver states as follows:

M.A.M.C.'s Operations and the Appointment of the Receiver

1. Prior to receivership, MAMC was in the business of lending money to high credit risk borrowers, including single purpose real estate LLCs owned by the principal of MAMC, Dana Berman, and solicited and raised funds through private placement memoranda.

2. To fund its operations and the loans made, MAMC raised funds from approximately 640 individuals, some of whom directly invested in the loans and in equity positions in Normandy Holdings II, LLC.

3. The State of Florida, for the reasons stated in the Complaint in this case, seized control of the Defendants and Relief Defendants and On December 11, 2007, this Court appointed Michael Goldberg to be the Receiver for MAMC and Relief Defendant Normandy Holdings II. *See* Temporary Injunction and Agreed Order Appointing Receiver (the "Receivership Order"), previously on file with this Court.

4. Pursuant to the Receivership Order, the Receiver is authorized to take control of the Receivership Entities, as that term is defined in the Receivership Order, manage their operations and assets, wind up their business affairs and exercise all rights afforded under Florida law as more fully set out in the Receivership Order.

Normandy Holdings II, LLC and The Disputes

5. Normandy Holdings II was formed to take title to certain real property and develop townhomes in the Normandy Isles area of Miami. The original members of Normandy Holdings II were Ira Sukoff ("Sukoff"), Dana Berman ("Berman") and Daren Schwartz ("Schwartz") (hereinafter referred to collectively as the "Original Members"). During the development process, the Original Members decided to raise funds through an equity raise using two separate private placement memoranda. Through this process, several of the MAMC Lenders purchased equity interests in Normandy Holdings II and became the New Members of Normandy Holdings II.

6. Normandy Holdings II developed and built the townhome project. At the time of the institution of this Receivership, a number of the townhomes remained unsold and the project property was subject to a third party loan that was in default and accruing interest at a default rate. The Receiver and his counsel marketed and sold all but one of the remaining units and paid off the third party loan in full.

7. The Normandy Holdings II private placement memoranda provided for certain management fees, development fees and equity participation in profits. During the development of Normandy Holdings II, certain of the management fees and development fees that were available for distribution to the Original Members were not taken at the time of closing of certain loans and sale of certain assets ("the Deferred Fees"). Sukoff and Schwartz, as Original members, claimed that they are entitled to the full remaining balance of the funds available for distribution as Deferred Fees.

8. The New Members claimed there were certain inadequacies with respect to the disclosures made in the private placement memoranda which if proved, would exclude any payment to the Original Members. The Receiver acknowledged the Original Members' arguments that there may be standing and statute of limitations issue with respect to prosecuting claims relating to the disclosures in the private placement memoranda by the New Members.

9. The private placement memoranda did not clearly establish a priority in the waterfall for distribution with respect to priority among the New Members and the Original Members. The New Members claimed that a preferred dividend contemplated under the private placement memoranda must be paid before any distribution to the Original Members. The Original Members claimed the Deferred Fees have a priority in repayment.

10. MAMC claimed an interest in the funds available for distribution by virtue of certain intercompany transfers made at the direction of Berman.

11. Sukoff and Schwartz, as members of Normandy Holdings II, intervened in the Receivership case and assert claims to all of the funds available for distribution as Deferred Fees.

12. Patricia Marques holds a note from Normandy Holdings II dated May 15, 2003 in the amount of \$65,000 at an interest rate of 13 percent per year, which debt would have to be paid prior to any distributions to the members of Normandy Holdings II although Dana Berman had suggested these loans were satisfied through the sale of other MAMC assets to Marques at below market rates..

13. The Receiver entered into a settlement with Sukoff, and on December 15, 2008, this Court entered an Order approving the proposed settlement with Sukoff, awarding certain monies to MAMC and authorizing certain distributions. Excepting the Schwartz and Marques claims, this Court entered a bar order against all noticed parties from prosecuting claims against Normandy Holdings II, the funds available for distribution by Normandy Holdings II, the Receiver, and Sukoff regarding Normandy Holdings II.

14. The Court's Order stated that the Receiver shall hold, subject to resolution of the Schwartz claim, the funds allocated to the New Members from the cash on account.

15. The Court's Order also provided that the Marques note be satisfied first from the proceeds of any sale of the third Normandy Holdings II unit, which unit remains to be sold with the remaining portion of the net sales proceeds to be paid to Sukoff as to one-third and the New Members as to two-thirds. The portion allocated to the New Members would have been subject to Schwartz's claims herein.

The Settlement

16. The Receiver has entered into a settlement with both Schwartz and Marques to avoid the significant expense of litigating the disputes outlined above, to provide for an effective and speedy adjudication of the rights of the parties and to allow for a distribution of the remaining funds of Normandy Holdings II as soon as practicable.

17. A copy of this Motion and notice of hearing thereon are being posted on the Receiver's website, which is available to all MAMC investors. Notice of the posting is simultaneously emailed to all MAMC investors.

18. Pursuant to the settlement, Marques will accept \$40,000.00 in full satisfaction of the \$65,000.00 including any accrued interest, fees, and costs associated therewith.

19. Pursuant to the settlement, Schwartz will accept \$60,000.00 in full settlement of all of his claims against Normandy Holdings II.

20. Schwartz and Marques will release all claims against Normandy Holdings II and the funds available for distribution by Normandy Holdings II pursuant to the form releases attached hereto as **Exhibits A and B**, respectively.

Distributions

21. The Receiver seeks this Court's approval to allocate the remaining \$509,142.18 cash on-hand available for distribution and the net sales proceeds from the last unsold unit as follows:

- (a) \$60,000.00 to Schwartz, pursuant to the above-described settlement;
- (b) \$40,000.00 to Marques, pursuant to the above-described settlement;
- (c) \$5,559.70 to Berger Singerman, P.A. for representation of the Receiver in relation to Normandy Holdings II following the settlement with Ira Sukoff, including its efforts related to this Motion, the settlements with Schwartz and Marques, and administration of Normandy Holdings II assets;
- (d) \$7,460.43 to MAMC, Inc. for the 2% holdback on all distributions for non-performing investments previously authorized by this Court;
- (e) \$365,561.07 to the New Members of Normandy Holdings II in accordance with their respective percentage ownership interests;
- (f) \$10,000.00 holdback as reserve for continuing legal expenses related to administration of the Receivership estate, for additional attorneys fees incurred in resolving post-settlement issues and through the hearing on this motion. The Receiver requests authorization to pay up to the \$10,000.00 amount without further order of this Court;

(g) \$20,560.98 holdback as reserve for the payment of property taxes on the Normandy Holdings II property (\$11,000.00), insurance on the Normandy Holding II property (\$4,000.00), electric bills related to the Normandy Holdings II property (\$1,069.17), and as a contingency fund for the project (\$4,491.81);

(h) After payment by the Receiver of all attorneys' fees and administrative expenses related to the marketing and sale of the last unsold Normandy Holdings II townhome unit, payment of one-third (1/3) of the net sales proceeds from the sale of the last unsold unit to Sukoff and payment of two-thirds (2/3) of the net sales proceeds from the sale of the last unsold unit to the New Members in accordance with their respective percentage ownership interests.

WHEREFORE, the Receiver, Michael I. Goldberg respectfully requests this Court to enter an Order:

a. approving the proposed settlements with Daren Schwartz and Patricia Marques as outlined in this Motion;

b. approving the form releases to be executed by Schwartz and Marques and directing that, as a condition to the receipt of funds, that same be executed and delivered to counsel for the Receiver;

c. authorizing the Receiver make the distributions from the cash on-hand of Normandy Holdings II, LLC as outlined in this motion in paragraphs 21(a) through (g);

d. authorizing the Receiver to sell the remaining Normandy Holdings II townhome unit and to distribute the net sales proceeds of the last unsold unit in accordance with this Motion after payment of all attorneys' fees and administrative expenses related to the marketing and sale of the unit; and

e. awarding such other and further relief this Court deems just and proper.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Electronic Mail and U.S. Mail on this **8th day of July 2009**, to the attached service list.

Respectfully submitted,

BERGER SINGERMAN

Attorneys for Receiver, Michael Goldberg

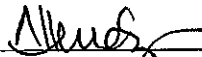
1000 Wachovia Financial Center

200 South Biscayne Boulevard

Miami, Florida 33131

Phone: (305) 755-9500 / Fax: (305) 714-4340

By: _____



JAMES D. GASSENHEIMER

Florida Bar No. 959987

E-Mail: jgassenheimer@bergersingerman.com

ARIADNA HERNANDEZ

Florida Bar No. 020953

E-Mail: ahernandez@bergersingerman.com

SERVICE LIST

Cristina Saenz

Assistant General Counsel

STATE OF FLORIDA
OFFICE OF FINANCIAL REGULATION
401 N.W. 2nd Avenue, Suite N-708
Miami, Florida 33128

Alan M. Sandler, Esquire

*Counsel for Defendants, Joel and Deborah Sokol,
Darlene Levasser, Robert Dzimidas IRA,
Lawrence Meyer IRA, Lawrence Meyer Roth IR
and Mary Joe Meyer SD IRA and Mary Joe Meyer Roth IRA*

SANDLER & SANDLER
117 Aragon Avenue
Coral Gables, Florida 33134

Allan A. Joseph, Esquire

Special Counsel for Receiver

DAVID AND JOSEPH, P.L.
1001 Brickell Bay Drive, Suite 2002
Miami, Florida 33131

Charles W. Throckmorton, Esquire

Attorneys for Dana Berman

KOZYAK TROPIN THROCKMORTON, P.A.
2525 Ponce de Leon Boulevard, 9th Floor
Coral Gables, Florida 33134

Paul Huck, Esquire

Dean C. Colson, Esquire

COLSON HICKS EIDSON
255 Aragon Avenue, Second Floor
Coral Gables, Florida 33134

Jason S. Miller, Esquire

Counsel for Flagstar Bank

ADORNO & YOSS, LLP
2525 Ponce de Leon Boulevard, Suite 400
Coral Gables, Florida 33134

William F. Fink, Esquire

Jacob J. Liro, Esquire

Counsel for Axis Surplus Ins. Co.

WICKER SMITH O'HARA MCCOY AND FORD, P.A.

Grove Plaza, 5th Floor

2900 SW 28th Terrace

Miami, FL 33133

Mr. Jared Gelles

Counsel for Daren Schwartz

RAFFERTY, STOLZENBERG, GELLES, TENENHOLTZ & FLYNN, P.A.

1401 Brickell Avenue

Suite 825

Miami, FL 33131

E-mail: JGelles@rsglawyers.com

cc: The Honorable Thomas Wilson, Jr. *(via Hand-Delivery)*
Michael Goldberg, Esq., as Receiver *(via e-mail)*
The Investor(s)/Lender(s) Group *(via e-mail)*
Posted to the Berman Mortgage Website

2199198-1

**GENERAL RELEASE
THIS IS A RELEASE OF ALL CLAIMS**

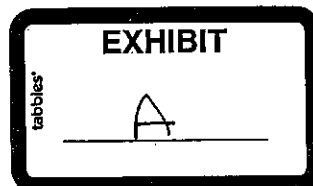
IN CONSIDERATION of the payment to me on this date of the sum of SIXTY THOUSAND DOLLARS (\$60,000.00), receipt of which is acknowledged, I, DAREN SCHWARTZ, (hereinafter "Releasor") on my own behalf and on behalf of my dependents, heirs, executors, administrators and assigns (hereinafter collectively "Releasors"), do hereby fully and forever compromise, settle, waive, release and discharge all past, present, and future claims, causes of action, rights, damages, penalties, forfeitures, judgments, liabilities, costs, executions and demands, whether based in tort, contract, or other theories of recovery, which Releasor, ever had, and now has, against NORMANDY HOLDINGS II, LLC, or its officers, directors, agents, independent contractors, employees, members, subsidiary corporations, underwriters, successors and assigns, or any of them, (singularly or collectively "Releasee") which are the subject of or may be asserted in any action or proceeding in any court or other body, including all claims asserted or that may have been asserted by Releasor in Case No: 07-43672 CA 09 in the Eleventh Judicial Circuit Court in and for Miami-Dade County, Florida.

IN FURTHER CONSIDERATION of such payment, the Releasor hereby represents and warrants to Releasee, that (s)he has full legal authority to execute this Release on behalf of any and all Releasors having any beneficial interest whatsoever in any of the claims and demands described above and will indemnify and save harmless each Releasee against any and all of the liabilities released herein which may be asserted at any time in any manner, and provided that Releasor will pay all damages, costs and expenses, including, but not limited to attorneys' fees which the Releasee herein may bear and incur by reasons thereof.

I ACKNOWLEDGE that this Release constitutes a waiver and discharge of all present claims held by Releasor, as of the date of the signing of this Release.

I FURTHER ACKNOWLEDGE and agree that the payment of the aforesaid sum in full and final settlement of this matter is the compromise of a doubtful and disputed claim or claims, and that this payment is not to be construed as an admission of liability on the part of any and all parties and entities hereby released, by whom liability is hereby expressly denied.

I FURTHER ACKNOWLEDGE that I have read this Release, and know and understand the full contents and effect of it, and that I hereby fully and consciously contract with each Releasee to release them from any and all liability and responsibility of any kind and the consequences thereof, whether known or unknown, past, present or future, and that I have been fully and independently advised by my own counsel and regarding the effect of this Release. I hereby represent and warrant that prior to the execution of this Release, I have been fully apprised of sufficient relevant data, either through experts or other sources, in order to intelligently evaluate the contents of the Release and exercise the decision to execute the Release



I FURTHER ACKNOWLEDGE that this document shall be the entire agreement between the parties and will supersede all representations or conditions not contained herein. Releasor's decision to execute the Release was not predicated or influenced by any declarations or representations not expressly contained herein.

Should any provision of this document be contrary to and/or invalid by virtue of, the law of any jurisdiction in which this document is sought to be enforced, or for any other reason, said provision is deemed to be severed from this document and shall be of no effect, all of the remaining provisions that are contained herein shall remain in full force and effect.

IN WITNESS WHEREOF, I have executed this Release on this ____ day of July 2009.

Daren Schwartz,

Personally known to me, or
 Produced identification: _____
type of identification

Notary Public - STATE OF _____
Print name: _____
My Commission Expires: _____
Address: _____

**GENERAL RELEASE
THIS IS A RELEASE OF ALL CLAIMS**

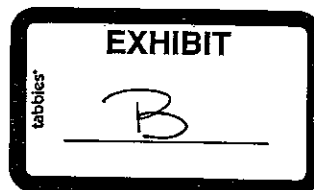
IN CONSIDERATION of the payment to me of the sum of FORTY THOUSAND DOLLARS (\$40,000.00), receipt of which is acknowledged, I, PATRICIA MARQUES, (hereinafter "Releasor") on my own behalf and on behalf of my dependents, heirs, executors, administrators and assigns (hereinafter collectively "Releasors"), do hereby fully and forever compromise, settle, waive, release and discharge all past, present, and future claims, causes of action, rights, damages, penalties, forfeitures, judgments, liabilities, costs, executions and demands, whether based in tort, contract, or other theories of recovery, which Releasor, ever had, and now has, against NORMANDY HOLDINGS II, LLC, or its officers, directors, agents, independent contractors, employees, members, subsidiary corporations, underwriters, successors and assigns, or any of them, (singularly or collectively "Releasee") which are the subject of or may be asserted in any action or proceeding in any court or other body, including all claims asserted or that may have been asserted by Releasor in Case No: 07-43672 CA 09 in the Eleventh Judicial Circuit Court in and for Miami-Dade County, Florida.

IN FURTHER CONSIDERATION of such payment, the Releasor hereby represents and warrants to Releasee, that (s)he has full legal authority to execute this Release on behalf of any and all Releasors having any beneficial interest whatsoever in any of the claims and demands described above and will indemnify and save harmless each Releasee against any and all of the liabilities released herein which may be asserted at any time in any manner, and provided that Releasor will pay all damages, costs and expenses, including, but not limited to attorneys' fees which the Releasee herein may bear and incur by reasons thereof.

I ACKNOWLEDGE that this Release constitutes a waiver and discharge of all present claims held by Releasor, as of the date of the signing of this Release.

I FURTHER ACKNOWLEDGE and agree that the payment of the aforesaid sum in full and final settlement of this matter is the compromise of a doubtful and disputed claim or claims, and that this payment is not to be construed as an admission of liability on the part of any and all parties and entities hereby released, by whom liability is hereby expressly denied.

I FURTHER ACKNOWLEDGE that I have read this Release, and know and understand the full contents and effect of it, and that I hereby fully and consciously contract with each Releasee to release them from any and all liability and responsibility of any kind and the consequences thereof, whether known or unknown, past, present or future, and that I have been fully and independently advised by my own counsel and regarding the effect of this Release. I hereby represent and warrant that prior to the execution of this Release, I have been fully apprised of sufficient relevant data, either through experts or other sources, in order to intelligently evaluate the contents of the Release and exercise the decision to execute the Release



I FURTHER ACKNOWLEDGE that this document shall be the entire agreement between the parties and will supersede all representations or conditions not contained herein. Releasor's decision to execute the Release was not predicated or influenced by any declarations or representations not expressly contained herein.

Should any provision of this document be contrary to and/or invalid by virtue of, the law of any jurisdiction in which this document is sought to be enforced, or for any other reason, said provision is deemed to be severed from this document and shall be of no effect, all of the remaining provisions that are contained herein shall remain in full force and effect.

IN WITNESS WHEREOF, I have executed this Release on this _____ day of July 2009.

Patricia Marques

{ } Personally known to me, or
{ } Produced identification: _____
type of identification

Notary Public - STATE OF _____

Print name: _____

My Commission Expires: _____

Address: _____

