

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 AN ORDER APPROVING A PARTIAL DISTRIBUTION
OF THE SETTLEMENT PROCEEDS FROM THE M.A.M.C. PROFESSIONAL
LIABILITY INSURANCE POLICIES AND THE PAYMENT OF
RECEIVERSHIP FEES AND ATTORNEYS' FEES AND COSTS**

Michael I. Goldberg ("Receiver"), the court-appointed receiver for Defendants, Berman Mortgage Corporation ("BMC") and M.A.M.C. Incorporated ("MAMC") and the Relief Defendants, files this Motion for an Order Approving a Partial Distribution of the Settlement Proceeds from MAMC's Professional Liability Insurance Policies and for the Payment of Receivership Fees and Costs and Attorneys' Fees and Costs. In support of the Motion, the Receiver states:

BERGER SINGERMAN
attorneys at law

Boca Raton Fort Lauderdale Miami Tallahassee

200 South Biscayne Boulevard Suite 1000 Miami, Florida 33131-5308 Telephone 305-755-9500 Facsimile 305-714-4340

1. On May 27, 2009, this Court entered an order (“the Settlement Order”) approving the settlement between the Receiver (on behalf of the Receivership entities and MAMC Lenders) and BMC and MAMC’s professional liability errors and omissions insurance underwriters.

2. Under the terms of the settlement, BMC and MAMC’s insurer, after fully investigating the claims made by the Receiver, agreed to tender the policy limits for policy number 1007-00084188B of \$1,000,000.00 (The Settlement Proceeds”) to the Receivership estate in order to resolve all claims against said policy.

3. Pursuant to the Settlement Order, Receiver’s counsel, Berger Singerman, P.A. holds the settlement proceeds in trust for distribution upon further motion and order of this Court.¹

4. In the Settlement Order, the Court approved the payment from the Settlement Proceeds to Receiver’s special counsel of its contingent fee for prosecuting the insurance claims representing a 20% fee equaling \$200,00.00. The Receiver’s special counsel has agreed to waive the costs incurred in prosecuting the subject insurance claim.

5. This Court’s Temporary Injunction and Agreed Order Appointing Receiver dated December 11, 2007, at paragraph 19, authorized the Receiver to employ, without further order of the court, such employees, accountants and attorneys, etc., as is necessary and proper for the collection, preservation, maintenance and operation of the Receivership assets. The Receiver was further authorized in the aforementioned Order to collect any and all sums of money due and owing to the Receivership Defendants.

¹ The Settlement Order authorized the payment of the contingency fee to the David and Joseph LLP law firm, the Receiver’s special counsel, with respect to the prosecution of the underlying insurance claim. The contingency fee in the amount of \$200,000 has been disbursed.

6. Pursuant to paragraph 23 of the same Order, the Receiver and his retained professionals are entitled to reasonable compensation and expenses recovered from receivership assets. The Receiver is authorized to pay from Receivership Estate funds 80 percent of the ordinary and reasonable fees and 100 percent of the costs of such outside professionals upon receipt of a bill from outside professionals. The Order further authorizes payment of fees in full upon application to the Court for approval of all fees and expenses.

7. At the time the Receiver was appointed, there were no unencumbered funds to pay the Receiver or his professionals for their services. Moreover, the MAMC Lenders informed the Receiver that they would not pay the Receiver and his professionals with "new" money and objected to their liens being primed to pay fees and costs as is permitted under Florida law. The Receiver and his professionals accepted these conditions and understood they would be paid out of unencumbered assets. As such, the Receiver and his professionals have been working on a contingent basis and have essentially financed the administration of the receivership and all related lawsuits. Accordingly, the Receiver and the professionals have, for a significant part of this case, carried substantial receivables for fees and costs incurred and although provided for under the Berger Singerman Retainer Agreement, are not seeking to be paid interest on outstanding invoices.² Apart from sporadic payments received from small amounts of unencumbered funds that have been recovered and approved by this Court from time to time, the Insurance Settlement represents the first meaningful opportunity to satisfy the Receiver and his professional's outstanding legal bills.

² The accrued interest on the outstanding Berger Singerman bills amounts to more than \$40,000.

8. The Receiver seeks an order authorizing partial distribution of the settlement proceeds for payment of Receivership fees and costs and the Receiver's attorneys' fees and costs as set forth in this Motion.

9. The Receiver has made his bills and the Berger Singerman bills available for review by the Executive Committee of Lenders and has met to Review concerns of the Lenders. The Executive Committee of Lenders raised questions regarding certain billing entries. To resolve the concerns raised, the Receiver has agreed to a \$28,000 discount on his bills and Berger Singerman has agreed to a \$43,612 discount of the fees charged and has agreed not to charge interest on its outstanding invoices. The Executive Committee of Lenders has accepted these accommodations and now supports the motion and the payment of the outstanding fees as set forth in the motion.

10. Berger Singerman, P.A. has represented the Receiver in this complicated Receivership and provided general representation and/or litigation services with respect to all Receivership projects. Currently, Berger Singerman, P.A. is owed in excess of \$470,000 in legal fees associated with its representation of the Receiver. Furthermore, Berger Singerman has advanced costs in an amount in excess of \$30,000, as an interest free loan.

11. The Receiver believes that it is appropriate to seek an order authorizing the payment of outstanding attorneys' fees and costs and receivership fees and costs related to the general representation of the Receiver and certain Receivership projects out of the subject settlement proceeds as set forth herein.

12. All invoices for attorneys' fees and costs incurred by the Receiver are reviewed by the Receiver and available for review at the Receiver's office. The Receiver's counsel hereby certifies that a copy of this Motion and Notice of Hearing thereon have been distributed

by electronic mail to all lenders and have been posted on the M.A.M.C. Receiver website for review. Each lender has the opportunity to file an objection on or before the date of the hearing, as to the requested relief.

13. For the **General Representation of and by the Receiver**, the Receiver seeks authorization to pay:

(a)	Receiver's fee:	\$ 245,256.25 ³
(b)	Costs incurred by the Receiver	\$ 10,692.34
(c)	Attorneys fees for Berger Singerman, P.A.	\$ 226,357.54 ⁴
(d)	Costs incurred by Berger Singerman, P.A.	\$ 25,957.51

14. In relation to the **Bella Vista del Mar by Obake, LLC** project, the Receiver seeks authorization to pay from the Settlement Proceeds and book as a loan to be repaid to the general fund upon the sale of the Bella Vista assets:

(a)	Attorneys fees for Berger Singerman, P.A.:	\$ 15,511.50 ⁵
(b)	Costs incurred by Berger Singerman, P.A.:	\$ 860.87

The lenders now hold title to the Bella Vista property as a result of the completion of the foreclosure action. Because the Receiver believes it will take an extended length time to market and sell the Bella Vista property, the Receiver requests authorization from the Court to pay the

³ This amount reflects the agreed upon discount of \$28,000.

⁴ This amount reflects the agreed upon discount of \$43,612.

⁵ This amount reflects a ten percent discount off the fees billed on the outstanding invoices.

fees and costs incurred in representing the lenders in the foreclosure action in full at this time. Upon a sale of the Bella Vista property, the Receiver will repay the Receivership general fund from the proceeds of the sale.

15. In relation to the **Bayview Apartments, LLC** project, the Receiver seeks authorization to pay:

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|-----|---|--------------------------|
| (a) | Attorneys fees for Berger Singerman, P.A: | \$ 5,294.25 ⁶ |
| (b) | Costs incurred by Berger Singerman, P.A.: | \$ 12.75 |

The subject fees and costs were incurred by the Receiver in defending a foreclosure action commenced by a first mortgage-holder on the property. As a consequence of the first mortgage-holder's foreclosure on the Bayview Apartments property, there has been no recovery for the Receivership from this project. Accordingly, at this time, the Receiver seeks payment of the fees and costs incurred by the Receivership in the foreclosure action, subject to the aforementioned ten percent reduction.

16. In relation to the **Brickell Bay at the Four Ambassadors** project, the Receiver seeks authorization to pay:

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|-----|---|---------------------------|
| (a) | Attorneys fees for Berger Singerman, P.A: | \$ 34,850.25 ⁷ |
| (b) | Costs incurred by Berger Singerman, P.A.: | \$ 1,305.85 |

⁶ This amount reflects a ten percent discount off the fees billed on the outstanding invoices.

⁷ This amount reflects a ten percent discount off the fees billed on the outstanding invoices.

The subject fees and costs were incurred in a foreclosure action with regard to a condominium unit at the Four Ambassadors in Miami, Florida in which the MAMC lenders held a first mortgage. The condominium association foreclosed on the condominium unit for nonpayment of association fees and the MAMC Lenders were not willing to pay the back assessments on the property to the Association and let the property be foreclosed. Accordingly, the Receiver seeks payment of the subject fees and costs incurred on behalf of the MAMC Lenders in the foreclosure action, subject to the aforementioned ten percent reduction.

17. In relation to the **MAMC Windward, LLC** project, the Receiver seeks authorization to pay:

- | | | |
|-----|--|---------------------------|
| (a) | Attorneys fees for Berger Singerman, P.A.: | \$ 30,666.60 ⁸ |
| (b) | Costs incurred by Berger Singerman, P.A.: | \$ 2,142.89 |

The subject fees and costs have been incurred in ongoing foreclosure litigation with regard to the MAMC Windward property. Because the main issue in the litigation is the validity and priority of the Plaintiff's alleged mortgage vis-à-vis the MAMC Lenders, it is unclear whether there will be a recovery by the Receivership in relation to this project. Accordingly, the Receiver seeks payment of the subject fees and costs incurred on behalf of the MAMC Lenders in the foreclosure and priority litigation, subject to the aforementioned ten percent reduction.

⁸ This amount reflects a ten percent discount off the amounts billed on the outstanding invoices.

18. In relation to the **Moran Note and Mortgage** sale transaction, the Receiver seeks authorization to pay:

(a) Attorneys fees for Berger Singerman, P.A: \$ 1,732.50⁹

The subject fees were incurred in relation to the sale of a note serviced by MAMC. The borrower had defaulted on the note and sold the loan to a third-party who initiated foreclosure proceedings. Most of the subject attorneys' fees were paid out of the closing; however, a portion of the fees remain relating to closing and post-closing issues. Accordingly, the Receiver seeks payment of the remaining fees and costs relative to sale of the Moran Note and Mortgage, subject to the aforementioned ten percent reduction.

19. In relation to the **903 Duval Street** project, the Receiver seeks authorization to pay:

(a) Attorneys fees for Berger Singerman, P.A: \$ 2,418.30¹⁰

(b) Costs incurred by Berger Singerman, P.A.: \$ 187.74

The subject fees and costs were incurred in relation to the sale of the 903 Duval property, previously acquired by the Lenders through foreclosure. Most of the subject attorneys' fees were paid out of the closing; however, a portion of the fees relating to closing and post-closing issues remain outstanding. Accordingly, the Receiver seeks to pay the remaining fees and costs relative to sale of the 903 Duval Street property, subject to the aforementioned ten percent reduction.

⁹ This amount reflects a ten percent discount off the fees billed on the outstanding invoices.

¹⁰ This amount reflects a ten percent discount off the fees billed on the outstanding invoices.

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

(a) Authorizing the Receiver to pay Receivership fees and costs, attorneys' fees and costs from the Settlement Proceeds in accordance with this Motion; and

(b) Directing that the balance of the proceeds be held in trust until further order of this Court.

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 **9th 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

Joshua C. Weisberg, Esq.
Counsel for Certain Underwriters at Lloyd's
Wilson, Elser, Moskowitz, Edelman & Dicker, LLP
150 E. 42nd Street
New York, New York 10017
Facsimile: (212) 490-3038

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

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

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