

**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.

**RECEIVER'S MOTION SEEKING ENTRY OF AN ORDER: (I) REOPENING
THE CASE; (II) AUTHORIZING THE DONATION OF UP TO \$77,967.61 IN
REMAINING FUNDS WITHIN 6 MONTHS; (III) RECLOSING THE CASE, AND
(IV) FURTHER DISCHARGING THE RECEIVER UPON RECLOSURE 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 *Receiver's Motion Seeking Entry of An Order: (I) Reopening the Case; (II) Authorizing the Donation of Up to \$77,967.61 in Remaining Funds Within 6 Months; (III) Reclosing the Case, and (IV) Further Discharging the Receiver Upon Reclosure of Case* (the "Motion"). In support of this Motion, the Receiver states as follows:

Introduction

1. Pursuant to the terms of the Final Distribution Order (defined herein), the Receiver has made a pro rata Final Distribution¹ to all Lenders (defined herein) totaling \$2,214,695. Post administration of this Final Distribution, the receivership estate has remaining funds on hand totaling approximately \$104,075. The Receiver has consulted with the Executive Committee of Lenders as well as with Mr. Valencia, the receivership estate's Asset Manager, regarding the disposition of the remaining funds. Based upon such discussions, the parties have all concluded that the time and expense associated with further distributing the remaining funds on hand—as originally contemplated in the Final Distribution Order—would likely meet and quite possibly exceed the value of any further pro rata distribution to the Lenders.

2. The Receiver thus seeks to reopen this case so that he may obtain Court authority to donate an amount up to \$77,967.61² within 6 months of entry of an Order approving this Motion to a non-profit food bank serving the residents of Miami-Dade County. The Receiver seeks to hold the funds for the 6 months to ensure any residual administrative expenses – including, but not limited to federal, state and/or local taxes – can be paid. Once the Receiver has concluded this final winddown task, the Receiver is to be finally and completely discharged from his role and able to close the receivership without additional Order of the Court. Moreover, except as otherwise provided herein, the Receiver, his agents, employees, independent contractors, attorneys and representatives seek to be further: (a) discharged; (b) released from all claims and liabilities arising out of and/or pertaining to the Receiver's final actions taken in his role as the Receiver in the receivership, including, but not limited to making the donation; and

¹ Capitalized terms not otherwise defined herein will take on the meaning ascribed to them in the Final Distribution Motion.

² The Receiver intends to donate all funds remaining from the Final Funds on hand *after* the Receiver has paid any final administrative fees and costs incurred, an amount estimated between \$30,000-\$40,000, which amount includes final federal and state taxes as well as legal and accounting fees.

(c) relieved of all duties and responsibilities pertaining to the receivership previously established in this action on a final basis.

A. Case Background

3. 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. 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.

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

5. 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

6. 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.

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

8. The Receivership Order directed and authorized 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.

9. The Receivership Order further authorized 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. The Final Distribution Motion and the Closing of the Case

10. As provided for and contemplated by the Receivership Order, the Receiver 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.

11. Accordingly, on August 20, 2020, the Receiver filed his *Motion 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 “Final Distribution Motion”).

12. In the Final Distribution Motion, the Receiver sought Court authority: (i) to make a pro rata Final Distribution from the \$2,358,899 in funds on hand to all Lenders; (ii) to provide the Lenders with a period of 90 days to redeem their Final Distribution, at which time any check issued but not yet deposited were to become null and void (the “Unclaimed Funds”); (iii) to redistribute any resulting Unclaimed Funds to the other Lenders on a pro rata basis; (iv) to destroy records and discharge the Receiver upon completion of all final administrative tasks; and (v) to close the case.

13. On August 20, 2020, the Court entered its *Unopposed Order Dismissing Case and Granting Receiver's Motion* (the “Final Distribution Order”).

D. Relief Requested

14. The Receiver has concluded the tasks of winding down the receivership estate, paying administrative costs and fees to date, and has made a Final Distribution on a pro rata basis totaling \$2,214,695 to the Lenders as authorized by the Final Distribution Order.³

15. As of the filing of this Motion, the receivership estate has remaining funds on hand totaling approximately \$104,075.00 (the “Final Funds”). (Valencia Decl. ¶ 13). Of that amount \$51,783.34 constitutes Unclaimed Funds; the remaining \$52,291.66 represents funds reserved by the Receiver for administrative expenses. (Valencia Decl. ¶ 13).

16. The Receiver has consulted with the Executive Committee of Lenders as well as with Mr. Valencia, the Asset Manager. (Valencia Decl. ¶ 14). After much deliberation the parties have reached the conclusion that the time and administrative expense associated with further distributing the Unclaimed Funds on a pro rata basis to the approximately 1000 Lenders, as

³ See Declaration of Antonio Javier Valencia, Asset Manager, attached hereto and incorporated herein as **Exhibit A**.

originally contemplated in the Final Distribution Order, would likely meet and quite possibly exceed the value of any such further distribution to the Lenders. (Valencia Decl. ¶ 14).

17. The Receiver thus seeks to reopen this case so that he may obtain Court authority to donate an amount up to \$77,967.61⁴ to a non-profit food bank serving the residents of Miami-Dade County. The Receiver will donate the funds no later than 6 months post entry of an Order approving this Motion. The Receiver seeks to hold the funds for the 6 months to ensure any residual administrative expenses – including, but not limited to federal, state and/or local taxes – can be paid.

18. Once the Receiver has concluded this final winddown task, the Receiver seeks to be finally and completely discharged from his role and able to close the receivership without additional Order of the Court.

19. Moreover, except as provided herein, the Receiver, his agents, employees, independent contractors, attorneys and representatives seek to be further: (a) discharged; (b) released from all claims and liabilities arising out of and/or pertaining to the Receiver's final actions taken in his role as the Receiver in the receivership, including, but not limited to making the donation; and (c) relieved of all duties and responsibilities pertaining to the receivership previously established in this action on a final basis.

20. In order to provide sufficient notice to all of the Lenders, a copy of this Motion will be served by e-mail and will also be posted upon the receivership web-page. Furthermore, once the 6 months have elapsed and the Receiver has made the donation, the Receiver will serve notice by e-mail of the amount of the donation and the identity of the selected non-profit Food Bank. Such information will also be posted to the receivership web-page.

⁴ The Receiver intends to donate all funds remaining from the Final Funds on hand *after* the Receiver has paid any final administrative fees and costs incurred, an amount estimated between \$30,000-\$40,000, which amount includes final federal and state taxes as well as legal and accounting fees.

WHEREFORE, Michael I. Goldberg, in his capacity as Receiver of MAMC and related entities, respectfully requests this Court enter an Order (i) granting this Motion; (ii) reopening this case; (iii) authorizing the Receiver to donate an amount up to \$77,967.61 within 6 months of entry of the Order approving the Motion; (iv) reclosing the case; (v) further releasing and discharging the Receiver upon such reclosure of the case; and (vi) granting any such further relief as is just and proper.

Dated: August 20, 2021

Respectfully submitted,

AKERMAN LLP

201 East Las Olas Blvd., Suite 1800

Ft. Lauderdale, FL 33301

Phone: (954) 463-2700/Fax: (954) 463-2224

Email: catherine.kretzschmar@akerman.com

By: /s/ Catherine D. Kretzschmar

Catherine D. Kretzschmar, Esq.

Florida Bar No. 85843

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this August 20, 2021, a true and correct copy of the forgoing was furnished to the parties on the attached Service List by U.S. mail, to the Lenders by e-mail and a copy of this motion will be posted on the receivership web-page.

/s/ Catherine D. Kretzschmar

EXHIBIT “A”

IN THE CIRCUIT COURT OF THE
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CASE NO. 07-43672 CA 09

STATE OF FLORIDA, OFFICE OF
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Plaintiff,

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.

DECLARATION OF ANTONIO JAVIER VALENCIA

BEFORE ME, the undersigned authority, on this day personally appeared ANTONIO JAVIER VALENCIA, who, being duly sworn, deposes and says:

1. My name is Antonio Javier Valencia. I am over the age of eighteen and am otherwise competent to execute this Declaration.
2. I work with Michael Goldberg, in his capacity as the court-appointed receiver over Defendants Berman Mortgage Corporation (“BMC”), M.A.M.C. Incorporated (“MAMC”) and Relief Defendants DB Atlanta, LLC, *et al.*, (the “Relief Defendants”) in the above-styled case.

3. I also work with the private investors (“Lenders”) who funded the commercial loans offered by BMC and serviced by MAMC.

4. In my capacity as the Asset Manager, I maintain books and records of the Relief Defendants, including records of each of the Lenders' investments in the individual projects.

5. I make this Declaration based on my personal knowledge and my review of the books and records of the Relief Defendants in the ordinary course of business. I know that the facts stated in this Declaration are true. I am authorized by the Receiver to make this Declaration in support of the *Receiver's Motion Seeking Entry of An Order: (I) Reopening the Case; (II) Authorizing the Donation of Up to \$77,967.61 in Remaining Funds Within 6 Months; (III) Reclosing the Case, and (IV) Further Discharging the Receiver Upon Reclosure of Case.*

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

7. The Receivership Order directed and authorized 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. As provided for and contemplated by the Receivership Order, the Receiver 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.

9. Accordingly, on August 20, 2020, the Receiver filed his *Motion 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 “Final Distribution Motion”).

10. In the Final Distribution Motion, the Receiver sought Court authority: (i) to make a pro rata Final Distribution from the \$2,358,899 in funds on hand to all Lenders; (ii) to provide the Lenders with a period of 90 days to redeem their Final Distribution, at which time any check issued but not yet deposited were to become null and void (the “Unclaimed Funds”); (iii) to redistribute any resulting Unclaimed Funds to the other Lenders on a pro rata basis; (iv) to destroy records and discharge the Receiver upon completion of all final administrative tasks; and (v) to close the case.

11. On August 20, 2020, the Court entered its *Unopposed Order Dismissing Case and Granting Receiver's Motion* (the “Final Distribution Order”).

12. In October of 2020, the Receiver made a Final Distribution totaling \$2,214,695 to all Lenders on a pro rata basis as authorized by the Final Distribution Order.

13. As of the filing of this Motion, the receivership estate has funds on hand totaling approximately \$104,075.00 (the “Final Funds”). Of that amount \$51,783.34 constitutes Unclaimed Funds; the remaining \$52,291.66 represents funds reserved by the Receiver for administrative expenses.

14. The Receiver has consulted with the Executive Committee of Lenders as well as myself, in my capacity as Asset Manager. After much deliberation we have reached the conclusion that the time and administrative expense associated with further distributing the Unclaimed Funds on a pro rata basis to the approximately 1000 Lenders, as originally

contemplated in the Final Distribution Order, would likely meet and quite possibly exceed the value of any such further distribution to the Lenders.

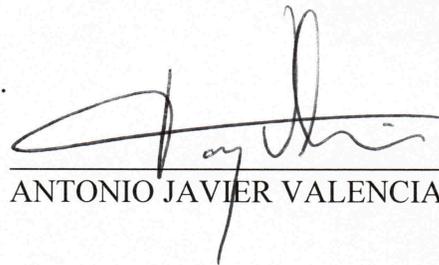
15. The Executive Committee of Lenders therefore wish to donate an amount up to \$77,967.61¹ within 6 months of entry of an Order approving the Motion to a non-profit food bank serving the residents of Miami-Dade County. The Receiver seeks to hold the funds for the 6 months to ensure any residual administrative expenses – including, but not limited to federal, state and/or local taxes – can be paid.

16. The amounts referenced in the foregoing paragraphs can be found in the receivership estates book and records. Such books and records were made near the time the acts, events, conditions, or opinions described in such records occurred or were made.

17. I know that the records were made by a person with knowledge of the transactions or occurrences described in such records, or the information contained in the records was transmitted by a person with knowledge of the transactions or occurrences described in the records.

18. The records are kept in the ordinary course of the regularly conducted business activity and it is the regular business practice to prepare or maintain the records. I am the custodian of the records.

THIS CONCLUDES MY DECLARATION.



ANTONIO JAVIER VALENCIA

¹ The Receiver intends to donate all funds remaining from the Final Funds on hand *after* the Receiver has paid any final administrative fees and costs incurred, an amount estimated between \$30,000-\$40,000, which amount includes final federal and state taxes as well as legal and accounting fees.