

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

STATE OF FLORIDA, OFFICE OF FINANCIAL  
REGULATION,

CASE NO.: 07-43672 CA 09

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.

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**RECEIVER'S MOTION FOR AN ORDER CLARIFYING  
THE COURT'S MARCH 24, 2010 ORDER GRANTING THE  
RECEIVER'S MOTION FOR AN ORDER APPROVING  
THE PROPOSED PRIORITY OF DISTRIBUTION  
AND PROCEDURES FOR THE DISBURSEMENT OF FUNDS  
RECOVERED BY THE RECEIVER IN AN ACCOUNTING  
PROFESSIONAL LIABILITY CLAIM**

Michael I. Goldberg, the receiver over Defendants Berman Mortgage Corporation, M.A.M.C. Incorporated, et al, and Relief Defendants DB Atlanta, LLC, et al., (the "Receiver"), hereby files this Motion for an Order Clarifying the Court's March 24, 2010 Order Granting the Receiver's Motion for an Order Approving the Proposed Priority of Distribution and Procedures for the Disbursement of Funds Recovered by Receiver in an Accounting Professional Liability Claim, and states as follows:

1. On December 11, 2007, this Court appointed Michael Goldberg as the receiver for the Defendants and the Relief Defendants (collectively, the "Receivership Defendants") to prevent the waste and dissipation of the Receivership Defendants' assets to the detriment of investors who entrusted over \$192 million to the Receivership Defendants.

2. As part of his duties in administering the receivership, the Receiver uncovered potential claims against the Receivership Defendants' accountants. Accordingly, the Receiver, in conjunction with a class of creditors, brought claims against the accountants. Subsequently, a settlement with the accountants was reached and a pool of money was available to satisfy certain creditors' claims.

3. On or about March 9, 2010, the Receiver filed the Receiver's Motion for an Order Approving the Proposed Priority of Distribution and Procedures for the Disbursement of Funds Recovered by Receiver in an Accounting Professional Liability Claim (the "Distribution Motion").

4. In the Distribution Motion, the Receiver essentially sought to set forth a priority among the various claims made against the Receivership Estate. To that extent, the Receiver divided the claims he recommended making a distribution on into five categories: Tier I – administrative expenses incurred in the operation of the receivership; Tier II - pre-receivership attorneys' fees and costs; Tier III – claims of certain lenders, including Exclusive Vacation Lenders, whose funds were misdirected in January 2007 and used to make payments to lenders on other matters; Tier IV – repayment of 2% withheld from projects sold by the Receiver to fund receivership overhead; and Tier V – repayment of 50% of so-called "Intercompany Loans".

5. This motion is directed at a certain dispute arising in connection with the Receiver's distribution on Tier III claims. More specifically, on or about February 20, 2007

(prior to the receivership), M.A.M.C. produced a check run to pay lenders for principal payments received by M.A.M.C. from borrowers in January, 2007 and interest due to lenders for the month of January 2007. It was subsequently learned that this check run and prior check runs wrongfully contained payments of interest on non-performing loans. Accordingly, money was inadvertently paid to lenders on non-performing loans who are not entitled to such payment because M.A.M.C. never received money from the borrower to make such payment (the "Misdirected Payments").

6. It was also learned that M.A.M.C. maintained only one bank account where all principal and interest monies for all loans were commingled. It was subsequently determined that M.A.M.C. had inadequate control procedures to enable it to operate properly with only one bank account. Up to that time, M.A.M.C. had sufficient funds of its own in its single bank account to cover payments made on non-performing loans, however, the amount of excess cash had dwindled to zero by the end of January 2007. Consequently, when the check run was produced and signed and a distribution commenced on February 20, 2007, there were insufficient funds to cover it. Over the subsequent months, an analysis was done through which it was determined that the funds were inadvertently paid to lenders as interest on numerous non-performing loans that should not have been paid as these funds were not remitted by the borrowers to M.A.M.C.. These misdirected funds were therefore not paid to lenders to whom it was due. As an example, MAMC received a \$1 million principal payment from Exclusive Vacations in early February, 2007, which amount was the full payoff of that loan. These funds should have been paid to the holders of the Exclusive Vacations' Note and Mortgage on March 20, 2007 when principal payments received during the month of February would normally have

been distributed. As there was no segregation of funds, these funds were instead used to fund the non-performing interest payments paid on the check run issued on February 20, 2007.

7. In the Distribution Motion, the Receiver made it clear that he intended to recapture the Misdirected Payments for the benefit of all creditors by off-setting such sums from the payments being made to the lenders that previously received the Misdirected Payments in error. *See* Distribution Motion at p.10.

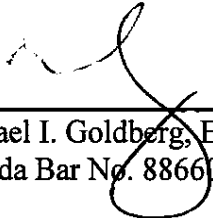
8. The Court approved the Distribution Motion, and shortly thereafter, the Receiver commenced a distribution and recaptured the Misdirected Payments by reducing the amount otherwise payable to a lender by the amount of Misdirected Payments previously received by such creditor. Within a couple of weeks of making the distribution, the Receiver received approximately a dozen complaints from lenders stating that the Receiver wrongfully deducted the Misdirected Payments from their distribution. The Receiver pointed out to these lenders that the Distribution Motion requested authority to do this and that the Court authorized the Receiver to do so. However, these lenders either did not understand or read the Distribution Motion and believe that they did not have the opportunity to properly present their objection to the Court at the hearing on the Distribution Motion.

9. The issue of whether or not the Receiver is entitled to offset the Misdirected Payments has become a heated issue amongst certain creditors. The Receiver has received numerous calls from lenders both in support of and against the Receiver recapturing the Misdirected Payments. Accordingly, the Receiver respectfully suggests that this Court hold a hearing limited solely to the issue of the Receiver's entitlement to recapture the Misdirected Payments by off-setting them against a Lender's Distribution.

WHEREFORE, Michael I. Goldberg, in his capacity as Receiver of Berman Mortgage, M.A.M.C. and related entities, respectfully request this Court to hold a hearing in order to specifically determine whether or not the Receiver is properly entitled to recapture the Misdirected Payments from lenders by virtue of off-setting such amount against a Lender's Distribution and to grant such further relief as is just and proper.

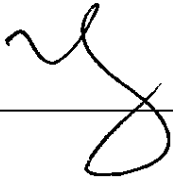
Respectfully submitted,

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By:   
Michael I. Goldberg, Esquire  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 9<sup>th</sup> day of July, 2010, a true and correct copy of the forgoing was furnished via U.S. Mail to the parties on the attached Service List.

By: 

**SERVICE LIST**

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