

IN THE CIRCUIT COURT OF THE  
11TH 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.

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**RECEIVER'S AMENDED MOTION TO DETERMINE PROCEDURES BY  
WHICH RECEIVER CAN MAKE DECISIONS ON SPECIFIC LOANS OR PROJECTS**

Receiver Michael I. Goldberg, Esq., ("Receiver"), previously filed a motion to determine procedures by which the Receiver can make decisions on specific loan projects. The Receiver amends its motion and moves this court to enter an order authorizing the Receiver to make decisions without consent of the Lenders on certain ministerial matters and to adopt voting procedures by which a majority vote of the investors in each project, in proportion to their percentage ownership, shall provide the controlling authority for the Receiver to act with the same finality as an order of this court and to adopt and approve all previous decision notice votes, and as grounds therefore states:

**BERGER SINGERMAN**  
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1. On December 11, 2007, Michael Goldberg was appointed as State Court Receiver in this matter.

2. The receivership estate includes approximately \$192,000,000.00 of investor money secured by mortgages in approximately 40 different real estate projects. Investors participated in a project by providing a portion of the funds for a loan. Each loan was serviced by M.A.M.C. Incorporated. In order to participate in a loan each Investor was to sign a Loan Servicing Agreement (LSA) in the form attached as Exhibit A to the original motion. The corporate structure of the business worked as follows:

(A) **BERMAN MORTGAGE CORPORATION:** This entity was a licensed mortgage lender whose primary role in this group of entities was to broker what the company referred to as hard money loans to various real estate ventures. As a broker it charged fees to the borrowers, paid at the time of closing. After an individual loan was closed, Berman Mortgage Corporation had very little other involvement. This company also had a residential mortgage brokering business which was another source of income, brokering loans on behalf of borrowers through various institutional lenders.

(B) **M.A.M.C. INCORPORATED:** This entity was also a licensed mortgage lender whose primary role in the organization was to act as the loan servicing agent for the brokered hard money loans. M.A.M.C. Incorporated would raise capital to make the loans brokered by Berman Mortgage Corporation through a group of approximately 640 investors ("The Investor Group"). The lending opportunities would be marketed on the internet to The Investor Group and each lender had the option of participating in an individual mortgage. If an investor elected to participate in a mortgage, he or she would receive an undivided percentage interest in the note and Mortgage. As a result of the structure of doing business in this manner, a loan may have as

few as one and as many as 300 participants. Each participant would have a fractional interest in a note and mortgage. M.A.M.C. Incorporated was compensated by an origination fee at the time of closing and thereafter received loan servicing fees. The loan servicing fees would be one point on each individual loan. The loans would have interest rates ranging from 12% up to 18%.

(C) **THE DB ENTITIES:** The loans brokered by Berman Mortgage Corporation and made by M.A.M.C. Incorporated were either "Third-Party Loans" or "Insider Loans." Third-party loans were made to unaffiliated borrowers. Insider loans were made to single asset real estate entity, owned by the principal of Berman Mortgage Corporation and M.A.M.C. Incorporated, Dana Berman.

3. Under the LSA certain decisions with regard to the handling of loans were reserved to the management of M.A.M.C., Incorporated, while others required a vote. The LSA was signed by the vast majority of the Investors. The Receiver has learned that a small minority of Investors did not sign Loan Servicing Agreements.

4. The Receiver, in an effort to assure that ALL decisions pertaining to loans and/or projects are conducted effectively and by a fair method, moves this Court to allow him to adopt a similar procedure, binding on all loan participants, irrespective of whether they signed a LSA. The proposed procedure is that on matters requiring a vote under the LSA, the Receiver shall send to the loan participants in a Non-Emergency, a written explanation of the issue to be voted upon and a ballot, by U.S. Mail, allowing a minimum of 10 days from the date of mailing to return the ballot. In an Emergency, the voting notice and ballot shall be sent via E-mail unless an investor has advised he has no access to email in which case the notice and ballot shall be sent via Federal Express, allowing 5 days notice of a vote

5. In the event that any individual is authorized to vote on an issue by virtue of his or her participation in a loan, fails to return a ballot, said failure to respond shall constitute an approval of the position recommended by the Receiver. The Receiver shall only be authorized to act by majority vote of the Lenders in each loan on a pro-rata basis in accordance with their percentage interest in the loan or business entity.

6. The Receiver will post **ALL** voting notices on a web site maintained by the Receiver for The Investors immediately after service of same.

7. The Receiver seeks approval that he retain authority in his sole discretion to make all decisions reserved to management in the LSA including the following decisions:

(a) Declare a Loan In Default;

(b) To Initiate Foreclosure Proceedings;

(c) Retain appropriate professionals on behalf of the investors to prosecute foreclosure actions and/or take appropriate action with respect to the property securing each loan that is in default in litigation to protect the interests of the investors.

(d) To bid at any sale on property and to form a special purpose entity to take title to property which shall be managed by the Receiver, unless the Receiver elects to submit the issues of management to a vote.

8. On March 12, 2007, at the request of certain of the Investor Group, Alan Goldberg was appointed CRO of M.A.M.C. Incorporated. He remained in this capacity until the Date of the Receivership. During that time period certain matters were handled through the LSA decision notice process. The Receiver seeks a court order ratifying these votes and authorizing him to execute all documents necessary to consummate sales and or contracts previously authorized by a Decision Notice Vote during the period Alan Goldberg was CRO.


8. The Receiver seeks to accomplish by this motion a procedure that will allow the company to operate without seeking court approval for every action, which is both costly in terms of attorney fees and use of judicial resources.

**WHEREFORE**, The Receiver moves the court for entry of an order authorizing him to have sole decision making authority and to act on those matters M.A.M.C. management was authorized to handle under the LSA, and to otherwise authorize him to take action in accordance with a majority vote of the investors in a particular project in accordance with the procedures set forth herein above with the same binding authority as an order of this court and to adopt as binding all prior decision notice votes conducted by Alan Goldberg as CRO as binding votes approved by this court.

Respectfully Submitted,

BERGER SINGERMAN  
*Attorneys for Defendants*  
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By: \_\_\_\_\_

  
JAMES D. GASSENHEIMER  
Florida Bar No. 959987

**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail on this 18<sup>th</sup> day January 2008, to: **Cristina Saenz, Assistant General Counsel**, STATE OF FLORIDA, OFFICE OF FINANCIAL REGULATION, 401 N.W. 2<sup>nd</sup> Avenue, Suite N-708, Miami, Florida 33128; to **Alan M. Sandler, Esquire, Counsel for Defendants, Joel and**

*Deborah Sokol, Darlene Levasser, Robert Dzimidas IRA, Lawrence Meyer IRA, Lawrence Meyer Roth IRA and Mary Joe Meyer SD IRA and Mary Joe Meyer Roth IRA, of SANDLER & SANDLER, 117 Aragon Avenue, Coral Gables, Florida 33134; to Michael P. Ehrenstein, Esquire, Counsel for The Amid Companies and Amedia Family Investors, EHRENSTEIN CHARBONNEAU CALDERIN, 1111 Brickell Avenue, 2915 Mellon Financial Center, Miami, Florida 33131; and to Bruce Scheinberg, Esquire, Counsel for Jay Rothlein, THE SOUTH BAY CLUB, 800 West Avenue, Suite C-1, Miami Beach, Florida 33139.*

BY: \_\_\_\_\_

  
JAMES D. GASSENHEIMER

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