

THE ORIGINAL FILED
ON FEB 19 2008
IN THE OFFICE OF
CIRCUIT COURT DADE CO. FL.

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.

**RECEIVER'S MOTION FOR COURT ORDER DETERMINING
RECEIVER'S AUTHORITY TO ACT WITH RESPECT TO CERTAIN
ASSETS SUBJECT TO DANA J. BERMAN'S DIVORCE SETTLEMENT**

Receiver, Michael Goldberg, by and through undersigned counsel, moves this Honorable Court for an Order clarifying and directing the Receiver with respect to certain assets subject to Dana Berman's Divorce Settlement, and as grounds therefore states:

1. Michael Goldberg has been appointed by the Court to act as Receiver on behalf of the State of Florida Department of Financial Regulation. The Receivership extends over the businesses of Dana J. Berman, including Berman Mortgage Corporation, M.A.M.C. Incorporated and the Relief Defendants, which are certain real estate development entities owned exclusively

by Dana Berman or by him in partnership with other individuals. The Receivership estate also includes the personal assets of Dana J. Berman to the extent they would derive from his work.

2. Dana J. Berman is also the Petitioner in a divorce from his former wife, Deborah Berman.

3. Prior to the Receivership, the assets of Berman Mortgage Corporation, M.A.M.C. Incorporated and Dana J. Berman were subject to the control of Alan L. Goldberg, as Chief Restructuring Officer, through a voluntary process. The CRO, Alan L. Goldberg came into possession of certain tax refunds for hurricane losses associated with the DB Biloxi projects.

4. The tax refunds were made payable to both, the former wife and Dana Berman, jointly. Alan Goldberg negotiated certain terms to resolve the cashing of these checks whereby \$200,000.00 was paid to M.A.M.C. Incorporated for working capital, \$200,000.00 was paid to the Former Wife and \$200,000.00 was paid to Dana J. Berman. \$44,000.00 was placed in an account which was designated for the use of the children. Part of the children's funds were used to pay health insurance premiums and approximately \$33,000.00 remains in the account. The Family Court has ordered these funds be used to pay for Kevin Berman's private school tuition.

5. The Former Wife is seeking in the divorce case to have these funds paid to Kevin Berman's school. The Receiver believes that these funds are subject to the Receivership Estate and seeks to determine whether any creditor of the estate has any objection to these funds being used to pay Kevin Berman's tuition.

6. Additionally, during the divorce proceedings it was discovered that certain real property in Haines City, Polk County, Florida, was titled in the name of Dana Berman, however, was purchased with funds from one of Dana Berman's development entities. Alan Goldberg, as the Chief Restructuring Officer entered into an agreement to resolve the claim of the Former

Wife to this property and to resolve any dispute over whether the property was an asset of the divorce case. The agreement provided that the property would be sold and the proceeds would be distributed as follows:

- a. The first \$175,000.00 shall be paid to M.A.M.C. Incorporated.
- b. Any remaining net proceeds from the sale shall be equally divided

between the Former Wife and the Former Husband.

The Sale of the property will most probably result in proceeds in excess of the amount to be paid to M.A.M.C. Incorporated.

7. The excess funds are currently claimed by the Former Wife's counsel, and the Former Husband's counsel, including the Law Offices of Daniel Kaplan, the Law Offices of Leinoff & Lemos, the Law Offices of Barranco and Kircher, and James D. Gassenheimer, P.A., as attorney fees.

8. The settlement regarding the Polk County property was entered into to avoid protracted litigation between the Former Wife and the M.A.M.C. Incorporated.

9. The Receiver at this time takes no position with respect to either agreement reached by Alan Goldberg.

10. The Receiver seeks Court Authority and approval of these pre-petition transactions subject to any objection raised by any claimant, potential claimant, or member of the investor group.

WHEREFORE, the Receiver seeks a Court Order Determining whether:

1. The Receiver is authorized to pay the \$33,000.00 currently held in Trust, for Kevin Berman's private school for tuition.
2. Whether the Receiver is authorized to sell the Polk County property.

3. Whether the Receiver is authorized to disburse the Polk County property net sale proceeds in accordance with the property settlement agreement resolving all financial issues, including property settlement, alimony and child support entered into in the matter of Berman v. Berman, Case no. 06-21446 FC 17, and joined by Alan Goldberg.

Respectfully submitted,

BERGER SINGERMANN
Attorneys for the Receiver, Michael I. Goldberg
200 South Biscayne Boulevard, Suite 1000
Miami, Florida 33131
Telephone: (305) 755-9500
Facsimile: (305) 714-4340

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 Facsimile and U.S. Mail on this 19th day of February 2008, to: **Cristina Saenz, Assistant General Counsel**, STATE OF FLORIDA, OFFICE OF FINANCIAL REGULATION, 401 N.W. 2nd 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 **Allan A. Joseph, Esquire, Counsel for The Amid Companies and Amedia Family Investors**, DAVID AND JOSEPH, P.L., 1001 Brickell Avenue, Suite 2002, Miami, Florida 33131; and to **Richard R. Robles, Esquire, LAW OFFICES OF RICHARD ROBLES, P.A., Counsel for the Four Ambassadors**

Association, Inc., 905 Brickell Bay Drive, Tower II, Mezzanine, Suite 228, Miami, Florida
33131.

BY: 

JAMES D. GASSENHEIMER

cc: The Honorable Thomas Wilson, Jr. *(via hand-delivery)*
Daniel Kaplan, Esq. *(via Fax and U.S. Mail)*
Michael Goldberg, Esq., as Receiver *(via email)*
The Group of Lenders *(via email)*

966530-1