

**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,

Defendants,

and,

DB ATLANTA, LLC, a Florida Limited
Liability Company, **DB DURHAM, LLC**, a Florida Limited
Liability Company, **NORMANDY HOLDINGS II,
LLC**, a Florida Limited Liability Company, **NORMANDY
HOLDINGS III, LLC**, a Florida Limited Liability Company,
WATERSIDE ACQUISITIONS, LLC, a Florida Limited Liability
Company, **DBKN GULF INCORPORATED**, a Florida Limited
Liability Company, **OCEANSIDE ACQUISITIONS, LLC**,
a Florida Limited Liability Company, **DB BILOXI, LLC**, a Florida
Limited Liability Company, **DB BILOXI II, LLC**, a Florida
Limited Liability Company, **DB BILOXI III, LLC**, a Florida
Limited Liability Company, **DBDS VERO BEACH, LLC**, a
Florida Limited Liability Company, **DB TAMPA, LLC**, a
Florida Limited Liability Company, **DB SIMPSONVILLE,
LLC**, a Florida Limited Liability Company, **DBDS NORTH MIAMI,
LLC**, a Florida Limited Liability Company, **REDLANDS RANCH
HOLDINGS, LLC**, a Florida Limited Liability Company,
DBDS BISCAYNE PARK, LLC, a Florida Limited Liability
Company, **DB CARROLL STREET, LLC**, a Florida Limited
Liability Company,

Relief Defendants.



**COMPLAINT FOR TEMPORARY AND PERMANENT INJUNCTION
AND APPOINTMENT OF RECEIVER**

Plaintiff, State of Florida, Office of Financial Regulation (the "Office"), sues the Defendants and Relief Defendants, jointly and severally, and alleges as follows:

NATURE OF THE ACTION

The Office brings this action to restrain and enjoin the above-named Defendants and Relief Defendants from committing further violations of the provisions of Chapter 494, Florida Statutes, the Florida Mortgage Brokerage and Mortgage Lending Act and of the registration provisions of Chapter 517, Florida Statutes, the Florida Securities and Investor Protection Act, in conjunction with the offer and sale of fractionalized interests in mortgage loans.

Through February 2007, Defendant Berman Mortgage has brokered the funding of at least \$192 million, in mortgage loans, from approximately 700 private investors by offering fractional interests in short-term, hard-equity, acquisition and/or construction, mortgage loans. All loans funded by the private investors are commercial loans. All loans are closed in the names of all participating investors with each investor's percentage of the total promissory note value indicated on the promissory note and accompanying mortgage document. On average, there are more than 50 private investors in each loan.

Defendant M.A.M.C. services the loans pursuant to a servicing agreement entered into between each investor and M.A.M.C. At present, M.A.M.C. services about 104 mortgage loans, representing approximately \$192 million. However, only 6 of those loans are performing, representing about \$29 million dollars in mortgages of the entire loan portfolio.

The Office also seeks the appointment of a receiver over the assets of all the Defendants. The books and records of M.A.M.C. reflect that the company is insolvent and that investor funds have been misappropriated.

The Office has grave concerns that unless immediately restrained, enjoined, and placed in receivership, the Defendants will continue to violate Chapters 494 and 517, Florida Statutes, and subject investor funds to further waste, misappropriation, or risk.

THE PLAINTIFF

1. The Office is the agency created under Section 20.121, Florida Statutes responsible for all activities of the Financial Services Commission relating to the regulation of finance companies, including mortgage brokerage, mortgage lending businesses and the securities industry. As such, the Office is charged with protecting the public from the illegal activities of mortgage brokerage and mortgage lending businesses and securities dealers and broker dealers conducting business in this state.

THE DEFENDANTS

2. Defendant Berman Mortgage is a Florida corporation incorporated on September 6, 1988 and located in Coconut Grove, Florida. Berman Mortgage is a Florida licensed savings clause mortgage lender. Berman Mortgage is in the business of originating and brokering short-term, high interest, construction loans between non-institutional investors (also known as lenders) and borrowers. Berman Mortgage is also in the business of originating residential mortgages for institutional lenders. Daren A. Schwartz is currently listed as the President and Director of Berman Mortgage in corporate records on file with the Florida Secretary of State's Office. However, Dana Berman is listed as the President of Berman Mortgage in the Office's licensing records.

3. Defendant M.A.M.C. is a Florida corporation incorporated on June 22, 2005, and located in Coconut Grove, Florida. M.A.M.C. is a licensed Florida mortgage lender. M.A.M.C. services the mortgage loans that are brokered by Berman Mortgage for a monthly fee. In most instances, the servicing by M.A.M.C. is conducted pursuant to an executed servicing agreement entered into by M.A.M.C. with each private investor. The servicing fee is usually one percent (1%), the difference between what the borrower pays in interest on the loan, and the return the investor receives on his investment. Berman is currently listed as the President and Director of M.A.M.C.

4. Defendant Dana J. Berman is 44 years old and resides in Miami-Dade County, Florida. Berman was listed as the President and Director of Berman Mortgage until March 9, 2007 in corporate records as filed with the Florida Secretary of State's Office.

5. Defendant DB Atlanta, LLC is a Florida limited liability company with its principal place of business in Coconut Grove, Florida. The company is managed by DB Atlanta Clarion Manager Incorporated. Dana Berman is listed as the director of the managing corporation as filed with the Florida Secretary of State's Office. Defendant Company was created in 2006 for the acquisition of an existing hotel located in Atlanta, Georgia. Although the hotel is operational, revenues are not sufficient to cover the outstanding debt.

6. Defendant DB Durham, LLC is a Florida limited liability company with its principal place of business in Coconut Grove, Florida. Dana Berman is listed as manager for the company as filed with the Florida Secretary of State's Office. Defendant Company was created in 2006 for the acquisition, renovation and change of

franchise of a 159-unit hotel located in Durham, North Carolina. Defendant has been unable to sell the hotel because of title issues.

7. Defendant Normandy Holdings II, LLC is a Florida limited liability company with its principal place of business in Coconut Grove, Florida. The company is managed by Normandy II Manager Incorporated. Dana Berman and Daren Schwartz are listed as the directors of the managing corporation as filed with the Florida Secretary of State's Office. Defendant Company was created in 2001 and consists of 34 town homes. Approximately 8 townhomes remain unsold.

8. Defendant Normandy Holdings III, LLC is a Florida limited liability company with its principal place of business in Coconut Grove, Florida. The company is managed by Normandy III Manager Incorporated. Dana Berman and Daren Schwartz are listed as the directors of the managing corporation as filed with the Florida Secretary of State's Office. This project consists of the same piece of property as Normandy Holdings II, above, but the funding was acquired from different investors.

9. Defendant Waterside Acquisitions, LLC is a Florida limited liability company with its principal place of business in Coconut Grove, Florida. Dana Berman is listed as the manager for the company as filed with the Florida Secretary of State's Office. Defendant Company was created in 2003 and has borrowed money from several of the other limited liability companies funded by private investors.

10. Defendant DBKN Gulf Incorporated is a Florida corporation with its principal place of business in Coconut Grove, Florida. Dana Berman and Keith Novak are listed as the corporation's officers and directors as filed with the Florida Secretary of

State's Office. Defendant Company was created in 2003 for the acquisition of land in Hudson, Florida. The company owes approximately \$1 million to investors.

11. Defendant Oceanside Acquisitions, LLC is a Florida limited liability company with its principal place of business in Coconut Grove, Florida. Dana Berman and Keith Novak are listed as the managers for the company as filed with the Florida Secretary of State's Office. Defendant Company was created in 2002 for the acquisition of 19 condominium units. The company needs funding in order to rehabilitate the units for sale. The company has been in litigation for the past 4 years due to title issues.

12. Defendant DB Biloxi, LLC is a Florida limited liability company with its principal place of business in Coconut Grove Florida. The company is managed by DB Biloxi Manager, Incorporated. Dana Berman is listed as the director for the managing corporation as filed with the Florida Secretary of State's Office. Defendant Company was created in 2004 for the acquisition and development of a hotel, town homes and vacant land in Biloxi, Mississippi. The properties suffered a great deal of damage in 2005 during Hurricane Katrina, and the company is engaged in litigation with the insurance carrier. Defendant owes over \$10.5 million to investors.

13. Defendant DB Biloxi II, LLC is a Florida limited liability company with its principal place of business in Coconut Grove Florida. The company is managed by DB Biloxi II Manager, Incorporated. Dana Berman is listed as the director for the managing corporation as filed with the Florida Secretary of State's Office. The members of the limited liability company are Deborah Berman, individually and on behalf of 4 minor children and Joshua Schwartz. Defendant Company was created in 2004 for the

acquisition of vacant land, and a condominium conversion in Biloxi, Mississippi. The property suffered extensive damage in 2005 during Hurricane Katrina.

14. Defendant DB Biloxi III, LLC is a Florida limited liability company with its principal place of business in Coconut Grove Florida. The company is managed by DB Biloxi III Manager, Incorporated. Dana Berman is listed as the director for the managing corporation as filed with the Florida Secretary of State's Office. Defendant Company was created in 2005 for the acquisition of vacant land and the development of condominium units in Biloxi, Mississippi. The properties suffered extensive damage in 2005 during Hurricane Katrina. Defendant owes over \$23.5 million to investors for a second mortgage.

15. Defendant DBDS Vero Beach, LLC is a Florida limited liability company with its principal place of business in Coconut Grove Florida. The company is managed by DBDS Vero Beach Manager, Incorporated. Dana Berman and Daren Schwartz are listed as the directors for the managing corporation as filed with the Florida Secretary of State's Office. Defendant Company was created in 2005 for the acquisition of a condominium and vacant land in Vero Beach, Florida. The company owes approximately \$3.5 million to investors in a second mortgage. Over \$2 million of the second mortgage consists of unsecured promissory notes.

16. Defendant DB Tampa, LLC is a Florida limited liability company with its principal place of business in Coconut Grove Florida. The company is managed by DBT Manager Incorporated. Dana Berman, Mitchell Morgan, and Keith Novak are listed as the directors of the managing corporation as filed with the Florida Secretary of State's Office. Defendant Company was created in 2004 for the acquisition of a 48-unit

condominium conversion in Tampa, Florida. The company owes approximately \$7.5 million, of which over \$4.5 million consists of private investor funds.

17. Defendant DB Simpsonville, LLC is a Florida limited liability company with its principal place of business in Coconut Grove Florida. Dana Berman is listed as manager for the company as filed with the Florida Secretary of State's Office. Defendant Company was created in 2005 for the acquisition of a condominium conversion in Simpsonville, South Carolina. Some of the units have been sold at auction.

18. Defendant DBDS North Miami, LLC is a Florida limited liability company with its principal place of business in Coconut Grove Florida. The company is managed by DBDS North Miami Manager Incorporated. Dana Berman and Daren Schwartz are listed as officers and directors of the managing corporation as filed with the Florida Secretary of State's Office. Defendant Company was created 2005 for the acquisition of two residential buildings in North Miami, Florida. Some of the units have been sold. The company owes more than \$4.5 million to investors.

19. Defendant Redlands Ranch Holdings, LLC is a Florida limited liability company with its principal place of business in Coconut Grove Florida. Dana Berman is listed as manager for the company as filed with the Florida Secretary of State's Office. Defendant Company was created in 2005 for the acquisition of approximately 20 acres of vacant land in the Redlands, Florida. The bank holding the first mortgage has filed foreclosure proceedings. The company owes approximately \$.5 million to investors.

20. Defendant DBDS Biscayne Park, LLC is a Florida limited liability company with its principal place of business in Coconut Grove Florida. The company is managed by DBDS Biscayne Park Manager Incorporated. Dana Berman and Daren

Schwartz are listed as officers and directors of the managing corporation as filed with the Florida Secretary of State's Office. Defendant Company was created in 2005 and consists of a condominium conversion of 2 buildings located in Miami, Florida. Some of the units have been sold. The company owes approximately \$2.5 million to investors.

21. Defendant DB Carroll Street, LLC is a Florida limited liability company with its principal place of business in Coconut Grove Florida. Dana Berman is listed as manager for the company as filed with the Florida Secretary of State's Office. This company was created in 2005. The company, along with Dana Berman, bought a vacant lot in Islamorada, Florida. Defendant Company has borrowed from several of the other LLC Defendants that were funded by private investors.

JURISDICTION AND VENUE

22. This is an action pursuant to §§ 494.0013 and 517.191, Florida Statutes which authorizes the Office to bring this action before this Court in order to restrain and enjoin violations of, and enforce compliance with, the statutes. This action seeks restraint of acts and practices of the Defendants that have occurred, are occurring, or are about to occur in and from Miami-Dade County, Florida.

23. This action also seeks the appointment of a receiver pursuant to §§ 494.0013 and 517.191, Florida Statutes, for the property, assets, and business interests of Defendants Berman Mortgage and M.A.M.C. and of all Relief Defendants to demand the return of sums obtained in violation of any of the provisions of Chapters 494 and 517, Florida Statutes.

24. Jurisdiction is vested in this Court under Article V, Section 5(b), Florida Constitution, and §§ 26.012(2)(b), 494.0013 and 517.191, Florida Statutes.

25. Pursuant to §§ 47.011 and 47.051, Florida Statutes, venue is proper in Miami-Dade County, Florida, the Defendants' and Relief Defendants' principal place of business and where substantially all of the acts complained of herein took place.

26. This Court has specific authority under § 494.0013 and § 517.191, Florida Statutes, which authorizes the Court to impound and to appoint a receiver for the property, assets, and business interests of the Defendants, including, but not limited to, books, records, documents, and papers appertaining thereto.

GENERAL ALLEGATIONS

27. Defendants are engaged in the commercial mortgage lending, mortgage servicing and mortgage brokerage businesses.

28. Defendant Berman created approximately 36 limited liability companies for the development of commercial projects. Berman created one company for each project that he wanted to develop in order to obtain funding from private investors.

29. Berman is identified as either the managing member or the president for all of the Defendant Limited Liability Companies as filed with the Florida Secretary of State's Office.

30. Defendants Berman Mortgage and M.A.M.C solicited investors over the Internet. At least through August 2006, these Defendants advertised a website offering "individuals, trusts, pension plans and IRAs with the opportunity to participate as undivided percentage lenders in privately funded mortgages." The website invited members of the general public to fill out their contact information, a Loan Origination and Loan Servicing Agreement, along with a W-9, Request for Taxpayer Identification

Number and Certification and send it to the company for subsequent approval as private investors.

31. Defendants Berman Mortgage and M.A.M.C.'s website induced borrowers to invest by claiming an average return of approximately 14%, with a loan-to-value ratio "typically between 50% -70%." Defendants advertised that it placed a "conservative value" on each property in order to "increase the margin of safety for each lending opportunity."

32. From approximately 1997, Defendant Berman Mortgage has been conducting an ongoing securities offering, raising at least \$192 million from the sale of fractionalized mortgages to hundreds of investors. Many of the investors consist of Trusts, IRAs and Pension Funds. In almost all cases, the mortgages are funded by and assigned to numerous investors, with each investor holding a percentage interest in the mortgage note based on the investor's corresponding percentage contribution to the amount of the mortgage note. Most mortgage loans and corresponding notes contain at least 50 investors in each loan.

33. Many of the loans funded by these private investors contain a provision in the Mortgage and Security Agreement which allows the borrowers to borrow funds in excess of the original note amount as future advances. The future advances are funded by the original investors and/or the addition of new private investors. The funding of future advances has caused some of the loans to exceed the loan to value ratio disclosed to the investors in the original loan offerings.

34. On or about March 2007, the Office received information that Defendant

M.A.M.C. was experiencing serious financial difficulties and the monthly interest payment checks issued by M.A.M.C. to the private investors were not honored by the bank. The checks, totaling over \$1.8 million were returned to the investors marked "NSF" (Not Sufficient Funds). Shortly thereafter, M.A.M.C. engaged the services of a restructuring firm.

35. As a result of the examination of all available books and records of Defendants Berman Mortgage and M.A.M.C., including a review of the public records of all counties in which these Defendants are known to have conducted business, along with interviews with Defendants' investors, employees, and officer/directors, the Office states the following:

a. M.A.M.C. is servicing approximately 104 mortgage loans totaling at least \$192 million. The total investment in these mortgages comes from the funding by approximately 700 private investors in mortgage loans. Most of these mortgage loans have more than fifty (50) fractional units per loan.

b. Out of the mortgage loans serviced by M.A.M.C., only 6 loans are performing, representing approximately \$29 million of the entire loan portfolio.

c. Defendants Berman Mortgage and M.A.M.C. engaged in public advertising or solicitation through a website on the Internet.

d. Defendant M.A.M.C. did not give its investors a three-day of rescission to cancel their investments, as required by law.

e. The LLC Defendants: DB Atlanta, LLC; DB Biloxi, LLC; DB Biloxi II, LLC; DB Biloxi III, LLC; DB Durham, LLC; LLC; DB Tampa, LLC; DBDS Biscayne Park, LLC; LLC; DBDS North Miami, LLC; DBDS Vero Beach, LLC;

Normandy Holdings II, LLC; Oceanside Acquisitions, LLC and DB Carroll Street, LLC transferred private investor funds amongst each other. These transfers were done without the knowledge or consent of the individual investors, and total over \$13 million. These funds were not used for the specific purpose represented to the investors in Defendants' loan offerings. Defendant Berman transferred funds from one company to another as the need arose. For example, \$8,000.00 was transferred from one company to another to pay the latter's tax certificate in order to avoid a tax deed from being issued. For the most part, the inter-company transfers remain unpaid, and the investor funds that were transferred from one company to another are not secured by real property.

f. At least until February 2007, Defendant M.A.M.C. advanced investors their monthly interest payments on loans in which M.A.M.C. had not received payment from the borrowing entities or individuals.

g. As a business practice, Defendant M.A.M.C. did not maintain a segregated bank account to be used exclusively for the servicing of mortgage loans. Defendant commingled the monthly payments received from borrowers with the company's operating income and business expenses.

h. As of January 31, 2007, Defendant had an ending balance of \$216,365.68 in its bank account.

i. During the month of February 2007, the Defendant made deposits totaling \$2,250,949.73 into this account. The amount included a \$1,289,418 payoff from a mortgage loan. Pursuant to the mortgage servicing agreements entered into between Berman Mortgage, M.A.M.C., and the individual investors on the loan, the investors were to receive their principal payment plus any interest accrued upon receipt of the

payoff. However, at the end of February 2007, Defendant wrote checks totaling \$2,621,402.17 against the account. This resulted in a negative balance of \$154,086.76 in the account.

j. The payoff funds belonging to the investors were used for other purposes, and as a result, Defendant M.A.M.C. has owed approximately \$1,289,418 to those investors since February 2007.

k. From the loan files, books and records, financial statements, and from additional information provided to the Office by investors, the Office has determined that Defendant M.A.M.C has been insolvent for some time.

COUNT I: MISREPRESENTATION IN A MORTGAGE TRANSACTION
(AS AGAINST M.A.M.C.)

Plaintiff realleges and incorporates by reference the allegations contained in Paragraphs 1 through 35.

36. This is an action against Defendant M.A.M.C. for violations of Section 494.0025 (4)(a), (b), (c) and (5), and 494.0072(2)(e), (f), (g) and (h), Florida Statutes.

37. M.A.M.C. received the sum of \$1 million as payoff on a mortgage loan. M.A.M.C. did not use the funds to pay the investors on that loan.

38. By failing to account for, and forward to investors the payoff funds from the ExclusiVacations loan, when received, M.A.M.C. knowingly and willfully made a false statement or representation to its investors and borrowers, and obtained property by willful misrepresentation or false promise as to the actual use or application of funds belonging to private investors.

COUNT II: FAILURE TO MAINTAIN NET WORTH
(AS AGAINST M.A.M.C.)

Plaintiff realleges and incorporates by reference the allegations contained in Paragraphs 1 through 35.

39. This is an action against M.A.M.C. for violations of sections 494.0061 and 494.00721, Florida Statutes.

40. Section 494.0061, Florida Statutes requires a mortgage lender to maintain a bona fide and verifiable net worth, pursuant to generally accepted accounting principles, of at least \$ 250,000, which must be continuously maintained as a condition of licensure.

41. Section 494.00721, Florida Statutes provides that the net worth requirements mandated under section 494.0061 shall be continually maintained as a condition of licensure, and that if a mortgage lender does not satisfy the net worth requirements within a 120-day period, the license of the mortgage lender shall be deemed to be relinquished and canceled and all servicing contracts shall be disposed of in a timely manner by the mortgage lender.

42. M.A.M.C. does not have the statutorily-required net worth of \$250,000.00, as documented by audited financial statements, and has not had the required net worth for some time.

43. M.A.M.C. continued to service mortgage loans for others, after it failed to meet and maintain the statutory net worth requirements, in violation of Sections 494.0061 and 494.00721(2), Florida Statutes.

COUNT III: SERVICING AUDIT VIOLATION
(AS AGAINST M.A.M.C.)

Plaintiff realleges and incorporates by reference the allegations contained

in Paragraphs 1 through 35.

44. This is an action against Defendant M.A.M.C. for violations of section 494.0076, Florida Statutes.

45. Section 494.0076, Florida Statutes provides that each licensee who services loans shall maintain a separate, segregated depository account for all receipts relating to servicing.

46. M.A.M.C. failed to have and maintain a separate, segregated depository account for all receipts relating to loans it serviced, as required by Section 494.0076(1)(a)2, Florida Statutes.

COUNT IV
SALE OF UNREGISTERED SECURITIES IN VIOLATION
OF SECTION 517.07, FLORIDA STATUTES
(AS AGAINST BERMAN MORTGAGE AND M.A.M.C)

Plaintiff realleges and incorporates by reference the allegations contained in Paragraphs 1 through 35.

47. This is an action against Defendants Berman Mortgage and M.A.M.C for violations of section 517.07, Florida Statutes.

48. Section 517.07, Florida Statutes, provides that it is unlawful for any person to sell or offer to sell a security within this state unless the security is exempt under s. 517.051, is sold in a transaction exempt under s. 517.061, is a federally covered security, or is registered pursuant to this chapter.

49. No registration has been filed or is in effect with the Office pursuant to section 517.07, Florida Statutes, and no exemption from registration exists with respect to the securities and transactions described herein.

50. Since a date unknown, but at least since 1997 Defendants Berman Mortgage and M.A.M.C. have sold or offered to sell within the State of Florida securities, in the form of fractionalized interests in mortgage loans, that are not and have never been registered with the Office as required by law.

COUNT V
SALE OF SECURITIES BY AN UNREGISTERED ISSUER OR DEALER
IN VIOLATION OF SECTION 517.12, FLORIDA STATUTES
(AS AGAINST BERMAN MORTGAGE AND M.A.M.C.)

Plaintiff realleges and incorporates by reference the allegations contained in Paragraphs 1 through 35.

51. This is an action against Defendants Berman Mortgage and M.A.M.C. for violations of section 517.12, Florida Statutes.

52. Section 517.12, provides that no dealer, associated person, or issuer of securities shall sell or offer for sale any securities in or from offices in this state, or sell securities to persons in this state from offices outside this state, by mail or otherwise, unless the person has been registered with the Office.

53. No registration has been filed or is in effect with the Office pursuant to section 517.12, Florida Statutes, and no exemption from registration exists with respect to the entities and persons described herein.

54. Defendants Berman Mortgage and M.A.M.C. have sold and offered to sell in or from offices within the State of Florida securities in the form of fractionalized interests in mortgage loans.

BASIS FOR RELIEF SOUGHT

I. TEMPORARY AND PERMANENT INJUNCTION

55. The proper issuance of a temporary injunction requires a showing of four elements: “(1) irreparable harm; (2) a clear legal right; (3) an inadequate remedy at law; and (4) that the public interest will be served.” Provident Mgmt. Corp. v. City of Treasure Island, 796 So.2d 481 (Fla. 2001); Weinstein v. Aisenberg, 758 So.2d 705, 706 (Fla. 4th DCA 2000).

Where the government seeks an injunction in order to enforce its police power, any alternative remedy is ignored and irreparable harm is presumed. Harvey v. Wittenberg, 384 So.2d 940 (Fla. 3d DCA 1980); PM Investments, Inc. v. City of Tampa, 779 So.2d 404 (Fla. 2d DCA 2000); Metropolitan Dade County v. O’Brien, 660 So.2d 364 (Fla. 3rd DCA 1995).

56. Without an injunction prohibiting Defendants and their representatives from disbursing investors’ funds, the investors and/or borrowers will suffer irreparable harm, in that the investors’ funds will continue to be depleted.

57. The Office is substantially likely to prevail on the merits because it has shown in this verified pleading that the Defendants have violated the law. The Office has established that the Defendants have violated sections 494.0025(4)(a), (b), (c), 494.0061(1)(c), 494.00721(2), 494.0072(2)(b), (c), (e), (g), (h), (m), (p) and (q), and 494.0076(1) 1 and 2, Florida Statutes, as well as sections 517.07 and 517.12, Florida Statutes. In City of Jacksonville v. Naegele Outdoor Advertising Co., 634 So.2d 750, 753 (Fla. 1st DCA 1994) approved, 659 So.2d 1046 (Fla. 1995), the Court stated that a

substantial likelihood of success on the merits is shown if good reasons exist for anticipating a favorable result.

58. The Plaintiff has no adequate remedy at law because without this Court's issuance of an Injunction, the Office cannot prevent Defendants, their representatives and agents from disbursing investors' funds and further depleting any assets that rightfully belong to those investors.

59. It is in the interest of the State of Florida to protect the investors and borrowers of the Defendants as evidenced by the Legislative enactment of Chapter 494, Florida Statutes, The Florida Mortgage Brokerage and Lending Act and the Legislative enactment of Chapter 517, Florida Statutes, the Florida Securities and Investor Protection Act.

60. Plaintiff requests that the Court exercise its discretion and dispense with the requirement of a bond in this matter. This petition seeks to protect the rights of innocent third parties. Fla.R.Civ.P.1.610(b) provides that when an injunction is issued on the pleading of any state agency, the court may dispense with the requirement of a bond. Sunplus Credit, Inc. v. Office of the Attorney General, 752 So.2d 1225 (Fla. 4th DCA 2000).

II. APPOINTMENT OF RECEIVER

61. The appointment of a receiver rests within the sound discretion of the Court. The Court must exercise its judicial discretion according to the circumstances of each case, and intended to promote the ends of justice and protect the rights of the parties. Apalachicola Northern R. Co. v. Sommers, 79 Fla. 816, 85 So. 361, 362 (1920); Puma Enterprises Corp. v. Vitale, 566 So.2d 1343 (Fla. 3d DCA 1990).

The party seeking the appointment of the receiver must establish a right or interest in the property that is the subject of the litigation. Apalachicola Northern R. Co. v. Sommers, 79 Fla. 816, 85 So. 361, 362 (1920). The property in question must be in danger of being lost or removed. Electro Mechanical Products, Inc. v. Borona, 324 So.2d 638 (Fla. 3d DCA 1976). Furthermore, the appointment of a receiver must be to prevent the injury or further injury to the property. Akers v. Corbett, 138 Fla. 730, 190 So. 28 (1939). Finally, the court must determine that there exists no alternative remedy to protect the property or the interests of the parties in the property. Recarey v. Rader, 320 So.2d 28 (Fla. 3d DCA 1975)

62. A receiver is needed in this cause to receive, preserve and protect the property, assets and income of Defendants Berman Mortgage and M.A.M.C. and the Relief Defendants and their investors, based on the facts, as alleged herein.

63. The appointment of a receiver is necessary to prevent further financial harm to the investors and borrowers of the Defendants and Relief Defendants. A less drastic remedy is not available.

64. The Office requests that the Court appoint Michael I. Goldberg, Esquire as the Receiver in this matter.

65. The Office also requests that the receiver be entitled to recover fees, attorneys' fees, expenses, and court costs.

RELIEF REQUESTED

WHEREFORE, the Office respectfully requests that this Honorable Court:

A. Temporary and Permanent Injunction

Issue a Temporary Injunction and a Permanent Injunction, pursuant to

§ 494.0013 and 517.191, Florida Statutes, and Fla.R.Civ.P. 1.610 restraining and enjoining the named Defendants and Relief Defendants, their officers, agents, servants, employees, and representatives, and all persons in active concert or participating with them, and each of them from violating any of the provisions of Chapters 494 and 517, Florida Statutes and from disbursing any funds received from borrowers to the investors.

B. Receivership

Appoint a receiver, pursuant to §§ 494.0013 and 517.191, Florida Statutes, and Fla.R.Civ.P. 1620, for the property, assets, and business of Defendants Berman Mortgage and M.A.M.C. and the Relief Defendants, including, but not limited to the books, records, documents, and papers appertaining thereto, with such powers and duties as to custody, collection, administration, report preparation, winding up, and liquidation of said property and business and all other powers this Court deems fit and proper.

C. Further Relief

Grant such other and further relief as this Court may deem just and proper.

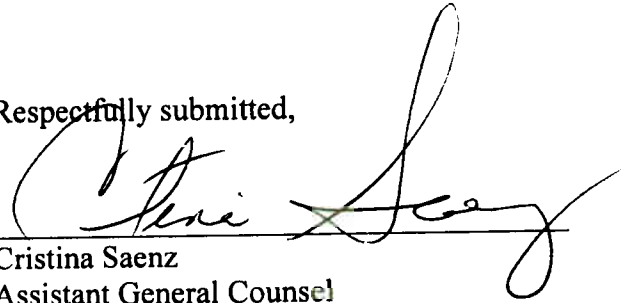
D. Retention of Jurisdiction

The Office respectfully requests that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may hereby be entered, or to entertain any suitable application or motion by the Office for additional relief within the jurisdiction of this case.

WHEREFORE, Plaintiff, State of Florida, Office of Financial Regulation
requests this Court to enter orders granting the relief prayed for herein.

Dated: 12/11/07

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Cristina Saenz', written over a horizontal line.

Cristina Saenz
Assistant General Counsel
Fla. Bar No.: 0001627
Office of Financial Regulation
401 N.W. 2nd Avenue, Ste. N-708
Miami, Florida 33128
Tel.: (305) 536-0308