

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 20-CIV-21964-CMA**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

TCA FUND MANAGEMENT GROUP CORP.,
et al.,

Defendants.

_____ /

**RECEIVER'S MOTION FOR LEAVE
TO INSTITUTE LITIGATION ON CONTINGENCY FEE BASIS**

Jonathan E. Perlman, Esq., as Receiver, moves under Section X of the Court's Order Granting Plaintiff Securities and Exchange Commission's Unopposed Expedited Motion for Appointment of Receiver [ECF No. 5] ("Order") for leave to engage counsel to initiate litigation on a contingency fee basis. In support, the Receiver states:

BACKGROUND

1. The Court's Order states that the Receiver was appointed for the purposes of "marshaling and preserving all assets of the Receivership Entities ("Receivership Assets"), and those assets of the Receivership Entities that: (a) are attributable to funds derived from investors or clients of the Receivership Entities; (b) are held in constructive trust for the Receivership Entities; (c) were fraudulently transferred by the Receivership Entities; and/or (d) may otherwise be includable as assets of the estates of the Receivership Entities." Order at 1.

2. Under paragraph 37 of the Order,

37. Subject to Receiver's obligation to expend receivership funds in a reasonable and cost-effective manner, the Receiver is authorized, empowered and directed to investigate the manner in which the financial and business affairs of the Receivership Entities were conducted and (after obtaining leave of this Court) to institute such actions and legal proceedings, for the benefit and on behalf of the

Receivership Estate, as the Receiver deems necessary and appropriate; the Receiver may seek, among other legal and equitable relief, the imposition of constructive trusts, disgorgement of profits, asset turnover, avoidance of fraudulent transfers, rescission and restitution, collection of debts, and such other relief from this Court as may be necessary to enforce this Order. Where appropriate, the Receiver should provide prior notice to Counsel for the Commission before commencing investigations and/or actions. *Id.* at 13, ¶37.

3. The Receiver has conducted an investigation and identified fraudulent transfer and related claims that the Court authorized, empowered and directed the Receiver to bring under paragraph 37 of the Order, subject to the obligation to expend receivership funds in a reasonable and cost effective manner (each a “Claim” and together the “Claims”). If necessary, the Receiver will provide additional information to the Court upon request regarding the substance of the Claims, under seal or in camera or in another manner that will protect the privileged and confidential nature of the information.

4. The Receiver has determined that it is not in the estate’s best interest to pay for litigation related to the Claims on an hourly basis. The Receiver, therefore, has conferred with his counsel, Genovese, Joblove & Battista, P.A. (“GJB”), which has agreed to handle the Claims on behalf of the receivership estate on a contingency-fee basis. GJB has experience in handling these types of claims with favorable results, and the contingency fee arrangement will minimize the out-of-pocket administration expense and risk to the receivership estate.

5. The Receiver proposes that as a reasonable attorney’s fee, GJB receive:

- a. 27.5% of any recovery obtained on a Claim pre-suit;
- b. 30% of any recovery obtained on a Claim post-filing but pre- answer; and
- c. 33% of any recovery obtained after an answer is filed.

6. Payment of any fees would be subject to approval of this Court. The costs of litigation will be reimbursed by the Receivership Estate, also subject to this Court’s approval.

GJB's engagement on similar terms has been approved by courts in the Southern District of Florida in similar receivership cases.

RELIEF REQUESTED AND MEMORANDUM OF LAW

7. The Receiver believes it is in the best interest of the receivership estate to engage GJB on a contingency-fee basis to pursue the Claim. Prosecuting the Claims on an hourly basis could potentially deplete the receivership estate's cash on hand and other resources that might otherwise be used for distributions. Proceeding on a contingency fee basis is consistent with the Order's directive "to expend receivership funds in a reasonable and cost-effective manner."

8. This Court has broad powers and discretion to appoint a receiver, to award compensation and reimburse expenses incurred by the receiver in the performance of his duties, and to determine the appropriate action to be taken in the administration of the receivership. *See Securities & Exchange Commission v. Elliott*, 953 F. Supp. 1560 (11th Cir. 1992).

9. In accordance with the Order, the Receiver has consulted with Counsel for the Commission concerning the relief sought in this motion. The Commission does not object to the proposed relief, and does not take a position on the underlying merits of the Claims.

10. Any compensation to the Receiver and any fees or reimbursement of costs to GJB will be subject to the approval of this Court.

11. The Receiver respectfully requests that the Court grant the motion without delay so that the Receiver can expeditiously pursue the Claims for the benefit of the receivership.

CONCLUSION

WHEREFORE, the Receiver requests the Court (i) grant this motion, (ii) grant leave to initiate litigation of the Claims in accordance with paragraph 37 of the Order, (iii) grant leave to

engage GJB on a contingency fee basis for the purpose of pursuing the Claims, and grant such other and further relief as the Court deems appropriate.

CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 7.1(A)3

Pursuant to Local Rule 7.1(a) 3, undersigned counsel hereby certifies that they have conferred with counsel for the Commission, as set forth above and is authorized to represent that the Commission does not object to the relief sought in the motion.

Respectfully submitted this 18th day of June 2021.

GENOVESE JOBLOVE & BATTISTA, P.A.
Attorneys for Jonathan E. Perlman, Receiver
100 Southeast 2nd Street, Suite 4400
Miami, Florida 33131
Tel: (305) 349-2300;
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By: /s/ Michael A. Friedman, Esq.
Michael A. Friedman Esq., FBN 71828

CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2021, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all parties registered to receive electronic notice and or some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: /s/ Michael A. Friedman, Esq.
Michael A. Friedman Esq., FBN 71828

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**ORDER GRANTING RECEIVER'S MOTION FOR LEAVE
TO INSTITUTE LITIGATION ON CONTINGENCY FEE BASIS**

THIS MATTER came before the Court upon the motion of Jonathan E. Perlman, Esq., as Receiver, for Leave to Institute Litigation on a Contingency Fee Basis [ECFD No. ___] (the "Motion"), which seeks leave of Court under Section X of the Court's Order Granting Plaintiff Securities and Exchange Commission's Unopposed Expedited Motion for Appointment of Receiver [ECF No. 5] ("Order") to engage counsel to initiate litigation on a contingency fee basis. The Court having reviewed the Motion and being otherwise duly advised, it is

ORDERED AND ADJUDGED as follows:

1. The Motion is **GRANTED**.
2. The Receiver may pursue the fraudulent transfer and related Claims referenced in the Motion subject to the other applicable provisions of the Order.
3. The Receiver may engage counsel on a contingency fee basis as set forth in the Motion. Payment of compensation and reimbursement of expenses is subject to further approval of this Court.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, this _____ day
of _____ 2021.

CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: All counsel of record