

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

UNITED STATES COMMODITY	§
FUTURES TRADING COMMISSION,	§
	§
<i>Plaintiff,</i>	§
	§
v.	§
§	Civil Action No. A-12-CV-0862-LY
	§
SENEN POUSA, INVESTMENT	§
INTELLIGENCE CORPORATION,	§
DBA PROPHETMAX MANAGED FX,	§
JOEL FRIANT, MICHAEL DILLARD, and	§
ELEVATION GROUP, INC.,	§
	§
<i>Defendants.</i>	§

**ORDER GRANTING RECEIVER'S  
MOTION FOR APPROVAL OF NINETEENTH FEE APPLICATION**

Before the Court is the Receiver's Motion for Approval of the Nineteenth Fee Application and Brief in Support ("Motion"), covering the one-month time period from May 1, 2023, through May 31, 2023.

Before the Court is the Receiver's Motion for Approval to Pay his Fees and Expenses of \$25,891.38 for the following:

1. Receiver's fees of \$14,921.66
2. Senior paralegal total expenses of \$2,304.00.
3. Paralegal total expenses of \$1,608.00
4. Kinstellar (Slovakia) €3,790.00 (USD \$4,137.48)
5. Archipel (Paris France) €2,675.00 (USD \$2,920.24)

Having considered the Motion, the evidence presented, and arguments of counsel, if any, the Court finds the time spent, services performed, hourly rates charged, and expenses incurred by the Receiver were reasonable and necessary for the Receiver to perform his Court-ordered duties. The Court concludes the Motion should be, and is hereby, GRANTED.

It is therefore ORDERED that payment for interim fees and expenses listed above totaling \$25,891.38.00 for the Receiver's invoice and for services rendered to the ProphetMax Receivership Estate and IB Capital Receivership Estate during the Nineteenth Fee Period is approved.

SIGNED this 29<sup>th</sup> day of June, 2023.



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DAVID A. EZRA  
SENIOR UNITED STATES DISTRICT JUDGE



*Highway Express, Inc.*, 488 F.2d 714, 717-19(5th Cir.1974).<sup>1</sup> The Court in the Stanford Receivership observed that this particular receivership is essentially equivalent to a Chapter 7 bankruptcy. *See* Civ. Action No. 3;09-cv-072 4, Doc. 1093 at 39 ("Ultimately, this particular receivership is the essential equivalent of a Chapter 7 bankruptcy. While a different federal statutory scheme - one that is looser and more flexible than the Bankruptcy Code-is at work, the overall purposes and objectives of the Stanford receivership track the overall purposes and objectives present in the Bankruptcy Code and a Chapter 7 proceeding."). Therefore, the factors governing the analysis of requests for professional fees and expenses incurred in the bankruptcy context are also relevant to the Court's valuation of the Receiver's fee applications.

Under 11 U.S.C. § 330(a)(3), in examining a request for fees and expenses to be awarded to an examiner, trustee under chapter 11, or other professional in the context of a bankruptcy, a court considers, in addition to the amounts involved and results obtained, "the nature, the extent, and the value of such services, taking into account all relevant factors, including (A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered

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<sup>1</sup> Under *Johnson*, courts consider the following factors in determining whether the time spent, services performed, expenses incurred, and hourly rates charged are reasonable and necessary: (1) the time and labor required for the litigation; (2) the novelty and complication of the issues; (3) the skill required to properly litigate the issues;(4) whether the attorney was precluded from other employment by the acceptance of this case; (5) the attorney's customary fee; (6) whether the fee is fixed or contingent; (7) whether the client or the circumstances-imposed time limitations; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorney; (10) the "undesirability" of the case; (11) the nature and length of the attorney-client relationship; and (12) awards in similar cases. *Id.* at 717-19. In applying these factors, "the district court must explain the findings and the reasons upon which the award is based. However, it is not required to address fully each of the 12 factors." *Curtis v. Bill Hanna Ford, Inc.*, 822 F.2d 549, 552 (5th Cir. 1987) (citation omitted); *see also SEC v. W.L. Moody & Co., Bankers (Unincorporated)*, 374 F. Supp. 465,480 (S.D. Tex. 1974), *aff'd*, *SEC v. W.L. Moody & Co.*, 519 F.2d 1087 (5th Cir. 1975); *SEC v. Mega. fund Corp.*, No. 3:05-CV-1328-L, 2008 WL 2839998, at \*2 (N.D. Tex. June 24, 2008); *SEC v. Fifth Ave. Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973).

toward the completion of, a case under [11 U.S.C. § 330(a)(3)]; (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under [11 U.S.C. § 330(a)(3)]." 11 U.S.C. § 330(a)(3).

#### **A. ING BANK SETTLEMENT**

As previously stated in the Receiver's Eighteenth fee application, a telephonic hearing was held on all pending motions before the Court on March 22, 2023.<sup>2</sup> On March 23, 2023, the Court entered an Order granting the Receiver's First Amended Motion to Approve Settlement, to Issue Ancillary Channeling and Bar Injunctions, and to Establish Distribution Procedures. The Order is final and is no longer appealable. The Receiver notified ING's counsel of such, and the distribution phase of the ING settlement has begun.<sup>3</sup> The ING settlement is being paid in EUROS to the Receivership. All distribution payments to investors will be issued in USD. The ING settlement will result in a payment to investors of 33.87% of their approved claim amounts.

In regard to timing, to date, the DocuSign envelopes are in the process of being emailed to all investors. The Receiver estimates Investor Claimants will begin receiving their distributions by July 7, 2023.<sup>4</sup>

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<sup>2</sup> Receiver's Motion for Approval of Eighteenth Fee Application [Dkt. # 281, 283]

<sup>3</sup> FINAL ORDER APPROVING [Dkt. # 263] Settlement, Issuing Channeling and Bar Injunctions, and Establishing Distribution Procures.

<sup>4</sup> ORDER [Dkt. 268] on [Dkt #253] Receiver's Motion for Distribution Plan and Procedures for Approval of Disbursement of Funds to Approved Investor Claimants from the ING Bank Settlement.

## **B. MOTION FOR FIRST INTERIM DISTRIBUTION**

As previously reported, on March 23, 2023, the Court also entered an Order granting the Receiver's Unopposed Motion for Disbursement of Funds for Approval of First Interim Distribution Plan & Procedures. This Order is also final.<sup>5</sup> This distribution will be distributed from funds the Receiver has recovered and will represent a payment to investors of 20% of their approved claim amounts.<sup>6</sup> The information gathered as part of the ING settlement distribution will also be used for the first interim distribution, as well. The Receiver estimates Investor Claimants will begin receiving their first interim distribution payments by the end of summer or early fall of 2023.<sup>7</sup>

## **C. RECEIVER'S ACTIVITIES FOR THIS FEE PERIOD**

Due to the ING Bank Settlement becoming final, and the anticipation of the upcoming distributions, the Receiver continued to receive a significant number of direct emails and telephone calls from investor claimants requesting updates. Correspondingly, a significant amount of time during the Fee Period was spent communicating with investors as well as reviewing documents that U.S. and International approved Investor Claimants will receive and execute in their DocuSign envelopes.<sup>8</sup>

The Receiver also filed a Motion for Instructions from the Court. This motion became necessary because of a dispute between the estate of a deceased claimant and her former business

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<sup>5</sup> ORDER GRANTING [Dkt. # 249] Receiver's Unopposed Motion for Approval of First Interim Distribution Plan and Procedures

<sup>6</sup> Due to ING Bank's time constraints, the ING distribution will be made first. Then, we will begin making the first interim distributions.

<sup>7</sup> ORDER [Dkt. 262] on [Dkt #249] Receiver's Unopposed Motion for Approval of First Interim Distribution Plan and Procedures.

<sup>8</sup> The Receiver and his paralegal are preparing letters explaining the details of the two upcoming distributions, the ING Waiver Settlement for International investors to sign, W-9 forms for U.S residents governed by federal tax laws, wire transfer forms from international investors to complete (all documents needed to be recreated or uploaded in the DocuSign software application).

partner over who was entitled to receive payment in connection with an investor entity that was at one time jointly owned. The Receiver recommended the approved claim amount be divided evenly. This Court granted the Receiver's motion.

The Receiver's paralegals have worked in the DocuSign application; the Receiver oversaw the steps and provided direct feedback on the execution.

The majority of the Receiver's time during this fee period, was focused on repatriating funds back from Slovakia. He continued to communicate with the Dutch Public Prosecutors Office ("DPPO") regarding the timing of the \$7.3 million in Slovakian funds and when it is expected to be repatriated. Given the delays in receiving any substantive updates from the DPPO, the Receiver reached out to his Slovakian counsel to further explore domestication of the Riknik judgment issued by this Court in Slovakia.

One of the logistical difficulties in enforcing the judgment in Slovakia was the requirement that a copy of the execution notice had to be served upon Riknik, at its registered address in the Seychelles. Because Riknik failed to file annual reports with the government of the Seychelles, in 2015, it was stricken from the Seychelles company registry. From a legal perspective, the company no longer existed. It appeared it might be necessary to file a case in the Seychelles seeking to have Riknik reinstated to the Seychelles company registry, in order to effectuate service on Riknik at its corporate seat.

The Receiver was provided a budget from Seychelles counsel that estimated the process could cost more than \$150,000.00 and it could take up to a year to complete; there was no guarantee the suit would be successful.

Fortunately, in mid-May of 2023, the Receiver's Slovakian counsel filed an equitable proceeding with a court in Slovakia; it would allow the Receiver to avoid having to go through the

process in the Seychelles of attempting to restore Riknik's existence. The Receiver's Slovakian counsel was successful in obtaining a ruling from the Slovakian court. This resulted in the court issuing a letter instructing the enforcement officer to continue with the enforcement of the claim to have the judgment against Riknik domesticated in Slovakia. The Slovakian court also ruled that, instead of restoring Riknik to the Seychelles company registry, it would be sufficient to have the enforcement notice posted in a Slovakian publication known as the Commercial Journal published by the Ministry of Justice.<sup>9</sup> That notice has been posted and if no objections are received, the enforcement officer in Slovakia is expected to be able to proceed with execution on the Riknik funds by August 15, 2023.

The Receiver also spent significant time communicating with his foreign French and Moroccan counsel to assist in repatriating the equivalent of approximately \$4.5 million in Moroccan funds back to the United States. These efforts will be explained more thoroughly in the status report, due to this Court on July 31, 2023.

#### **PARALEGALS' ACTIVITIES FOR THIS FEE PERIOD**

The majority of the paralegals' activities consisted of communicating with investors and learning the DocuSign software program to send secure files for the approved Investor Claimants to share sensitive financial information, in preparation for the upcoming distributions. The senior paralegal responded to numerous investor claimants via email and telephone regarding responses to claim questions, provided status updates and responded to individual specific questions, as they pertained to their claims and the timing of anticipated distributions. She validated or updated their contact information where applicable and updated the investor spreadsheet. She also spent time

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<sup>9</sup> The Slovakian court authorized the use of the publication. It was not possible to deliver the document to the registered seat of Riknik.



assisting the Receiver with preparing court papers. As part of her monthly activities, she updates the IB Capital ProphetMax bookkeeping notebook to include all expense activity for the month of May for the expenses the Receiver was approved to issue.<sup>10</sup> Her total hours for the month of May were 19.20; her invoice totaled \$2,304.00. As previously stated, the Receiver's other paralegal focused on learning and testing the DocuSign. His total hours for the month of May were 20.10; his invoice totaled \$1,608.00.<sup>11</sup>

## **RECEIVER'S COUNSELS' ACTIVITIES**

### **I. Kinstellar (Slovakia)**

The Receiver inadvertently overlooked an invoice from the Kinstellar firm that was submitted on June 17, 2022. That outstanding invoice was recently brought to the Receiver's attention. It covered the time period from November 10, 2020 through January 25, 2022.

The June 2022 Kinstellar invoice included their initial time in initiating the Slovakian enforcement action, communicating with the Slovakian Court as part of that proceeding relative to possible service on Riknik and communicating with the Receiver regarding the enforcement action. In addition, the Kinstellar firm spent time communicating and meeting with counsel for the person that was designated as Riknik's ultimate beneficial owner (Zsofia Dobos). The Receiver had initially attempted to have Ms. Dobos execute documents assigning the proceeds of Riknik's Slovakian bank account to the Receiver. Neither the Receiver nor his Slovakian counsel were successful in their efforts to have the assignment documents executed.

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<sup>10</sup> The IB Capital ProphetMax notebook includes all bank statements, invoices, court papers with corresponding orders and an Excel spreadsheet of account activity.

<sup>11</sup> The Receiver's senior paralegal invoiced 13.8 hours at \$50.00 per hour which is thirty-three percent of her normal hourly rate for a total of \$690.00 and 13.6 hours at \$120.00 per hour which is 20% of her normal hourly rate for a total of \$1,632.00. The Receiver's paralegal invoiced 4.9 hours at \$30.00 per hour which is 70% of his normal hourly rate for a total of \$147.00 and 7 hours at \$80.00 per hour which is 20% for a total of \$560.00. [Dkt. 265]

Total fees and expenses for Kinstellar's June 2022 invoice for their combined fee note amounts to €3790 (USD 4,137.48)<sup>12</sup>.

## **II. Archipel (Paris, France)**

The Archipel's firm activities related to communications in assisting the Receiver with foreign recovery efforts in Morocco. The firm's time invoiced for analyzing documents and finalizing their strategy and budget with the Receiver's Moroccan counsel. The Receiver requested this information to provide a strategic and financial plan to establish a path forward.

Total fees and expenses for their most recent invoice amounts to EUR €2,675 (USD 2,920.24).<sup>13</sup>

### **CONCLUSION AND PRAYER FOR RELIEF**

The Receiver requests the Court to approve his Nineteenth Fee Application totaling \$14,921.66 for his invoice which includes time expended by the Receiver for the one-month time period between May 1, 2023, through May 31, 2023. Attached as Exhibit 1 to this Motion for Approval of Nineteenth Fee Application and Brief in Support is the redacted invoice detailing all the Receiver's time entries during the Fee Period.

The Receiver requests the Court enter the proposed Order filed with this Motion to approve the payment of interim expenses of \$3,912.00 for the invoices of his two paralegals and \$7,057.52 for the Receiver's counsel for their invoices to the Receiver for the ProphetMax Receivership Estate and IB Capital Receivership Estate during the Nineteenth Fee Period, which were both reasonable and necessary for the Receiver to fulfill his Court-ordered duties.

Respectfully submitted,  
GUY HOHMANN

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<sup>12</sup> XE: Convert EUR/USD (June 28, 2023). Retrieved from <https://www.xe.com/currencyconverter/convert/?Amount=3790&From=EUR&To=USD>

<sup>13</sup> XE: Convert EUR/USD (June 28, 2023). Retrieved from <https://www.xe.com/currencyconverter/convert/?Amount=2675&From=EUR&To=USD>

By: /s/ Guy Hohmann

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Suite 1100  
Austin, Texas 78701  
(512) 495-1438

**RECEIVER FOR THE PROPHETMAX AND  
IB CAPITAL RECEIVERSHIP ESTATES**

**CERTIFICATE OF CONFERENCE**

The Receiver conferred with Timothy Mulreany, counsel for the CFTC, who stated the CFTC does not take a position on the Motion nor the relief sought herein.

/s/ Guy Hohmann

Guy Hohmann

**CERTIFICATE OF SERVICE**

On June 28, 2023, I electronically submitted the foregoing document with the Clerk of the Court of the U.S. District Court, Western District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Guy Hohmann

Guy Hohmann



## The Hohmann Law Firm

Norwood Tower  
114 West 7th Street, Suite 1100  
Austin, Texas , 78701  
Guyh@hohmannlaw.com  
www.hohmannlaw.com  
O: 5125519808

## INVOICE

Number	1298
Issue Date	5/1/2023
Due Date	5/31/2023
Email	guyh@hohmannlaw.com

### Bill To:

Guy Hohmann Receiver for ProphetMax and IB Capital  
114 West Seventh Street  
Suite 1100  
Austin, Texas 78701  
O: 512-495-1438

### Time Entries

Time Entries	Rate	Hours	Sub
GMH-RCVR 5/3/2023 Review lengthy email from investor with enclosures in connection with dispute with deceased investor's estate regarding allocation of claim payments, email to investor regarding tax returns for [REDACTED] for 2012 and permission to contact CPA that prepared its tax returns.	\$658.75	1.30	\$856.38
GMH-RCVR 5/4/2023 Review email and attachments from investor regarding disputed claims to upcoming distribution and email to investor's former CPA firm regarding same.	\$658.75	1.40	\$922.25
GMH-RCVR 5/8/2023 Email with Dennis Roossien regarding [REDACTED]	\$658.75	0.70	\$461.13
GMH-RCVR 5/9/2023 Continued with review and revisions to Motion for Instructions and review of source documents and emails, prepare proposed Order in connection with same. Prepare transmittal letter to investors in connection with First Interim Distribution and conference with Ryn Hohmann regarding same and multiple signature options in DocuSign for (1) Individual owned account, (2) Joint individual accounts and (3) Entity Owned Accounts, email from investor regarding Gallagher and Dion Order of Restitution and review and revise proposed response, email to my DOJ contact regarding restitution order.	\$658.75	4.70	\$3,096.13
GMH-RCVR 5/10/2023 Email from investor regarding email he received from the DOJ regarding Dion incarceration, email to the investor regarding responsive email seeking to obtain the contact information for the DOJ representative tasked with collecting on the \$30 million order of restitution.	\$658.75	0.40	\$263.50

EXHIBIT 1

Time Entries	Rate	Hours	Sub
GMH-RCVR 5/11/2023 Email with DPPO regarding status of Slovakian funds transfer and contact information of cause number for that proceeding, email to my French counsel regarding [REDACTED] [REDACTED] review and revise Motion for Instructions and Motion to Seal, email from [REDACTED] regarding possible agreement between him and the mother of the [REDACTED].	\$658.75	2.80	\$1,844.50
GMH 5/12/2023 Telephone conference with Tim Mulreany regarding Motion for Instructions and Fee Application. Review and revise 18th Fee Application. Email from Michel Geurkink regarding Hibma and Wan Der Waal, review of emails/agreements with the DPPO regarding same, emails to Tyler Cunningham and Michel Geurkink regarding same.	\$550.00	0.90	\$495.00
GMH-RCVR 5/13/2023 Email from Michel Geurkink regarding Hibma and Van der Wal distributions, review emails/agreements with the DPPO regarding same, emails to Tyler Cunningham & Michel Geurkink regarding same.	\$658.75	0.90	\$592.88
GMH-RCVR 5/14/2023 Review and revise proposed order on Eighteenth Fee Application.	\$658.75	0.10	\$65.88
GMH-RCVR 5/18/2023 Email to my Slovakian counsel regarding [REDACTED].	\$658.75	0.30	\$197.63
GMH-RCVR 5/22/2023 Emails with my Slovakian counsel regarding [REDACTED].	\$658.75	0.30	\$197.63
GMH-RCVR 5/25/2023 Email from my Slovakian counsel regarding [REDACTED] [REDACTED] lengthy email to my Slovakian and US counsel regarding [REDACTED], email from and to Emade Echade regarding status, review of previous communications with Seychelles counsel regarding restoration proceeding in the Seychelles, email from my US counsel regarding [REDACTED].	\$658.75	1.80	\$1,185.75
GMH-RCVR 5/26/2023 Emails with my US counsel regarding [REDACTED], telephone conference with Dennis Roossien regarding [REDACTED], review of investor's two claim submissions and supporting documents, review email from investor and respond to same.	\$658.75	1.80	\$1,185.75
GMH-RCVR 5/30/2023 Emails with investor regarding previously approved claim amounts, need for wire transfer records and manner in which he provided IB Capital with funds, review of documents provided by Kasrie Fodor law firm and ING wires from same firm.	\$658.75	1.60	\$1,054.00
GMH-RCVR 5/31/2023 Review of Britain based company's website which specializes in corporate restorations in the Seychelles. Order corporate report on Riknik and prepare lengthy email regarding background information in connection with Receivership, default judgment, Riknik and confiscation order proceedings in the Netherlands and Slovakia, emails with my Slovakian and US counsel regarding [REDACTED].	\$658.75	3.80	\$2,503.25
	<b>Time Entries Total</b>	<b>22.80</b>	<b>\$14,921.66</b>

## EXHIBIT 1

Total (USD)	\$14,921.66
Paid	\$0.00
Balance	\$14,921.66

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[Terms & Conditions](#)

Net 30

EXHIBIT 1

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AUSTIN DIVISION

UNITED STATES COMMODITY	§
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Having considered the Motion, the evidence presented, and arguments of counsel, if any, the Court finds the time spent, services performed, hourly rates charged, and expenses incurred by the Receiver were reasonable and necessary for the Receiver to perform his Court-ordered duties. The Court concludes the Motion should be, and is hereby, GRANTED.

It is therefore ORDERED that payment for interim fees and expenses listed above totaling \$25,891.38.00 for the Receiver's invoice and for services rendered to the ProphetMax Receivership Estate and IB Capital Receivership Estate during the Nineteenth Fee Period is approved.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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DAVID A. EZRA  
SENIOR UNITED STATES DISTRICT JUDGE