

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- DAE
	§	
SENEN POUSA, INVESTMENT	§	
INTELLIGENCE CORPORATION,	§	
DBA PROPHETMAX MANAGED FX,	§	
JOEL FRIANT, MICHAEL DILLARD, and	§	
ELEVATION GROUP, INC.,	§	
	§	
<i>Defendants.</i>	§	

**RECEIVER’S MOTION FOR APPROVAL OF TWENTY-SEVENTH FEE  
APPLICATION, STATUS UPDATE AND TO PAY EXPENSES AND BRIEF IN  
SUPPORT**

Guy M. Hohmann, the Court-appointed Receiver in the above-referenced ProphetMax Receivership matter and the ancillary IB Capital matter, files this Motion for Approval of Twenty-Seventh Fee Application, Status Update and to Pay Expenses and Brief in Support (the “Motion”) covering the one-month period from January 1, 2024, through January 31, 2024, (hereinafter “the Fee Period”).

The Receiver believes this Motion and brief in support demonstrate the Receiver’s fees and expenses were reasonable and necessary when considering the time period covered by the application and the results achieved by the Receiver during the Fee Period. For the Court’s convenience, the Receiver will convey details at a high level to avoid duplicate reporting.

## LEGAL STANDARD

The Receiver has previously briefed the legal standards for evaluating the reasonableness and necessity of professional fees and expenses. The Court has consistently evaluated the Receiver's fee applications using the factors set forth by the Seventh Circuit in *Johnson v. Georgia 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

---

<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. Seventh Ave. Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973).

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 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. FIRST INTERIM DISTRIBUTION**

As previously reported, during this fee period, the Receiver continues to distribute funds for the First Interim Distribution. On March 23, 2023, this Court approved the Receiver's Unopposed Motion for Approval of First Interim Distribution Plan and

Procedures.<sup>2</sup> As previously reported, the Receiver sought this Court's permission to extend the distribution period of the First Interim Distribution period until February 28, 2024.<sup>3</sup> The Receiver expects the First Interim Distribution to be completed prior to February 28, 2024.

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

### **1. Slovakia - \$7.2 million**

As noted in the Receiver's most recent status report, the Dutch Public Prosecutor's Office (the "DPPO") communicated with an individual within the Slovakian court system. The Receiver was informed a letter was sent to the "President of the court".

As to an update, on February 20, 2024, the Receiver received an email from the DPPO. It is the Receiver's belief it a substantial update. The DPPO received a court order from the Slovakian court and emailed it to the Receiver.<sup>4</sup> In that email, the DPPO stated it was their understanding the "Slovakian court stopped the confiscation proceeding on the basis of the request for withdrawal of the certificate and end the seizure of funds". The Receiver forwarded the document to his Slovakian counsel; in turn, they forwarded it to the Enforcement Officer. The Enforcement Officer will contact the bank where the funds are currently seized and report further to the Receiver's Slovakian counsel.

The Slovakian repatriation efforts are for a bank account holding approximately USD \$7.2 million.

---

<sup>2</sup> September 12, 2023, [Dkt. #295]. Signed Order [Dkt. #297]. Unopposed Motion Receiver's Motion to Amend Previously Issued Orders.

<sup>3</sup> March 3, 2023, [Dkt. #262]. Signed Order [Dkt. # 249]. Receiver's Unopposed Motion for Approval of First Interim Distribution Plan and Procedures.

<sup>4</sup> The DPPO requested a translated version in Dutch. Once, it is received; they will forward a copy to the Receiver.

## **2. Morocco – \$ 4.87 million**

Since the Receiver's most recent update, the Receiver's communication has been focused on the efforts needed for the Moroccan Consultant to be successful in assisting the Receiver with repatriating the misappropriated funds back to the U.S.

As to an update, the Receiver's French and Moroccan consultant has been active in requesting documents and information from the Receiver and the DPPO. The Receiver's French and Moroccan counsel drafted a report at the consultant's request to better understand the complexity of the three accounts that were seized.

In an attempt to gather bank account information on the three accounts held in Banque Populaire, the Receiver's Moroccan counsel contacted counsel for Banque Populaire. They were informed by the bank's counsel that it would be a violation of Morocco's banking privacy laws to release details. Thereafter, the Receiver contacted counsel for the actual account holders to see if they would be able to request that information directly from the bank and provide it the Receiver. The bank told the account holders they could not provide them with that information because the accounts were seized.

Obtaining this critical information, is one example of how the Receiver is hopeful the Moroccan consultant's expertise will be of assistance in the repatriation efforts. There are several unknown factors that will dictate the exact repatriation amount. They include the validation of the exact amounts in the seized bank accounts, a possible tax by the Kingdom of Morocco in an unknown amount and a small percentage of the funds that were derived from the separate Spot Forex fraud which will be shared with the

victims of that fraud. Even with these unknowns, it is the Receiver's belief the funds in the Moroccan accounts warrants his continued repatriation efforts.

### **C. COMMUNICATIONS WITH INVESTOR CLAIMANTS**

As previously stated, the First Interim Distribution is in its final stages. During this fee period, the Investor Claimants continued to be engaged in their communications with the Receiver's two paralegals. The email traffic and telephone inquiries continued to be immense. The majority of the emails and telephone calls fell into several categories: (1) when do we receive our next distribution (2) Investor Claimants U.S. governed by federal tax laws inquiring why are they receiving a MISC-1099 form, or (3) investors do not remember receiving a previous distribution and requesting copies of checks or wire confirmations as proof of their previous distributions. To date, in all instances the investors received the distribution(s) in question.

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

As previously outlined above, the senior paralegal's activities were and continue to be extremely active. In part it was due to email communications to and from the international investors to reconfirm wire instructions, send wires and validate wires were received.

Another main category for both paralegals was to attempt to obtain or clarify missing data or discrepancies received in the required W-9 forms. The vast majority of approximately 550 W-9 forms received were completed with accuracy; it was the remaining five (5) percent that presented the largest challenge to obtain or obtain corrected W-9 forms.

Over the past few months, as the W-9 forms were received, the paralegals manually entered the Investor Claimant's information into a template. This template was securely emailed via ShareFile to this Court's approved distribution agent to create the MISC-1099 forms. During this fee period, the paralegals spent time validating and comparing the spreadsheet data against the original W-9 forms to ensure its accuracy.<sup>5</sup> The paralegals also managed general communications and updates pertaining to the receivership.

The senior paralegal's total hours during this fee period were 83.9; her invoice totaled \$10,068.00. The paralegal's total hours were 101.3 and his invoice totaled \$8104.00.<sup>6</sup>

## **E. RECEIVER'S COUNSELS' ACTIVITIES FOR THIS FEE PERIOD**

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

The Archipel's firm most recent invoices are for the months of January 2024; they include activities related to communications in assisting the Receiver with foreign recovery efforts in Morocco. The firm's time invoiced for activities relating to requesting documents on behalf of the consultant who they and their Moroccan co-counsel retained that specializes in making presentations to the Moroccan Currency Exchange Office and whom they believe can assist in repatriating funds back to the United States.<sup>7</sup> They also created a report for the consultant to assist in understanding

---

<sup>5</sup> September 7, 2023, [Dkt #295]. Signed Order [Dkt. #297]. Unopposed Motion to Amend Previously Issued Orders.

<sup>6</sup> The Receiver's paralegal invoiced 101.3 hours at \$80.00 per hour which is a 20% discount from his normal hourly rate for a total of \$8,140.00. The senior paralegal invoiced 83.9 hours at \$120.00 per hour which is a 20% discount of her normal hourly rate for a total of \$10,068.00 [Dkt. 265].

<sup>7</sup> On November 6, 2023, [Dkt. #304]. This Court granted the Receiver's Motion for Approval to Retain a Moroccan Consultant.

this complex fraud. They also held conference calls and had numerous email exchanges with the Receiver regarding all of the above.

Total fees and expenses for their most recent invoices from January amounts to EUR €3,750 (USD \$4,053.55).<sup>8</sup> Their fee also include the expense this Court's approved consultant's engagement flat fee of EUR €14,303.08 (USD \$15,461.64)<sup>9</sup>

## **II. BRAHMA (Casablanca, Morocco)**

The Brahma's firm activities for their most recent invoice were related to communications in assisting the Receiver with foreign recovery efforts in Morocco. Their activities included exchanges with their co-counsel in France regarding the consultant who specializes in support of clients before the Moroccan Currency Exchange Office and the instruction letter to the consultant. They participated in drafting the requested report for the consultant and reviewing the mutual legal assistance request sent by the Moroccan authorities. Total fees and expenses for their most recent invoice from January amounts to \$1,620.00.<sup>10</sup>

## **F. ADMINISTRATIVE EXPENSES**

During this fee period the Receiver's senior paralegal mailed multiple documents to an elderly widow.<sup>11</sup> In an attempt to reach an Investor Claimant to obtain the required

---

<sup>8</sup> XE: Convert EUR/USD (February 20, 2024).  
Retrieved from  
<https://www.xe.com/currencyconverter/convert/?Amount=3750&From=EUR&To=USD>

<sup>9</sup> XE: Convert EUR/USD (February 20, 2024).  
Retrieved from  
<https://www.xe.com/currencyconverter/convert/?Amount=15,461.64&From=EUR&To=USD>

<sup>10</sup> The Brahma firm invoices in USD.

<sup>11</sup> The mailing included the deceased Investor Claimants original claim documentation, correspondence between the Investor Claimant and the receivership, the order



W-9 form, the senior paralegal left multiple telephone messages and sent emails to the Investor Claimant. The senior paralegal made contact with a distraught widow. The widow was confused, not aware of his claim and did not use a computer. The UPS expense totaled \$29.82.

The Receiver received two (2) invoices for the month of January 2024 from this Court's approved distribution agent. The first invoice was for \$3,677.64 and the second was for \$6,767.31. The first invoice was for activities relating to the First Interim Distribution including preparing and mailing checks.<sup>12</sup> The second invoice was for activities relating to performing services related to the tax filing documents such as receiving the W-9 form template, generating and mailing the Misc. 1099 forms to approximately 540 Investor Claimants.

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

The Receiver requests the Court approve his Twenty-Seventh Fee Application for his invoice which includes time expended by the Receiver for the one-month time period between January 1, 2023, through January 31, 2024, totaling \$7,312.14 Attached as Exhibit 1 to this Motion for Approval of Twenty-Seventh Fee Application and Brief in Support is the redacted invoice detailing all the Receiver's time entries during the Fee Period.

---

appointed Guy Hohmann as the Receiver, general receivership information as well as a letter from Guy Hohmann. It included a return self-addressed envelope to the Hohmann Law Firm to receive the will, death certificate and completed W-9. To date, the Receiver has not received returned documents.

<sup>12</sup> First Interim Distribution checks are mailed on a rolling basis. The determining factor is the Receiver has the required W-9 form required for U.S. Investors governed by federal tax laws.

The Receiver requests the Court enter the proposed Order filed with this Motion to approve (1) the payment of interim expenses of \$18,172.00 for the invoices of his two paralegals (2) the payment of the Receiver's foreign counsel's invoices totaling \$19,673.08 (3) the receivership administrative expenses totaling \$10,474.77. The total fees and expenses for this fee period are \$57,094.10 for the Receivership Estate and IB Capital Receivership Estate during the Twenty-Seventh Period, all of which were both reasonable and necessary for the Receiver to fulfill his Court-ordered duties.

Respectfully submitted,  
GUY HOHMANN

By: /s/ Guy Hohmann  
Guy Hohmann  
State Bar No. 09813100  
guyh@hohmannlaw.com  
114 West 7<sup>th</sup> Street  
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**

February 21, 2024, 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

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

UNITED STATES COMMODITY  
FUTURES TRADING COMMISSION,

*Plaintiff,*

**V.**

Civil Action No. A-12-CV-0862-DEA

**SENEN POUSA, INVESTMENT  
INTELLIGENCE CORPORATION,  
DBA PROPHETMAX MANAGED FX,  
JOEL FRIANT, MICHAEL DILLARD, and  
ELEVATION GROUP, INC.,**

*Defendants.*

**ORDER GRANTING RECEIVER'S**  
**MOTION FOR APPROVAL OF TWENTY-SEVENTH FEE APPLICATION AND**  
**EXPENSES**

Before the Court is the Receiver’s Motion for Approval of the Twenty-Seventh Fee Application and Brief in Support (“Motion”), covering the one-month time period from January 1, 2024 through January 31, 2024.

Before the Court is the Receiver's Motion for Approval to Pay his Fees and Expenses of \$57,094.10 for the following:

1. Receiver's fees of \$7,312.14
2. Senior paralegal total expenses of 10,068.00
3. Paralegal total expenses of \$8,104.00
4. Archipel (France) fees and expenses of €14303.08 (USD \$15,461.64)
5. Brahma (Morocco) fees of \$1,620.00
6. The Hohmann Law Firm expenses \$29.82
7. Donlin Recano & Company Inc. fees and expenses of \$10,444.95

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 \$57,094.10 for the Receiver's invoice and for services rendered to the ProphetMax Receivership Estate and IB Capital Receivership Estate during the Twenty-Seventh Fee Period is approved.

SIGNED this 22<sup>nd</sup> day of February, 2024.



---

DAVID A. EZRA  
SENIOR UNITED STATES DISTRICT JUDGE