

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

UNITED STATES COMMODITY
FUTURES TRADING COMMISSION,

Plaintiff,

V.

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

Defendants.

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

**RECEIVER’S MOTION FOR APPROVAL OF TWENTY-EIGHTH 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-Eighth Fee Application, Status Update and to Pay Expenses and Brief in Support (the “Motion”) covering the one-month period from February 1, 2024, through February 29, 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 Eighth Circuit in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19(5th Cir.1974).¹ 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.

¹ 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. Eighth Ave. Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973).

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

During this fee period, the Receiver completed the distribution of funds for the First Interim Distribution. Due to certain financial institutions stringent wire fraud screening processes, there were numerous international approved Investor Claimants' that had issues receiving their First Interim Distribution wires. The Receiver was required to send correspondence as well as court papers to the investors to share with the financial institutions to release the funds to their accounts.² In several instances wires were rejected and returned to the Receiver. Those investors

² January 15, 2016, [Dkt. # 16]. Order of Preliminary Injunction and Other Equitable Relief; March 3, 2023, [Dkt. # 262]. Order on Receiver's Unopposed Motion for Approval of First Interim Distribution Plan and Procedures.

subsequently opened new accounts at different institutions. In those instances, the Receiver's senior paralegal successfully rewired their First Interim Distribution to their new accounts.

B. RECEIVER'S ACTIVITIES FOR THIS FEE PERIOD

1. Slovakia - \$7.2 million

In early March, the Receiver received new information from his Slovakian counsel. The Receiver's Slovakian counsel was informed by the Enforcement Officer there may be another attachment on the account that may have priority over the Receiver's claims to the funds. The Receiver requested his Slovakian counsel, if possible, to obtain additional information concerning the other possible claim to the funds.

The Receiver was informed, the Enforcement Officer is considering whether he should abandon his collection efforts. If the Enforcement Officer chooses to abandon the claim to the funds, the Receiver's Slovakian counsel informed the Receiver he would have a right to appeal that decision in the Slovakian courts. If the Enforcement Officer chooses to abandon the claim to the funds and after, the Receiver learns more regarding the prospects of a successful appeal from his Slovakian counsel; the Receiver will seek instructions from this Court on how to proceed.

2. Morocco – \$ 4.87 million

In Morocco, the Receiver retained consultant recommended the account holders (Emade Echade, Essadia and Rabiaa Moutaouakil) send letters to two separate individuals at Banque Populaire requesting they be provided with specific information regarding the accounts that will be provided to the Moroccan Currency Exchange Office. Because the letters had to be written in French, the Receiver recommended his French and Moroccan draft the letters for Emade Echade, Essadia and Rabiaa Moutaouakil to sign.

To date, the letters were not signed by the account holders. In addition, three letters which needed to be written were not sent. The Receiver contacted the account holder's counsel to have these deficiencies cured.

C. COMMUNICATIONS WITH INVESTOR CLAIMANTS

As previously stated, the First Interim Distribution is complete. 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 substantial. The majority of the emails and telephone calls fell into several categories: (1) when do we receive our next distribution (2) Investor Claimants governed by U.S federal tax laws inquired why they received a MISC-1099 form (3) investors who invested through their IRA's did not complete their W-9's correctly and their accountants requested they contact the Receivership to have the MISC-1099 forms revised (4) investors did not remember receiving a previous distribution and requested copies of checks or wire confirmations as proof of their previous distributions (5) the last category revolved around international investors whose financial institutions flagged their First Interim Distribution wire and required the Receivership's assistance to have the funds released into their accounts.

The Receiver believes the communication with the Investor Claimants will slow down significantly until further distributions are made.

D. PARALEGALS' ACTIVITIES FOR THIS FEE PERIOD

As previously outlined above, the senior paralegal's activities were and continue to be substantial. 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. There was also a lot of communication regarding financial institutions questioning the validity of the wires and providing proof of validity of the wires.

Another main category for both paralegals was to provide proof of previous distributions. Numerous investors questioned their distribution amounts received on their Misc. 1099 forms. The paralegals researched and contacted the distribution agent for copies of canceled checks and emailed them to the investors for their records. Due to the constraints on the U.S.P.S, the Receiver's paralegals emailed numerous e-copies of the Investor Claimants Misc-1099 forms via secure ShareFile. The Receiver's paralegals obtained the remaining four outstanding W-9's that were either missing information or received via U.S.P.S. In turn, the distribution agent quickly generated the Misc. 1099 forms.

The paralegals also managed general communications and updates pertaining to the receivership. The senior paralegal's total hours during this fee period were 91.30; her invoice totaled \$10,961.60. The paralegal's total hours were 101.3 and his invoice totaled \$8,112.00.³

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

I. Archipel (Paris, France)

The Archipel's firm most recent invoice is for the month of February 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; he requested the account holders send letters to Banque Populaire. He requested they be provided with specific information regarding the accounts that will be provided to the Moroccan Currency Exchange Office.

³ The Receiver's paralegal invoiced 101.40 hours at \$80.00 per hour which is a 20% discount from his normal hourly rate for a total of \$8,112.00. The senior paralegal invoiced 91.30 hours at \$120.00 per hour which is a 20% discount of her normal hourly rate for a total of \$10,961.60 [Dkt. 265].

They also exchanged emails with account holder Emade Echade as well as his counsel. They also held conference calls with the Receiver's Moroccan counsel and had numerous email exchanges with the Receiver regarding all of the above.

Total fees and expenses for their most recent invoices from February amounts to EUR €2560.68 (USD \$4,053.55).⁴

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 the Receiver and with their co-counsel in France. They participated in drafting the letters in French for the three account holders to sign and send to Banque Populaire. Total fees and expenses for their most recent invoice from February amounts to \$540.00.⁵

CONCLUSION AND PRAYER FOR RELIEF

The Receiver requests the Court approve his Twenty-Eighth Fee Application for his invoice which includes time expended by the Receiver for the one-month time period between February 1, 2024, through February 29, 2024, totaling \$13,504.39 Attached as Exhibit 1 to this Motion for Approval of Twenty-Eighth 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 (1) the payment of interim expenses of \$19,073.60 for the invoices of his two paralegals (2) the payment of the Receiver's foreign counsel's invoices totaling \$3,182.40 The total fees and expenses for this fee period are \$35,760.39 for the Receivership Estate and IB Capital Receivership Estate

⁴ XE: Convert EUR/USD (March 22, 2024).

Retrieved from
<https://www.xe.com/currencyconverter/convert/?Amount=3750&From=EUR&To=USD>

⁵ The Brahma firm invoices in USD.

during the Twenty-Eighth 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
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**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

March 25, 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

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UNITED STATES COMMODITY
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ELEVATION GROUP, INC.,**

Defendants.

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

Before the Court is the Receiver’s Motion for Approval of the Twenty-Eighth Fee Application and Brief in Support (“Motion”), covering the one-month time period from February 1, 2024 through February 29, 2024.

Before the Court is the Receiver's Motion for Approval to Pay his Fees and Expenses of \$35,760.39 for the following:

1. Receiver's fees of \$13,504.39
2. Senior paralegal total expenses of 10,961.60
3. Paralegal total expenses of \$8,112.00
4. Archipel (France) fees and expenses of €2477.5 (USD \$2,678.40)
5. Brahma (Morocco) fees of \$504.00

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 \$35,760.39 for the Receiver's invoice and for services rendered to the ProphetMax Receivership Estate and IB Capital Receivership Estate during the Twenty-Eighth Fee Period is approved.

SIGNED this 26th day of March, 2024.



DAVID A. EZRA
SENIOR UNITED STATES DISTRICT JUDGE