

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 THIRTY-SECOND 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 Thirty-Second Fee Application, Status Update and to Pay Expenses and Brief in Support (the “Motion”) covering the one-month period from June 1, 2024, through June 30, 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 Ninth 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.

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

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

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. RECEIVER'S ACTIVITIES FOR THIS FEE PERIOD

1. Receivership Estate Income Tax Returns Review

Income tax returns for the receivership were filed in years 2012 and 2013. The accountant that prepared those returns informed the Receiver it would not be necessary to prepare tax returns for future years. Last fall, the Receiver worked with his U.S. counsel who is a subject matter expert in this area and with the Receiver's new accounting firm, Ahuja & Consultants, Inc., to determine the best course of action going forward.² It was determined the best course of action would be to prepare and file tax returns as a Qualified Settlement Fund.

Ahuja & Consultants, Inc. prepared income tax returns for the receivership estate for the years 2014-2023 as well as a proposed letter to be submitted with each return filed with the Internal Revenue Service ("IRS"). The Receiver held several conference calls with the accountants and his U.S. counsel and provided interest income to his accountant and revised the cover letter to be submitted with each tax return, prior to signing the power of attorney and the individual returns that were submitted to the IRS. No taxes were due with any of the returns.

² Ahuja & Consultants, Inc were formally referenced in previous court papers as Ahuja & Clark, PLLC.

2. Second Interim Distribution – Recovered Slovakian Funds

As previously reported, on May 31, 2024, the Receiver received a wire transfer from the Slovakian Enforcement Officer in the amount of \$7,193,992.11. On June 24, 2024, this Court granted the Receiver's Motion for Approval of Second Interim Distribution Plan & Procedures.³

After the Order becomes final (assuming there are no objections to the Order and no notices of appeal are filed), the Second Interim Distribution process will begin thirty (30) days after the Court's Order approving the Second Interim Distribution.

The Receiver is not expecting any objections or notices of appeal. Based on the Investor Claimants' telephone calls and email communication, they are very excited to be receiving another distribution.

To date, the Receiver's asset recovery efforts including the anticipated Second Interim Distribution, will result in the return of approximately 82% (eighty-two percent) of the Investor Claimants' losses.

3. Morocco – \$ 4.87 million

As previously reported, on May 30, 2024, the Receiver was informed by his French counsel the last documents required for the transfer of funds are "Authorization Requests," which are to be transmitted to the Moroccan Currency Exchange Office.

As previously reported, these documents were initially requested from Banque Populaire ("the Bank") in March 2024. It is the Receiver's understanding the "Bank has not sent the letters to the account holders (Emade Echade, Essadia and Rabiaa Moutaouakkil) that they will then need to sign. The letters will provide the required specific information regarding the accounts that the Moroccan Currency Exchange Office needs to release the funds.

³ [Dkt. # 320, 321].

This above step is crucial to move forward and the Receiver's Moroccan and French counsel are in a holding pattern until the Bank sends the letters. Once the Bank sends the letters to the account holders, the next crucial step will almost be complete.

Also, during this Fee Period, the Receiver was informed by the Dutch Public Prosecutor's Office ("DPPO") they completed the final version of the Mutual Legal Assistance Treaty request. It was in the process of being translated and will then be sent by the DPPO to their counterparts in Morocco.

B. COMMUNICATIONS WITH INVESTOR CLAIMANTS

At the beginning of this Fee Period, the Investor Claimants continued to be sporadically engaged in communications with the Receiver's two paralegals. Once the Receiver announced the Second Interim Distribution, the communications with Investor Claimants spiked immediately.⁴ The three primary categories of communications: (1) Contacting the Receiver to update their contact details & wire transfer details (2) Investor Claimants contacting the Receiver to inquire about the amount of their specific distribution (3) and inquiries about the specific timing of the distribution.

C. PARALEGALS' ACTIVITIES FOR THIS FEE PERIOD

As previously outlined above, the paralegal's activities regarding Investor Communication were not time-consuming, until the last week of June. The majority of their time was spent preparing for the anticipated Second Interim Distribution. This included creating new files, spreadsheets and assisting the Receiver in preparing the Order for the Second Interim Distribution.

⁴ [Dkt. #101]. Through this Court's approved communication process, the Receiver makes announcements on the Receivership's social media accounts: Facebook site: www.facebook.com/prophetmax.receivership, website: www.prophetmaxreceivership.com as well as and via email to Investor Claimants' email addresses the Receiver has on file.

The senior paralegal spent time on various receivership activities related to assisting the Receiver with the Receivership accountant's requests for tax documents as well as her regular monthly duties which included updating the IB Capital ProphetMax bookkeeping spreadsheet and notebook to include all approved expenses paid by the Receiver.⁵ During this Fee Period, the senior paralegal's hours were 38.5; her invoice totaled \$4,620.00. The paralegal's total hours were 44.7 and his invoice totaled \$3,576.00.⁶

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

I. Munsch, Hardt

The Munsch Hardt firm is the Receiver's United States counsel ("U.S."). His time in May related to communications with the Receiver and the Receivership's accountant Ahuja & Consultants, Inc. relating to tax return preparation. Total fees and expenses for their most recent invoice for May time amounts to \$350.00.

II. Archipel (Paris, France)

The Archipel's firm most recent invoices are for the months of March, April, and May 2024; they include activities related to communications in assisting the Receiver with foreign recovery efforts in Morocco. The firm's time invoiced for continued activities relating to the request for documents made by the consultant; they requested letters from the Bank, they held strategy meetings regarding repatriation efforts and translated letters and other documents from French or Moroccan to English

⁵ The IB Capital ProphetMax notebook includes all bank statements, invoices, court papers with corresponding orders and an Excel spreadsheet of account activity.

⁶ The Receiver's paralegal invoiced 44.7 hours at \$80.00 per hour which is a 20% discount from his normal hourly rate for a total of \$3,576.00. The senior paralegal invoiced 44.7 hours at \$120.00 per hour which is a 20% discount of her normal hourly rate for a total of \$4,620.00 [Dkt. #265].

Archipel's further activities included communications with the 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 March EUR €3,710.00 (USD \$4,049.30, April EUR €3,025.00 (USD \$3,302.01) and May EUR €2,575.00 (USD \$2,810.73).⁷

III. 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. Their activities also included exchanging emails with the Bank, attending strategy calls with the Receiver's French counsel and conference calls with the consultant regarding Mr. Echadi and Mrs. Moutaoukil. Total fees and expenses for their most recent invoice from March is \$360.00, combined April & May fee invoice is \$2,340.00.⁸

E. ADMINISTRATIVE EXPENSES

During this fee period, The Hohmann Law Firm received invoices from Donlin Recano & Company, Inc. ("DRC"), the Court approved distribution agent.⁹ The DRC submitted their invoices for two matters which included two invoices related to the First Interim Distribution in the amount of \$1,426.92.¹⁰ Two invoices related to administrative expenses such as

⁷ XE: Convert EUR/USD (July 18, 2024). Respectively quoted in their order of issuance.

Retrieved from

<https://www.xe.com/currencyconverter/convert/?Amount=3710&From=EUR&To=USD>

<https://www.xe.com/currencyconverter/convert/?Amount=3025&From=EUR&To=USD>

<https://www.xe.com/currencyconverter/convert/?Amount=2575&From=EUR&To=USD>

⁸ The Brahma firm invoices in USD.

⁹ [Dkt. #'s 268, 262 and 321].

¹⁰ It was brought to the Receiver's attention that several Investor Claimants did not cash their First Interim Distribution checks. The Receiver requested reports to research on the Receivership's end.

document storage and other administrative services. Those invoices totaled \$351.35.

The Receivership's accountant Ahuja & Consultants, Inc. submitted a second quarter invoice to the Receivership. The invoice related to the preparing, finalizing and submitting the 2014-2023 tax returns to the IRS which totaled \$15,516.33.

CONCLUSION AND PRAYER FOR RELIEF

The Receiver requests the Court approve his Thirty-Second Fee Application for his invoice which includes time expended by the Receiver for the one-month time period between June 1, 2024, through June 30, 2024, totaling \$23,385.55 Attached as Exhibit 1 to this Motion for Approval of Thirty-Second 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 \$8,196.00 for the invoices of his two paralegals. The total fees and expenses for this fee period are \$62,088.19 (inclusive of the Receiver's U.S. and foreign counsel) for the Receivership Estate and IB Capital Receivership Estate during the Thirty-Second Fee 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 W. 7th Street
Suite 625
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

July 19, 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



The Hohmann Law Firm

114 West 7th Street
 625 Norwood Tower
 Austin, Texas , 78701
 Guyh@hohmannlaw.com
 www.hohmannlaw.com
 O: (512) 551-9808

INVOICE

Number	1386
Issue Date	7/17/2024
Due Date	8/16/2024
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 6/2/2024 Conference with my Dutch counsel (Jurjen de Korte) regarding [REDACTED] [REDACTED] emails with my Slovakian counsel regarding recent [REDACTED], emails with Mr. Echadi's counsel and the bank's counsel regarding certificate of instructions.	\$658.75	1.70	\$1,119.88
GMH-RCVR 6/10/2024 Conference with Ryn Hohmann regarding [REDACTED] [REDACTED], review of amounts in Receivership bank accounts and prepare estimate of Second Interim Distribution administrative expenses, calculate amounts to be distributed as part of a Second Interim Distribution.	\$658.75	3.20	\$2,108.00
GMH-RCVR 6/13/2024 Review and revise Thirty-First Fee Application and proposed order, email to Tim Mulreany (CFTC) regarding certificate of conference on upcoming Motion to Approve Second Interim Distribution out of recently received funds from Slovakia and status of repatriation efforts in Morocco, conference with Ryn Hohmann regarding [REDACTED] [REDACTED]	\$658.75	3.80	\$2,503.25
GMH-RCVR 6/17/2024 Emails from and to investor regarding recently recovered funds from Slovakia and upcoming motion to make an additional distribution, begin review of Sanook International's federal income tax returns for 2014 through 2023, review and revise cover letter memo to the IRS and sign all tax returns and cover letter memos and conference with Ryn Hohmann regarding same.	\$658.75	4.10	\$2,700.88
GMH-RCVR 6/18/2024 Complete review of Sanook International's federal income tax returns for 2014 through 2023, emails with the DPPO regarding wiring instructions for the [REDACTED] and conference with Ryn Hohmann regarding [REDACTED]	\$658.75	3.60	\$2,371.50

Exhibit 1

Time Entries	Rate	Hours	Sub
GMH-RCVR 6/19/2024 Review and revise Motion to Approve Second Interim Distribution Plan and proposed Order, review of bank balances, latest total approved claim amounts and prepare budget for the upcoming distribution expenses and calculate proposed second interim distribution amount and conference with Ryn Hohmann regarding same, review emails and attachments from the DPPO regarding [REDACTED] counsel's contact information, review of CSF victims list and investment amounts, email to my Dutch counsel regarding [REDACTED], the CSF victims list and conference call to discuss same and recent email exchanged with the DPPO.	\$658.75	6.70	\$4,413.63
GMH-RCVR 6/20/2024 Email from and to investor regarding status of repatriation efforts.	\$658.75	0.10	\$65.88
GMH-RCVR 6/21/2024 Emails to and from Tim Mulreany (CFTC) regarding status of repatriations efforts and non-opposition to Motion for Approval of Second Interim Distribution, final review and revisions to the motion and the proposed order.	\$658.75	2.80	\$1,844.50
GMH-RCVR 6/24/2024 Email from my Dutch counsel regarding background [REDACTED] [REDACTED] [REDACTED] revise Order on Motion to Approve Second Interim Distribution and conference with Ryn Hohmann regarding same and review and revise draft email to investor regarding additional distributions.	\$658.75	3.40	\$2,239.75
GMH-RCVR 6/25/2024 Review and revise proposed announcement to be posted on Receivership Facebook page and Receivership website regarding Second Interim Distribution and conference with Ryn Hohmann regarding same and timing of anticipated distribution payments, finalize email to the registered agent of [REDACTED] regarding first and second interim distributions and his wiring instructions, review selected emails from Investors in response to emails notifying all investors of the Second Interim Distribution and conference with Ryn Hohmann regarding same.	\$658.75	2.70	\$1,778.63
GMH-RCVR 6/27/2024 Review incoming email from the registered agent for [REDACTED] and respond to same, conference with Ryn Hohmann regarding selected emails from investors received after posting Second Interim Distribution Notice, email from Emadi Echadi regarding status of repatriation efforts, email from and to the DPPO regarding MLAT request to Morocco, [REDACTED] [REDACTED] and response to Emadi Echadi's email from yesterday regarding status of repatriation efforts in Morocco, emails from Nadia Deprez regarding status of [REDACTED].	\$658.75	3.40	\$2,239.75
Time Entries Total		35.50	\$23,385.65

Total (USD)	\$23,385.65
Paid	\$0.00
Balance	\$23,385.65

Terms & Conditions

Net 30

Exhibit 1

Guy Hohmann Receiver's 32nd Fee Application
June 1 through June 30, 2024

Exhibit 1

IN 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-DEA

ORDER GRANTING RECEIVER’S
MOTION FOR APPROVAL OF THIRTY-SECOND FEE APPLICATION AND
EXPENSES

Before the Court is the Receiver’s Motion for Approval of the Thirty-Second Fee Application and Brief in Support (“Motion”), covering the one-month time period from June 1, 2024, through June 30, 2024.

The Motion seeks approval to pay his fees and associated expenses of \$62,088.19 in the following amounts:

1. Receiver's fees of \$23,385.55
2. Senior paralegal total expenses of \$4,620.00
3. Paralegal total expenses of \$3,576.00
4. Munsch Hardt (U.S.) fees and expenses \$350.00
5. Archipel (France) fees and expenses of €9,310.00 (USD \$10,162.04)
6. Brahma (Morocco) fees of \$2,700.00
7. Ahuja & Consultant's Inc. expenses \$15,516.33

8. Donlin Recano & Co. Inc. expenses \$1,778.27

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 \$62,088.19 for the Receiver's invoice and for services rendered to the ProphetMax Receivership Estate and IB Capital Receivership Estate during the Thirty-Second Fee Period is approved.

SIGNED this _____ day of _____, 2024.

DAVID A. EZRA
SENIOR UNITED STATES DISTRICT JUDGE