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9 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
10
11 IN AND FOR MARICOPA COUNTY

12 STATE OF ARIZONA ex rel. LAUREN)	Cause No. CV2009-020595
13 KINGRY, Superintendent of the Arizona)	
14 Department of Financial Institutions,)	
15 Plaintiff,)	PETITION NO. 85
16 v.)	PETITION FOR ORDER TO APPROVE
17 LANDMARC CAPITAL &)	REIMBURSEMENT OF DFI
18 INVESTMENT COMPANY,)	RECEIVERSHIP FUND FOR 2ND
19 Defendant.)	QUARTER 2012 ADMINISTRATIVE
	EXPENSES
	(Assigned to the Honorable Patricia Star)

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Lauren W. Kingry, as the court appointed Receiver, respectfully petitions the Court as follows:

1. On June 24, 2009, this Court entered its *Order Appointing Receiver and Order To Show Cause*, which appointed the Superintendent of the Arizona Department of Financial Institutions as Receiver of Landmarc Capital & Investment Company (“Landmarc”). On July 10, 2009, this Court entered its *Order Appointing Permanent Receiver and Injunction*. On February 27, 2010, the Court entered is *Order placing Hayden Investments, LLC, Desert Trails Holdings, LLC and Arizona Valuation Company, LLC in Receivership*. On May 12, 2010, the Court entered its *Amended Order Appointing Permanent Receiver and Injunction*

1 (Collectively “Receivership Order”). The Receivership Order appointed Thomas Giallanza
2 as Deputy Receiver and authorized the Receiver to engage and employ Special Deputy
3 Receivers to carry on the day to day business of Landmarc.

4 2. Pursuant to A.R.S. §6-131.01 the Arizona Department of Financial Institutions
5 (“DFI”) is authorized to fund the operations of a receivership in which the Superintendent is
6 the receiver and to be reimbursed for those expenditures upon order of the receivership Court.

7 3. Specifically, A.R.S. §6-131.01 provides as follows:

8 A. The superintendent may be appointed as a receiver of a financial
9 institution or enterprise under his supervision. No bond is required of the
10 superintendent for acting as a receiver.

11 B. All reasonable expenses of the department relating or apportioned to
12 a receivership, including receiver fees and attorney fees, costs of preliminary or
13 other examinations of the person placed into receivership and expenses relating
14 to the management of any office or other asset of the person placed in
15 receivership, shall be awarded by the court for payment to the department out of
16 the assets of the receivership. The department shall assess those expenses
17 against the receivership quarterly and shall deposit those amounts in the
18 department receivership revolving fund, as provided in section 6-135.01. Those
19 assessments have priority over the other creditors of the receivership.
20 Notwithstanding the other provisions of this subsection, on request by the
21 superintendent, the court may award personal property of the receivership to the
department as partial compensation for the services rendered during the
administration of the receivership.

C. The superintendent shall maintain a complete accounting of each
receivership in which he is appointed as receiver.

4. A.R.S. §6-135.01, which establishes the DFI Receivership Revolving Fund,
provides as follows:

A. A department receivership revolving fund is established to be
administered by the superintendent. The fund shall consist of monies from the
following sources:

1 1. Monies awarded and received as fees and costs in receiverships in
2 which the superintendent was the receiver, as provided in section 6-131.01.

3 2. Monies received from the department revolving fund, as provided in
4 section 6-135, subsection B.

5 B. Monies in the fund may be used to pay any costs incurred by the
6 department arising out of the administration of a receivership in which the
7 superintendent is the receiver.

8 C. The superintendent shall submit to the legislature with the
9 department's annual budget request a full and complete account of the
10 department receivership revolving fund through the end of its most recent fiscal
11 year.

12 5. On August 26, 2009, the Court entered its *Order Re: Petition No. 2, Order*
13 *Governing the Administration of the Receivership* ("Order No. 2"), which provides in
14 pertinent part as follows:

15 9. Petitions for Payment of Fees. Pursuant to A.R.S. § 6-131.01(B),
16 and notwithstanding the Receivership Order, the Receiver may seek an award
17 from the Court for all reasonable expenses of the Department of Financial
18 Institutions relating or apportioned to this receivership, including the fees of the
19 Special Deputy Receiver, attorneys and accountants, costs of preliminary or
20 other examinations of the person or persons in receivership and expenses
21 related to the management of offices or assets of the person or persons in
 receivership by filing a petition, which petition shall not be required to include
 as exhibits the itemized statements of services rendered to, and costs incurred or
 expended on behalf of, the Receivership, provided that the petition includes a
 statement that anyone desiring additional information concerning the services
 and costs to be paid under the pay petition may obtain redacted information
 from the Receiver by delivering to the Receiver and the Receiver's general
 counsel, Guttilla Murphy Anderson, P.C., a written request specifying the
 additional information requested at least three days prior to the date set for
 hearing on the pay petition. Upon request of the Court, the Receiver shall make
 available for in camera review by the Court, the itemized statements and
 supporting documentation for the services and costs to be paid under the pay
 petition.

6. In accordance with *Order No. 2*, anyone desiring additional information concerning the services and costs paid by DFI for which reimbursement is sought in this petition may obtain redacted information from the Receiver by delivering to the Receiver and the Receiver's general counsel, Guttilla Murphy Anderson, P.C., a written request specifying the additional information requested at least three days prior to the date set for hearing on this petition.

7. For the second quarter of 2012 ending June 30, 2012, DFI incurred and paid a total of \$247,947.36 apportioned to this receivership for receiver fees and attorney fees and expenses relating to the management of Landmarc.

8. A summary of those fees and expenses incurred and paid by the DFI is set forth below:

<u>Vendor</u>	<u>Service Dates</u>	<u>Paid by DFI</u>			<u>Total</u>
		<u>Apr 2012</u>	<u>May 2012</u>	<u>June 2012</u>	
<u>Management & Accounting</u>					
Warfield & Co.	3/16 –6/15	\$26,666.32	\$81,683.21	\$59,941.87	\$168,291.40
<u>Attorney Fees</u>					
Guttilla Murphy Anderson	3/1 – 5/31	\$28,461.89	\$30,040.12	\$21,089.45	\$79,591.46
<u>Process Server</u>					
Hawkins Messegr	4/12/12	64.50			\$ 64.50
Total 2nd Quarter 2012 Administrative Expenses					\$247,947.36

9. Once approved by the Court, these administrative expenses will be paid from the general unsecured assets of Landmarc and the other receivership entities. No funds held in trust for the benefit of borrowers or investors and no funds or other assets which are the

1 subject of a security interest or a potential ownership or equitable claim will be used to pay
2 these administrative expenses.¹

3 WHEREFORE, the Receiver respectfully requests that the Court enter an order:

4 1. Awarding to the DFI Two Hundred Forty Seven Thousand Nine Hundred Forty
5 Seven Dollars and 36/100 (\$247,947.36) as reimbursement for administrative expenses
6 incurred and paid during the quarter ending June 30, 2012; and

7 2. Authorizing the Receiver to transfer Two Hundred Forty Seven Thousand Nine
8 Hundred Forty Seven and 36/100 (\$247,947.36) as reimbursement for administrative
9 expenses incurred and paid during the quarter ending June 30, 2012 as funds become
10 available from the general unsecured assets of the receivership estate in this action to the
11 Arizona Department of Financial Institutions Receivership Revolving Fund established under
12 A.R.S. §6-135.01.

13 Respectfully submitted this 13th day of August, 2014.

14 GUTTILLA MURPHY ANDERSON, P.C.

15 /s/Patrick M. Murphy
16 Patrick M. Murphy
17 Attorneys for the Receiver

18 1157-001(186992)

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20 _____
21 ¹ Although A.R.S. §6-131.01 would permit the Court to award reimbursement from trust funds or other assets subject to the beneficial ownership or security claims of others, the Receiver does not seek that authority here and does not anticipate that it will be necessary at any time in this case.