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6 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

7 IN AND FOR THE COUNTY OF MARICOPA

8 STATE OF ARIZONA ex rel. LAUREN)
KINGRY, Superintendent of the Arizona)
9 Department of Financial Institutions,)

10 Plaintiff,

11 v.)

12 LANDMARC CAPITAL &)
INVESTMENT COMPANY,)

13 Defendant.)
14)

Cause No. CV2009-020595

PETITION NO. 64

PETITION FOR ORDER TO APPROVE
REIMBURSEMENT OF DFI
RECEIVERSHIP FUND FOR 3RD
QUARTER 2011 ADMINISTRATIVE
EXPENSES

(Assigned to Judge Lisa Flores)

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

17 1. On June 24, 2009, this Court entered its *Order Appointing Receiver and Order*
18 *to Show Cause*, which appointed the Superintendent of the Arizona Department of Financial
19 Institutions as Receiver of Landmarc Capital & Investment Company (“Landmarc”). On July
20 10, 2009, this Court entered its *Order Appointing Permanent Receiver and Injunction*. On
21 February 27, 2010, the Court entered its *Order placing Hayden Investments, LLC, Desert*

1 *Trails Holdings, LLC and Arizona Valuation Company, LLC in Receivership*. On May 12,
2 2010, the Court entered its *Amended Order Appointing Permanent Receiver and Injunction*
3 (collectively “Receivership Order”). The Receivership Order appointed Thomas Giallanza as
4 Deputy Receiver and authorized the Receiver to engage and employ Special Deputy
5 Receivers to carry on the day to day business of Landmarc.

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

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

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

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

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

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

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

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

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

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

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

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

18 9. Petitions for Payment of Fees. Pursuant to A.R.S. § 6-131.01(B),
19 and notwithstanding the Receivership Order, the Receiver may seek an award
20 from the Court for all reasonable expenses of the Department of Financial
21 Institutions relating or apportioned to this receivership, including the fees of the
Special Deputy Receiver, attorneys and accountants, costs of preliminary or
other examinations of the person or persons in receivership and expenses
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 third quarter of 2011 ending September 30, 2011, DFI incurred and paid a total of \$466,786.46 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>July 2011</u>	<u>Aug 2011</u>	<u>Sept 2011</u>	
<u>Management & Accounting</u>					
Warfield & Co.	3/16 – 8/31	\$215,902	\$46,681	\$62,798	\$325,382
<u>Attorney Fees</u>					
Guttilla Murphy Anderson	4/1 – 7/31	\$103,280	\$38,123	\$0.00	\$141,404
Total 3rd Quarter 2011 Administrative Expenses					\$466,786

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

1 in trust for the benefit of borrowers or investors and no funds or other assets which are the
2 subject of a security interest or a potential ownership or equitable claim will be used to pay
3 these administrative expenses.¹

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

5 1. Awarding to the DFI Four Hundred Sixty Six Thousand Seven Hundred Eighty
6 Six Dollars (\$466,786) as September reimbursement for administrative expenses incurred
7 and paid during the quarter ending September 30, 2011; and

8 2. Authorizing the Receiver to transfer Four Hundred Sixty Six Thousand Seven
9 Hundred Eighty Six Dollars (\$466,786) as reimbursement for administrative expenses
10 incurred and paid during the quarter ending September 30, 2011 as funds become available
11 from the general unsecured assets of the receivership estate in this action to the Arizona
12 Department of Financial Institutions Receivership Revolving Fund established under A.R.S.
13 §6-135.01.

14 Respectfully submitted this 3rd day of July, 2012.

15 GUTTILLA MURPHY ANDERSON, P.C.

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

18 1157-001(117912)

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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.