

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CONSUMER FINANCIAL PROTECTION
BUREAU and STATE OF FLORIDA,
OFFICE OF THE ATTORNEY GENERAL,
Department of Legal Affairs,

Plaintiffs,

Case no. 9:14 CV 80931/COHN/SELTZER

vs.

MICHAEL HARPER, et al.,

Defendants.

**RECEIVER'S MOTION TO APPROVE SETTLEMENT WITH THE LAW OFFICES
OF MICHAEL E. HERSKOWITZ, ESQUIRE, MICHAEL E HERSKOWITZ,
MICHAEL LEHRMAN, AND CARMEL MASENG**

Mark J. Bernet, Receiver for The Hoffman Law Group, P.A., f/k/a The Residential Litigation Group, P.A., Nationwide Management Solutions, LLC, Legal Intake Solutions, LLC, File Intake Solutions, LLC, and BM Marketing Group, LLC (the "Receiver"), hereby moves this Court for entry of an order approving a settlement reached between the Receiver, on the one hand, and The Law Offices of Michael E. Herskowitz, Esquire, Michael E. Herskowitz, Michael Lehrman and Carmel Maseng. In support of this motion the Receiver submits the accompanying memorandum.

MEMORANDUM

The Receiver has identified several potential causes of action owned by the receivership estates, including potential claims against The Law Offices of Michael E. Herskowitz, Esquire ("LOMEH"), Michael E. Herskowitz ("Herskowitz"), Michael Lehrman ("Lehrman"), and Carmel Maseng ("Maseng"). Herskowitz, Lehrman and Maseng are New York attorneys,

presently residing in New York, who worked for LOMEH¹ and who provided legal advice and services to the Hoffman Law Group prior to the commencement of this lawsuit. They were paid by the Hoffman Law Group for this advice and services; the Receiver has determined that they received a total of \$563,261.58 from the Hoffman Law Group prior to the commencement of this case.

The Receiver concluded that the transfers of funds to Herskowitz, Lehrman, Maseng, and LOMEH were fraudulent under Fla. Stat. §§726.105 & 726.106 because (i) at the time that the Hoffman Law Group transferred the funds to Herskowitz, Lehrman, Maseng and LOMEH, the Hoffman Law Group was insolvent, or became insolvent as a result of the transfers; (ii) at the time that the Hoffman Law Group transferred the funds to Herskowitz, Maseng, Lehrman and LOMEH, the Hoffman Law Group intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they became due, and (iii) the Hoffman Law Group did not receive reasonably equivalent value in return for the funds transferred to Herskowitz, Lehrman, Maseng and LOMEH. The Receiver therefore wrote letters to Herskowitz, Lehrman and Maseng, and LOMEH, demanding the return of the funds.

In addition, the Receiver concluded that Herskowitz, Lehrman, Maseng and LOMEH violated their duty of care to the Hoffman Law Group, thereby causing it damage. This conclusion was premised in part upon e-mail and other communications between the parties, as well as interviews with consumer clients and others. For their part, Herskowitz, Lehrman, Lehrman and LOMEH deny that they violated their duty of care to the Hoffman Law Group, or that they were the recipients of fraudulent transfers of funds from the Hoffman Law Group.

The parties engaged in negotiations for several months and ultimately were able to enter into a written settlement agreement, subject to court approval. A copy of the Settlement

¹ LOMEH is not a legal entity, but instead simply is a trade name utilized by Herskowitz.

Agreement is attached as Exhibit "A." Some of the material provisions contained in the Settlement Agreement are:²

- Herskowitz, Lehrman, Maseng and LOMEH would pay the total amount of \$281,630.79 in settlement of the claims of the Receiver and the Hoffman Law Group, as follows:
 - \$50,000, paid to the Receiver by no later than May 12, 2015. The Receiver acknowledges receipt of this payment.
 - \$25,000.00 to FLAG for application to FLAG's costs associated with proceedings involving an Assurance of Voluntary Compliance, by no later than May 19, 2015. FLAG acknowledges receipt of this payment.
 - \$50,000, paid to the Receiver by no later than May 26, 2015.
 - \$156,630.79, paid to the Receiver by no later than July 31, 2015.
- The Receiver would provide to Herskowitz, Lehrman, Maseng and LOMEH a general release of all claims of the receivership estates.

The Receiver recommends that the Court approve the proposed settlement because doing so is in the best interests of the receivership estates. In making this recommendation the Receiver reports that he has analyzed the potential claims against Herskowitz, Lehrman, Maseng and LOMEH, the likely costs associated with pursuing such claims, the likelihood of obtaining a successful result, and the possibility of collecting on any judgment that he may obtain³. The Receiver believes that the claims are reasonably strong and that the chances of achieving a successful result are good. On the other hand, the Receiver believes that pursuing claims for

² The parties to this lawsuit are encouraged to review the Settlement Agreement for the precise terms of the proposed settlement.

³ On the last point, the Receiver has analyzed sworn personal financial statements provided by Herskowitz, Lehrman and Maseng.

fraudulent transfers and for a violation of a duty of care could become expensive and would take a considerable period of time. Finally, the Receiver believes that, given the financial resources of Herskowitz, Lehrman and Maseng as disclosed on their sworn financial statements, the proposed settlement amount compares favorably with the amount that may be available through post-judgment collection efforts.

LOCAL RULE 7.1(a)(3) CERTIFICATION

The Receiver certifies that prior to filing this motion he made a reasonable effort to confer with all parties who may be affected by the relief requested herein. Counsel for all parties have indicated that they do not object to the entry of an order granting this motion.

Dated: Tampa, Florida
May 21, 2015

/s/ Mark J. Bernet, Receiver
Mark J. Bernet, Receiver
401 E. Jackson Street, Suite 1700
Tampa, Florida 33602
Telephone: (813) 223-7333
Facsimile: (813) 218-5495
Email: mark.bernet@akerman.com
Secondary: doris.zsurka@akerman.com

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing was served by CM/ECF to Melissa Guidorizzi, Esquire, 1700 G Street NW, Washington, DC 20552, e-mail melissa.guidorizzi@cfpb.gov; Leanne Hartmann, Esquire, 1700 G Street NW, Washington, DC 20552, e-mail leanne.hartmann@cfpb.gov; Maureen Elin McOwen, Esquire, 1700 G. Street NW, Washington, DC 20552, e-mail molly.mcowen@cfpb.gov; Amanda Arnold Sansone, 3507 E. Frontage Road, Suite 325, Tampa, Florida 33607, e-mail amanda.sansone@myfloridalegal.com; Richard Colin Nathan Schiffer, Esquire, 3507 E. Frontage Road, Suite 325, Tampa, Florida 33607, e-mail richard.schiffer@myfloridalegal.com; Hector E. Lora, Esquire, The Lora Law Firm, LLC, 174 N.E. 106th Street, Miami Shores, Florida 33138, e-mail hectorlora@bellsouth.net; John A. Richert, Esquire, Hornstine, Pelloni & Hornstine, LLC, 13575 58th Street North, Clearwater, Florida 33760, e-mail john@hornstine.com; and Andrew N. Cove, Esquire, Cove & Associates, P.A., 225 S. 21st Avenue, Hollywood, Florida 33020, e-mail anc@covelaw.com, main@covelaw.com, this 21st day of May, 2015.

/s/ Mark J. Bernet, Receiver
Receiver

cc: Lou Hornstine, Esquire (via facsimile)

RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT (hereafter the "Agreement") is made and entered into as of April 30, 2015, by, between and among the following:

1. The Law Offices of Michael E. Herskowitz, Esq. ("LOMEH");
2. Michael E. Herskowitz ("Herskowitz");
3. Carmel Maseng ("Maseng");
4. Michael Lehrman ("Lehrman"); and
5. Mark J. Bernet, as Receiver for The Hoffman Law Group, P.A. (the "Receiver").

WITNESSETH:

WHEREAS, on July 14, 2014, the Consumer Protection Financial Bureau ("CFPB") and the Florida Attorney General ("FLAG") filed a civil lawsuit against Michael Harper, Benn Willcox, Marc Hoffman, The Hoffman Law Group, P.A., f/k/a The Residential Litigation Group ("Hoffman Law Group"), Nationwide Management Solutions, LLC ("Nationwide") Legal Intake Solutions, LLC ("Legal Intake Solutions"), File Intake Solutions, LLC ("File Intake Solutions"), and BM Marketing Group, LLC ("BM Marketing") styled *Consumer Financial Protection Bureau and State of Florida, Office of the Attorney General v. Michael Harper, et al.*, case no. 14 CV 80931/COHN/SELTZER, United States District Court, Southern District of Florida (the "Lawsuit"); and

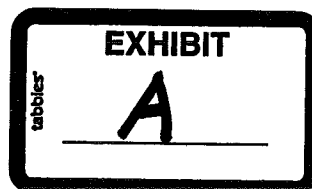
WHEREAS, in the Lawsuit, CFPB and FLAG alleged that the defendants operated as an "enterprise" and preyed upon consumers by making false representations relating to mortgage relief services; in particular, CFPB and FLAG charged the defendants with specific violations of state and federal law; and

WHEREAS, , on July 16, 2014, Judge Cohn entered a *Temporary Restraining Order with Asset Freeze, Appointment of a Temporary Receiver, and Other Equitable Relief and Order Setting Hearing on Motion for Preliminary Injunction* (the "TRO") in the Lawsuit; and

WHEREAS, among other things, the TRO shut down the operations of The Hoffman Law Group and appointed the Receiver as a federal equity receiver for each of the non-individual defendants; and

WHEREAS, under the TRO, the Receiver, has taken control of Hoffman Law Group, Nationwide, Legal Intake Solutions, File Intake Solutions, and BM Marketing, and all of their assets, including in particular claims that are owned by those companies; and

WHEREAS, the TRO since has been converted into a preliminary injunction containing essentially the same provisions as were set out in the TRO; and



WHEREAS, Herskowitz, Maseng and Lehrman are New York attorneys who worked for LOMEH and who provided legal advice and services to Hoffman Law Group prior to the commencement of the Lawsuit; and

WHEREAS, prior to the commencement of the Lawsuit, Hoffman Law Group paid Herskowitz, Maseng, Lehrman and LOMEH a total of \$563,261.58 for legal advice and services that they provided to Hoffman Law Group; and

WHEREAS, the Receiver asserts that Herskowitz, Maseng, Lehrman and LOMEH violated their duty of care to Hoffman Law Group, thereby causing it damage; and

WHEREAS, the Receiver asserts that the transfers of funds to Herskowitz, Maseng, Lehrman and LOMEH were fraudulent under Fla. Stat. §§726.105 & 726.106 because (i) at the time that Hoffman Law Group transferred the funds to Herskowitz, Maseng, Lehrman and LOMEH, Hoffman Law Group was insolvent, or became insolvent as a result of the transfers; (ii) at the time that Hoffman Law Group transferred the funds to Herskowitz, Maseng, Lehrman and LOMEH, Hoffman Law Group intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they became due, and (iii) Hoffman Law Group did not receive reasonably equivalent value in return for the funds transferred to Herskowitz, Maseng, Lehrman and LOMEH; and

WHEREAS, Herskowitz, Maseng, Lehrman and LOMEH deny that they violated their duty of care to Hoffman Law Group, or that they were the recipients of fraudulent transfers of funds from Hoffman Law Group; and

WHEREAS, the parties intend to resolve their disputes, as set forth herein;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Affirmation of Recitals. The recitals set forth above are true and correct and incorporated herein by reference.

2. Assurance of Voluntary Compliance. By no later than ^{May 29, 2015} ~~May 12, 2015~~, Herskowitz, Maseng, and Lehrman shall enter into an Assurance of Voluntary Compliance FLAG, covering such issues as FLAG deems appropriate and containing such terms as the parties may agree. ML CM

3. Payment. Herskowitz, Maseng, Lehrman and LOMEH shall pay the total amount of \$281,630.79 in settlement of the claims of the Receiver and Hoffman Law Group, as follows:

- a. \$50,000, paid to the Receiver by no later than May 12, 2015; ML CM
check must be sent by overnight mail
- b. \$25,000.00 to FLAG for application to FLAG's costs associated with proceedings involving an Assurance of Voluntary Compliance, by no later than May 19, 2015;
- c. \$50,000, paid to the Receiver by no later than May 26, 2015; and

d. \$156,630.79, paid to the Receiver by no later than July 31, 2015.

Any payment that is more than five days past-due shall be subject to a late fee of five percent of the delinquent amount. Any payment that is more than 15 days past-due shall be subject to an additional 5 percent late fee. Under no circumstances shall any late fee charged be deemed "interest" within the meaning of Chapter 687, Florida Statutes, or any similar state or federal usury statute, rule or regulation, but instead the "late fee" described herein shall be deemed additional consideration owed by Herskowitz, Maseng, Lehrman and LOMEH hereunder.

Payments owed to the Receiver shall be delivered, on or before the due date, to the following address:

Mark J. Bernet, Receiver
401 E. Jackson Street, Suite 1700
Tampa, Florida 33602

Payments owed to FLAG shall be delivered, on or before the due date, to the following address:

State of Florida
Office of the Attorney General
Attn: Richard Schiffer, Esquire
Consumer Protection Division
3501 East Frontage Road, Suite 325
Tampa, Florida 33607

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4. *May 13, 2015*

4. Approval of Court; Effective Date. Herskowitz, Maseng, Lehrman and LOMEH shall sign this agreement and return it to the Receiver, so that it is received by the Receiver by no later than ~~May 11, 2015~~ *May 13, 2015*. Within five days of receiving the signed Agreement, the Receiver shall file a motion in the Lawsuit seeking the Court's approval of the settlement as set forth in the Agreement. The effective date of the Agreement shall be the date on which the Court enters an order approving the Agreement. Payments shall be made to the Receiver and FLAG in accordance with the schedule set forth herein, notwithstanding the absence of an order from the Court approving the settlement. In the event the Court denies approval of the settlement, then the funds paid to the Receiver and FLAG shall be returned, and this Agreement shall be of no force or effect.

5. Release; No Discharge. The Receiver, on behalf of Hoffman Law Group, and subject to the approval of the Court in the Lawsuit and the performance by Herskowitz, Maseng, Lehrman and LOMEH of their obligations hereunder, remises, releases and forever discharges Herskowitz, Maseng, Lehrman and LOMEH, and their agents, employees, directors, officers, attorneys, branches, affiliates, subsidiaries, successors and assigns and all persons, firms, corporations and organizations acting on any of their behalfs (the "**Released Parties**") of and from any and all claims, liabilities, demands, obligations, damages, losses, actions and causes of action whatsoever which the Receiver and Hoffman Law Group each may now have or claim to have against the Released Parties as of the date hereof, whether presently known or unknown and of any nature and extent whatsoever, including, without limitation, on account of or in any way affecting, concerning or arising out of or founded upon this Agreement.

6. Construction. This Agreement shall not be construed more strictly against any party hereunder merely because this Agreement may have been or has been prepared by one of the parties or its or his counsel, it being recognized that each party has contributed substantially and materially, either by himself, or itself or through his or its attorney, to the preparation of this Agreement.

7. Entire Agreement. Each party acknowledges that there are no other agreements, representations, either or oral or written, expressed or implied, not referenced or embodied in this Agreement. In particular, the Receiver has made, and can make, no representations that this Agreement can be or is binding upon the Plaintiffs in the Lawsuit, in any fashion.

8. Time is of the Essence. Time shall be of the strictest essence in the performance of each and every one of the obligations of each of the parties arising hereunder.

9. Integration; Amendments. No party shall be bound by any oral agreement, and no rights or liabilities, expressed or implied, shall arise on the part of any party, or any third party, until and unless the agreement on any given issue has been reduced to a written agreement executed by the party to be charged and all other parties. The parties agree that this Agreement may be amended, replaced or supplemented only by a written agreement executed by all parties.

10. Voluntary Agreement. Each party represents and warrants that he or it is or could have been represented by legal counsel of his or its choice and that his or its counsel has or had the opportunity to review this Agreement, that he and it are fully aware of the terms contained herein, and that he and it each has voluntarily and without coercion or duress of any kind or nature whatsoever entered into this Agreement. The provisions of this Agreement shall survive the execution and delivery of this Agreement.

11. Governing Law and Binding Effect. This Agreement shall be deemed to be a contract under the Laws of the State of Florida, and for all purposes shall be governed by and construed and enforced in accordance with the Laws of the State of Florida, without regard to its conflict of laws principles. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns; provided, however, that Herskowitz, Maseng, Lehrman and LOMEH may not assign any rights or duties hereunder without the prior written consent of the Receiver. Any action to enforce this Agreement shall be by motion brought in the Lawsuit; and the parties hereto consent to the jurisdiction of the Court in which the Lawsuit is pending, and to submission of any disputes hereunder to the Court by motion filed in the Lawsuit.

12. Miscellaneous. This Agreement is made for the sole benefit and protection of the parties hereto, and their respective successors and assigns. No other persons shall have any rights hereunder. If any provision of this Agreement is held invalid or unenforceable, the remaining provisions shall remain in effect without impairment, unless the provision held invalid or unenforceable goes to the essence of this Agreement. All representations and warranties of the parties hereto contained herein or made in connection herewith shall survive the making of this Agreement. The covenants and agreements contained in or given pursuant to this Agreement shall continue in force until the payment in full and the discharge of all obligations of Herskowitz, Maseng, Lehrman and LOMEH to the Receiver and FLAG. Unless the context of

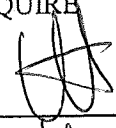
this Agreement clearly requires otherwise, references to the plural include the singular, the singular the plural and the part the whole, and "or" has the inclusive meaning represented by the phrase "and/or". The words "hereof", "herein", "hereunder", and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The section and other headings contained in this Agreement are for reference purposes only and shall not control or affect the construction of this Agreement or the interpretation thereof in any respect. Section and subsection references are to this Agreement unless otherwise specified.

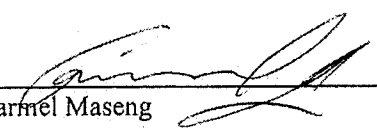
13. Execution and Return of Agreement. If this Agreement has not been signed by Herskowitz, Maseng, Lehrman and LOMEH and returned to the Receiver by May 13, 2015, the Receiver shall have no obligations hereunder and this Agreement shall be void and of no force or effect whatsoever, without notice or demand of any kind. This Agreement may be signed in counterparts.

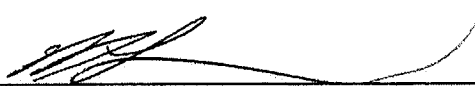

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WHEREFORE, the parties hereto, intending to be legally bound hereby, have caused this Agreement to be executed and delivered as of the day and year first above written.

LAW OFFICES OF MICHAEL
E. HERSKOWITZ, ESQUIRE

By:  _____
Title: Michael Herskowitz Michael E. Herskowitz

 _____
Carmel Maseng

 _____
Michael Lehrman

THE HOFFMAN LAW GROUP, P.A.

By: _____
Mark J. Bernet, Receiver

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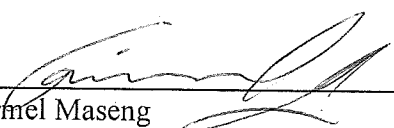
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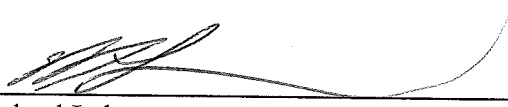
LAW OFFICES OF MICHAEL
E. HERSKOWITZ, ESQUIRE

By: _____


Michael E. Herskowitz

Title: _____


Carmel Maseng


Michael Lehrman

THE HOFFMAN LAW GROUP, P.A.

By: 
Mark J. Bernet, Receiver