

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 16-cv-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS,
WILLIAM STENGER,
JAY PEAK, INC.,
Q RESORTS, INC.,
JAY PEAK HOTEL SUITES L.P.,
JAY PEAK HOTEL SUITES PHASE II. L.P.,
JAY PEAK MANAGEMENT, INC.,
JAY PEAK PENTHOUSE SUITES, L.P.,
JAY PEAK GP SERVICES, INC.,
JAY PEAK GOLF AND MOUNTAIN SUITES L.P.,
JAY PEAK GP SERVICES GOLF, INC.,
JAY PEAK LODGE AND TOWNHOUSES L.P.,
JAY PEAK GP SERVICES LODGE, INC.,
JAY PEAK HOTEL SUITES STATESIDE L.P.,
JAY PEAK GP SERVICES STATESIDE, INC.,
JAY PEAK BIOMEDICAL RESEARCH PARK L.P.,
AnC BIO VERMONT GP SERVICES, LLC,

Defendants, and

JAY CONSTRUCTION MANAGEMENT, INC.,
GSI OF DADE COUNTY, INC.,
NORTH EAST CONTRACT SERVICES, INC.,
Q BURKE MOUNTAIN RESORT, LLC,

Relief Defendants.

Q BURKE MOUNTAIN RESORT, HOTEL
AND CONFERENCE CENTER, L.P.
Q BURKE MOUNTAIN RESORT GP SERVICES, LLC,

Additional Receivership Defendants¹

¹See Order Granting Receiver's Motion to Expand Receivership dated April 22, 2016 [ECF No.: 60].

**RECEIVER'S RESPONSE AND LIMITED OBJECTION TO
MOTION OF BERGER SINGERMAN
FOR PAYMENT OF ATTORNEY'S FEES AND MEMORANDUM OF LAW**

Michael I. Goldberg (the "Receiver"), through undersigned counsel, hereby files his Response and Limited Objection to the Motion of Berger Singerman for Payment of Attorney's Fees and Memorandum of Law [D.E. 118]. The receivership estates are not in a financial position to pay such fees at this time or to have receivership estate assets liquidated to pay such fees. Instead, Mr. Quiros should pay his attorneys from his own personal assets that were not obtained with funds traceable to investors.

In support of this Response and Limited Objection, the Receiver states as follows:

1. On May 13, 2016, Berger Singerman filed its Motion of Berger Singerman for Payment of Attorney's Fees and Memorandum of Law [D.E. 118] (the "Fee Motion"). In the Fee Motion, Berger Singerman seeks payment of \$96,930.47 in fees for representing Ariel Quiros from April 1, 2016 through May 5, 2016, the day Berger Singerman withdrew from such representation.²

2. The Receiver has the utmost respect for Berger Singerman and the partner in charge of this engagement, Charles Lichtman. Nevertheless, given the financial circumstances of the receivership estates, the Receiver does not believe that payment of any fees are justified from receivership estate assets and does not believe that payment should be made at this time.

3. Those financial circumstances, based on the available evidence, are attributable directly to Mr. Quiros. The Court heard and received evidence and testimony at the hearing (the "Preliminary Injunction Hearing") on SEC's Motion for Preliminary Injunction and Quiros' Emergency Motion to Lift or Modify Asset Freeze Order [DE 39]. At the Preliminary Injunction

² In its motion, Berger Singerman states that it started representing Quiros on April 1, 2015. The Receiver believes that this is a typo and that Berger Singerman commenced representing Mr. Quiros late April, 2016.

Hearing, the Court received evidence that the receivership entities are facing financial difficulty; i.e., that the receivership estate is extremely illiquid and that the Receiver needs all available cash to satisfy the necessary expenses of the receivership entities' operations. In fact, due to the current state of the receivership entities' financial affairs, the Receiver may be forced to mortgage receivership assets or issue receivership certificates to generate sufficient cash to be able to continue to operate the receivership entities' hotels. At the Preliminary Injunction Hearing, the Court heard further evidence that such difficulties are attributable to Mr. Quiros' wrongful diversion of funds.

4. In fact, with respect to those financial difficulties, the Receiver is currently unable to pay for the expenses of his own professionals and, based on preliminary cash budgets, will not be able to do so for at least a few months. Accordingly, the Receiver believes that it would jeopardize the viability of the receivership entities' operations and be inequitable to his own professionals to authorize payment of Mr. Quiros' attorneys' fees at this time.

5. The Receiver believes it is more appropriate to defer ruling on the Fee Motion until such time as the Court determines Mr. Quiros' entitlement to fees, and furthermore, to a time when the receivership estates may be in a better financial position to afford them. The Receiver is required to provide the Court regular periodic updates, which will provide the Court with the necessary information to make such a determination on the receivership estates' financial position.

6. At the Preliminary Injunction Hearing, Mr. Quiros' counsel requested authorization to allow Quiros to sell the Setai condominium, which the SEC alleged was purchased with funds wrongfully diverted from investors and to utilize the proceeds thereof to pay his various professionals.

7. If the Court is considering allowing Mr. Quiros to liquidate any assets to pay his professionals, the Court should require that Mr. Quiros sell or mortgage his homestead located on Key Biscayne to pay his professionals rather than the non-exempt condominium purchased with funds traceable to investors. Otherwise, Mr. Quiros will receive a windfall in the event it is ultimately determined that the SEC is correct that Mr. Quiros wrongfully diverted investors' funds to buy the Setai condominium. More specifically, Mr. Quiros' homestead is arguably exempt from creditor execution.³ Based on the available evidence, the Setai condominium is not homestead exempt, and moreover, is traceable to investors' funds. Thus, if Mr. Quiros is allowed to sell the Setai condominium and preserve his possible homestead protected residence, he would essentially be allowed to utilize funds that belong to investors and still be left with his homestead intact -- thereby obtaining a windfall at the investors' expense.

8. With respect to the reasonableness of any fees charged by Berger Singerman, the Receiver does not currently take a position and reserves all rights in that regard.

WHEREFORE, the Receiver respectfully requests the Court to deny the Fee Motion at this time and to grant such further relief as is just and proper.

Dated: May 20, 2016.

Respectfully submitted,

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³ The Receiver does not concede this point, but merely anticipates that Mr. Quiros will raise this argument.

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