

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 9:18-cv-81038-MIDDLEBROOKS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

PALM HOUSE HOTEL, LLLP, *et al.*,

Defendants and Relief Defendants.

ORDER

THIS CAUSE comes before the Court upon Plaintiff Securities and Exchange Commission's Motion for an Order Appointing a Tax Administrator and a Distribution Agent, and Related Relief, filed on June 12, 2020.¹ (DE 98).

The Court having reviewed the Motion of Plaintiff Securities and Exchange Commission (the "SEC") for an Order appointing Miller Kaplan Arase LLP ("Miller Kaplan") as tax administrator; appointing JND Legal Administration ("JND") as distribution agent; and authorizing payment of tax obligations and administrative fees and expenses from collections in this matter (the "Distribution Fund") without further Court Order,

it is hereby **ORDERED AND ADJUDGED** that:

1. The Motion (DE 98) is **GRANTED**.

¹ Defendant Matthews and the Bankruptcy Trustees for many of the Defendants have indicated that they do not oppose the requested relief. (DE 98 at 2). Although no response has been filed as to the remaining Defendants, I find it unnecessary to wait for any response because those Defendants have defaulted and final default judgment has been entered against them.

Tax Administrator

2. Miller Kaplan is appointed tax administrator (the “Tax Administrator”) to execute all income tax reporting requirements, including the preparation and filing of tax returns, for the Distribution Fund.

As the Tax Administrator, Miller Kaplan shall:

a) Be designated the Tax Administrator of the Distribution Fund, pursuant to Section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), and related regulations, and shall satisfy the administrative requirements imposed by those regulations, including but not limited to (i) obtaining a taxpayer identification number; (ii) filing applicable federal, state, and local tax returns and paying taxes reported thereon out of the Distribution Fund; and (iii) satisfying any information, reporting, or withholding requirements imposed on distributions from the Distribution Fund, including but not limited to the Foreign Account Tax Compliance Act. Upon request, the Tax Administrator shall provide copies of any filings to the SEC’s counsel of record;

b) Perform services in accordance with, and be entitled to charge reasonable fees for tax compliance services and related expenses. The Tax Administrator shall be entitled to charge reasonable fees for tax compliance services and related expenses in accordance with its agreement with the SEC for the Tax Years 2019 through 2021. The Tax Administrator shall, at such times as the Tax Administrator deems appropriate, submit a request to the SEC’s counsel of record for payment of fees and expenses from the Distribution Fund; and

c) At such times as the Tax Administrator deems necessary to fulfill the tax obligations of the Distribution Fund, submit a request to the SEC’s counsel of record for authorization to pay from the Distribution Fund tax obligations of the Distribution Fund.

3. The SEC is authorized to approve and arrange payment of all tax obligations owed by the Distribution Fund and the fees and expenses of the Tax Administrator directly from the Distribution Fund without further order of this Court. The Tax Administrator will submit invoices for all fees and expenses

incurred in connection with its respective duties to the SEC's counsel of record for review and, as appropriate, payment. All payments will be reflected in the final accounting referenced below.

Distribution Agent

4. JND is appointed Distribution Agent (the "Distribution Agent") for the Distribution Fund, to oversee the administration and distribution of the Distribution Fund in coordination with the SEC's counsel of record pursuant to the terms of a distribution plan (the "Plan") to be approved by this Court. The Distribution Agent will, among other things:

a) Perform services in accordance with the pricing schedule and cost proposal submitted by the Distribution Agent to the SEC;

b) Work with the SEC's counsel of record to develop a distribution plan to be approved by the Court;

c) Confirm and/or determine the identities, contact information, and payment preferences of harmed investors;

d) Work with the SEC to quantify losses and distribution amounts of investors eligible for a distribution under a Court-approved Plan;

e) Respond to investor and distribution related inquiries;

f) Work with the Tax Administrator to calculate a reserve for fees, expenses, and taxes (the "Reserve"); and

g) Perform all activities necessary for the distribution of Distribution Fund net the Reserve in accordance with the Plan;

h) Coordinate with the Tax Administrator to ensure timely compliance with all tax related obligations;

i) File with the Court or provide to the SEC's counsel of record to file with the Court, a quarterly status report within forty-five (45) days of Court approval of the Plan, and provide additional

reports within twenty (20) days after the end of every quarter thereafter. Upon establishing an escrow account into which the monies in the Distribution Fund are transferred, the Distribution Agent will include a quarterly accounting report, in a format to be provided by the SEC, in the status report. The status report will inform the Court and the SEC of the activities and status of the Distribution Fund during the relevant reporting period and the quarterly accounting report will specify, at a minimum:

- i) The location of the account(s) comprising the Distribution Fund; and
- ii) An interim accounting of all monies in the Distribution Fund as of the most recent month-end, including the value of the account(s), all monies earned or received into the account(s), funds distributed to eligible claimants under the Plan, and any monies expended from the Distribution Fund to satisfy fees, expenses, and taxes, incurred or required in the administration of the Distribution Fund or the implementation of the Plan.
- j) Comply with the Plan and all Court orders;
- k) Be entitled to charge reasonable fees and related expenses incurred in the performance of its duties, in accordance with the cost proposal submitted to the SEC's counsel of record. The SEC is authorized to approve and arrange payment of the fees and expenses of the Distribution Agent directly from the Distribution Fund without further order of this Court. The Distribution Agent will submit invoices of all fees and expenses incurred in connection with their respective duties to the SEC's counsel of record for review and, as appropriate, payment. All payments will be reflected in the quarterly and final accountings referenced herein.

Additional Provisions

5. Upon completing its duties as set forth herein, the Distribution Agent, in consultation with the Tax Administrator, will jointly provide to the SEC's counsel of record a final accounting in a form provided by the SEC's counsel of record; a final report providing statistics related to the distribution,

including amounts disbursed to investors, amounts returned and/or not delivered or negotiated, outreach efforts on unnegotiated payments and the costs and results of the same, and statistics concerning payments made to individuals and entities; and an affidavit in a format acceptable to the SEC's counsel of record summarizing its activities as Distribution Agent.

6. The Distribution Agent and/or the Tax Administrator may be removed *sua sponte* at any time by the Court or upon motion of the SEC and replaced with a successor. In the event Distribution Agent and/or the Tax Administrator decide to resign, the resigning entity must first give written notice to the SEC's counsel of record and the Court of its intention, and resignation, if permitted, will not be effective until the Court has appointed a successor. The resigning entity will then follow instructions from the Court or a successor for relinquishing its duties, including all records related to Distribution Fund monies and property. Unless otherwise ordered, the resigning entity will within 30 days of the notice of resignation or removal, file with the Court a final accounting and a report of its activities as further set forth above in paragraph 5, and provide any other information requested by the SEC, the Court, or the successor.

7. The Court will retain exclusive jurisdiction over the distribution, including, but not limited to, claims against the Distribution Agent and/or Tax Administrator asserting liability for violation of any duty imposed by the Plan or other Court order.

SIGNED in Chambers in West Palm Beach, Florida, this 18th day of June, 2020.



DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE