

04-60573

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

**CIV. MORENO**

CASE NO.

SECURITIES AND EXCHANGE COMMISSION,  
  
Plaintiff,

MAGISTRATE JUDGE  
GARBNER

v.

MUTUAL BENEFITS CORP.,  
JOEL STEINGER a/k/a JOEL STEINER,  
LESLIE STEINGER a/k/a LESLIE STEINER,  
and PETER LOMBARDI,

Defendants,

VIATICAL BENEFACTORS, LLC,  
VIATICAL SERVICES, INC.,  
KENSINGTON MANAGEMENT, INC.,  
RAINY CONSULTING CORP.,  
TWIN GROVES INVESTMENTS, INC.,  
P.J.L. CONSULTING, INC.,  
SKS CONSULTING, INC., and  
CAMDEN CONSULTING, INC.

Relief Defendants.

FILED by *SC* D.C.  
  
MAY 04 2004  
  
CLARENCE MADDOX  
CLERK U.S. DIST. CT.  
S. D. OF FLA.

ORDER APPOINTING RECEIVER

WHEREAS, Plaintiff Securities and Exchange Commission ("SEC" or "Commission") has filed an emergency motion for the appointment of a Receiver for Defendant Mutual Benefits Corp. ("MBC") and Relief Defendants Viatical Benefactors, LLC ("VBLLC") and Viatical Services, Inc. ("VSI"), with full and exclusive power, duty, and authority to: administer and manage the business affairs, funds, assets, choses in action and any other property of MBC, VBLLC and VSI; marshal and safeguard all of the assets of MBC, VBLLC and VSI; and take whatever actions are necessary for the protection of the investors; and

*JL/BS*

WHEREAS, the Commission has made a sufficient and proper showing in support of the relief requested by evidence demonstrating a prima facie case of violations of the federal securities laws by MBC, VBLLC and VSI; and

WHEREAS, the Commission has submitted the credentials of a candidate to be appointed as Receiver of all of the assets, properties, books and records, and other items of MBC, VBLLC and VSI including any properties, assets and other items held in the names of MBC's, VBLLC's and VSI's principals, and the Commission has advised the Court that this candidate is prepared to assume this responsibility if so ordered by the Court;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Roberto Martinez of Colson & Hicks P.A. is hereby appointed the Receiver for MBC, VBLLC and VSI, their subsidiaries, successors and assigns, and is hereby authorized, empowered, and directed to:

1. Take immediate possession of all MBC, VBLLC and VSI property, assets and estate, and all other property of MBC, VBLLC and VSI of every kind whatsoever and wheresoever located belonging to or in the possession of MBC, VBLLC and VSI, including but not limited to all offices maintained by MBC, VBLLC and VSI, rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of MBC, VBLLC and VSI wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court;

2. To use funds currently held in escrow to preserve assets, including for the payment of viatical premiums, subject to reimbursement of legitimately escrowed funds.

3. Investigate the manner in which the affairs of MBC, VBLLC and VSI were conducted and institute such actions and legal proceedings, for the benefit and on behalf of MBC, VBLLC and VSI and their investors and other creditors, as the Receiver deems necessary against those individuals, corporations, partnerships, associations and/or unincorporated organizations, which the Receiver may claim have wrongfully, illegally or otherwise improperly misappropriated or transferred monies or other proceeds directly or indirectly traceable from investors in MBC, VBLLC and VSI, including against MBC, VBLLC and VSI, their officers, directors, employees, affiliates, subsidiaries or any persons acting in concert or participation with them, or against any transfers of monies or other proceeds directly or indirectly traceable from investors in MBC, VBLLC and VSI; provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement of profits, recovery and/or avoidance of fraudulent transfers under Florida Statute § 726.101, et. seq. or otherwise, rescission and restitution, the collection of debts, and such orders from this Court as may be necessary to enforce this Order;

4. Present to this Court a report reflecting the existence and value of the assets of MBC, VBLLC and VSI and of the extent of liabilities, both those claimed to exist by others and those which the Receiver believes to be legal obligations of MBC, VBLLC and VSI;

5. Appoint one or more special agents, employ legal counsel, actuaries, accountants, claims administrators, clerks, consultants and assistants as the Receiver deems necessary and to fix and pay their reasonable compensation and reasonable expenses, as well as all reasonable expenses of taking possession of MBC's, VBLLC's and VSI's assets and business, and exercising the power granted by this Order, and approval by this Court at the time the Receiver accounts to the Court for such expenditures and compensation;

6. Engage persons in the Receiver's discretion to assist the Receiver in carrying out the Receiver's duties and responsibilities, including, but not limited to, the United States Marshals Service or a private security firm;

7. Defend, compromise, enter pleas, or settle legal actions, including the instant proceeding, in which MBC, VBLLC and VSI or the Receiver is a party, commenced either prior to or subsequent to this Order, with authorization of this Court; except, however, in actions where MBC, VBLLC and VSI is a nominal party, as in certain foreclosure actions where the action does not effect a claim against or adversely affect the assets of MBC, VBLLC and VSI, the Receiver may file appropriate pleadings in the Receiver's discretion. The Receiver may waive any attorney-client or other privilege held by MBC, VBLLC and VSI;

8. Assume control of, and be named as authorized signatory for, all accounts at any bank, brokerage firm, escrow agent, or financial institution which has possession, custody or control of any assets or funds, wherever situated, of MBC, VBLLC and VSI and, upon, order of this Court, of any of their subsidiaries or affiliates; provided that the Receiver deems it necessary;

9. Make or authorize such payments and disbursements from the funds and assets taken into control, or thereafter received by the Receiver, and incur, or authorize the incurrence of, such expenses and make, or authorize the making of, such agreements as may be reasonable, necessary and advisable in discharging the Receiver's duties;

10. Have access to and review all mail of MBC, VBLLC and VSI and the mail of Defendants Joel Steinger, Leslie Steinger and Peter Lombardi (except for mail that appears on its face to be purely personal or attorney-client privileged) received at any office of MBC, VBLLC and VSI. All mail addressed to Joel Steinger, Leslie Steinger or Peter Lombardi that is opened by the

Receiver that, upon inspection, is determined by the Receiver to be personal or attorney-client privileged, shall be promptly delivered to the addressee and the Receiver shall not retain any copy.

**IT IS FURTHER ORDERED** that, in connection with the appointment of the Receiver provided for above:

11. MBC, VBLLC and VSI, and all of their directors, officers, agents, employees, attorneys, attorneys-in-fact, shareholders, and other persons who are in custody, possession, or control of any assets, books, records, or other property of MBC, VBLLC and VSI shall deliver forthwith upon demand such property, monies, books and records to the Receiver, and shall forthwith grant to the Receiver authorization to be a signatory as to all accounts at banks, brokerage firms or financial institutions which have possession, custody or control of any assets or funds in the name of or for the benefit of MBC, VBLLC and VSI;

12. All banks, brokerage firms, financial institutions, and other business entities which have possession, custody or control of any assets, funds or accounts in the name of, or for the benefit of, MBC, VBLLC and VSI shall cooperate expeditiously in the granting of control and authorization as a necessary signatory as to said assets and accounts to the Receiver;

13. Unless authorized by the Receiver, MBC, VBLLC and VSI and their principals shall take no action, nor purport to take any action, in the name of or on behalf of MBC, VBLLC and VSI;

14. MBC, VBLLC and VSI and their principals, and their respective officers, agents, employees, attorneys, and attorneys-in-fact, shall cooperate with and assist the Receiver, including, if deemed necessary by the Receiver, appear for deposition testimony and produce documents upon two (2) business days' notice (by facsimile). MBC, VBLLC and VSI and their principals, and their respective officers, agents, employees, attorneys, and attorneys-in-fact shall take no action, directly

or indirectly, to hinder, obstruct, or otherwise interfere with the Receiver in the conduct of the Receiver's duties or to interfere in any manner, directly or indirectly, with the custody, possession, management, or control by the Receiver of the funds, assets, premises, and choses in action described above;

### **Retention of Professionals**

15. The Receiver, or any attorney, accountant, consultant, agent or other professional being engaged by the Receiver pursuant to the provisions of the Receivership Order (a "Professional") shall file with the Court a notice indicating the Receiver's intent to retain a Professional (a "Notice of Intention to Retain Professional"). The Notice of Intention to Retain Professional shall identify the name of the professional firm, the individual(s) who will render professional services, the scope of terms of the retention of such Professional, the effective date of the retention, and the proposed hourly rates to be charged by such Professional. Any material additional engagement terms shall be disclosed or attached to the Notice of Intention to Retain Professional along with an affidavit of the Professional stating that the Professional does not hold or represent any interest adverse to the Receivership Estate and is a "disinterested" person.

16. The Receiver may retain a Professional that has represented the Receivership Entities prior to the Receiver's appointment if such Professional does not represent or hold any interest adverse to the Receiver or the Receivership Estate with respect to the matter on which such Professional is to be employed.

17. If no objection to a Notice of Intention to Retain Professional is timely filed within ten (10) days, then the engagement proposed in the Notice of Intention to Retain Professional shall be deemed approved by the Court in all respects without further order.

### **Compensation of Professionals**

18. The Receiver, and any Professional whom the Receiver may select, are entitled to reasonable compensation from the assets now held by or in the possession or control of or which may be received by MBC, VBLLC and VSI; said amount or amounts of compensation shall be commensurate with their duties and obligations under the circumstances, subject to approval by the Court. In connection with any third party litigation or other collateral actions, the Receiver shall seek the approval of the staff of the Commission for the hourly rates and/or fee structure for said litigation, to the extent such hourly rates or structure differ(s) from those charged in connection with the initial investigation and receivership administration, which fees shall also be subject to approval of the Court;

### **Applications for Compensation of Professionals**

19. Any Professional or the Receiver, on its own behalf or on behalf of any Professional, may file a Request for Interim Compensation or a Notice of Intention to Pay Interim Compensation (both a "Notice of Compensation") no more frequently than every sixty (60) days. All Notices of Compensation shall set forth the amount of fees and costs requested; a summary of prior Notices of Compensation reflecting the amount of fees previously requested, awarded and paid; and a brief summary of the services rendered during the relevant period. All Notices of Compensation shall have attached as an exhibit a schedule broken down into categories pre-determined by the Receiver showing the amount of fees and costs requested in each category, including a list of the billing persons, the hourly rates and amount of time spent in each category. All objections must be filed and served within ten (10) days of the Application. No compensation will be paid by the Receiver before twenty (20) days of service of a Notice of Compensation to ensure that even if no party in interest objects within ten (10) days of service,

the Court will have an additional ten (10) days to consider the Notice of Compensation and, if the Court deems necessary, schedule a hearing on the Notice of Compensation. Within ten (10) days of the expiration of the time to file an objection, the Court shall either: (i) issue an order allowing in full, allowing in part, or disallowing the requested compensation; or (ii) set the Notice of Compensation for hearing on a date the Court deems appropriate. If the Court does not enter an order on an unopposed Notice of Compensation or set an unopposed Notice for hearing, within the period prescribed herein then the compensation requested in the unopposed Notice of Compensation shall be deemed allowed as requested, without further order of the Court.

20. During the period of this receivership, all persons, including creditors, banks, investors, or others, with actual notice of this Order, are enjoined from filing a petition for relief under the United States Bankruptcy Code without prior permission from this Court, or from in any way disturbing the assets or proceeds of the receivership or from prosecuting any actions or proceedings which involve the Receiver or which affect the property of MBC, VBLLC and VSI;

21. The Receiver is fully authorized to proceed with any filing the Receiver may deem appropriate under the Bankruptcy Code as to MBC, VBLLC and VSI;

**Injunction Against Other Proceedings**

22. The Court hereby enjoins any party (excluding the Receiver, the SEC, the National Association of Securities Dealers (the "NASD"), and/or any other regulatory body or law enforcement agency of the United States or its constituent states) with notice of this Order from initiating, maintaining, or in any way prosecuting in any other court any proceeding, suit, or action against any of the above-named Defendants and/or Relief Defendants. Additionally, the Court hereby enjoins any party (excluding the Receiver, the SEC, the NASD, any other regulatory body or law enforcement agency of the United States or its constituent states or any



party with the express written consent of the Receiver or this Court) with notice of this Order from initiating, maintaining, or in any way prosecuting in any court any proceeding, suit or action that may diminish or usurp property of the Receiver or the Receivership Entities' estates, including, but not limited to, causes of action that the Receiver may have standing to bring or that may belong to the Receiver, or that may belong to any investors or any class or group of investors against the Receivership Entities' former principals, professionals or against other third parties. Unless otherwise expressly authorized by the Receiver or the Court, such proceedings, suits, and actions must be brought in the form of a proceeding ancillary to this Proceeding pursuant to this Order. The Receiver may provide effective notice of this injunction contained in this Order by publication as provided for in the Federal Rules of Civil Procedure, or by filing notice of this Order in any such proceedings, suits and actions brought prior to the entry of this Order.

23. Title to all property, real or personal, all contracts, rights of action and all books and records of MBC, VBLLC and VSI and their principals, wherever located within or without this state, is vested by operation of law in the Receiver;

24. Upon request by the Receiver, any company providing telephone services to MBC, VBLLC and VSI shall provide a reference of calls from the number presently assigned to MBC, VBLLC and VSI to any such number designated by the Receiver or perform any other changes necessary to the conduct of the receivership;

25. Any entity furnishing water, electric, telephone, sewage, garbage or trash removal services to MBC, VBLLC and VSI shall maintain such service and transfer any such accounts to the Receiver unless instructed to the contrary by the Receiver;

26. The United States Postal Service is directed to provide any information requested by the Receiver regarding MBC, VBLLC and VSI, and to handle future deliveries of the mail of MBC, VBLLC and VSI as directed by the Receiver;

27. No bank, savings and loan association, other financial institution, or any other person or entity shall exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court;

28. No bond shall be required in connection with the appointment of the Receiver; however, the Receiver is permitted, at her discretion, to use Receivership Assets to obtain a bond should she so chose. Except for an act of gross negligence, the Receiver shall not be liable for any loss or damage incurred by MBC, VBLLC and VSI or by the Receiver's officers, agents or employees, or any other person, by reason of any act performed or omitted to be performed by the Receiver in connection with the discharge of the Receiver's duties and responsibilities;

29. Service of this Order shall be sufficient if made upon MBC, VBLLC and VSI and their principals by facsimile or overnight courier;

30. In the event that the Receiver discovers that funds of persons who have invested in MBC, VBLLC and VSI have been transferred to other persons or entities, the Receiver shall apply to this Court for an Order giving the Receiver possession of such funds and, if the Receiver deems it advisable, extending this receivership over any person or entity holding such investor funds;

31. Immediately upon entry of this Order, the Receiver may take depositions upon oral examination of, and obtain the production documents from, parties and non-parties subject to two (2) business days notice. In addition, immediately upon entry of this Order, the Receiver shall be entitled to serve interrogatories, requests for the production of documents and requests for

admissions. The parties shall respond to such discovery requests within five (5) calendar days of service. Service of discovery requests shall be sufficient if made upon the parties by facsimile or overnight courier. Depositions may be taken by telephone or other remote electronic means.

32. This Court shall retain jurisdiction of this matter for all purposes.

DONE AND ORDERED this 4<sup>th</sup> day of May, 2004, at Miami, Florida.

  
UNITED STATES DISTRICT JUDGE

Copies to:

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2) Receiver, Roberto Montenegro