

COPY

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5  
6 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA  
7  
8 IN AND FOR THE COUNTY OF MARICOPA

9 ARIZONA CORPORATION )  
10 COMMISSION, )

11 Plaintiff, )

12 v. )

13 TREND MANAGEMENT GROUP, )  
14 INC.; TREND CAPITAL, L.L.C., )

15 Defendants. )

Cause No. CV 2006-016822

PETITION NO. 20

PETITION FOR ORDER DIRECTING  
PAYMENT OF RECEIVERSHIP ASSETS  
TO HARPER CHRISTIAN DICHTER  
GRAIF P.C. LEGAL COUNSEL FOR  
SCOTT BOGUE

(Assigned to Judge A. Craig Blakey, II)

16 Peter S. Davis, as the court appointed Receiver, respectfully petitions the Court for an  
17 Order directing the Receiver to pay \$23,000.00 to Harper Christian Dichter Graif, P.C., legal  
18 counsel for Scott Bogue.

19 **I. Background**

20 1. The Trend Capital Receivership was established by the consent of the principals  
21 of Trend Management and Trend Capital and the Arizona Corporation Commission.  
Pursuant to the agreement for the establishment of a Receivership, the principles of Trend  
Management, and Trend Capital, among other things, agreed that the Arizona Corporation

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1 Commission would continue to prosecute its administrative complaint<sup>1</sup> against Trend Capital,  
2 Trend Management, Scott and Arlene Bogue, Ryan and Lori Herndon, Linda Jordon-Van  
3 Vranken, Russell Van Vranken, Christopher and Jane Doe Marx and Scot and Lori Ann  
4 Oglesby while the Receivership was administered in the Maricopa County Superior Court.

5 2. During the negotiations related to the consent to the appointment of a Receiver,  
6 lawyers for the Arizona Corporation Commission and Trend Management and Trend Capital  
7 negotiated terms of a Receivership Order. The fruit of these negotiations formed the *Order*  
8 *Appointing Receiver* ("Receivership Order") signed by Judge Hilliard on November 14,  
9 2006.<sup>2</sup>

10 3. The Receivership Order contains certain provisions not commonly found in  
11 Receivership Orders. For example, the Receivership Order includes an express provision  
12 against the Receiver's ability to recover from any attorney (employed by Trend Management  
13 or Trend Capital) any funds paid for the defense of Trend Management or Trend Capital prior  
14 to the effective date of the Receivership Order. (*See Order Appointing Receiver*, ¶ 23, lines  
15 11-15). The Receivership Order also states that nothing precludes attorneys for Trend  
16 Management/Trend Capital from requesting the Receiver pay legal fees and costs associated  
17 with defense of the administrative action or any other legal proceeding in which Scott Bogue  
18 or Ryan Herndon become involved arising out of facts alleged in the administrative action.  
19 (*See Order Appointing Receiver*, ¶ 23, lines 17-22).

21 \_\_\_\_\_  
<sup>1</sup> The Administrative Case is Docket Number S-20476A-06-055.

<sup>2</sup> Peter Davis, the eventual court-appointed Receiver was not a party to any of these negotiations.

1           4.       Soon after Peter S. Davis was advised by the parties that he had been selected  
2 as the proposed Receiver, the Receiver and his counsel attended a meeting with  
3 representatives of the Arizona Corporation Commission and legal counsel for Trend Capital  
4 and Trend Management. At this meeting, the Receiver was advised of the provisions of the  
5 Receivership Order. The Receiver was also advised of an agreement between the Arizona  
6 Corporation Commission and Harper Christian Dichter Graif, P.C that \$23,000.00 of Trend  
7 Management funds in the possession of U.S. Bank was intended to used pay to Harper  
8 Christian Dichter Graif, P.C. However, the Trend Management accounts were "frozen" by  
9 U.S. Bank before Scott Bogue could have these funds actually delivered to Harper Christian  
10 Dichter Graif, P.C .<sup>3</sup> The Receiver was advised that the Arizona Corporation Commission  
11 and Harper Christian Dichter Graif, P.C. had agreed that the Receiver would pay \$23,000.00  
12 to Harper Christian Dichter Graif, P.C. upon his request.<sup>4</sup>

13           5.       When the Receiver learned of this agreement, he advised the parties that he  
14 would not agree to turnover these funds, but upon the request of Harper Christian Dichter  
15 Graif, P.C., the Receiver would prepare a petition seeking direction from the Receivership  
16 Court to pay these funds to Harper Christian Dichter Graif, P.C.

17           6.       On January 18, 2007, Stephen Dichter sent counsel for the Receiver a written  
18 request for payment of the \$23,000.00 (see attached Exhibit A).  
19

20 <sup>3</sup> U.S. Bank served as the indenture trustee and escrow agent on behalf of Trend Management and Trend Capital.

21 <sup>4</sup> It was presumed by the State of Arizona and Harper Christian Dichter Graif, P.C. that U.S. Bank would voluntarily turnover these funds to a court-appointed Receiver. As this Court is aware, U.S. Bank eventually did turnover these funds after the Receiver filed his Petition No. 5 - Receiver's Petition for Order Directing U.S. Bank to Turnover Receivership Assets and Records.

1           **II.       The Receiver Recommends the Payment of \$23,000.00 to Harper,**  
2           **Christian, Dichter Graif, P.C.**

3           The Receiver recommends the Court approve the payment of \$23,000.00 to Harper  
4 Christian Dichter Graif, P.C. because an agreement to pay these funds to Harper Christian  
5 Dichter Graif, P.C was negotiated and agreed to before the Receivership was established and  
6 the \$23,000.00 will reimburse Harper Christian Dichter Graif, P.C for fees and costs  
7 associated with the operation of Trend Management before it was placed into Receivership.

8           As detailed above, the State of Arizona and Harper Christian Dichter Graif, P.C as  
9 counsel to Scott Bogue agreed that \$23,000.00 of Trend Management funds in the possession  
10 of U.S. Bank was intended to pay to Harper Christian Dichter Graif, P.C. However, Trend  
11 Management's accounts were "frozen" by U.S. Bank before these funds could actually be  
12 paid to Harper Christian Dichter Graif, P.C. The Receiver does not want to interfere with this  
13 pre-Receivership agreement between the Arizona Corporation Commission and counsel for  
14 Trend Management who among other things worked to establish the Trend Receivership.

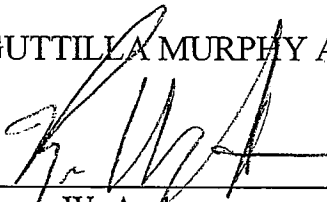
15           Additionally, it must be noted that the Receiver recommends to that the Court approve  
16 this payment to Harper Christian Dichter Graif, P.C because Harper Christian Dichter Graif,  
17 P.C incurred nearly \$23,000.00 of legal fees in the management of the "receivership assets"  
18 before the Receiver was appointed. The Receiver has determined that it was Mr. Bogue and  
19 his counsel who discovered that there were numerous investors in Trend Capital which were  
20 unknown to Trend Management and worked to ensure the assets of Trend Management and  
21 Trend Capital would be preserved for a Receiver, once one was appointed. The Receiver

1 believes that these fees incurred by Harper Christian Dichter Graif, P.C. were for the benefit  
2 of the estate.

3 WHEREFORE, based on the foregoing, the Receiver requests the Court enter an order  
4 directing the Receiver to pay \$23,000.00 to Harper Christian Dichter Graif, P.C as counsel for  
5 Scott Bogue.

6 Respectfully submitted this 6<sup>th</sup> day of February, 2008.

7 GUTTILLA MURPHY ANDERSON, P.C.

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9 \_\_\_\_\_  
10 Ryan W. Anderson  
11 Attorneys for the Receiver

12 1027-001(70725)

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21

January 15, 2008

Ryan W. Anderson, Esq.  
Guttilla, Murphy, & Anderson P.C.  
4150 W. Northern  
Phoenix, Arizona 85051-5787



Re: Scott R. Bogue and Trend Management Group, Inc.

Dear Ryan:

I have reviewed the billing statements for our files in the Trend Management Group cases. In total, for the matter we carry as "Securities Division," we billed \$99,751.54 and we were paid \$ 78,210.00, leaving us short \$21,541.54

In the *Navas*' matter, of which you are aware, we billed \$15,071 and received payment. In addition, there was another matter called *Fridley*, in which an aged investor represented by Roshka who invested through Herndon's agents threatened suit based upon suitability issues and demanded restitution of her invested funds without any return pursuant to a settlement agreement. In that case we billed \$1,494 and were paid \$187.50, so we were short \$1,306.50.

In total, for our work to date, we are short \$22,747.04 and, as we are to receive \$23,000, we will be left in the positive by \$252.96.

In addition to justifying our bills by the hourly method, pursuant to the agreement between the Division, your client, and mine, we are to be paid the additional \$23,000.00 for the reasons outlined in my December 18, 2007 letter.

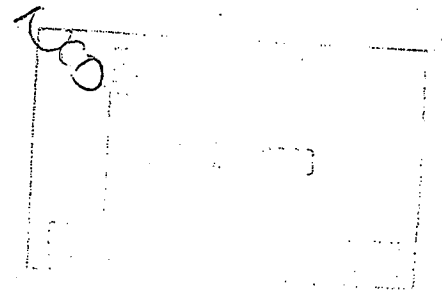
The time for which we primarily remain unpaid is the time associated with for the time we spent analyzing the growing number of instances in which investor funds meant by investors for TMG were diverted by Ryan Herndon to himself or his associates and for the time spent thereafter negotiating for the appointment of a Receiver so as to remove any thought that Scott Bogue was attempting to manipulate the remaining TMG funds for his benefit and provide the Division with a method of assuring the investors that all was being done that could reasonably be done to assist them.

Stephen M. Dichter  
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Exhibit "A"



Ryan W. Anderson, Esq.

January 15, 2008

Page 2

In this endeavor, we have hidden nothing, we have answered every question put to us, and the material statement we have made have proven to be accurate in the main and mistaken, rather than false, where inaccurate.

I believe that our efforts, both singly and, combined with the later efforts of others, including your client and your firm, saved the Estate hundreds of thousands of dollars both in terms of assets recovered and claims forestalled. We could, of course, have chosen an alternative path; one that many in Bogue's position might well have chosen and, as a result, kept control of the TMG funds for many more months. Instead, we have cooperated completely with the Receiver and with the Securities Division.

If you have any additional questions or concerns, please advise me of them so we can address them.

Very truly yours,



Stephen M. Dichter

SMD/

cc: Client