

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

In re:

PALM BEACH FINANCE PARTNERS, L.P.,
PALM BEACH FINANCE II, L.P.,

Debtors.

Case No.: 09-36379 BKC PGH

Chapter 11 (Liquidating Trust)
(Jointly Administered)

**TRUSTEE'S APPLICATION FOR EMPLOYMENT
OF BARRY E. MUKAMAL, CPA AND KAPILAMUKAMAL, LLP
AS ACCOUNTANTS AND ADVISORS *NUNC PRO TUNC* TO MAY 1, 2014**

Barry E. Mukamal, as Trustee for the estate of the above-captioned Debtor (the "Trustee"), applies to the court for authorization and approval of the employment of Barry E. Mukamal, CPA ("Mukamal") and the accounting firm of KapilaMukamal, LLP ("KM") as accountants and advisors for the Trustee and the estate, *nunc pro tunc* to May 1, 2014, and respectfully represents:

1. The undersigned is the duly appointed, qualified and acting Liquidating Trustee in this case.
2. In order for the Trustee to properly discharge his duties in this case, it is essential that he employ accountants and advisors to assist him in tax compliance filings and other financial matters, including litigation support. The Trustee has selected KM because of its extensive experience and expertise in bankruptcy and related matters.
3. Barry E. Mukamal, CPA and Soneet Kapila, CPA are both partners of the firm KapilaMukamal LLP ("KM") and both serve as members of the Chapter 7 Panel of Trustee's in the Southern District of Florida.
4. On February 17, 2010, the Trustee filed his Application to Employ Forensic Accountants and Advisors *Nunc Pro Tunc* to February 8, 2010 (ECF #124) seeking to employ

Barry E. Mukamal, CPA and Marcum, LLP (“Marcum”) and the Order approving the application was entered on February 18, 2010 (ECF #125).

5. Marcum’s employment in this case shall continue for on-going and discrete matters. Marcum shall continue to provide analysis of cash transfers and transactions relating to litigation in process. Since Marcum has generated spreadsheets containing details of specific transactions requested by Trustee’s counsel during litigation, the Trustee determined that the Estate would be best served by Marcum providing analysis of source transaction in support of counsel’s efforts.

6. I am a retired partner of the accounting firm of Marcum, LLP as of May 1, 2014. On May 1, 2014, Soneet Kapila and I formed Kapila Mukamal, LLP an accounting and litigation support firm.

7. Under the retirement agreement between Marcum and myself, there are continuing benefits and obligations between the parties to that agreement, including my receiving compensation for services rendered by Marcum on and after May 1, 2014 on certain of those files I originated where Marcum continues to provide services.

8. I do not believe that this arrangement is a violation of Section 504 of the Bankruptcy Code. Section 504 provides in general that a person receiving compensation or reimbursement under Section 503(b)(2) or 503(b)(4) may not share or agree to share any compensation unless it is with another member, partner or regular associate in such association corporation or partnership. I believe that my retired partner status qualifies under the exception to Section 504.

9. On November 7, 2012, this Court entered its Order on Application to Employ Soneet R. Kapila (“SRK”) and Kapila & Company, approving SRK’s employment and the employment of Kapila & Company (“KCO”), effective October 12, 2012 [ECF 1504], as experts for the Liquidating Trustee consistent with the Trustee’s obligations as are set forth in 11 U.S.C. §327. KCO ceased operations as of April 30, 2014, and SKR is an equity partner in KM. KCO will file

a final fee application for services rendered through April 30, 2014. Effective May 1, 2014, the services of KCO shall transition over to KM, which will not include expert testimony.

10. There will be no duplication of these tasks by KM and any tasks KM will provide will not be duplicative of any work/analysis performed by Marcum.

11. The Trustee will routinely monitor the tasks assigned to each firm to ensure no duplication of services provided and will provide detailed instructions with respect to work flow assignments.

12. The Trustee shall provide a semi-annual report to the United States Trustee's office as to the status of the case and the engagement so long as both firms are providing accounting services.

13. The Trustee seeks to employ KM to render the following professional services to the Trustee:

(a) review of all financial information prepared by the Debtor or its accountants, including but not limited to a review of the Debtor's financial information as of the date of the filing of the petition, its assets and liabilities, and its secured and unsecured creditors;

(b) review and analysis of the organizational structure of and financial interrelationships among the Debtor and its affiliates and insiders, including a review of the books of such companies or persons as may be requested;

(c) review and analysis of transfers to and from the Debtor to third parties, both pre-petition and post-petition, unrelated to the analysis being performed by Marcum, LLP;

(d) attendance at meetings with the Debtor, its creditors, the attorneys of such parties, and with federal, state, and local tax authorities, if requested;

(e) review of the books and records of the Debtor for potential preference payments, fraudulent transfers, or any other matters that the Trustee may request;

(f) the rendering of such other assistance in the nature of accounting services, financial consulting, valuation issues, or other financial projects as the Trustee may deem

necessary, including but not limited to financial assistance with matters pertaining to the estate's involvement with the creditor's committees.

(g) preparation of estate tax returns,

(h) and any other items reasonably related to the above at the request of the Trustee,

(i) continuation of financial analysis to assist expert, to be retained by the estate for insolvency opinions and testimony, if needed.

14. KM neither holds nor represents any interest adverse to the estate in the matters upon which it is to be employed, is a "disinterested person" as that term is defined by 11 U.S.C. SS 101 (14) and 327 (a) and (d), and its employment would be in the best interest of the estate and its creditors. An affidavit in support of this application is attached hereto as Exhibit A.

15. KM has agreed to perform the foregoing services at the ordinary and usual hourly billing rates of its members who will perform services in this matter. KM will incur out-of-pocket disbursements in the rendition of the services for which it shall seek reimbursement. KM recognizes that its compensation is subject to approval and adjustment by the Court in accordance with 11 U.S.C. §330.

WHEREFORE, the Trustee respectfully requests that this Court enter an order approving the selection and employment by the Trustee of Barry E. Mukamal, CPA and KapilaMukamal LLP as his accountants and advisors to perform the services set forth in this Application, upon the terms and conditions set forth herein.

Respectfully submitted this 3rd day of June, 2014.

/s/ Barry E. Mukamal
Barry E. Mukamal
Liquidating Trustee

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
www.flsb.uscourts.gov

In re:

**PALM BEACH FINANCE PARTNERS, L.P.,
PALM BEACH FINANCE II, L.P.,**

Debtors.

Case No.: 09-36379 BKC PGH

Chapter 11 (Liquidating Trust)
(Jointly Administered)

_____ /

AFFIDAVIT OF BARRY E. MUKAMAL

STATE OF FLORIDA)
) **SS**
COUNTY OF MIAMI-DADE)

BEFORE ME, the undersigned authority, personally appeared Barry E. Mukamal, C.P.A., in Miami, Florida, who after being duly sworn, deposes and says as follows:

1. I am a Certified Public Accountant, experienced in rendering accounting, advisory, and litigation consulting services.

2. I am a partner of the firm KapilaMukamal LLP ("KM"), with offices located at 1 SE 3rd Ave, Ste 2150, Miami, FL 33131.

3. I am willing to accept employment by the trustee, on the basis set forth in the annexed application. Neither I nor the firm hold or represent any adverse interest to the trustee, the debtor or the estate in regards to the matters for which I am to be employed and are disinterested persons as required by 11 U.S.C. § 327(a).

4. Neither I nor KM has a pre-petition or other claim against the estate.

5. Neither I nor KM holds any connections with the Debtor, creditors, any other party in interest, their respective attorneys, accountants, the Trustee, the U.S. Trustee, or any person employed by the Office of the U.S. Trustee as required by Fed.R.Bank.P. 2014, except as follows:

- a. Barry E. Mukamal is a member of the Chapter 7 Panel of Trustee's in the Southern District of Florida and is the Chapter 11 Trustee in this matter. Should I or KM become notified of any conflicts asserted by a party with which the firm has a relationship, I will notify this Court immediately.
- b. Soneet R. Kapila ("Kapila"), a partner in the accounting firm of KapilaMukamal, LLP is also a member of the Chapter 7 Panel of Trustees. Should Kapila or KM become notified of any conflicts asserted by a party with which the firm has a relationship, I will notify this Court immediately.
- c. On February 17, 2010, the Trustee filed his Application to Employ Forensic Accountants and Advisors *Nunc Pro Tunc* to February 8, 2010 (ECF #124) seeking to employ Barry E. Mukamal, CPA and Marcum, LLP ("Marcum") and the Order approving the application was entered on February 18, 2010 (ECF #125).
- d. Marcum's employment in this case shall continue for on-going and discrete matters. Marcum shall continue to provide analysis of cash transfers and transactions relating to litigation in process. Since Marcum has generated spreadsheets containing details of specific transactions requested by Trustee's counsel during litigation, the Trustee determined that the Estate would be best served by Marcum providing analysis of source transaction in support of counsel's efforts.
- e. There will be no duplication of these tasks by KM and any tasks KM will provide will not be duplicative of any work/analysis performed by Marcum.
- f. I am a retired partner of the accounting firm of Marcum, LLP as of May 1, 2014. On May 1, 2014, Soneet Kapila and I formed Kapila Mukamal, LLP an accounting and litigation support firm.

- g. Under the retirement agreement between Marcum and myself, there are continuing benefits and obligations between the parties to that agreement, including my receiving compensation for services rendered by Marcum on and after May 1, 2014 on certain files I originated where Marcum continues to provide services.
- h. I do not believe that this arrangement is a violation of Section 504 of the Bankruptcy Code. Section 504 provides in general that a person receiving compensation or reimbursement under Section 503(b)(2) or 503(b)(4) may not share or agree to share any compensation unless it is with another member, partner or regular associate in such association corporation or partnership. I believe that my retired partner status qualifies under the exception to Section 504.
- i. On November 7, 2012, this Court entered its Order on Application to Employ Soneet R. Kapila ("SRK") and Kapila & Company, approving SRK's employment and the employment of Kapila & Company ("KCO"), effective October 12, 2012 (ECF #1504), as experts for the Liquidating Trustee consistent with the Trustee's obligations as are set forth in 11 U.S.C. §327. KCO ceased operations as of April 30, 2014, and SRK is an equity partner in KM. KCO will file a final fee application for services rendered through April 30, 2014. Effective May 1, 2014, the expert services of KCO shall transition over to KM, which will not include expert testimony.

6. As part of its diverse practice, KM appears in cases, proceedings, and transactions involving many different creditors, shareholders, attorneys, accountants, financial consultants, investment bankers, and other entities, some of which may be or may represent claimants and parties in interest in this case. KM has a widespread practice in insolvency and bankruptcy matters and I and the Firm participate in numerous cases in both the federal and state courts

involving different professionals, including attorneys, accountants and financial consultants. Some of those professionals may represent parties-in-interest in this case. However, I am not advising any such entity and/or professional in connection with this Liquidating Trust proceeding nor do I have a relationship with any such entity or professional which is adverse to the Debtor, its creditors or the estate.

7. KM is otherwise well-qualified to serve as accountants for the Trustee for the purpose required. KM has been retained as accountants and financial consultants to render professional services to trustees, debtors, creditors, creditors' committees, and others in numerous bankruptcy matters. Barry E. Mukamal is also a Certified Fraud Examiner (CFE), Certified in Financial Forensics (CFF), a personal Financial Specialist (PFS), accredited in Business Valuation (ABV), and a candidate for the Certified Insolvency & Restructuring Advisor (CIRA) designation

8. Neither I nor KM has received a retainer from the debtor, the estate, or a third party.

9. In the normal course of business, the firm has completed a conflict check containing a list of all creditors resulting in no verified conflicts.

FURTHER AFFIANT SAYETH NAUGHT.

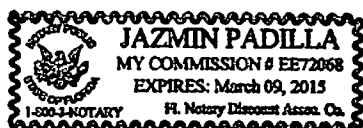


Barry E. Mukamal, C.P.A.

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

THE FOREGOING INSTRUMENT was acknowledged before me this 3rd day of June, 2014 by Barry E. Mukamal, who is personally known to me.

My commission expires:





Jazmin Padilla
Notary Public, State of Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the Application of Trustee for Employment of Barry E. Mukamal, CPA and KapilaMukamal LLP as Accountants and Advisors *Nunc Pro Tunc* to May 1, 2014, was delivered via CM/ECF on all electronic recipients and via U.S. Mail as indicated on the attached service list on this 3rd day of June, 2014.

/s/ Jazmin Padilla

Jazmin Padilla for
KapilaMukamal, LLP
1 SE 3rd Ave, Ste 2150
Miami, FL 33131
Telephone: (786) 517-5771

Label Matrix for local noticing
113C-9
Case 09-36379-PGH
Southern District of Florida
West Palm Beach
Tue Jun 3 15:39:42 EDT 2014

Ashton Revocable Living Trust
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New York, NY 10006-3007

BMO Harris Bank, N.A.
c/o Charles W. Throckmorton
2525 Ponce de Leon
9th Floor
Coral Gables, FL 33134-6039

Blackpool Absolute Return Fund, LLC
c/o John E. Page, Esquire
Shraiberg, Ferrara & Landau, P.A.
2385 N.W. Executive Center Drive
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Blackpool Partners, LLC
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Calhoun Multi-Series Fund, L.P.
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First Baptist Church of Tequesta, Inc.
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Geoff Varga, as Liquidator
c/o Robin Rubens
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The Christensen Group, Inc. Wicker Smith O'Hara McCoy & Ford, P 515 North Flagler Drive Suite 1600 West Palm Beach, FL 33401-4346	Thomas J. Ginley Life Ins. Trust Dated 1-22- 6650 N. Tower Circle Drive Lincolnwood, Il 60712-3218	Toledo Fund, LLC c/o Weissman, Dervishi, Borgo & Nordlund SunTrust International Center One Southeast Third Avenue, Suite 1980 Miami, FL 33131-1716
Trustee Services Inc 2 Ken Welt 3790 N 28 Tr Hollywood, FL 33020-1112	West Capital Management c/o Simon B. Paris 1 Liberty Pl 52 FL 1650 Market St Philadelphia, PA 19103-7301	ZCALL, LLC c/o Weissman, Dervishi, Borgo & Nordlund SunTrust International Center One Southeast Third Avenue, Suite 1980 Miami, FL 33131-1716
Agile Safety Fund (International) 730 17th Street Suite 550 Denver, CO 80202-3539	Agile Safety Fund (Master Fund) 730 17th Street Suite 550 Denver, CO 80202-3539	Agile Safety Variable Fund, L.P. 730 17th Street Suite 550 Denver, CO 80202-3539
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Amy Davenport POB 3511 Midland, TX 79702-3511	Armadillo Fund 40 Random Farms Cir Chappaqua, NY 10514-1000	BTA Oil Producers 104 S Pecos St Midland, TX 79701-5099
Barry Beal 104 S Pecos St Midland, TX 79701-5021	BayRoc Associates c/o JamiScott 15 W 53rd St. #24-B New York, NY 10019-5401	Beacon Partners, Ltd 3030 McKinney Ave, #305 Dallas, TX 75204-7472
Beal Family Trust FBO Kelly S Beal 104 S Pecos St Midland, TX 79701-5021	Beal GST Exemption Trust 104 S Pecos St Midland, TX 79701-5021	Blackpool Absolute Return Fund, LLC c/o John E. Page, Esquire Shraiberg, Ferrara & Landau, P.A. 2385 N.W. Executive Center Drive, Suite Boca Raton, Florida 33431-8510
Bruce Prevost #15810-041 9595 W Quincy Ave Littleton, CO 80123-1159	Calhoun Multi-Series Fund, L.P. c/o John E. Page, Esquire Shraiberg, Ferrara & Landau, P.A. 2385 NW Executive Center Dr, Suite 300 Boca Raton, FL 33431-8530	Cannonball Funds/Globefin Asset Manageme PO Box 218 Wickatunk, NJ 07765-0218
Carlton Beal Family Trust FBO Barry Beal 104 S Pecos St Midland, TX 79701-5021	Christopher J Topolewski, West Capital Manag c/o Simon B. Paris 1 Liberty Pl 52 FL 1650 Market St Philadelphia, PA 19103-7301	Claude Lestage 4893 N Kay Palm Beach Gardens, FL 33418-6167

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