

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND

In re:

CMS PROCESSING, LLC

Petitioner.

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Civil No. C-15-CV-22-004193

**ORDER GRANTING EMERGENCY PETITION FOR APPOINTMENT OF
GRAY & ASSOCIATES, LLC AS RECEIVER FOR CMS PROCESSING, LLC**

UPON CONSIDERATION of the Emergency Petition to Appoint Gray & Associates, LLC (“Gray & Associates”) as Receiver (“Receiver”) for CMS Processing, LLC¹ and its properties, pursuant to Title 24, Maryland Commercial Receivership Act, Md. Code Ann., Com. Law § 24-101 *et seq.* (“Receivership Act”)² and upon taking judicial notice of the Court’s prior Orders Appointing Gray & Associates Receiver for (i) CMS Holdings Group, LLC (Civil No. C-15-CV-22-001735); and (ii) Merchant Portfolio Management Group, LLC (Civil Case No. C-15-CV-002267), and the factual and legal grounds set forth in those receivership proceedings; the Court hereby determines that it has subject matter jurisdiction over the Petition and all relief requested therein, that Petitioners have shown sufficient factual and legal grounds for the appointment of Gray & Associates as Receiver for CMS Processing and two (2) entities that the Receiver believes are wholly owned subsidiaries: Claris Group, LLC and Tillim Investments, LLC (together, “CMS Processing”) and its receivership property as being in the best interests of CMS Processing and its creditors by the protection and preservation of value of its properties; it is hereby:

ORDERED, that the Petition be, and it hereby is GRANTED; and it is further

¹ All defined terms shall have the meanings ascribed to them in the Petition unless specifically defined herein.

² All statutory references (*i.e.*, § 24-101 *et seq.*) are to the Receivership Act, unless other citation is provided.

ORDERED, that the Court appoints Gray & Associates, LLC (“Gray & Associates”) as receiver for CMS Processing and its Receivership Property (“Receiver”) and specifically, consistent with the CMS Holdings and MPMG Receivership Orders, the Receiver is authorized to and shall continue to act as managing member of CMS Holdings, CMS Processing (and specifically its subsidiaries) and MPMG, and its three (3) wholly owned subsidiaries (“MPMG Entities”) and any other entities owned by CMS Holdings, CMS Processing and MPMG; and it is further

ORDERED, that the entry of this Order Appointing a Receiver for CMS Processing operates as a matter of law³ as a stay of any act to:

- (1) Commence or continue a judicial, administrative, or other action or proceeding against the owner that was or could have been commenced before entry of the order;
- (2) Collect, assess, or recover a claim against the owner that arose before entry of the order;
- (3) Obtain possession of, exercise control over, or enforce a judgment against the receivership property obtained before entry of the order; or
- (4) Create, perfect, or enforce a lien or other claim against the receivership property that arose before entry of the order.

And it is further

ORDERED, that Petitioners’ request to impose a stay as provided under § 24-401(b) as necessary to protect the receivership property or business, and to facilitate administration of this receivership, the Court hereby orders a stay of the matters set forth in § 24-401(c), including the following:

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³ See, § 24-401(a)(1) through (4) of the Receivership Act.

(i) an act to perfect, maintain, or continue the perfection of an interest in receivership property pursuant to § 24-401(c)(2);

(ii) the exercise of the right of setoff or recoupment pursuant to § 24-401(c)(7);

(iii) the commencement of an involuntary bankruptcy case against MPMG under 11 U.S.C. §303 by petitioning creditors of MPMG pursuant to § 24-401(c)(8); and

(iv) any other matter stayed in bankruptcy proceedings under 11 U.S.C. §362(b) to the fullest extent allowed under the Receivership Act, pursuant to § 24-401(c)(9); and it is further

ORDERED, that the Receiver is authorized to obtain exclusive access and control of all receivership property, and all books and records pertaining thereto, including all financial information related to CMS Processing and manage the operations of CMS Processing (specifically including its subsidiaries) for the benefit of creditors, and is authorized with and given all rights, powers and duties of a Receiver as provided in § 24-301, including, without limitation authorization to perform the following acts (and to seek authorization from this Court for any other powers) on behalf of CMS Processing, until the Court enters an Order terminating the Receiver at the request of CMS Processing or the Receiver:

(a) Enter upon and take possession, manage and control of all documents, books, records, papers, data and accounts relating to the accounts of CMS Processing including computer files and other electronic data (collectively, "Files");

(b) Take and maintain possession of all books, records, papers, contracts, agreements and other documents and materials relating to CMS Processing and preserve and maintain the property of CMS Processing including computer-readable memory and any computer hardware or software necessary to access and process such memory maintained by CMS

Processing and their agents, whether offsite or onsite (collectively, "Books and Records");

(c) Employ or discharge such contractors, subcontractors, agents, inspectors, materialmen, architects, engineers, consultants, managers, brokers, marketing agents, or other employees, agents, independent contractors or professionals, as the Receiver may in its sole discretion deem necessary, appropriate or desirable to operate, manage, maintain and improve CMS Processing and otherwise implement and effectuate the rights and powers set forth herein;

(d) Pay, settle or compromise all existing bills and claims which are or may be liens against the property of CMS Processing, or may be necessary or desirable in the judgment of the Receiver to effectuate the provisions hereof, including, without limitation, negotiating and entering into compromises and settlements with contractors and/or subcontractors;

(e) Make repairs and alterations to the real or personal property of the CMS Processing;

(f) Exercise all rights of a signatory on any financial accounts or contracts of CMS Processing;

(g) Execute and deliver, in the name of the Receiver as attorney-in-fact and agent of the CMS Processing, such documents, instruments, applications and certificates as are necessary or appropriate to implement and effectuate the rights and powers set forth herein and to consummate authorized transactions;

(h) Enter into, enforce, modify or cancel such leases, whether of real or personal property, or tenancy agreements of CMS Processing, under such terms and conditions as the Receiver may in its sole discretion deem appropriate or desirable;

(i) Collect and receive the income, accounts receivable, revenues, profits, issues, transfers, payments and proceeds, accrued or accruing, from CMS Processing;

(j) Collect and receive the income, revenues, profits, issues, payments and proceeds, accrued or accruing, for the CMS Processing;

(j) Sue for unpaid sums owed, profits, income, revenues, issues, payments and proceeds in the name of the CMS Processing and defend all actions, at law or in equity, which may be brought against the Receiver or property of MPMG and the MPMG Entities;

(k) Operate CMS Processing in the ordinary course of business using the Receiver's business judgment including the sale and acquisition of assets;

(l) Authorize CMS Processing to borrow funds from its existing creditors or third parties as the Receiver deems appropriate in the ordinary course of the CMS Holdings and the Operating Companies;

(m) Compromise or give acquittance for contractual profits, payments, income or proceeds that may become due for CMS Processing;

(n) Execute all applications and certificates in the name of the Receiver as attorney-in-fact of CMS Processing;

(o) Bring all actions at law or in equity which cause may require, and defend all actions at law or in equity which may be brought against the Receiver, CMS Processing to implement and effectuate the provisions hereof;

(p) Delegate or assign any and all rights and powers set forth herein, including to the existing management of CMS Processing;

(q) Take and possess all financial accounts of CMS Processing and/or establish new financial accounts (together, "Bank Accounts"), collect and receive dues, income, revenues, profits, issues, payments, and proceeds, accrued or accruing, from CMS Processing and deposit such sums into the corresponding account of CMS Processing and deposit the proceeds into the

Bank Accounts; and accounts receivable to which the CMS Processing are entitled, which shall not be subject to attachment by creditors of CMS Processing or anyone else without authorization of this Court, and the Receiver may utilize the Bank Accounts to pay the obligations of CMS Processing in the ordinary course of business;

(r) File a voluntary petition in bankruptcy (either Chapter 7 or Chapter 11) at any time for CMS Processing without further application or order from this Court or for any entities owned or managed by CMS Processing;

(s) Exclude, in whole or in part, the CMS Processing's employees and their independent contractors, their agents, servants and employees from CMS Processing's assets absent prior consent by the Receiver;

(t) Do any acts which the Receiver, in its sole discretion, deems appropriate or desirable to protect the CMS Processing and use such measures, legal or equitable, as the Receiver may in its sole discretion deem appropriate or desirable to implement and effectuate the provisions hereof including, without limitation, marketed and selling by public auction or private sale any assets of CMS Processing (specifically including its subsidiaries and/or the assets thereof), subject to court approval of procedures and any transaction where such sale is outside the ordinary course of business;

(u) Execute and deliver, in the name of the Receiver as attorney-in-fact and agent of the CMS Processing, such documents, instruments, applications, and certificates as are necessary or appropriate to implement and effectuate the rights and powers set forth herein;

(v) Borrow from related entities or a third party (in the sole discretion of the Receiver) such amounts as the Receiver deems necessary or appropriate to protect, preserve, insure, manage, lease, market, improve, secure and control CMS Processing and to repay on a

periodic basis any sums owed by CMS Processing that have been paid in the ordinary course of business by CMS Processing plus interest at a contractual rate if so required by contract;

(w) Collect all mail, whether physical or electronic, being directed to CMS Processing through change of address forms and/or physical collection and relocation or electronic means;

(x) Retain law firms, accountants and professionals as the Receiver deems necessary to advise the Receiver on legal or financial matters that arise during the receivership and to represent the Receiver in any litigation to which the Receiver, CMS Processing may become a party, and to pay a retainer to any other professional which the Receiver deems necessary and pay all such professionals on monthly basis pursuant to invoices showing the nature of the services at their customary hourly rates, plus all reasonable and necessary out-of-pocket expenses. The Receiver may require that the professionals file applications for compensation on a quarterly basis. The Receiver is authorized to compensate its professionals as administrative claims monthly, and all compensation of the Receiver and its professionals shall have the highest priority of all claims of creditors, subject to further Court Order. All applications for authority to employ or compensate the Receiver and its professionals shall be filed in the CMS Holdings Receivership, with notices to be filed in this proceeding;

(y) Compromise any litigation to which CMS Processing (specifically including its subsidiaries) is or becomes a party consistent with the purposes of maximizing the recovery for CMS Processing;

(z) Seek injunctive relief from this Court and any court of competent jurisdiction to protect the assets for this Receivership Estate and the ultimate distribution to creditors of CMS Processing;

(aa) Issue subpoenas for documents, testimony and other discovery;

(bb) Take such actions and require performance as is deemed necessary or desirable in the judgment of the Receiver under any contracts, including entering into or terminating such contracts, relating to CMS Processing;

(cc) Have all other powers granted to the Receiver by this Court, permitted under the laws of the State of Maryland and/or pursuant to applicable law including, without limitation, to bring actions pursuant to Md. Code, Com. Law Art. § Section 15-101 et seq.;

(dd) File reports with this Court detailing receipts and disbursements and describing activities undertaken in its capacity as Receiver within thirty (30) days of the close of every calendar quarter commencing after the close of the second calendar quarter after entry of this order and at the conclusion of the receivership; and

(ee) Seek clarification or additional authorization of this Court to perform the duties and obligations appointed hereunder. It is further

ORDERED, that Gray & Associates, LLC shall serve as Receiver and shall use its business judgment in the performance of duties and he shall have no liability to the Estate, CMS Processing or any creditor or interested party unless the Receiver has acted with gross negligence and shall receive the protections provided by Md. Code, Com. Law Art. § 24-702(a) and (b); and it is further

ORDERED, that the Receiver shall charge fees for receivership services on an hourly basis; specifically, \$400 per hour for time billed by G. Richard Gray; \$300 per hour for associates and paid monthly. In addition to the hourly rate, Mr. Gray charges \$2,000 per day for court appearances. The Receiver will request reimbursement of its actual and reasonable out-of-pocket expenses. In a Court-authorized sale of CMS Processing's Receivership Property (including, specifically, assets of its subsidiaries), or the recovery of avoidable transfers of monies or property

for the benefit of CMS Processing and its creditors, or other recoveries from third parties through litigation or negotiated settlements, the Receiver shall receive compensation of two percent (2%) of gross proceeds of any such sale and of such recoveries in litigation or by negotiated settlements, subject to further application and orders of the Court; and it is further

ORDERED, that Gray & Associates, LLC shall not be required to post a bond; and it is further

ORDERED, that anyone in possession of the Files, Books and Records of CMS Processing shall turn over and deliver to the Receiver all such Books and Records, bank accounts (if any) and all other materials relating to the operation of CMS Processing; and it is further

ORDERED, that all individuals and entities other than the Receiver (including, without limitation, officers, employees, independent contractors, creditors and agents) are enjoined from entering upon the premises of CMS Processing or accessing their electronic data at any time during the pendency of the receivership without the prior express permission of the Receiver, and from interfering with, obstructing or preventing in any manner the actions of the Receiver; and it is further

ORDERED, that all reports filed by the Receiver shall be filed in the CMS Holdings Receivership proceeding, unless specifically ordered otherwise by the Court; and it is further

ORDERED, that the Receiver may take all actions necessary to manage the business affairs of CMS Processing (specifically including its subsidiaries); and it is further

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ORDERED, that the Receivership shall terminate, unless sooner authorized, after the approval of the Court of the Receiver's final report and accounting, pursuant to Md. Code, Com.

Law Art. § 24-602.

Date: 11/9/2022

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