

IN THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 08-65372 CA 27

COLONIAL BANK, successor by merger
to COMMERCIAL BANK OF FLORIDA,

Plaintiff,

vs.

750 JEFFERSON AVENUE LLC, SOUTH
BEACH ATRIUM, INC., VICENZO DE
PAU, COLLEGE HEALTH GROUP II
GP, INC., ERIC DIMECO, PRIVATE
MORTGAGE SERVICES LLC,
METROPOLITAN MORTGAGE
COMPANY OF MIAMI, ARPA PROFIT
SHARING PLAN, ARLENE RAIJMAN,
CITY OF MIAMI BEACH, FLORIDA,
MICHAEL A. STERN, LAYNE STERN,
IVOR ROSE and RITA STARR,

Defendants.

**RECEIVER ANDREW J. BOLNICK'S
INITIAL PROJECT ASSESSMENT**

WEISSMAN, DERVISHI, BORGO
& NORDLUND, P.A.
SunTrust International Center
One Southeast Third Avenue, Suite 1980
Miami, Florida 33131

Attorneys for Andrew J. Bolnick, Receiver

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I. Introduction, Scope of Receivership, and Description of the Collateral¹

Receiver Andrew J. Bolnick submits this Initial Project Assessment pursuant to the Court's November 14, 2008 Order Appointing Receiver ("Appointment Order").² This assessment is based on the Receiver's activities from the November 26, 2008 date of his Acceptance of Appointment through December 29, 2008.

This report contains a brief overview of the scope of the Receivership; a description of the Collateral, as defined below; the legal proceedings surrounding the appointment of the Receiver; the Receiver's recommended plan for maximizing the value of the Collateral; the commencement of receivership operations; and the status of insurance for the Collateral.

The Receiver was given the power and duty to take any reasonable actions which he shall deem necessary or appropriate to take possession of, exercise full control over, to prevent waste and to otherwise preserve, manage, maintain, secure and safeguard the collateral securing loans given by plaintiff Colonial Bank (the "Bank") to defendants 750 Jefferson Avenue LLC ("750 Jefferson") and South Beach Atrium, Inc. ("Atrium").

The Collateral is two separate and distinct real property developments, titled respectively to 750 Jefferson and Atrium:

¹ Citations to the Appendix are by tab numbers and are designated as "App. ___."

- (1) Fairway Village Condominiums (“Fairway”) is a nine-building, 135-unit mixed condominium and apartment complex, bordered by Michigan Ave., Alton Rd., and 19th St. in the “South Beach” area of Miami Beach. Ten of the units were conveyed to third-party purchasers prior to the inception of the receivership and are not part of the Collateral; and
- (2) 1434 Collins Ave., Unit No. 9 (“Atrium Nightclub”) is a third-floor, penthouse, vacant nightclub, also located in the “South Beach” area of Miami Beach. Unit Nos. 1 to 8 were conveyed to third-party purchasers prior to the inception of the receivership and are not part of the Collateral (Fairway and Atrium, together, the “Collateral”).

II. The Legal Background of the Receivership

The Bank’s loans to 750 Jefferson and Atrium in the approximate amount of \$17,850,000.00 are secured by the Collateral. Both 750 Jefferson and Atrium respectively defaulted on the loans, still owing an aggregate amount of \$13,590,486.51, as of the date the Complaint was filed. The Bank filed its October 24, 2008 Complaint seeking, *inter alia*, to foreclose on the Collateral and appoint a receiver. Subsequently, the Bank filed its Emergency Motion for the Appointment of a Receiver, which was granted in the Appointment Order.

² The Appointment Order is dated November 14, 2008, but the Receiver did not receive notice of his appointment

Defendants 750 Jefferson, Atrium, Michael A. Stern, Layne Stern, Ivor Rose, and Rita Starr (collectively, the “Stern Defendants”) filed [their] Emergency Motion for Order Vacating Appointment of Receiver. A hearing on the motion is specially set for January 23, 2008 at 3:00 p.m. The Stern Defendants also filed an appeal to the Third District Court of Appeal requesting that the appellate court vacate the Appointment Order.

III. The Collateral

Fairway Village Condominiums

The following summary describes the nine buildings at Fairway:

	Address	No. of Units (Remaining)	Average Unit Size (SF)	Renovation Status
1	1015/1021 19 th St. ³	6	648	Renovated
2	1031 19 th St.	18	511	Renovated
3	1045 19 th St.	14	629	Not Renovated
4	1920 Michigan Ave.	4	477	Renovated
5	1932 Michigan Ave.	8	522	Renovated
6	1944 Michigan Ave.	22	522	Renovated
7	1950-60-70 Michigan Ave.	19	582	Not Renovated
8	1965 Alton Rd.	18	522	Partially Renovated
9	1975 Alton Rd.	16	678	Not Renovated
	Total	125		

Upon information and belief, Fairway was conceived by defendant 750 Jefferson as a condominium conversion. It consists of 9 free-standing buildings, which 750 Jefferson purchased separately and combined into one development. 750 Jefferson sold and transferred title to 10 units before the receivership began

and execute his Acceptance of Receivership until November 26, 2008.

³ 1015/1021 19th Street is one building with two main entrances, each with a separate numerical address. Similarly, 1950-60-70 Michigan Ave. is one building with three entrances, each with its own posted numerical address.

and 125 units are under the Receiver's control. Site "footprints" identifying all buildings on satellites photos are attached as App. 1. Blueprints of the buildings and individual units are attached as App. 2. Photographs of the Fairway buildings are attached as App. 3.

Five of the buildings – 1015/1021 19th St., 1031 19th St., 1920 Michigan Ave., 1932 Michigan Ave., and 1944 Michigan Ave. – are renovated and appear well-maintained. Four of the buildings – 1045 19th St., 1950-60-70 Michigan Ave., 1956 Alton Rd., and 1975 Alton Rd. are either not renovated or are partially renovated and do not appear well-maintained. The Receiver understands that 750 Jefferson planned to renovate these four buildings.

750 Jefferson advertised that a pool was going to be built, though it is unclear whether such plans were ever pursued, and there is no pool at Fairway. Fairway neighbors the Miami Beach Golf Club, and is centrally located in the "South Beach" area of Miami Beach, a tourist destination. A copy of Fairway's advertising brochure is attached as App. 4.

With the exception of the 10 conveyed condominium units, Fairway is operated as an apartment complex. There are currently 81 rented units and 44 vacant units at Fairway. The Alfred and Sadye College of Judaic Studies currently rents 27 units in 1975 Alton Rd., 1950-60-70 Michigan Ave., and 1045 19th St. for its faculty and students. There is no written lease agreement with the College, but

the College has advised the Receiver that its verbal lease agreement with defendant Michael A. Stern, who is the principal and Managing Member of 750 Jefferson, calls for it to pay rent, net of maintenance and utility expenses. The current rent for the 27 units is \$19,248.22, or \$712.90/unit, net of the maintenance and utilities. A copy of the current rent roll for the College is attached as App. 5. Fifty-four units are rented to individuals. A copy of the current rent roll of individual tenants at Fairway is attached as App. 6. The Receiver is in possession of 48 written lease agreements.

Fairway's management office operates in Unit 2 of 1920 Michigan Ave. The Receiver has taken possession of the management office and has staffed it temporarily with an employee of KW Property Management, LLC, a property management company retained by the Receiver. Upon notice of the Receiver's intention to take over the management office, defendant Michael A. Stern, through his agents, removed all items of personal property from the premises, including documents. Mr. Stern removed these items without giving the Receiver the opportunity to review them. The Receiver protested such action, but was advised by Andrew Kramer, an agent of Mr. Stern, that all of the removed items were the personal property of Mr. Stern.

A third-party developer, Mitchell Baumann, is in the process of converting 1965 Alton Rd. to a "halfway house" for people suffering from alcohol and

narcotic addictions. The Receiver met with Mr. Baumann on December 18, 2008. The plans for the halfway house call for 1st floor meeting and dining spaces and 2nd floor lodging spaces. Mr. Baumann advised the Receiver that his company has entered into a 5-year written lease agreement with 750 Jefferson, which calls for \$10,000/month rent payments to be made to 750 Jefferson for the entire building, starting April 1, 2009. Mr. Baumann further advised the Receiver that there is a tenant's renewal option for an additional 5 years. The Receiver has requested a copy of this lease agreement from Mr. Baumann. The Receiver is investigating whether 1965 Alton Rd. is appropriately zoned for a halfway house.

The units in Fairway are subject to the Fairway Village Condominium Association, Inc. A copy of the Declaration of Condominium of Fairway Village, A Condominium, with Amendments, is attached as App. 7. The Declaration states that the Developer shall be in total control of the Condominium Association, until such time as individual unit owners own at least 15% of the units. Only 10 out of 135 units are currently controlled by individuals, which amounts to 7.4%. Therefore the Receiver believes that 750 Jefferson, as the owner and developer of Fairway, controls the Association. The Appointment Order is silent as to whether the Receiver's powers extend over the Fairway Village Condominium Association and the Receiver has not exercised authority or control over the Association. The Receiver is evaluating whether to request from the Court the authority to exercise

such control.

The Receiver has determined that the 750 Jefferson Collateral is the subject of code violations and multiple liens, arising from pre-Receivership obligations. Copies of the liens and notice violations are attached as App. 8. The Receiver has discovered that there is mold infestation in at least one unit – Unit 1, 1932 Michigan – which has forced the tenants to move out and withhold rent. Copies of a Notice of Code Violation from the City of Miami Beach and photographs of mold and water damage are attached as App. 9.

The Atrium Nightclub

The Atrium Nightclub is a 4,378 square foot South Beach nightclub located at 1434 Collins Ave., No. 9, Miami Beach, Florida 33139. It has a large outdoor terrace, which significantly expands its capacity. It has a full bar, several billiard tables, a plasma television, sound and electrical equipment, digital gaming machines, a full kitchen, an outdoor hot tub, and other amenities. The Atrium Nightclub currently has no tenant. Photographs of the Atrium Nightclub are attached as App. 10. The Receiver requested, but was denied, keys to the Atrium Nightclub by Mr. Kramer. The Receiver is taking steps as of the date of this report to change the locks and secure the premises. The Atrium Nightclub is subject to South Beach Atrium Condominium Association, Inc. A copy of the Declaration of Condominium for the Atrium Condominium, with Amendments, and the 2008

Annual Report is attached as App. 11.

Upon information and belief, there are no current liens or code violations recorded for Atrium or the Atrium Nightclub. A copy of a current public records search is attached as App. 12.

IV. Insurance Coverage

One of the Receiver's primary responsibilities is to maintain commercial general liability and commercial property insurance coverage for both the Receiver and the Collateral. The Receiver made his first request to the defendants for information related to existing coverage at the beginning of the Receivership and continued to request information, until such information was provided.

After initially failing to receive the requested information, the Receiver contacted the existing carrier and discovered that coverage, which was comprised of multiple individual policies (with different effective dates) for the 9 buildings at Fairway and the Atrium Nightclub, had essentially lapsed, though certain policies were still in place. The Receiver requested a proposal from the existing carrier and got a second quotation from a competing brokerage firm. In order to save money and time, and because by using the existing carrier there was no minimum earned premium requirement, the Receiver elected to work with the existing carrier to bind insurance coverage for the Collateral where needed.

The Receiver did not receive sufficient information to bind coverage until

December 24, 2008, at which time coverage was bound.

V. Recommended Plan for Maximizing the Value of the Collateral

The Receiver believes at the time of this initial assessment that the best way of maximizing the value of the Collateral is to continue to lease vacant units at Fairway, while analyzing the possibility and cost of completing the renovations of the remaining buildings. There are currently 44 vacant units available for rent. The Receiver intends to evaluate the fair market rental value of the Atrium Nightclub and determine whether it should be rented or sold. There is potentially valuable personal property located inside the Atrium Nightclub and the Receiver will determine whether it is part of the Collateral and how best it may be used to maximize the Collateral. The Receiver will file an inventory of the personal property inside the Atrium Nightclub in his next monthly report.

The Appointment Order grants the Receiver powers to “recommend and consummate the sale of all or any portion of [the Collateral] (subject to the approval of the Court), as deemed appropriate, and to exercise the powers and duties set forth in this order, including, but not limited to, authority to operate, sell or lease all or any portion of the [Collateral], to hire and fire personnel and to execute documents relating to pending or future sales and leases.”⁴ The Receiver is still investigating whether the long-term solution is to sell the units piecemeal as

⁴ Appointment Order, P. 6, ¶2.

condominiums, or to sell the Fairway in bulk. In the short-term, the Receiver recommends the continuation of the leasing program.

Under Florida law and the Appointment Order, the Receiver may sell receivership property for fair value, subject to Court approval, where necessary to protect the interests of the parties. Either sales or leasing of individual units by the Receiver would potentially benefit the Bank by generating funds to partially repay its loans and enable the Receiver to preserve, secure, and protect the Collateral, including cleanup, security, and other necessary expenses of the receivership.

By delivery of a receiver's deed with Court approval, the Receiver believes he is able to convey insurable title to third party purchasers. The Court has the power, when approving a sale, to order that the transfer of title is free and clear of all liens and encumbrances, and that all claims of interest in the real property attach only to the proceeds of the sale.

The sales procedure recommended by the Receiver includes a title search, notice to all junior lienholders, and issuance of title insurance of the Receiver's deeds, free and clear of all liens arising from the defendants' acts as well as any pre-receivership liens. Any liens will attach to sales proceeds and will go first to satisfy the Bank's first lien priority, subject to Court approval of disbursements and determination of lien claim priority.

Under the Appointment Order, the Receiver is empowered to lease parts of

the Collateral. The Receiver plans to continue to lease vacant units at fair market rental value. The Receiver's leases will include 30-day termination clauses to minimize the risk of leasing the Collateral beyond the duration of the Receivership. However, this 30-day termination requirement could be deterrent to a successful leasing program.

VI. Assembling the Collateral and Commencing Operations

A. Inspection and Turnover of Fairway

On November 28, 2008, the Receiver conducted an initial site inspection of Fairway and went door-to-door posting instructions for tenants to pay the December rents to the Receiver promptly upon learning of his appointment. A copy of the letter posted on residents' doors is attached as App. 13. The Receiver took possession of the management office for Fairway on December 18, 2008, and took possession of all keys to the property on that day. A hand-written copy of the receipt of keys, witnessed by Mr. Kramer, and Receiver consultant Juan Muñoz, is attached as App. 14. The Receiver conducted an inspection of 1965 Alton Road on December 18, 2008.

The Receiver has uncovered essentially no personal property that relates to Fairway.

B. Inspection of Atrium Nightclub

The Receiver conducted his initial site inspection of the Atrium Nightclub

on December 17, 2008. The Receiver has met with Mr. Kramer twice to garner information regarding day-to-day issues at Fairway and the Atrium Nightclub and to gain access to parts of the Collateral. Mr. Kramer retained the keys to the Atrium Nightclub after granting access to the Receiver for the initial inspection.

C. Turnover of Documents and Rents

On December 1, 2008 and again on December 3, 2008, the Receiver made written requests to the defendants for the keys and documents, including lease agreements and rent checks, pertaining to the Collateral. The defendants turned over certain payables, lease agreements, and rent checks on December 8, 2008 and December 9, 2008. Copies of receipts of those documents are attached as App. 15.

The Receiver continues to negotiate with the defendants for their cooperation and access to additional documents and keys. The Receiver will take all necessary steps to ensure that the defendants have provided him with all the information and documents that he is entitled to under the Court's Appointment Order.

The Receiver is in the process of contacting the tenants to ensure that they timely pay their rents and that they direct the rents to the Receiver, rather than the defendants. The Receiver has drafted and will post "reminders" and "three-day notices" on tenants' doors. The Receiver is currently analyzing the accounts payable of 750 Jefferson and Atrium to prioritize payment. 750 Jefferson and

Atrium provided the Receiver with an estimated \$500,000 in accounts payable, while rent collected to this point amounts to \$20,655.43. A current accounting of received rents as of December 29, 2008 is attached as App. 16.

As mentioned above, the Receiver is currently staffing the onsite management office at Fairway and is working to ensure rents are collected, maintenance is performed, and that residents' questions and issues are resolved. The Receiver has worked to ensure that utility service remains uninterrupted.

VII. Retaining of Professionals

During this first reporting period the Receiver retained the services of the law firm of Weissman, Dervishi, Borgo & Nordlund, P.A., and KW Property Management, LLC, a property management company. A copy of the Management Agreement with KW Property Management, LLC is attached as App. 17.

VIII. Conclusion

In conclusion, the primary focus of the Receiver is to preserve and protect the Collateral. Throughout the Receiver's initial assessment period, he has identified concerns that require immediate attention and developed a plan that he believes will benefit the Collateral under his charge. With the continued cooperation of the parties, the Receiver believes he has the ability to not only preserve and protect the assets under his control, but to also sell or lease property

at current market prices, in accordance with the Appointment Order, and maximize a return on the Collateral.

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING INITIAL PROJECT ASSESSMENT AND THAT THE FACTS STATED IN IT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF AND THE EXHIBITS IN THE ATTACHED APPENDIX ARE AUTHENTIC COPIES OF THE ACTUAL DOCUMENTS IN MY POSSESSION AND CONTROL.

Dated: December __, 2008

Respectfully submitted,

Andrew J. Bolnick, Receiver

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The Receiver has determined that the 750 Jefferson Collateral is the subject of code violations and multiple liens, arising from pre-Receivership obligations. Copies of the liens and notice violations are attached as App. 8. The Receiver has discovered that there is mold infestation in at least one unit – Unit 1, 1932 Michigan – which has forced the tenants to move out and withhold rent. Copies of a Notice of Code Violation from the City of Miami Beach and photographs of mold and water damage are attached as App. 9.

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Upon information and belief, there are no current liens or code violations recorded for Atrium or the Atrium Nightclub. A copy of a current public records search is attached as App. 12.

IV. Insurance Coverage

One of the Receiver's primary responsibilities is to maintain commercial general liability and commercial property insurance coverage for both the Receiver and the Collateral. The Receiver made his first request to the defendants for information related to existing coverage on December 2, 2008 and continued to request information, until such information was provided on December 8, 2008.

The Receiver thereupon contacted the existing carrier and discovered that coverage, which was comprised of multiple individual policies (with different effective dates) for the 9 buildings at Fairway and the Atrium Nightclub, had essentially lapsed, though certain policies were still in place. The Receiver requested a proposal from the existing carrier and got a second quotation from a competing brokerage firm. In order to save money and time, and because by using the existing carrier there was no minimum earned premium requirement, the Receiver elected to work with the existing carrier to bind insurance coverage for the Collateral where needed.

V. Recommended Plan for Maximizing the Value of the Collateral

The Receiver believes at the time of this initial assessment that the best way of maximizing the value of the Collateral is to continue to lease vacant units at Fairway, while analyzing the possibility and cost of completing the renovations of the remaining buildings. There are currently 44 vacant units available for rent. The Receiver intends to evaluate the fair market rental value of the Atrium Nightclub and determine whether it should be rented or sold. There is potentially valuable personal property located inside the Atrium Nightclub and the Receiver will determine whether it is part of the Collateral and how best it may be used to maximize the Collateral.

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⁴ Appointment Order, P. 6, ¶2.

Under Florida law and the Appointment Order, the Receiver may sell receivership property for fair value, subject to Court approval, where necessary to protect the interests of the parties. Either sales or leasing of individual units by the Receiver would potentially benefit the Bank by generating funds to partially repay its loans and enable the Receiver to preserve, secure, and protect the Collateral, including cleanup, security, and other necessary expenses of the receivership.

By delivery of a receiver's deed with Court approval, the Receiver believes he is able to convey insurable title to third party purchasers. The Court has the power, when approving a sale, to order that the transfer of title is free and clear of all liens and encumbrances, and that all claims of interest in the real property attach only to the proceeds of the sale.

The sales procedure recommended by the Receiver includes a title search, notice to all junior lienholders, and issuance of title insurance of the Receiver's deeds, free and clear of all liens arising from the defendants' acts as well as any pre-receivership liens. Any liens will attach to sales proceeds and will go first to satisfy the Bank's first lien priority, subject to Court approval of disbursements and determination of lien claim priority.

Under the Appointment Order, the Receiver is empowered to lease parts of the Collateral. The Receiver plans to continue to lease vacant units at fair market rental value. The Receiver's leases will include 30-day termination clauses to

minimize the risk of leasing the Collateral beyond the duration of the Receivership.

VI. Assembling the Collateral and Commencing Operations

A. Inspection and Turnover of Fairway

On November 28, 2008, the Receiver conducted an initial site inspection of Fairway and went door-to-door posting instructions for tenants to pay the December rents to the Receiver promptly upon learning of his appointment. A copy of the letter posted on residents' doors is attached as App. 13. The Receiver took possession of the management office for Fairway on December 18, 2008, and took possession of all keys to the property on that day. A hand-written copy of the receipt of keys, witnessed by Mr. Kramer, and Receiver consultant Juan Muñoz, is attached as App. 14. The Receiver conducted an inspection of 1965 Alton Road on December 18, 2008.

The Receiver has uncovered essentially no personal property that relates to Fairway.

B. Inspection of Atrium Nightclub

The Receiver conducted his initial site inspection of the Atrium Nightclub on December 17, 2008. The Receiver has met with Mr. Kramer twice to garner information regarding day-to-day issues at Fairway and the Atrium Nightclub and to gain access to parts of the Collateral. Mr. Kramer retained the keys to the Atrium Nightclub after granting access to the Receiver for the initial inspection.

C. Turnover of Documents and Rents

On December 1, 2008 and again on December 3, 2008, the Receiver made written requests to the defendants for the keys and documents, including lease agreements and rent checks, pertaining to the Collateral. The defendants turned over certain payables, lease agreements, and rent checks on December 8, 2008 and December 9, 2008. Copies of receipts of those documents are attached as App. 15.

The Receiver continues to negotiate with the defendants for their cooperation and access to additional documents and keys. The Receiver will take all necessary steps to ensure that the defendants have provided him with all the information and documents that he is entitled to under the Court's Appointment Order.

The Receiver is in the process of contacting the tenants to ensure that they timely pay their rents and that they direct the rents to the Receiver, rather than the defendants. The Receiver has drafted and will post "reminders" and "three-day notices" on tenants' doors. The Receiver is currently analyzing the accounts payable of 750 Jefferson and Atrium to prioritize payment. 750 Jefferson and Atrium provided the Receiver with an estimated \$500,000 in accounts payable, while rent collected to this point amounts to \$20,655.43. A current accounting of received rents as of December 29, 2008 is attached as App. 16.

As mentioned above, the Receiver is currently staffing the onsite

management office at Fairway and is working to ensure rents are collected, maintenance is performed, and that residents' questions and issues are resolved. The Receiver has worked to ensure that utility service remains uninterrupted.

VII. Retaining of Professionals

During this first reporting period the Receiver retained the services of the law firm of Weissman, Dervishi, Borgo & Nordlund, P.A., and KW Property Management, LLC, a property management company. A copy of the Management Agreement with KW Property Management, LLC is attached as App. 17.

VIII. Conclusion

In conclusion, the primary focus of the Receiver is to preserve and protect the Collateral. Throughout the Receiver's initial assessment period, he has identified concerns that require immediate attention and developed a plan that he believes will benefit the Collateral under his charge. With the continued cooperation of the parties, the Receiver believes he has the ability to not only preserve and protect the assets under his control, but to also sell or lease property at current market prices, in accordance with the Appointment Order, and maximize a return on the Collateral.