

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION**

STATE OF FLORIDA,
OFFICE OF FINANCIAL REGULATION,

Plaintiff,

vs.

Case No.: 14-001695-CI

TRI-MED CORPORATION,
TRI-MED ASSOCIATES INC.,
JEREMY ANDERSON,
ANTHONY N. NICHOLAS, III,
ERIC AGER, IRWIN AGER,
TERESA SIMMONS BORDINAT
a/k/a TERESA SIMMONS,
and ANTHONY N. NICHOLAS, JR.,

Defendants,

TMFL HOLDINGS, LLC,

Relief Defendant.

**RECEIVER'S MOTION FOR APPROVAL OF SALE OR OTHER DISPOSITION OF
ASSETS AND MEMORANDUM OF LAW**

Pursuant to Fla. Stats. § 517.191(2), Rule 1.100 of the Florida Rules of Civil Procedure, the orders appointing Burton W. Wiand, as Receiver (the “**Receiver**”) for Tri-Med Corporation (“**Tri-Med**”), Tri-Med Associates, Inc. (“**TMA**”), TMFL Holdings, LLC (“**TMFL**”), Interventional Pain Center, PLLC (“**IPC**”), Rejuva Medical and Wellness Center, L.L.C., and Rejuva Medical Center, L.L.C. (the two Rejuva entities are collectively referred to as “**Rejuva**” and Tri-Med, TMA, TMFL, IPC, and Rejuva are collectively referred to as “**Receivership**”

Entities)¹, the Receiver respectfully moves the Court for authorization to sell or otherwise dispose of, using commercially reasonable efforts, (i) office, computer, and medical equipment recovered from or purchased for use in the office formerly occupied by IPC and Rejuva in Minnetonka, Minnesota (the “**IPC/Rejuva Office**”); and (ii) personal property recovered from the office formerly used by Tri-Med and TMA in Palm Harbor, Florida (the “**Tri-Med Office**”).

As detailed below, the Receiver will act in the Receivership estate’s best interests and use commercially reasonable efforts to sell the property recovered from the IPC/Rejuva Office and the Tri-Med Office. If he believes the best price offered for any of that property is materially below the fair market price and the Receivership likely will receive a higher return if the sale is postponed, then he will postpone the sale; or if he believes commercially reasonable sale efforts for a particular asset are likely to cost the Receivership more than the proceeds of the sale, then he will dispose of the asset in another way that will limit the Receivership’s costs, including possibly by donating it. The Receiver seeks this relief to minimize the expense of converting the assets to cash for the benefit of defrauded victims

BACKGROUND

1. On March 4, 2014, Plaintiff State of Florida, Office of Financial Regulation (“**OFR**”), filed this enforcement action against Receivership Entities and other defendants (collectively, “**Defendants**”). OFR alleged in verified pleadings with evidentiary support that Defendants were operating a fraudulent investment scheme that raised over \$16 million from investors, many of whom were elderly. OFR also alleged that Defendants violated Florida

¹ On March 5, 2014, the Court entered its Order Imposing Temporary Injunction, Appointment of a Receiver, and Other Statutory and Ancillary Relief (the “**Order Appointing Receiver**”). The Court subsequently entered Orders expanding the scope of the Receivership to include TMFL, IPC, and Rejuva on May 13, 2014, September 30, 2015, and December 11, 2015, respectively.

securities laws from at least 2011 forward by offering and selling unregistered securities based on misrepresentations that, among other things, those funds would be (a) used to purchase medical practice accounts receivable backed by Letters of Protection and (b) safeguarded by being kept in an attorney trust account.

2. On March 5, 2014, the Court entered the Order Appointing Receiver which appointed Mr. Wiand as Receiver and directed him to, among other things, marshal and safeguard assets for the benefit of Tri-Med's defrauded victims. That same day, the Receiver and his agents took possession of the Tri-Med Office as well as a storage unit leased by Tri-Med and subsequently secured and inventoried the contents. A true and correct copy of the inventory of those assets is attached hereto as **Exhibit 1**.

3. On September 30, 2015, and December 11, 2015, respectively, the Court entered orders expanding this Receivership to include IPC and Rejuva. IPC and Rejuva were both controlled by Defendant Jeremy Anderson; both operated out of the IPC/Rejuva Office; commingled funds; and used the same equipment, assets, and employees. The Receiver took possession of the IPC/Rejuva Office on December 13, 2015, and his agents secured and inventoried the office contents. The Receiver later learned that Defendant Anderson had removed certain items from the IPC/Rejuva Office and given those assets to Dr. Chad Hill. At the Receiver's request, Dr. Hill turned that property over to the Receiver. A true and correct copy of an inventory of the assets recovered from the IPC/Rejuva Office and turned over by Dr. Hill is attached hereto as **Exhibit 2**.

Description Of The Assets And Proposed Sale Procedure

4. The assets recovered from the Tri-Med Office, the IPC/Rejuva Office, and Dr. Hill primarily consist of computer equipment, office furniture and supplies, and medical equipment

(collectively, the “**Office Contents**”) and are currently being stored in rented storage units in Tampa, Florida, and Minnetonka, Minnesota. With the exception of certain pieces of medical equipment, initial indications suggest that the majority of the Office Contents seized by the Receiver are of little value because of their age and condition. Indeed, the Receiver does not believe that any of the Office Contents have an individual value exceeding \$2,500.

5. Nevertheless, the Receiver seeks authorization to sell, liquidate, or otherwise dispose of the Office Contents using commercially reasonable efforts that will maximize the return to the Receivership estate, including placing listings on auction sites such as eBay and dotmed, contacting companies specializing in the purchase of used office equipment, and advertising items for sale on the Receiver’s website located at <http://www.trimedreceivership.com>. Absent such authorization, these items will continue to depreciate and the Receiver will incur additional storage costs. If the Receiver is unable to sell any of these items following reasonable commercial efforts, he plans to donate or otherwise dispose of them in a manner that minimizes the Receivership’s costs.

The Sale Of The Office Contents Will Benefit The Receivership Estate

6. Through the sale of the Office Contents, the Receiver seeks to convert those assets into cash for the benefit of Tri-Med’s defrauded investors. The Receiver’s continued possession of the Office Contents will result in additional storage costs incurred by the Receivership estate as well as the further depreciation of the Office Contents. Tri-Med, IPC, and Rejuva are now in receivership and are no longer operating, and thus the Receivership Entities have no use for the Office Contents.

7. The Receiver is not aware of any liens or encumbrances on the Office Contents, and he believes proceeding with the sale of the Office Contents is in the Receivership estate's best interest.

MEMORANDUM OF LAW

8. Pursuant to the Order Appointing Receiver, the Receiver shall "direct and oversee the liquidation of the assets and the properties of the Receivership Entities as deemed appropriate by him in a manner as to maximize in a timely manner the proceeds for such assets and properties and the conversion of the assets and properties of the Receivership Entities for the benefit of their customers/investors and creditors." Order Appointing Receiver § VIII-h. In particular, the Receiver shall:

[h]ave and may exercise the power and authority to negotiate and prepare, or cause to be negotiated and prepared, and to enter into, written agreements relating to the sale, assignment, transfer or conveyance of any notes, stocks, securities, real property and other property (whether real, personal or mixed and whether tangible or intangible), except cash, in which the Receiver may hold any interest or have custody or possession; provided however, that the Receiver shall not actually sell, assign, transfer or convey any such asset or property until such time as the Receiver shall have made application to this Court for, and this court shall have entered, a further Order authorizing or ratifying such written agreement for sale, assignment, transfer or conveyance of such asset or property.

Id. § VIII-m-iii; *see Arzuman v. Saud*, 964 So.2d 809, 811 (Fla. 4th DCA 2007) (affirming order allowing sale of real property to proceed and denying review of trial court's order authorizing sale where property was in peril of loss and sale would preserve parties' interest).

9. The judicial sale of real or personal property in Florida is governed by Fla. Stats. § 45.031 ("Section 45.031"). Although Section 45.031 contains an enumerated set of procedures to effectuate a sale of real or personal property under an order or judgment, it expressly provides that those procedures "may be followed **as an alternative to any other sale procedure if so ordered by the court.**" Fla. Stats. § 45.031 (emphasis added). Thus, it is clear that compliance

with Section 45.031 is permissive, rather than mandatory, and that courts are vested with discretion to use alternative procedures where appropriate.

10. The Receiver seeks court approval to deviate from the procedures set forth in Section 45.301 and proceed with the proposed sale of the Office Contents because (a) the Tri-Med Office and IPC/Rejuva Office have been shut down and the Receiver continues to have to pay storage costs for the Office Contents and (b) the realizable value of the Office Contents will continue to diminish over time.

11. The Receiver believes that the requested relief is reasonable and in the best interests of the Receivership estate. Given the nature of these proceedings, and the language of Section 45.031 and the Order Appointing Receiver, the Receiver respectfully requests an order authorizing variation from Section 45.031 and approving the sale or other disposition of the Office Contents as set forth above.

STATEMENT OF OFR'S POSITION

Counsel for the Receiver has discussed the proposed sale of the Office Contents with counsel for OFR, and is authorized to represent that OFR has no objection to the relief sought in this motion.

CONCLUSION

For the reasons detailed in this Motion, the Receiver respectfully requests entry of an order (i) authorizing him to sell or otherwise dispose of, using commercially reasonable efforts as detailed in this motion, the Office Contents recovered from the Tri-Med Office, the IPC/Rejuva Office and from Dr. Hill and (ii) granting any such further relief as this Court deems just and appropriate.

s/Gianluca Morello

Gianluca Morello, FBN 034997

gmorello@wiandlaw.com

Michael S. Lamont, FBN 0527122

mlamont@wiandlaw.com

Jordan D. Maglich, FBN 0086106

jmaglich@wiandlaw.com

WIAND GUERRA KING P.A.

5505 West Gray Street

Tampa, FL 33609

Tel.: (813) 347-5100

Fax: (813) 347-5198

Attorneys for Burton W. Wiand, as Receiver for Tri-Med Corporation, Tri-Med Associates, Inc., TMFL Holdings, LLC, Interventional Pain Center, PLLC, Rejuva Medical and Wellness Center, L.L.C., and Rejuva Medical Center, L.L.C.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 3, 2016, I electronically filed a true and correct copy of the foregoing with the Clerk of the Court by using the Florida Courts E-Filing Portal, which served the following parties and non-parties:

Douglas Holcomb, Esq.
Office of Financial Regulation
400 West Robinson Street
Suite S225
Orlando, FL 32801
Primary Email: douglas.holcomb@flofr.com
*Attorney for Plaintiff State of Florida,
Office of Financial Regulation*

A. Gregory Melchior, Esq.
Assistant General Counsel
Office of Financial Regulation
1313 Tampa Street, Suite 615
Tampa, FL 33602-3394
Primary Email: Greg.Melchior@flofr.com
Secondary Email:
Sharon.Sutor@flofr.com
*Attorney for Plaintiff State of Florida,
Office of Financial Regulation*

Luke Lirot, Esq.
LUKE CHARLES LIROT, P.A.
2240 Belleair Road, Suite 190
Clearwater, FL 33764
Primary Email: luke2@lirotlaw.com
Secondary Email: krista@lirotlaw.com
Secondary Email: jummy@lirotlaw.com
*Attorney for Defendants Eric Ager and Irwin
Ager*

Thomas C. Little, Esq.
THOMAS C. LITTLE, P.A.
2123 NE Coachman Road, Suite A
Clearwater, FL 33765
Primary Email:
tomlittle@thomasclittle.com
Secondary Email: janet@thomasclittle.com
*Attorney for Defendants Eric Ager and Irwin
Ager*

Edwin B. Kagan, Esq.
Edwin B. Kagan, P.A.
2709 North Rocky Point Drive
Suite 102
Tampa, FL 33607
Primary Email: ebkagan@earthlink.net
Secondary Email: livingston22@live.com
*Attorney for Defendant Teresa Simmons
Bordinat*

Douglas E. Nepp, Esq.
Nepp & Hackert, LLC
One West Lake Street, Suite 185
Minneapolis, MN 55408
Primary Email: doug@nepphackert.com
*Attorney for Defendants Jeremy Anderson,
Anthony N. Nicholas, III, and Anthony N.
Nicholas, Jr.*

Timothy A. Patrick, Esq.
2102 West Cass Street
Tampa, FL 33606

Primary Email:

Timpatrick813@gmail.com

*Attorney for Defendants Jeremy Anderson,
Anthony N. Nicholas, III, and Anthony N.
Nicholas, Jr.*

Eric D. Jacobs, Esq.
Jennis & Bowen, P.L.
400 North Ashley Drive

Suite 2540

Tampa, FL 33602

Primary Email: mpalmer@jennisbowen.com

Secondary Email:

eservice@jennisbowen.com

kfoley@jennisbown.com

Attorney for Non-Party A.J. Brent

s/Gianluca Morello

Gianluca Morello, FBN 034997

EXHIBIT 1

Rejuva Storage Unit Inventory

Quantity	Item	Model	Serial Number
1	4 Drawer File Cabinet		
1	3 drawer wooden mahogany file cabinet w/broken wheel		
2	Large wooden mahogany desks		
2	Legacy-500 chiropractic exam tables		
1	Chiropractic adjustment table		
1	3 drawer mahogany file cabinet		
1	Sony 60 in flat screen tv	KDL-60EX645	5028536 Dec 2012
1	Sony 60 in flat screen tv	KDL-60EX645	5028591 Dec 2012
11	Black office chairs		
1	Large HP laser jet printer	Laser jet M4345MFP	JPJGS01444
1	Large mahogany credenza		
1	Earthlite portable massage chair		
1	Wireless keyboard		
3	Boxes of misc office supplies		
1	Asus LCD 27" monitor	VK278	D2LMTF011105
1	Asus LCD 27" monitor	VK278	D2LMTF010801
3	Hand weights		
1	RRT machine		
	Box Misc medical supplies		
1	Box of misc medical supplies		
1	MFC 3 in 1 scanner-copier-printer	MFC-8690DW	
3	Massage table pillows		
1	Framed pic of Autonomic Nervous System		
1	Folding black portable massage table		
1	DOT exams signs		
3	X-Ray vest		
1	C-collar		
1	Head table support		

Rejuva Storage Unit Inventory

1	Electronic blood pressure cuff		
1	Wireless 4 port media bridge		
1	Keyboard		
1	Antec PC and cables		
1	Credit card signature pad		
1	Dynatron 650 plus		
1	Monitor		
3	Keyboards		
1	APC battery back up		
2	Mouse		
1	Box Misc office supplies		
1	Box of misc medical supplies		
2	Monitors		
2	Keyboards		
1	Mouse		
1	Fan		
1	Heater		
1	Box Misc office supplies		
1	Sony portable stereo w/2 speakers		
1	Epson scanner	GT-S50	
1	Small box of misc office supplies		
1	Cyber power battery back up		
1	Panasonic cordless phone		
1	Casio portable calculator		
1	Ring Central desk phone		
1	Small box of markers, pens		
1	Business card holder		
1	Pen holder w/misc pens		
1	Cisco DVR		SACDVLMSG

Rejuva Storage Unit Inventory

Biometric Timeclock	Storage Unit
Small Crash Cart	Storage Unit
Portable Defib Unit missing battery	Storage Unit
Box of Balls, Empty CD's, PC Mouse	Storage Unit
Small Stainless Cart with Supplies	Storage Unit
Mayo Stand	Storage Unit
Clipboards, PC Keyboards	Storage Unit
Tins Unit	WGK Office
Tins Unit	WGK Office
Spinal Cord Simulator	WGK Office
Laptop	WGK Office
Harddrive	WGK Office

EXHIBIT 2

Tri-Med Tampa Storage Inventory

Public Storage in Tampa from the Tri-Med Office	
Quantity	Description
4	Office Chairs
5	Bookcases
2	Desks with returns
1	HP Computer monitor
1	Small office refrig
1	Wall clock
1	Box of office supplies
2	Metal desk file holders
1	Wicker trash can
Public Storage in Tampa that were in Tri-Med Storage unit on Receivership day	
Quantity	Description
1	Punching bag

Tri-Med Tampa Storage Inventory

1	Nordictrack treadmill	
1	Butt/Thigh Shaper	
10	Flat barbell weights	
10	Dumbbells	
1	Row Machine	
1	Fertilizer Spreader	
6	Rubber Gym Matt Floor Pieces	
	Misc gym equipment	