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FILED
 APR - 9 2004
 T. S. MCGREGOR, CLERK
 U. S. BANKRUPTCY COURT
 EASTERN DISTRICT OF WASHINGTON

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 9 UNITED STATES BANKRUPTCY COURT
 10 IN THE EASTERN DISTRICT OF WASHINGTON
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12 In re
 13 METROPOLITAN MORTGAGE &
 SECURITIES CO., INC.
 14 Debtor.

Jointly Administered Under
 Case No. 04-00757-W11

Chapter 11

ORDER DIRECTING APPOINTMENT
 OF EXAMINER

15
 16 In re
 17 SUMMIT SECURITIES, INC.
 18 Debtor.

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 20 The Securities and Exchange Commission has filed a Motion for an Order
 21 Directing the Appointment of an Examiner, joined by the Washington State Attorney
 22 General's Office, Division of Consumer Protection and the Washington State
 23 Department of Financial Institutions. After due deliberation and consideration of the
 24 evidence, the papers filed regarding the motion, and argument presented at the hearing,
 25 and sufficient cause appearing therefore, it is

26 ORDERED that an Examiner be appointed for the Debtors in the above-
 27 captioned cases, Metropolitan Mortgage & Securities Co., Inc. and Summit Securities,
 28 Inc. (hereinafter "Debtors"). The Examiner shall have the authority to investigate and

ORDER DIRECTING APPOINTMENT
 OF EXAMINER

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1 report on transactions involving Debtors and any entities controlled by or affiliated
2 with Debtors. The United States Trustee shall appoint a disinterested person as
3 Examiner in the above-captioned cases, subject to the Court's approval; and it is
4 further

5 **ORDERED** that said Examiner be, and hereby is, directed to investigate
6 the acts, conduct, assets, liabilities, and financial condition of the Debtors, as specified
7 below; and it is further

8 **ORDERED** that the Examiner shall have the authority and power to
9 investigate issues and transactions, as follows:

- 10 (1) Whether the Debtors' boards of directors and management are
11 independent and can be relied upon to bring legal causes of action
12 against appropriate parties or to propose and implement a plan of
13 reorganization that will be in the interests of creditors;
- 14 (2) Whether in the interests of creditors and other parties in interest the
15 Court should appoint a trustee for either or both of the Debtors;
- 16 (3) Debtors' commercial loans originated, acquired, disposed of, pending
17 or in default during the period including the 2000 fiscal year to the
18 present;
- 19 (4) Sales or transfers of assets and any related transactions among the
20 Debtors, Debtors' subsidiaries, or any other related party, during the
21 period including the 2000 fiscal year to the present;
- 22 (5) Sales of assets with a value of more than \$250,000 to any third party,
23 during the period including the 2000 fiscal year to the present;
- 24 (6) Any additional areas of concern, issues, transactions, or subject
25 matters that warrant investigation.

26 It is further **ORDERED** that on or before 45 days from the filing by the
27 United States Trustee of an application for approval of the appointment of the
28 Examiner, said Examiner shall file with this Court a statement of the investigation.

1 The statement shall address each of the above categories of issues, including (1) the
2 facts ascertained and any conclusions drawn, (2) whether any further investigation of
3 the issue is warranted, (3) further steps required to complete the investigation of the
4 issue, (4) the estimated cost and duration of further investigation, (5) the anticipated
5 benefit to the estates of further investigation, and (6) any other information relevant to
6 the Court's consideration of the issue. The statement shall also indicate when the
7 Examiner will file a further statement of investigation. The Examiner may, if
8 appropriate, seek leave to file any statement or portions thereof under seal as provided
9 by applicable rules or statutes. It is further

10 ORDERED that as soon as practicable after the appointment of the
11 Examiner, the Examiner shall meet with representatives of the United States Trustee to
12 establish a form for a fee application that may later be submitted to the Court in
13 support of the Examiner's application for fees and expenses. The form fee application
14 should include categories corresponding to the services performed and the expenses
15 incurred during the course of the investigation, and categories corresponding to the
16 issues investigated; and it is further


17 ORDERED that the Debtors shall provide the Examiner all documents
18 and information that the Examiner deems relevant to discharge the duties under this
19 Order or as such duties may be expanded or limited by this Court; and it is further

20 ORDERED that the Examiner shall have the power to waive, on an issue-
21 by-issue basis, the attorney-client privilege of the Debtors' estates with respect to pre-
22 petition communications relating to matters investigated by the Examiner. This
23 provision does not affect the ability of the Debtors to waive any privileges held by the
24 Debtors' estates. For any pre-petition communications or other documents that
25 involve a privilege jointly held by an entity or individual other than the Debtors, the
26 Examiner may not unilaterally waive any such privilege and may waive the Debtors'
27 privilege only to the extent the Debtors would be permitted to do so under applicable
28

1 law. The Examiner shall notify the Debtors' counsel of the fact and scope of any
2 waiver of the attorney-client privilege of the Debtors' estates. It is further
3 ORDERED that the Examiner may retain counsel and other professionals
4 pursuant to section 327 of the Bankruptcy Code, if he or she determines that such
5 retention is necessary to discharge his or her duties. The Examiner and any
6 professionals retained pursuant to an order of this Court shall be compensated from the
7 Debtors' estates pursuant to section 330 of the Bankruptcy Code and any further orders
8 of this Court.

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DATED: April 9th, 2004


Honorable Patricia Williams
United State Bankruptcy Judge

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1 GARY W. DYER
 2 Attorney for the United States Trustee
 3 United States Dept. of Justice
 4 Office of United States Trustee
 5 United States Courthouse
 6 920 West Riverside, Room 593
 7 Spokane, WA. 99201
 8 Telephone (509) 353-2999
 9 Fax (509) 353-3124

7 UNITED STATES BANKRUPTCY COURT
 8 EASTERN DISTRICT OF WASHINGTON

9 In re:

10 METROPOLITAN MORTGAGE &
 11 SECURITIES CO., INC.

12 Debtor.

13 SUMMIT SECURITIES, INC.

14 Debtor.

) Jointly Administered under
) Case No. 04-00757 W11
) Chapter 11

) APPLICATION FOR APPROVAL OF
) APPOINTMENT OF EXAMINER; AND
) APPROVAL OF APPOINTMENT

17
 18 The United States Trustee hereby applies to the court pursuant to 11 U.S.C.
 19 §1104(c) and FRBP 2007.1 for an order approving the appointment of ^{an examiner} ~~a trustee~~, and in *filed*
 20 support thereof states:

- 21 1. The court entered an order on April 9, 2004, directing the United States
 22 Trustee to appoint an examiner.
 23 2. The United States Trustee has appointed Samuel Maizel as examiner.
 24 3. A creditors committee has been appointed in both of these cases.
 25 4. The following parties were consulted independently and later with a list of
 26 possible candidates with their comments invited:

FILED

APR 15 2004

27
 28 UNITED STATES TRUSTEE'S APPLICATION FOR
 APPROVAL OF APPOINTMENT OF EXAMINER

T. S. MCGREGOR, CLERK
 U. S. BANKRUPTCY COURT
 EASTERN DISTRICT OF WASHINGTON

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- a. The Securities & Exchange Corporation;
- b. Ford Elsaesser;
- c. The Lane Powell firm;
- d. P.J. Grabicki
- e. Anthony Grabicki
- f. Dan O'Rourke
- g. Kevin O'Rourke
- h. Barry Davidson

4. To the best of the U.S. Trustee's knowledge (based upon the discussions with him and his initial conflicts check), Samuel Maizel has no connections with the debtors, creditors, U.S. Trustee's office, or any other parties in interest, except his firm represents the Association of Attorneys General in the bankruptcy aspects of the tobacco litigation and settlements, of which Washington is one of 46 members. We do not view this connection as significant.

5. The U.S. Trustee requests that the court enter an order approving the appointment of Samuel Maizel as examiner. A copy of his resume is attached. Declarations of disinterestedness will be filed.

6. Should a background check of Mr. Maizel discover any improprieties, he has agreed he will resign immediately. Since he has passed other background checks, we believe the chances of any discovery of any impropriety to be unlikely.

Dated this 15th day of April 2004.


Respectfully submitted,
ILENE J. LASHINSKY
United States Trustee

GARY W. DYER
Attorney for the United States Trustee

1 APPROVAL OF APPOINTMENT

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3 Based upon the application of the United States Trustee and the appointment of

4 Samuel Maizel, his appointment as examiner is approved.

5
6 Date: April 15, 2004


7 Hon. PATRICIA C. WILLIAMS
U.S. BANKRUPTCY COURT JUDGE

SAMUEL R. MAIZEL

Pachulski, Stang, Ziehl Young, Jones & Weintraub, P.C.
10100 Santa Monica Blvd., Suite 1100
Los Angeles, California 90067
TELEPHONE: (310) 772-2306
FAX: (310) 201-0760
email: SMAIZEL@PSZYJW.COM

Experience:

Shareholder, Pachulski, Stang, Ziehl Young, Jones & Weintraub, P.C., Los Angeles, CA, January 1997 - present

Practice includes bankruptcy matters and financial restructuring in and out of court. Clients include debtors, creditors, committees and third-party purchasers of assets throughout the nation, including the National Association of Attorneys General and the 46 states and 6 territories that are parties to the Master Settlement Agreement with the nation's largest cigarette manufacturers. Speaker at more than 70 programs over the past 6 years, for the American Bar Association ("ABA"), American Bankruptcy Institute ("ABI"), American Health Lawyers Association, National Association of Attorneys General, National Association of Bankruptcy Trustees, States Association of Bankruptcy Attorneys, Turnaround Management Association and the United States Department of Justice, as well as numerous other local, regional, state, and national associations. Published more than 12 articles in books, law reviews, and legal magazines in the past six years, the most recent being an article on the role of examiners in healthcare insolvency cases in the ABI Journal. Interviewed on television and radio regarding bankruptcy issues. Chair of the ABA Business Bankruptcy Committee's Committee on Executory Contracts and Unexpired Leases, and formerly Chair of the ABA Working Group on Healthcare Related Bankruptcy Issues (1999-2002). Currently co-chair of the ABI's Health Care Insolvency Committee. Contributing Editor, ABI Journal; Editorial Board, California Bankruptcy Journal.

Civil Trial Attorney, United States Department of Justice, Commercial Litigation Branch, Financial Litigation Section, Washington, DC 1991-1996

Represented federal government agencies, including the Departments of Defense, Transportation, and Health and Human Services, and the Health Care Financing Administration, in litigation in bankruptcy courts, district courts and the Court of Federal Claims, and in bankruptcy appeals before district courts and circuit courts of appeal. Lead counsel in cases including *American Home Healthcare of Georgia*, *St. Johns Home Health Agency*, *Mederl of Dade County*, *Glenbeigh Hospital*, *Virginia Manor*, and in adversary proceedings in national bankruptcy cases including *United States Lines*, *Continental Airlines*, and *Trans World Airlines*, as well as cases resulting in important published opinions including *United States v. Gerth* and *In re St. Johns Home Health Agency, Inc.* Adjunct Professor in Trial Advocacy for The Judge Advocate General's School, US Army, an ABA accredited law school, as well as an instructor in bankruptcy law and trial advocacy for the Department of Justice and other federal agencies. Served as the coordinator for business bankruptcy issues for the Department of Justice Bankruptcy Working Group and as the liaison on business bankruptcy issues between the Department of Justice and the Bankruptcy Review Commission. Lectured frequently on bankruptcy issues for legal associations and government organizations. Department of Justice Special Achievement Award, 1993, 1994, 1995.

Criminal Trial Attorney, United States Army, 1986-1991

Prosecuted over 60 cases, including contested murder and other serious felony trials before juries; represented the United States at numerous pretrial hearings and administrative proceedings. Organized and supervised the criminal investigations into numerous crimes, as well as organizing the provision of legal services to a front line combat brigade. During Operation Desert Shield/Storm: established the US Army's Trial Defense Service (equivalent to Public Defenders) offices for the soldiers in Saudi Arabia, Iraq, and Kuwait and, in that capacity, supervised 33 attorneys representing clients in over 100 trials and administrative boards and advising over 6,000 servicemembers on legal issues. Personally defended clients in over 50 criminal trials and administrative boards, including trials for capital murder and other serious felonies; supervised criminal defense counsel in hundreds of criminal trials and administrative boards. Awards include the Bronze Star Medal, Meritorious Service Medal, Army Commendation Medal, Army Achievement Medal, Southwest Asia Service Medal, National Defense Service Medal with Bronze Service Star, the Kingdom of Saudi Arabia Liberation of Kuwait Medal, and the Liberation of Kuwait Medal awarded by the Government of Kuwait.

Infantry Officer, United States Army, 1977-1982

Served in positions of increasing responsibility in the US Army's honor guard unit, The 3rd US Infantry Regiment (The Old Guard), in Washington, DC, including serving as the regimental staff officer responsible for the planning, preparation, and conduct of ceremonies throughout the United States, and as the second in command of, initially, a company of more than 100 soldiers and subsequently the Regiment's Ceremonial Support Company, with responsibility for hundreds of soldiers, vehicles, personal equipment, an artillery battery, and a stable. Previously served as a small unit leader in the 101st Airborne Division, a first-line combat unit. Awards include the Meritorious Service Medal with Oak Leaf Cluster, Army Commendation Medal with Oak Leaf Cluster, Army Service Ribbon, Expert Infantryman's Badge, Ranger Tab, Air Assault Badge, and Parachutist Badge.

Education:

- J.D., 1985, George Washington University National Law Center
Honors: Jacob Burns Prize for excellence in appellate advocacy, 1984
President, Moot Court Board, 1984-1985
- Internship with the National Security Council, Executive Office of the President, 1983-1985
- M.A., 1983, Georgetown University
Major in Government, Certificate in National Security Affairs
- B.S., 1977, United States Military Academy at West Point
Major in Engineering; minor in National Security and Public Affairs

Publications (This is a partial list of publications; a full list is available on request.):

- Co-Author, The Role Of An Examiner In Health Care Insolvencies, ABI Journal, Vol. XXII, No. 10, at 32 (Dec./Jan. 2004); The Negligent Operation of Nursing Homes in Bankruptcy: Who Pays?, ABI Journal, Vol. XX, No. 2, Mar. 2001; Selling Relationships With Governmental Entities, ABI Journal, Vol. XVIII, No.7, Sep. 1999; Look Out For The Roadblocks, ABI Journal, Vol. XVII, No. 6, July/Aug. 1998; Medicare's Recoupment Rights Get More Confusing, ABI Journal, Vol. XVI, No. 7, Sep. 1997.
- Substantive Consolidation of Debtor and Non-Debtors In Bankruptcy Proceedings, Annual Survey of Bankruptcy Law 2002 (West Group 2002).
- Co-Author, A Survey of Setoff and Recoupment Cases in Healthcare Insolvency Cases, 1999-2000 Annual Survey of Bankruptcy Law (William L. Norton, ed. 1999).
- Co-Author, Injunctive Relief In Health Care Insolvencies, California Bankruptcy Journal, Vol. 24, No. 3 (1998) (also served as Special Editor for the issue).
- Contributing Author, 2000 Wiley Bankruptcy Law Update, (Aspen Law & Bus. 2000), 1999 Wiley Bankruptcy Law Update, (Aspen Law & Bus. 1999) and 1998 Wiley Bankruptcy Law Update, (Aspen Law & Bus. 1998).
- Contributing Author, Health Care Insolvency Manual (American Bankruptcy Institute 1997).
- Setoff and Recoupment In Bankruptcy, 19th Annual Current Developments In Bankruptcy and Reorganization 1997, Vol. 2 (PLI Commercial Law and Practice Course Handbook Series, 1997). This article has been updated and reprinted in 1998, 1999, 2000, 2001, and 2002 in the Annual Current Developments In Bankruptcy and Reorganization Handbook, part of the PLI Commercial Law and Practice Course Handbook Series (This article has been cited several times by bankruptcy judges in reported opinions.).
- Co-Author, The Government's Contractual Rights and Bankruptcy's Automatic Stay, Public Contract Law Journal, Vol. 25, No. 4 (Summer 1996), reprinted in 19th Annual Current Developments In Bankruptcy and Reorganization 1997, Vol. 1 (PLI Commercial Law and Practice Course Handbook Series, 1997).
- Co-Author, The Medicare Contract In Bankruptcy: In Which Direction Does University Medical Center Lead?, Bankruptcy Developments Journal, Vol. 11, No. 2 (1994-95).

Presentations (This is a partial representative list of presentations; a full list is available on request.):

- **Governmental Entities in Bankruptcy Cases**, American Bankruptcy Institute ("ABI") Southwest Regional Conference (2003).
- Instructor, **National Association of Attorneys General/States Association of Bankruptcy Counsel Bankruptcy Conference** (2003).
- **An Introduction To Labor Issues in Bankruptcy**, Business Bankruptcy Committee, American Bar Association ("ABA") Annual Conference (2003).
- **The Brave New World of HMO Insolvency: New Issues and Trends**, national teleconference sponsored by the American Health Lawyers Association ("AHLA") and the ABI (2003).
- **Retaining the Professional in Chapter 11: The Latest in Disinterestedness and Other Issues**, Law Education Institute ("LEI") (2002).
- **First Day Orders: Ask and Yee Shall Receive**, Los Angeles County Bar Association Bankruptcy Committee (2002).
- **Whats New and Different About Executory Contracts and Unexpired Leases in Bankruptcy Proceedings**, Business Bankruptcy Committee of the ABA's Business Law Section (2002).
- **The Slippery Slope: Everything Business Lawyers Need To Know In The Impending Bankruptcy Of A Healthcare Entity**, Health Law Section of the ABA (2001).
- **Healthcare Industry Related Insolvency Issues**, New York University Workshop on Bankruptcy and Business Reorganization (2001).
- **Bankruptcy Issues**, Tennessee Bar Association (2001).
- **Coping With The Wave of IPA Bankruptcies**, California Society of Healthcare Attorneys (2001).
- **Current Developments in Health Care REITs, HMOs, and Other Health Care Providers**, Fulcrum Information Services Inc. (2000).
- **The Economics of Medical Practice in The Year 2000**, American Medical Association (2000).
- **Hot and Emerging Healthcare Bankruptcy Issues**, Commercial Law League of America (2000).
- **Why Are Healthcare Restructurings Different?** Renaissance American Management, Inc. and BeardGroup (2000).
- **What Happens When All Else Falls? Bankruptcy Solutions for IPAs**, The IPA Association of America (2000).
- Interviewed on *Business Center* on CNBC-TV (Apr. 14, 1999), *California Report* on KXJZ-FM (Mar. 31, 1999) and *Marc Cooper's Daily Review* on KPFK-FM (Mar. 17, 1999) all on the bankruptcy of MedPartners Provider Network.
- **Healthcare Bankruptcies: The Next Tidal Wave**, Turnaround Management Association (1999).
- **Adminstrating The Healthcare Insolvency Case: A Prescription**, National Association of Bankruptcy Trustees (1999).
- **Jurisdiction Of The Bankruptcy Court Over State Entities And Sovereign Immunity Under The Eleventh Amendment After Seminole Tribe**, Southeastern Bankruptcy Law Institute (1998).
- **To Pay Or Not To Pay: Healthcare Provider Bankruptcies and Their Impact on Contracting Partners**, California Society of Healthcare Attorneys (1998).
- **How Do You Mend A Broken Heart? Health Care Insolvency**, Central California Bankruptcy Institute (1998).
- **Setoff and Recoupment**, Office of Legal Education, Executive Office of United States Attorneys, Department of Justice (1998).
- **Contract Rights and Remedies After Discharge**, Board of Contract Appeals Judge's Association (1997).

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re:

Jointly Administered under
Case No. 04-00757 W11
Chapter 11

METROPOLITAN MORTGAGE &
SECURITIES CO., INC.

Debtor.

SUMMIT SECURITIES, INC.

Debtor.

APPOINTMENT OF EXAMINER

The United States Trustee hereby appoints Samuel Maizel as examiner.

As a condition of this appointment, should any improprieties be found in a
background check performed by the Department of Justice, Mr. Maizel will resign.

Dated this 5th day of April 2004.

Respectfully submitted,

ILENE J. LASHINSKY
United States Trustee

Gary W. Dyer
GARY W. DYER
Attorney for the United States Trustee

FILED

APR 15 2004

UNITED STATES TRUSTEE'S APPOINTMENT
OF EXAMINER

T. S. MCGREGOR, CLERK
U. S. BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

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