

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

GUTTILLA MURPHY ANDERSON

Ryan W. Anderson (Ariz. No. 020974)

5415 E. High St., Suite 200
Phoenix, Arizona 85054
Email: randerson@gamlaw.com
Phone: (480) 304-8300
Fax: (480) 304-8301

Attorneys for the Receiver

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR MARICOPA COUNTY

ARIZONA CORPORATION)
COMMISSION,)

Plaintiff,)

v.)
DENSCO INVESTMENT)
CORPORATION, an Arizona)
corporation,)

Defendant.)

Cause No. CV2016-014142

PETITION NO. 45

PETITION FOR ORDER TO APPROVE
THE ENGAGEMENT OF AJAMIE, LLP
TO REPRESENT THE RECEIVER AS
SPECIAL COUNSEL

(Assigned to the Honorable Teresa
Sanders)

Peter S. Davis, as the Court appointed Receiver of DenSco Investment Corporation (“DenSco”), respectfully petitions the Court for an Order approving the engagement of Ajamie, LLP, as Special Counsel to the Receiver, as follows:

1. On August 18, 2016, this Court entered its *Order Appointing Receiver*, which appointed Peter S. Davis as Receiver of DenSco Investment Corporation (“Receivership Order”).

1 2. The Receivership Order authorizes the Receiver to, among other things,
2 employ attorneys and other professionals that are necessary and proper for the collection,
3 preservation and maintenance of the Receivership Assets. [See ¶16 of the Receivership
4 Order]

5 3. The Receiver has initially determined that DenSco may hold claims against
6 Active Funding Group, LLC.

7 4. The Receiver’s investigation has determined that Active Funding Group, LLC
8 and its principals may have been working in concert with Yomtov Scott Menaged
9 (“Menaged”) and been aware that Menaged was seeking to obtain two hard money loans on
10 real property purchased at foreclosure auctions and defrauding DenSco in the process.

11 5. The Receiver’s initial investigation indicates that after Active Funding Group,
12 LLC uncovered Menaged’s scheme to defraud it and DenSco, Active Funding Group, LLC
13 took actions to protect its historical loans with Menaged and at the same time worked
14 cooperatively with Menaged to enable him to continue to defraud DenSco.

15 6. The Receiver has determined that he requires the legal services of the law firm
16 of Ajamie, LLP, to assist the Receiver in his ongoing investigation of these potential claims
17 against Active Funding Group, LLC.

18 7. The Receiver has determined that he requires the expertise of Ajamie, LLP, as
19 these accomplished lawyers have significant experience in the areas of complex commercial
20 litigation and litigating complex financial fraud cases. Moreover, Ajamie, LLP can not only
21 assist the Receiver in DenSco’s potential claims, but can also provide sound advice and

1 counsel to the Receiver in all aspects of potential legal claims and possible remedies that may
2 arise from actions or omissions of Active Funding Group, LLC.

3 8. Ajamie, LLP, has agreed to serve as Special Counsel pursuant to the terms of
4 the Engagement Agreement attached as Exhibit "A". Pursuant to the Engagement
5 Agreement, Special Counsel will investigate DenSco's potential claims and provide a detailed
6 memorandum of the claims with an estimation of probable costs of pursuit of the claims
7 within thirty (30) days from the Court's approval of this Petition.

8 9. Thereafter, if the Receiver determines that DenSco's claims should be
9 advanced, the Receiver will have the option to elect either an hourly or contingent fee as the
10 basis for future compensation to Special Counsel. If the Receiver elects to proceed on an
11 hourly basis, Ajamie, LLP professionals will be compensated on an hourly rate basis pursuant
12 to the professional rate schedule in Exhibit "A". If the Receiver elects to proceed on a
13 contingency fee basis, Special Counsel has agreed to a sliding scale for the potential
14 contingency fee as set forth in Exhibit "A". Specifically, Special Counsel would be
15 compensated Thirty Three and One-Third percent (33.33%) of any gross recovery between
16 \$0.00 and \$6,000,000.00; Twenty-Five percent (25%) of any gross recovery between
17 \$6,000,000.00 and \$12,000,000.00; Fifteen percent (15%) of any gross recovery between
18 \$12,000,000.00 and \$20,000,000.00; and Ten percent (10%) of any gross recovery above
19 \$20,000,000.00.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

10. The Receiver believes that both the hourly rates and sliding scale for the potential contingency fee are reasonable in light of the substantial experience of the professionals at Ajamie, LLP and the nature of the DenSco claims.

WHEREFORE, the Receiver respectfully requests that the Court enter an order:

1. Appointing the law firm of Ajamie, LLP as special counsel to the Receiver;
2. Approving the engagement agreement with the law firm of Ajamie, LLP, attached as Exhibit "A"; and
3. Directing the Receiver to file a notice with the Court when the Receiver has made his election to either proceed with compensation of Special Counsel on an hourly basis or on a contingency basis.

Respectfully submitted this 22nd day of November, 2017.

GUTTILLA MURPHY ANDERSON, P.C.

/s/Ryan W. Anderson
Ryan W. Anderson
Attorneys for the Receiver

2359-001(306856)

**FEE AGREEMENT
AJAMIE LLP**

The law firm of Ajamie LLP (“Attorneys”), agrees to represent Peter S. Davis, as receiver of DenSco Investment Corporation (“DenSco”) in receivership in CV 2016-014142 (“Client”) in the investigation, prosecution, trial, or settlement of any claims that DenSco may have against Active Funding Group, LLC.

1. **Flat Fee, Memorandum of Claim.** Receiver shall seek approval from the Court to retain Attorneys. If approval is given, Attorneys will prepare a memorandum of claim for the Receiver setting out an analysis of claims the Receiver may pursue. In preparing the memorandum, Attorneys shall review relevant documentation, setting out the factual and legal basis of any claims, and possible remedies. The memorandum will set out the probable costs of pursuing the claims. The memorandum will be submitted to the Receiver within thirty days of the approval of this agreement by the Court. Attorneys will prepare the memorandum of claim for a flat fee of \$20,000, with the understanding that the Receiver will seek approval from the Court to pay that fee after receipt of the memorandum.

2. **Election of Hourly or Contingent Fee.** If the Receiver decides to pursue the claims, then the Receiver may choose to proceed with the case either on a standard hourly rate basis or on a contingent fee basis.

3. **Hourly Rate.** If a decision is made to proceed on an hourly rate basis, Attorneys will be paid in accordance with the standard form hourly rate retention agreement that is attached to this Fee Agreement.

4. **Contingent Fee.** If a decision is made to proceed on a contingent fee basis, Client agrees to pay and assign to Attorneys:

- (1) Thirty-three and one third percent (33 1/3%) of any gross recovery between zero and \$6,000,000 obtained by reason of settlement or trial; and, in addition
- (2) Twenty-five percent (25%) of any gross recovery between \$6,000,000 and \$12,000,000 obtained by reason of settlement or trial; and, in addition
- (3) Fifteen percent of any gross recovery between \$12,000,000 and \$20,000,000 obtained by reason of settlement or trial; and, in addition
- (4) Ten percent of any gross recovery above \$20,000,000.

The term “gross recovery” shall mean actual receipt by Client (or its representatives) of the proceeds of a settlement, a court or arbitration award and/or a jury verdict; and the gross recovery is “obtained” either on receipt or on the date on which there is an enforceable settlement agreement with any Defendant or other relevant person or entity.

Any award of attorneys' fees, if allowed and ordered by the Court, will be included in calculating the gross recovery.

Except as provided in Paragraph 8 below, attorneys' fees, expenses and costs will be payable only out of recovery, and if no recovery is obtained, no fees or costs shall be payable to Attorneys except for the flat fee for the memorandum of claim.

Client consents to the payment of any recovery directly to Attorneys. If any recovery is paid by a joint check to Attorneys and Client, Client shall endorse such check over to Attorneys, and Attorneys shall disburse the proceeds in accordance with this Agreement, after deducting unreimbursed costs and its attorneys' fees.

Client agrees that the attorneys' fee calculated shall be a lien on any amount recovered, by settlement or otherwise.

5. **Appeal.** Attorneys shall respond to any appeal or special action filed by an adverse party. Attorneys shall initiate any appeal or special action requested by the Receiver.

6. **Future Payments.** If a settlement is reached or a judgment provided which provides that clients shall receive money and/or other benefits to be paid or conferred over some future period of time, any contingent fee will be based upon the present value of the recovery. In that event, the current value of such money or benefits shall be determined by fair and reasonable means, and that current value shall be the amount recovered. If practicable, Attorneys may take any contingent fee at the time a future payment is made; for example, if there is an annuity, Attorneys may take any contingent fee when an annuity is paid.

7. **Expenses.** Under the ethical rules governing lawyers and lawsuits in Arizona, Attorneys are allowed to, and hereby agree to, advance the expenses of representation. If an hourly rate basis is selected, Client will reimburse Attorneys for all expenses so advanced. If a contingent fee basis is selected, expenses advanced by Attorneys, and not otherwise reimbursed to Attorneys, for example by a recovery of taxable costs, shall be deducted from Client's share of the amount recovered. If nothing is recovered, then Client shall not have to reimburse Attorneys for any expenses advanced.

8. **Expenses include Taxable Costs.** In the event that the case is litigated to a judgment, Client may, if the Client prevails, recover "taxable costs." Taxable costs include such items as filing fees, and the costs of depositions, subpoenas, etc. Any taxable costs recovered shall be used to reimburse Attorneys for the taxable costs and expenses which they have advanced in the course of the litigation, and will not become part of the gross amount recovered if a contingent fee basis is selected.

9. **Withdrawal.** Attorneys may withdraw as counsel for Client at any time upon giving reasonable notice. This Agreement may also be terminated at any time by Client before settlement or ultimate recovery after reasonable notice to Attorneys.

In the event a contingent fee basis is selected and this Agreement is terminated by Attorneys for no cause before settlement or ultimate recovery, no fees shall be payable to Attorneys. In the event that Attorneys withdraw for good cause, then the Attorneys shall be paid

their ordinary hourly rates for work performed up to the time of their withdrawal. If Client and Attorneys cannot agree on the issue of good cause, then that issue shall be determined in a single arbitrator arbitration conducted according to the commercial arbitration rules of the American Arbitration Association, in confidential proceedings. The result of the Arbitration will be submitted to the Court for approval, and the parties agree that the Court may review the result as to the reasonableness of the hourly fees awarded.

In the event a contingent fee basis is selected and this Agreement is terminated by Client before settlement or ultimate recovery, Client agrees to pay to Attorneys from any recovery ultimately obtained a fee that fairly represents the value of Attorneys services, taking into account all the facts and circumstances, including the fee specified in this agreement, the status of the litigation at the time of the termination, and the pro rata division of time between Attorneys and any subsequent law firm. If disputed, that fee shall be set by the Court.

10. **Settlement.** No settlement shall be binding without the consent of Client, and the approval of the Court.

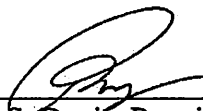
11. **Requirement of Reasonableness and Court approval.** Pursuant to ER 1.5, Rule 42, Rules of the Arizona Superior Court, Attorneys will review any fees billed if an hourly rate basis is selected to assure that the fees are reasonable in light of the factors set forth in ER 1.5, and will adjust their fees to the extent necessary to assure that they are reasonable and comport with ER 1.5.

Pursuant to the Receivership Order, the Court must approve the reasonableness of all attorneys' fees and costs and expenses. No attorneys' fees, costs or expenses shall be paid until approved by the Receiver and the Court.

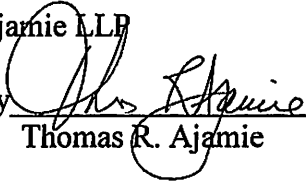
12. **Retention of Documents.** In the course of the representation, Attorneys are likely to come into possession of copies or originals of documents or other materials belonging to Client or others. Once the particular matter to which those materials relate has been concluded, Attorneys will have no further responsibility to maintain such materials unless expressly agreed otherwise. If Client has not sought the return of such materials within one year of the closing of the matter to which such materials relate, Attorneys may destroy such materials in accordance with their normal file retention policies.

13. **Client's Duties.** Client agrees to be truthful with Attorneys, to cooperate in the prosecution of the Claim, to keep Attorneys informed of all relevant developments, and to keep Attorneys advised of Client's address, telephone number, and whereabouts.

Dated this 13th day of November, 2017.



Peter S. Davis, Receiver

Ajamie LLP
By 

Thomas R. Ajamie

**FEE AGREEMENT
AJAMIE LLP**

Representation. The law firm of Ajamie LLP ("Firm," "us," or "we") has agreed to represent Peter S. Davis, as receiver of DenSco Investment Corporation in receivership in CV 2016-014142 ("Client," "DenSco," or "you") in the investigation, prosecution, trial, or settlement of any claims that DenSco may have against its former legal advisors, including any claims against Active Funding Group, LLC.

Fees and Costs. You agree to pay us for legal services at our regular hourly rates which will be billed to you and which are to be paid each month.

Our fee will be determined by multiplying the number of hours worked on your behalf by the standard hourly rate of each attorney, law clerk, paralegal, and other assistant. A rate schedule for the attorneys and others who we expect to work on your case is attached. These rates are adjusted from time to time, typically at the beginning of each calendar year. We will advise you of any change in our rates and of any changes in the persons who will be the principal providers of services to you. A rate schedule is available to you at any time on request.

We record and bill for our time in tenths of an hour. Our bills will include the time we spend on researching factual and legal issues, negotiations, conferences, preparation of various documents or pleadings, conducting discovery, court appearances, travel, and telephone calls.

In addition to our fees, you will be responsible for any charges and expenses we incur on your behalf. We normally advance the cost of court fees, deposition expenses, and travel expenses, and charge them to you monthly as bills are received and processed by the firm. We may also submit certain outside charges to you for direct payment, and you have agreed to hire, pay directly, and be solely responsible for the charges of all experts, investigators, and local counsel. We will bill you for photocopies (\$.20/page), data duplication (from \$10 to \$45), computer-assisted research (at average imputed cost), messenger services (from \$7 to \$30 or more, depending on distance), automobile travel (53.5¢/mile), extraordinary staff overtime (at cost), long distance telephone calls (at average imputed cost), and certain specialized technical services, such as computerized litigation support, at \$155 to \$200 per hour.

We prepare statements each month for mailing by the 15th. The statements will show the fees and charges incurred during the previous month and any balance of your trust account after payment of the statement. We will address our statements to you at the above address unless directed otherwise.

Payment of each month's statement is due 30 days after the date of the statement. However, if there are funds in the trust account we may immediately pay our statement from those funds. We would encourage you to examine our statements with as much care as you deem appropriate and to contact us immediately if you have any questions or concerns. We may withdraw from the representation, after reasonable notice, if our bills are not paid when due, or if you do not comply with the other terms of this Agreement. We reserve the right, upon ten days advance notice to you, to charge interest on past due amounts at 1.5% per month.

The responsible attorney will review your statements to make any adjustments we believe are appropriate. We would ask you to alert us promptly to any questions you may have about the statement or the work for which you were billed by contacting the attorney with whom you are working or the firm's controller. We are always willing to discuss our fees with you if you have questions or feel the charges may be inappropriate. It is our desire to provide you with the best representation possible at a price which is fair and reasonable and to build an ongoing relationship of trust, confidence, and fair dealing.

You may terminate our representation at any time. If you do so, you will be responsible for our fees and costs to the date of the termination plus any fees and costs incurred in withdrawing and in assisting new counsel during the termination.

Retention and Destruction of Documents. During our representation, we are likely to receive copies or originals of documents or other materials belonging to you or others. Once the matter to which those materials relate has been concluded, we will retain and eventually return these materials to you or destroy them in accordance with our file retention policy, a copy of which is enclosed. Please inform us of any change of address so that we can contact you when it is time to return the file.

All client-supplied materials, including your original documents ("Client Materials") are the property of Client. Attorney work papers, such as photocopies, attorney drafts, attorney notes, attorney memoranda, administrative materials, correspondence, and electronic versions of documents shall be considered attorney work product and property of the Firm. The Firm may retain copies of attorney work product and Client Materials. After completion of the matter, the Firm shall make all Client Materials available to you. You have an affirmative duty to retrieve those Client Materials or to direct the Firm to forward the Client Materials. If the firm does not receive instructions, the Firm is authorized to destroy the Client Materials five years following conclusion of the matter with no further notice to you.

Electronic Communications. Communication through email, cellular, and wireless devices is cost-efficient and convenient. We take reasonable internal precautions and safety measures to prevent disclosure of client sensitive information when using these forms of communication. But we have no control regarding Internet providers, the Internet itself, wireless communications, or where and how you store confidential information. You must understand it is possible for such communications to be intercepted, misdirected, viewed, heard, or otherwise accessed by third parties, either accidentally or intentionally. You authorize us to communicate with you and third parties via email, cellular, and wireless methods, and you understand and accept all confidentiality risks associated with such use. It is important for you to let us know if there are email or other electronic addresses to which we should avoid sending confidential information.

Arbitration of Fee Disputes. Any and all disputes, controversies, claims or demands arising out of or relating to this Agreement or any provision hereof, the providing of services by the Firm to Client, or in any way relating to the relationship between the Firm and Client, whether in contract, tort, or otherwise, at law or in equity, for damages or any other relief, shall be submitted to the fee arbitration process conducted by the Arizona State Bar. This arbitration provision shall be enforceable in either federal or state court. The decision of the arbitrators will

be final and non-appealable. You and we waive the right to file suit in court concerning disputed fees or costs. Any party to any award rendered in such arbitration proceeding may seek a judgment upon the award and that judgment may be entered by any federal or state court having jurisdiction.

Choice of Law & Other Terms. This Agreement shall be construed under and in accordance with the laws of the State of Arizona, and the rights, duties and obligations of you and of the Firm regarding the Firm's representation of you and regarding anything covered by this Agreement shall be governed by the laws of the State of Arizona.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representative, successors, and assigns.

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.


This Agreement constitutes the sole and only Agreement of the parties hereto and supersedes any prior understandings, whether by written or oral agreement, between the parties with respect to the subject matter within.

There shall be no modifications to this agreement, either oral or written, unless such modifications are in writing and agreed to by all parties hereto.

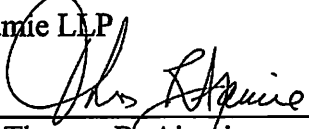
Finally, the Texas Supreme Court has promulgated a creed for Texas lawyers and requires us to provide a copy to our clients. A copy is enclosed for your records. Texas lawyers also must advise clients that the "State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. Although not every complaint against or dispute with a lawyer involves professional misconduct, the State Bar's Office of General Counsel will provide you with information about how to file a complaint. For more information, call 1-800-932-4900."

Binding Contract. If you agree to the terms set forth in this Agreement, please execute the enclosed copy and return it to us as soon as possible. When signed by you, this agreement constitutes a binding contract. You are encouraged to seek separate legal counsel if you desire independent legal advice concerning the meaning or effect of this agreement.

Dated this 13th day of November, 2017.



Peter S. Davis, Receiver

Ajamie LLP
By 

Thomas R. Ajamie

RATE SCHEDULE

Thomas R. Ajamie	\$800.00
John S. "Jack" Edwards, Jr.	\$450.00
Paralegal	\$190.00