

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:) Case No. 10-50494
)
FAIR FINANCE COMPANY) Chapter 7
)
Debtor.) Judge Jessica E. Price Smith
)

**APPLICATION FOR ORDER AUTHORIZING THE EMPLOYMENT AND
RETENTION OF MARCUM LLP TO REPLACE SKODA, MINOTTI & CO.
AS FORENSIC ACCOUNTANT TO THE TRUSTEE**

Brian A. Bash (“Trustee”) hereby moves the Court for entry of an order pursuant to sections 327(a) and 328(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2014, 2016 and 5002 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), authorizing the employment and retention of Marcum LLP, a New York limited liability partnership (“Marcum”) to replace Skoda, Minotti & Co., Certified Public Accountants, an Ohio corporation (“Skoda Minotti”) as forensic accountant to the Trustee. In support of this Application, the Trustee respectfully states as follows:

JURISDICTION AND BACKGROUND

1. The Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this proceeding and this Application is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 327(a) and 328 of the Bankruptcy Code.

2. On February 8, 2010 (the “Petition Date”), creditor-investors filed a petition for involuntary bankruptcy against the debtor in this case, Fair Finance Company (the “Debtor”).



3. On the Petition Date, the creditor-investors also filed an “Emergency Motion to Appoint Interim Trustee” (Docket No. 2) alleging that a trustee was needed to oversee the operations of the Debtor because (i) the Debtor had failed to make timely payments on its debts, including failing to redeem matured certificates and failing to pay interest on unmatured certificates; (ii) the Debtor and several affiliated companies had been raided by the Federal Bureau of Investigation in November of 2009; (iii) the Debtor had not been open to the public since the raid; and (iv) public records revealed that the Debtor had made “unusually large” loans to insiders.

4. On February 19, 2010, this Court entered an order directing the United States Trustee to appoint an interim trustee, and on March 2, 2010, the United States Trustee filed the Notice of Appointment of Interim Chapter 7 Trustee *nunc pro tunc* effective February 24, 2010 (Docket No. 41). Brian A. Bash is the duly appointed, qualified and acting interim trustee in the within proceedings.

5. Pursuant to this Court’s Orders dated March 23, 2010 and February 28, 2011 (Docket Nos. 67 and 341, respectively), the Trustee retained Howard L. Klein Co. to act as his forensic accountant and to provide expert witness services.

6. On September 1, 2013, Howard Klein of Howard L. Klein Co. joined the accounting firm Skoda Minotti. Pursuant to this Court’s Order dated September 10, 2013 (Docket No. 1313), the Court authorized the employment and retention of Skoda Minotti to replace Howard L. Klein Co. as forensic accountant and expert witness for the Trustee.

RELIEF REQUESTED

7. Skoda Minotti merged with Marcum on December 2, 2019, and Mr. Klein will continue as a partner with Marcum. Because of this merger, the Trustee seeks to employ and retain Marcum to replace Skoda Minotti as forensic accountant and expert witness for the Trustee.

BASIS FOR RELIEF REQUESTED

8. As part of his duty to administer and liquidate the estate for the benefit of creditors, the Trustee continues to require the assistance of a qualified forensic accountant, including for purposes of acting as an expert witness in litigation. During the nearly ten years that Mr. Klein has worked on this case, Mr. Klein has spent thousands of hours reviewing and analyzing the records of the Debtor. Mr. Klein has gained valuable institutional knowledge and conducted numerous substantial analyses regarding the Debtor, its books and records, its operation as a Ponzi scheme, and the scores of insiders and affiliates that received funds from the Debtor. Mr. Klein also has prepared several expert reports in connection with certain pending litigation. It would be duplicative and enormously expensive to lose Mr. Klein at this stage in the case. The Trustee wishes to retain Mr. Klein's new firm so Mr. Klein can continue in his valuable role as the Trustee's forensic accountant and expert witness.

9. Mr. Klein's new firm, Marcum, is a well-respected international accounting firm that is sufficiently experienced and qualified to provide the services needed by the Trustee. If Marcum is retained, Mr. Klein would continue to be the person primarily responsible for the engagement with the Trustee. As has been stated in prior retention applications, Mr. Klein is a Certified Public Accountant, a Certified Fraud Examiner, Certified Insolvency and Restructuring Advisor and a Certified Valuation Analyst, and he has extensive experience in investigative accounting and reviewing the records of bankruptcy debtors. The Court's authorization to employ Marcum to act as forensic accountant and provide expert witness services is in the best interest of the estate and the creditors, as Marcum (and Mr. Klein, in particular) is experienced and qualified to render the professional services needed by the Trustee.

10. The Trustee anticipates that the scope of the engagement with Marcum will be substantially the same as the scope of the engagement with Skoda Minotti and will include the following services:

- a) Serving as an expert witness for the estate;
- b) Assisting the Trustee in recovering assets for the estate;
- c) Assisting the Trustee in analyzing the assets and liabilities of the Debtor and, to the extent necessary, identifying causes of action and other assets of the Debtor;
- d) Assisting the Trustee in making distributions to creditors;
- e) Performing other accounting or tax services the Trustee requires to administer the estate; and
- f) Assisting the Trustee in wrapping up the affairs of the estate.

11. Marcum maintains an office at 6685 Beta Dr., Mayfield Village, Ohio 44143.

12. The Trustee proposes that Marcum be compensated for its services rendered on an hourly rate and for its expenses incurred in connection with this Chapter 7 proceeding. Marcum will permit Mr. Klein to continue to bill his time on this matter at \$351.00 per hour. Mr. Klein may utilize other personnel at Marcum when it would be in the best interest of the estate to do so based on cost and efficiency. Standard current billing rates for other professionals at Marcum are as follows:

Partner	\$440.00
Principal	\$410.00
Sr. Manager	\$340.00
Manager	\$285.00
Sr. Accountant	\$248.00
Staff Accountant	\$209.00

13. All of Marcum's fees and expenses will be subject to Court approval upon proper application and will be paid only upon Court order.

14. The hourly rate to be charged shall be the same as that charged in the ordinary course of business. These hourly rates normally are subject to review and revision each year.

15. As more fully set forth in the Affidavit of Howard L. Klein, attached hereto as **Exhibit A** (the “**Affidavit**”), Marcum is disinterested within the meaning of 11 U.S.C. § 101(14). Except as set forth in the Affidavit, neither Howard L. Klein nor anyone else at Marcum, to the best of Marcum’s knowledge, has any connection with the Debtor. Neither Mr. Klein nor anyone else at Marcum, to the best of Marcum’s knowledge, is a creditor, equity security holder, insider, director, officer, or employee of the Debtor, nor has any of them been a director, officer or employee of the Debtor in the two years preceding the bankruptcy petition. Further, neither Mr. Klein nor anyone else at Marcum, to the best of Marcum’s knowledge, has an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders by reason of any direct or indirect relationship to, connection with, or interest in, the Debtor, or for any other reason.

16. As set forth in the Affidavit, Marcum has connections with, and in the past represented, currently represents, and likely in the future will represent certain parties-in-interest in matters unrelated to the Debtors, the Debtors’ Chapter 11 cases, or such entities’ claims against or interests in the Debtors. To the best of Marcum’s knowledge, Marcum does not hold any interest that is adverse to the estate or any class of creditors or equity security holders as a result of these connections and engagements.

17. Further, neither Howard Klein nor anyone else at Marcum, to the best of Marcum’s knowledge, is a relative by blood or marriage of any Bankruptcy Judge for the Northern District of Ohio or the United States Trustee for Region 9, and is not now nor have they ever been so connected with any such Judge or the United States Trustee for Region 9 so as to render Marcum’s appointment or the Court’s approval of such employment as a forensic accountant and expert witness in the above-captioned matter improper.

WHEREFORE, the Trustee respectfully requests that the Court enter an Order, substantially in the form attached hereto as **Exhibit B**, authorizing the Trustee to employ and retain Marcum as forensic accountant and expert witness for the Trustee, and granting such other and further relief as is just and proper.

Date: January 9, 2020

Respectfully submitted,

/s/ Brian A. Bash

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EXHIBIT A

AFFIDAVIT OF HOWARD L. KLEIN

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:)	Case No. 10-50494
)	
FAIR FINANCE COMPANY)	Chapter 7
)	
Debtor.)	Judge Jessica E. Price Smith
)	

AFFIDAVIT OF HOWARD L. KLEIN
PURSUANT TO BANKRUPTCY RULES 5002 AND 2014

Affiant Howard L. Klein, a partner with the accounting firm Marcum LLP (“**Marcum**”), being first duly sworn and according to law, based on his best information and belief after reasonable investigation, deposes and states as follows:

1. I submit this Affidavit in support of the Trustee’s Application for Order Authorizing the Employment and Retention of Marcum LLP to Replace Skoda, Minotti & Co. as Forensic Accountant to the Trustee, pursuant to Sections 327(a) and 327(c) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 5002.

2. Marcum LLP is a New York limited liability partnership. Marcum has acquired and merged with Skoda, Minotti & Co., effective as of December 2, 2019. As a result of that merger, Marcum maintains an office at 6685 Beta Drive, Mayfield Village, Ohio 44143.

3. After a reasonable review of Marcum’s records and to the best of my knowledge, I am not aware of any person at Marcum being related by blood or marriage to any Bankruptcy Judge for the Northern District of Ohio or to the United States Trustee for Region 9, and I do not believe that any partner or employee of Marcum has a personal or professional relationship with any Bankruptcy Judge for the Northern District of Ohio or with the United States Trustee for

Region 9 that would render Marcum's appointment or the Court's approval of such engagement as a forensic accountant in the above-captioned matter improper.

4. After a reasonable review of Marcum's records and to the best of my knowledge, I am not aware of any partners or employees at Marcum whose interests are materially adverse to the interest of the estate or of any class of known creditors or equity security holders, by reason of any direct relationship to the Debtor. Marcum will not represent any creditor or other party in interest (other than the Trustee) as an advisor to such party in this case.

5. After a reasonable review of Marcum's records and to the best of my knowledge, I am not aware of any matters that would cause Marcum to not be a disinterested party with respect to Marcum providing forensic accounting and expert witness services in this case. Marcum is a "disinterested person" under 11 U.S.C. §101(14) because, after a reasonable review and to the best of my knowledge:

- a) Marcum has not represented the Debtor.
- b) No current Marcum partner is known to be a creditor of the Debtor, or an insider of the Debtor, or holds a direct or indirect equity interest in the Debtor, including stock, stock warrants or a partnership interest in a debtor partnership, or has a right to acquire such an interest.
- c) No Marcum partner is known to have served as an officer, director or employee of the Debtor within two years before the filing of the petition.
- d) No Marcum partner is in control of the Debtor or is a relative of a general partner, director, officer or person in control of the Debtor.
- e) No Marcum partner is or has served as an officer, director, or employee of a financial advisor which has been engaged by the Debtor in connection with the offer, sale, or issuance of a security of the Debtor within two years before the filing of the petition.
- f) Neither Marcum nor any Marcum partner has represented a financial advisor of the Debtor in connection with the offer, sale, or issuance of a security of the Debtor within three years before the filing of the petition.

- g) Neither Marcum, nor any Marcum partner, represents in this bankruptcy case a creditor, a holder of any equity securities of the Debtor, a general partner, a lessor, a lessee, a party to an executory contract of the Debtor, or a person adverse to the Debtor or the estate.
- h) Neither Marcum nor any Marcum partner represents an insider of the Debtor or the Debtor's parent, subsidiary, or other affiliate.
- i) Neither Marcum nor any Marcum partner has been paid fees on a prepetition basis or holds a security interest, guaranty or other assurance of compensation for services performed or to be performed by Marcum for the estate in this proceeding.
- j) There is no agreement of any nature as to the sharing of any compensation with respect to fees to be paid to Marcum in connection with its engagement as an advisor in this case.
- k) Neither Marcum nor any Marcum partner is aware of any professional or personal relationship the Debtor, known creditors, the United States Trustee or any employee of that office, or any other party known to have an interest in the Debtor that is materially adverse to the Debtor or the estate.

6. Marcum has the following relationships, none of which Marcum believes give rise to any materially adverse interest to the Debtor, known creditors, the United States Trustee or any employee of that office:

- a) Marcum has one client (Foley & Lardner LLP) that may have represented Timothy Durham in a prepetition matter. Marcum has not been retained to represent this client in connection with this case.
- b) Marcum has one client (Bentley Financial Services) that provided prepetition services to Timothy Durham. Marcum has not been retained to represent this client in connection with this case.
- c) Several years ago, Marcum provided litigation support services for a client that was also represented by Gibson Dunn & Crutcher. This matter has been closed for many years and has no connection with this case.
- d) Marcum acquired the accounting firm Stonefield Josephson, Inc. in 2010. The Trustee filed a fraudulent transfer action against Stonefield Josephson to recover \$41,375 of alleged fraudulent transfers that Stonefield Josephson received in November of 2007, prior to its acquisition by Marcum. The matter was settled and a settlement agreement was approved by the Court on January 16, 2013 (*See* Docket Nos. 738, 1163, 1164, and 1186.) Under the terms of the settlement, Stonefield Josephson agreed to pay the Trustee a total of \$20,000 in four installments of \$5,000 each, beginning on December 1, 2012. Stonefield Josephson paid the entire \$20,000 settlement due on December 12, 2012. In connection with their settlement

agreement, the parties waived all claims they had against each other related to the litigation.

7. Marcum is an international firm with over 25 offices and over 300 partners and directors, and the Debtor has or had thousands of creditors and other relationships. Despite the efforts described above to identify and disclose Marcum's relationships with parties who may have a material interest in the proceeding in this case, Marcum is unable to state with absolute certainty that every partner, employee, client, engagement, vendor or other relationship with parties who have or may have any interest in this case has been identified or disclosed. If Marcum becomes aware of additional information that requires disclosure during the course of this engagement, Marcum will file a supplemental disclosure with the Court as promptly as possible.

8. Marcum has not received a retainer in connection with this engagement. Marcum will charge for its expenses and typical hourly rates for work of this nature as set forth below. Mr. Klein will continue to bill his time for this matter at \$351.00 per hour. Marcum exercises efforts to utilize other personnel at lower rates when it would be in the best interest of the estate to do so based on cost and efficiency and its determination of skills required to perform the services. Standard current billing rates for professionals at Marcum performing similar services under similar circumstances are as follows:

Partner	\$440.00
Principal	\$410.00
Sr. Manager	\$340.00
Manager	\$285.00
Sr. Accountant	\$248.00
Staff Accountant	\$209.00

9. All of Marcum's fees and expenses will be subject to Court approval upon proper application and will be paid only upon Court order.

10. I will abide by Local Rule 2016-1 relating to the Guidelines for Compensation and Expense Reimbursement for Professionals.

FURTHER AFFIANT SAYETH NAUGHT.


Howard L. Klein, Partner
Marcum LLP

SWORN TO BEFORE ME, and subscribed in my presence, this 9 day of January, 2020.



DEBORAH A. WALSH
Notary Public, State of Ohio
My Commission Expires October 10, 2021
(Recorded in Lake County)



Notary Public
My commission expires: 10/10/2021

EXHIBIT B

PROPOSED ORDER

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:)	Case No. 10-50494
)	
FAIR FINANCE COMPANY)	Chapter 7
)	
Debtor.)	Judge Jessica E. Price Smith
)	

**ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION OF
MARCUM LLP TO REPLACE SKODA, MINOTTI & CO.
AS FORENSIC ACCOUNTANT TO THE TRUSTEE**

This matter came to be heard upon the application of the Trustee for an order authorizing him to employ Marcum LLP (“**Marcum**”) to replace Skoda, Minotti & Co. (“**Skoda Minotti**”) as forensic accountant to the Trustee.

Upon consideration thereof, the Court finds that the Application is well-taken; that the appointment of Marcum is in the best interests of the estate; that Marcum is disinterested; and that Marcum is qualified to act as a forensic accountant for the purposes set forth in the Application.

IT IS THEREFORE ORDERED that the Trustee’s Application for Order Authorizing the Employment and Retention of Marcum LLP to Replace Skoda, Minotti & Co. as Forensic

Accountant to the Trustee is hereby granted in its entirety.

IT IS SO ORDERED.

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Submitted by:

/s/ *Brian A. Bash*

Brian A. Bash, Trustee (0000134)

Baker & Hostetler LLP

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Telephone: 216.861.7581

Email: bbash@bakerlaw.com

CERTIFICATE OF SERVICE

A copy of the foregoing has been served via ECF or regular, U.S. Mail, on January 9, 2020,
on the attached service list.

/s/ Brian A. Bash

Brian A. Bash

Trustee in Bankruptcy

SERVICE LIST

Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive e-mail notice/service for this case.

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Manual Notice List

The following is the list of **parties** who are **not** on the list to receive e-mail notice/service for this case (who therefore require manual noticing/service).

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