

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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In the Matter of  
  
the Liquidation of

FRESENIUS HEALTH PLAN OF NEW YORK, INC.  
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Index No.: 453561/2021

(Hon. Shlomo Hagler)

**AFFIRMATION**

Melvin Browning, an attorney at law, duly admitted to practice before the Courts of the State of New York, hereby affirms the following to be true under penalties of perjury:

1. I am an attorney with the New York Liquidation Bureau (“NYLB”), which serves as the staff of Adrienne A. Harris, Superintendent of Financial Services of the State of New York (“Superintendent”) in her capacity as liquidator (“Liquidator”) of Fresenius Health Plan, Inc. (“Fresenius”). I submit this affirmation, upon information and belief based on my review of the Fresenius files maintained by the NYLB and the conversations I have had with employees of the Liquidator, in support of the Liquidator’s application for an order substantially in the form as the proposed order annexed hereto as Exhibit “1” approving the Liquidator’s report on the status of and request to close the Fresenius liquidation proceeding and the financial transactions detailed in the report (“Closing Report”). A copy of the Closing Report is annexed hereto as Exhibit “2”.

**Background and the Commencement of the Liquidation Proceeding**

2. Fresenius was incorporated in the State of New York on January 21, 2016, and obtained a certificate of authority, effective April 20, 2016, from the New York State Department of Health (“DOH”) to operate as a Medicare-only Managed Care Organization in Bronx, Kings, New York, and Queens Counties pursuant to Article 44 of the New York Public Health Law. Fresenius was not authorized to operate in any State other than New York State. Fresenius commenced business operations on or about January 1, 2017.

3. On November 24, 2021, this Court granted the Superintendent's application placing Fresenius into liquidation under Article 74 of the New York Insurance Law ("Insurance Law") and, among other things, appointing the Superintendent and her successors in office as Liquidator of Fresenius.

4. A bar date was established for the submission of all claims and evidence supporting those claims against Fresenius or its insureds. The bar date was the earlier of (i) the contractual time period established for the timely submission of claims in Fresenius's health plans or agreements between Fresenius and its network of hospitals and healthcare service providers for the provision of services to members; or (ii) six months from the entry of the liquidation order, i.e., May 24, 2022 (the "Bar Date"). The Bar Date applies to all claims other than the Liquidator's claim for administrative expenses.

5. The Liquidator now submits her report on the status of the Fresenius liquidation proceeding and requests authority to close the liquidation proceeding.

**Activities in Furtherance of Winding Down the Fresenius Estate**

6. During the pendency of the liquidation proceeding, the Liquidator has (a) taken possession of Fresenius's business and assets, (b) transferred all electronic data to the Liquidator's control, (c) reviewed all of Fresenius's executory contracts; (d) reviewed claims asserted against Fresenius policies; (e) reviewed Fresenius's liabilities; (f) and taken other steps necessary to wind down Fresenius's affairs.

7. No claims were filed in the liquidation proceeding on or before the Bar Date. Upon the closing of the liquidation proceeding, all monies left over after payment of administrative expenses will be distributed to FHP Insurance Holding Company, Inc. ("FHP") - Fresenius's sole shareholder.

**Relief Sought.**

1. The Liquidator proposes that notice be given through posting the Order to Show Cause and its supporting papers on the NYLB web page at <http://www.nylb.org> at least fifteen (15) days before the Return Date.
2. No previous application for the relief sought herein has been made to this or any other court of judge thereof.

WHEREFORE, it is respectfully requested that the Court grant an order substantially in the form as the proposed order annexed hereto as Exhibit "1" to this affirmation: (a) approving the Closing Report and the financial transactions delineated therein; (b) authorizing the continued payment of actual and necessary administrative expenses, if any, including such expenses pertaining to the closing of the liquidation proceeding; (c) terminating and closing the liquidation proceeding; (d) authorizing the Liquidator, upon the closing of the liquidation proceeding, to distribute to FHP as the class nine shareholder all assets remaining after payment of administrative expenses; (e) authorizing the Liquidator to receive and disburse, without further application to this Court, any receipts that are received after the termination of the liquidation proceeding; (f) authorizing the Liquidator, after termination of the liquidation proceeding and without further order of this Court, to destroy or otherwise dispose of any and all of the books, files, records (paper or electronic) and other property of the Fresenius estate; and (g) releasing and discharging the Liquidator, her predecessors and successors in office, and their agents, attorneys and employees, and the NYLB from any and all liability arising from their acts or omissions in connection with the liquidation proceeding.

Dated: New York, New York  
September 16, 2022

  
\_\_\_\_\_  
Melvin Browning

L33603/Report

# **EXHIBIT 1**

At IAS Part 17 of the Supreme Court of the State of New York, County of New York, at the Courthouse located at 60 Centre Street, New York, New York, on the \_\_\_ day of \_\_\_\_\_, 2022.

P R E S E N T:

HON. SHLOMO HAGLER, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X

In the Matter of

Index No.: 453561/2021

the Liquidation of

**ORDER**

FRESENIUS HEALTH PLAN OF NEW YORK, INC.

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Upon the motion of the Superintendent of Financial Services of the State of New York, as liquidator (“Liquidator”) of Fresenius Health Plan of New York, Inc. (“Fresenius”) for an order, *inter alia*: (i) approving the Liquidator’s report on the status of and request to close the Fresenius liquidation proceeding (the “Closing Report”) and the financial transactions detailed in the Closing Report, a copy of which is annexed as Exhibit “2” to the affirmation of Melvin Browning; (ii) authorizing the continued payment of actual and necessary administrative expenses, if any, including such expenses pertaining to the closing of the Fresenius liquidation proceeding; (iii) terminating and closing the liquidation proceeding; (iv) authorizing the Liquidator, upon the closing of the liquidation proceeding, to distribute to FHP Insurance Holding Company, Inc. (“FHP”) as the class nine shareholder all assets remaining after payment of administrative expenses; (v) authorizing the Liquidator to receive and disburse, without further application to this Court, any receipts that are received after the termination of the liquidation proceeding; (vi) authorizing the Liquidator, after termination of the liquidation proceeding and without further

order of this Court, to destroy or otherwise dispose of any and all of the books, files, records (paper or electronic) and other property of the Fresenius estate and; (vii) releasing and discharging the Liquidator, her predecessors and successors in office, and their agents, attorneys and employees, from any and all liability arising from their acts or omissions in connection with the liquidation proceeding.

NOW, on the motion of the Liquidator, and no opposition having been filed with the Court, it is;

**ORDERED**, that the application is granted; and it is further

**ORDERED**, that the Closing Report and the financial transactions detailed in such report are approved; and it is further

**ORDERED**, that continued payment of actual and necessary administrative expenses, if any, including such expenses pertaining to the closing of the Fresenius liquidation proceeding is authorized; and it is further

**ORDERED**, that the liquidation proceeding is terminated and closed; and it is further

**ORDERED**, that upon the closing of the liquidation proceeding, the Liquidator is authorized to distribute to FHP as the class nine shareholder all assets remaining after payment of administrative expenses; and it is further

**ORDERED**, that the Liquidator's receipt and disbursement, without further application to this Court, of any receipts that are received after the termination of the liquidation proceeding, is authorized; and it is further

**ORDERED**, that the Liquidator, after termination of the liquidation proceeding and without further order of this Court, is authorized to destroy or otherwise dispose of any and all of

the books, files, records (paper or electronic) and other property of the Fresenius estate; and it is further

**ORDERED**, that the Liquidator, her predecessors and successors in office, and their agents, attorneys and employees, and the New York Liquidation Bureau are released and discharged from any and all liability arising from their acts or omissions in connection with the liquidation proceeding.

E N T E R

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J.S.C.

L33603/Order/

# **EXHIBIT 2**

**REPORT ON THE STATUS OF AND REQUEST TO CLOSE THE LIQUIDATION  
PROCEEDING OF FRESENIUS HEALTH PLAN OF NEW YORK, INC.**

**INTRODUCTION**

Adrienne A. Harris, Superintendent of Financial Services of the State of New York as liquidator (“Liquidator”) of Fresenius Health Plan of New York, Inc. (“Fresenius”) has appointed David Axinn as Special Deputy Superintendent and Agent of the Liquidator and other Agents to carry out through her staff at the New York Liquidation Bureau (“NYLB”) the responsibilities of the Liquidator.

Fresenius was placed into liquidation under Article 74 of the New York Insurance Law on November 24, 2021, by order of the Supreme Court of the State of New York, New York County (NYSCEF Doc. No. 15). The Liquidator submits this report to apprise the Court on the status of the liquidation proceeding (“Closing Report”) and to respectfully request that the Court enter an order, *inter alia*, substantially in the form of the proposed order annexed as Exhibit “1” to the accompanying affirmation of Melvin Browning, approving the Closing Report and the financial transactions detailed herein thereby terminating and closing the Fresenius liquidation proceeding.

**BACKGROUND**

Fresenius was incorporated in the State of New York on January 21, 2016, and obtained a certificate of authority, effective April 20, 2016, from the New York State Department of Health (“DOH”) to operate as a Medicare-only Managed Care Organization in Bronx, Kings, New York, and Queens Counties pursuant to Article 44 of the New York Public Health Law. Fresenius was not authorized to operate in any State other than New York State. Fresenius commenced business operations on or about January 1, 2017.

Fresenius offered plans (“Plans”) including Medicare Advantage Chronic Special Needs Plan to Medicare beneficiaries with end stage renal disease (“Members”). Fresenius also offered

other healthcare services through a network of hospitals and other healthcare service providers. In August 2018, Fresenius started an orderly wind down of its business affairs. Plans were not renewed and new Members were not added. Fresenius also did not renew any of its Plans. In addition, the United States Center for Medicare and Medicaid Services terminated Fresenius' Medicare Advantage Prescription Drug Plan contract. DOH, on January 1, 2019, updated Fresenius' Certificate of Authority thereby precluding Fresenius from marketing and/or enrolling new Medicare members and limiting Fresenius' operations to the payment of remaining liabilities and close out activities.

The order placing Fresenius into liquidation provided that all creditors and claimants were required to present claims and any evidence of their claims to the Liquidator within the earlier of (i) the contractual time period established for the timely submission of claims in all Plans or agreements between Fresenius and its network of hospitals and healthcare service providers for the provision of services to members; or (ii) six months of the Liquidation Order Date, i.e., May 24, 2022 (the "Bar Date").

By setting a Bar Date, the Court allowed sufficient time for any creditors or claimant to assert any type of claim against Fresenius. To date, no claims, other than the Liquidator's administrative expenses, have been submitted to the Liquidator.

FHP Insurance Holding Company, Inc. ("FHP") was the 100 percent shareholder of Fresenius. Since Fresenius has no creditors, any assets remaining after the payment of class one administrative expenses will be paid to FHP as a class nine shareholder under New York Insurance Law § 7434 upon closing of the estate. There is no further action that the Liquidator needs to take to close the estate.

## **FINANCIAL REPORT**

Fresenius's Statement of Assets and Liabilities as of June 30, 2022, and the Statement of Changes of Cash and Invested Assets are attached hereto collectively as Exhibit A.

### **A. As of June 30, 2022**

As of June 30, 2022, Fresenius had total assets in the amount of \$683,799 and total liabilities in the amount of \$3,257.

#### **1. Disbursement of Assets**

As June 30, 2022, the Liquidator incurred and paid \$36,340 in administrative expenses, which include: \$11,695 for salaries of the Liquidator's staff and related payroll taxes; \$10,090 for professional fees (e.g., accountants to prepare financial statements and other consultants for litigation support); \$10,078 for employee relations and welfare; \$2,853 for rent and related expenses; and \$1,624 for general and administrative expenses (e.g., insurance, office equipment and supplies, printing, postage and telephone services).

#### **2. Liabilities**

As of the Closing Date, Fresenius's records reflect total liabilities in the amount of \$3,257, which consisted of \$1,757 for expenses incurred but not paid and closing costs of \$1,500, which includes final audit fees.

#### **3. Distribution of Assets**

Since there are no claims asserted against the Fresenius estate, upon closing of the liquidation proceeding, all assets remaining after payment of administrative expenses will be distributed to FHP.

**RELIEF SOUGHT**

The Liquidator submits this Closing Report to report that the affairs of the Fresenius Liquidation Proceeding have been completed and that it is in the best interests of the estate to close the Liquidation Proceeding at this time under the terms and conditions outlined herein.

Accordingly, the Liquidator requests that the Court issue an order:

1. Approving the Closing Report and the financial transactions detailed herein;
2. Authorizing the continued payment of actual and necessary administrative expenses, if any, including such expenses pertaining to the closing of the liquidation proceeding;
3. Terminating and closing the liquidation proceeding;
4. Authorizing the Liquidator, upon the closing of the liquidation proceeding, to distribute to FHP as the class nine shareholder, all assets remaining after payment of administrative expenses;
5. Authorizing the Liquidator to receive and disburse, without further application to this Court, any receipts that are received after the termination of the liquidation proceeding;
6. Authorizing the NYLB, after termination of the Fresenius liquidation proceeding and without further order of this Court, to destroy or otherwise dispose of any and all of the books, files, records (paper or electronic) and other property of the Fresenius estate; and

7. Releasing and discharging the Liquidator, her predecessors and successors in office, and their agents, attorneys, and employees, and the NYLB from any and all liability arising from their acts or omissions in connection with the liquidation proceeding.

Dated: New York, New York  
September 15, 2022

*David Axinn*

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David Axinn  
Special Deputy Superintendent and  
Agent of Adrienne A. Harris  
Superintendent of Financial Services  
of the State of New York as Liquidator of  
Fresenius Health Plan of New York, Inc.

# **EXHIBIT A**

**Exhibit A – Financial Statements**

<b>Fresenius Health Plan of New York, Inc.</b>	
<b>Statement of Assets</b>	
	As Of "June 30, 2021"
<b>Unrestricted Assets:</b>	
Cash & Cash Equivalents	\$ 683,799
Bonds (Fair Market Value)	-
<b>Total Cash &amp; Invested Assets</b>	<u>683,799</u>
<b>Total Assets</b>	<u>\$ 683,799</u>

<b>Fresenius Health Plan of New York, Inc.</b>	
<b>Statement of Liabilities</b>	
	As Of "June 30, 2021"
<b>Liabilities:</b>	
Class I - Administrative Claims	\$ 3,257
<b>Total Liabilities</b>	<u>3,257</u>
<b>Surplus</b>	680,542
<b>Total Liabilities and Surplus</b>	<u>\$ 683,799</u>

<b>Fresenius Health Plan of New York, Inc.</b>	
<b>Statement of Changes in Cash and Invested Assets</b>	
<b>For the Period November 24, 2021 to June 30, 2022</b>	
	As Of "June 30, 2021"
<b>Receipts:</b>	\$ -
<b>Disbursements:</b>	
Salaries	11,695
Professional Fees	10,090
Employee Relations and Welfare	10,078
Rent and Related Expenses	2,853
General & Administrative Fees	1,624
<b>Total Disbursements</b>	<u>36,340</u>
<b>Net Decrease in Cash</b>	<u>(36,340)</u>
<b>Cash at Liquidation November 24, 2021</b>	720,139
<b>Cash and Invested Assets at June 14, 2022</b>	<u>\$ 683,799</u>