

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SHLOMO HAGLER PART 17

Justice

ADRIENNE HARRIS Plaintiff, - V - FRESANIUS HEALTH PLAN OF NEW YORK, INC., Defendant. INDEX NO. 453561/2021 MOTION DATE N/A MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 12, 13, 14 were read on this motion to/for INJUNCTION/RESTRAINING ORDER

Upon the foregoing documents, it is

ORDERED, ADJUDGED and DECLARED that the Petition is granted on consent in accordance with an Order, so ordered by this Court on November 24, 2021, and as stated on the record today.

11/24/2021 DATE

SHLOMO HAGLER, J.S.C.

CHECK ONE:

X

CASE DISPOSED

NON-FINAL DISPOSITION

X

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE

NYSCEF DOC

At IAS Part 17 of the Supreme Court of the State of New York, at the courthouse located at 60 Conserve St. in the City, County, and State of New York, on the 24 day of November, 2021.

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

-----X

In the Matter of

Index No. 453561/21

the Application of

**ORDER**

Adrienne A. Harris, Acting Superintendent of Financial Services of the State of New York, for an order to take possession and liquidate the business and affairs of

FRESENIUS HEALTH PLAN OF NEW YORK, INC.

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Adrienne A. Harris, Acting Superintendent of Financial Services of the State of New York (“Superintendent”), having moved this Court by order to show cause (“Order to Show Cause”) for an order placing Fresenius Health Plan of New York, Inc. (“Fresenius”) into liquidation, appointing the Superintendent and her successors in office as liquidator (“Liquidator”) of Fresenius, and directing the Liquidator to take possession of Fresenius’ property, and to liquidate its business and affairs, and upon reading and filing the petition of the Superintendent, duly verified on October 28, 2021 (“Petition”), the affidavit of Alice W. McKenney, sworn to on October 21, 2021, and the exhibits and schedules annexed thereto, this Court finds that Fresenius should be placed into liquidation under Insurance Law Article 74 because Fresenius consented to the entry of an order of liquidation; and

NOW, on motion of Letitia James, Attorney General of the State of New York, it is hereby

ORDERED as follows:

1. The relief requested in the Petition for an order of liquidation (“Order”) is granted;
2. The Superintendent and her successors in office are appointed Liquidator of Fresenius;
3. The Liquidator is directed to take possession of Fresenius’ property and liquidate Fresenius’ business and affairs in accordance with Insurance Law Article 74;
4. The Liquidator is vested with all powers and authority expressed or implied under Insurance Law Article 74, in addition to the powers and authority set forth in this Order and with title to Fresenius’ property, contracts, rights of action, and all of its books and records, wherever located, as of the date of entry of this Order;
5. The Liquidator may deal with the property and business of Fresenius in Fresenius’ name or in the name of the Liquidator;
6. All persons and entities are permanently enjoined and restrained from wasting the assets of Fresenius, and are permanently enjoined and restrained, except as authorized by the Liquidator, from transacting Fresenius’ business or disposing of Fresenius’ property;
7. All persons and entities are permanently enjoined and restrained from interfering with the Liquidator or this proceeding, obtaining any preferences, judgments, attachments, or other liens, making any levy against Fresenius, its assets, or any part thereof, and commencing or prosecuting any actions or proceedings against the Liquidator, Fresenius, the New York Liquidation Bureau, or their present or former employees, attorneys, or agents, relating to this proceeding or the discharge of their duties under Insurance Law Article 74 in relation thereto;
8. The Liquidator is vested with all rights in Fresenius’ contracts and agreements, however described, and is permitted to, in her discretion, reject any contracts to which Fresenius is a party, in which case all liability under such contracts or agreements shall cease and be fixed as of the date of rejection;
9. Any bank, savings and loan association, other financial institution, or any other entity or person, that has on deposit or in its possession, custody, or control any of Fresenius’ funds, accounts (including escrow accounts), or assets shall immediately, upon the Liquidator’s request and direction: (a) turn over custody and control of such funds, accounts, or assets to the Liquidator; (b) transfer title of such funds, accounts, or assets to the Liquidator; (c) change the name of such accounts to the name of the Liquidator; (d) transfer funds from such bank, savings and loan association, or other financial institution; and (e) take any other action reasonably necessary for the proper conduct of the liquidation proceeding;
10. All persons or entities having property, papers (including attorney work product and documents held by attorneys), and/or information, including, but not limited

- to, plans offered by Fresenius including Medicare Advantage Chronic Special Needs Plans (“Plans”), underwriting data, any reinsurance or other insurance policies, claims files (electronic or paper), software programs, and/or bank records owned by, belonging to, or relating to Fresenius shall preserve such property and/or information and immediately, upon the Liquidator’s request and direction, assign, transfer, turn over, and deliver such property and/or information to the Liquidator;
11. The Liquidator is authorized, permitted, and allowed to sell, assign, or transfer any and all stocks, bonds, or other securities at the best price reasonably obtainable at such times and upon such terms and conditions as, in her discretion, she deems to be in the best interest of the creditors of Fresenius, and is further authorized to take such steps and to make and execute such agreements and other papers as may be necessary to effect and carry out such sales, transfers, and assignments, without the further approval of this Court;
  12. The date by which all claims against Fresenius, other than the Liquidator’s claims for administrative expenses, and all evidence supporting such claims, must be submitted to the Liquidator (“Bar Date”) is the earlier of: (a) the contractual time period established for the timely submission of claims in all Plans or agreements between Fresenius and a hospital or other provider of healthcare services (“Provider”) for the provision of such services to beneficiaries under the Plans (“Members”); or (b) the date that is six (6) months from the date of entry of this Order, and all claims submitted after the Bar Date are barred and discharged;
  13. In accordance with Insurance Law § 4307(d): (a) no former Member shall be liable to any Provider for any services covered by Fresenius; (b) no Provider shall collect, or attempt to collect, any amounts owed by Fresenius from any former Member; and (c) no Provider shall maintain any action against any former Member to recover any such amount; provided that the foregoing shall not apply in respect of any coinsurance amounts, copayments, and/or deductibles owed by any former Member;
  14. The Liquidator is authorized, in her discretion, to refrain from adjudicating claims of any class unless and until she determines, within her business judgment, that assets will be available to pay administrative costs of such adjudication and/or that it is in the best interests of the estate;
  15. Immunity is extended to the Superintendent in her capacity as Liquidator of Fresenius, her successors in office, the New York Liquidation Bureau, and their agents and employees, for any cause of action of any nature against them, individually or jointly, for any act or omission when acting in good faith, in accordance with the orders of this Court, or in the performance of their duties pursuant to Insurance Law Article 74;
  16. Any distribution of assets shall be in accordance with the priorities set forth in Insurance Law Article 74;

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- 17. The Liquidator may at any time make further application to this Court for such further and different relief as she sees fit;
- 18. The Liquidator shall serve a copy of this Order by overnight delivery upon: (a) Fresenius Health Plan of New York, Inc., Attention: Scott Dickison, President and CEO of Fresenius Health Plan of New York, Inc., 3711 S. MoPac Expressway, Building 2, Suite 300, Austin, TX 78746; (b) Fresenius Health Plan of New York, Inc., 315 East 62<sup>nd</sup> Street, 4<sup>th</sup> Floor, New York, NY 10065; and (c) any person or entity who or that timely filed and served papers in opposition to the relief sought;
- 19. The Liquidator shall provide notice of this Order to all creditors, claimants, and interested persons by: (a) publication of notice of this Order, in a form substantially similar to the one attached hereto as Annex A, in the *New York Post*, once a week for two (2) consecutive weeks, commencing within thirty (30) days of entry of this Order; and (b) posting this Order on the Internet web page maintained by the New York Liquidation Bureau at <http://www.nylb.org> within fifteen (15) days after the entry of this Order;
- 20. This Court shall retain jurisdiction over this matter for all purposes;
- 21. The caption for this proceeding is hereby amended as follows:

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK  
 -----X  
 In the Matter of  
  
 the Liquidation of  
  
 FRESENIUS HEALTH PLAN OF NEW YORK, INC.  
 -----X

- 22. All further papers in this proceeding shall bear the above amended caption.

ENTER

  
 \_\_\_\_\_  
 J.S.C.

**ANNEX A**

[Form of Notice of Liquidation Order]

NEW YORK LIQUIDATION BUREAU  
180 MAIDEN LANE  
NEW YORK, NY 10038  
(212) 341-6400

To all persons or entities interested in the affairs of  
FRESENIUS HEALTH PLAN OF NEW YORK, INC.

Notice is Hereby Given:

Adrienne A. Harris, Acting Superintendent of Financial Services of the State of New York ("Superintendent"), has been appointed by an order ("Order") of the Supreme Court of the State of New York, County of New York ("Court"), entered on \_\_\_\_\_, 2021, as the liquidator ("Liquidator") of Fresenius Health Plan of New York, Inc. ("Fresenius") and, as such, has been: (i) directed to take possession of Fresenius' property and liquidate Fresenius' business and affairs in accordance with New York Insurance Law ("Insurance Law") Article 74; and (ii) vested with all powers and authority expressed or implied under Insurance Law Article 74, in addition to the powers and authority set forth in the Order and with title to Fresenius' property, contracts, rights of action, and all of its books and records, wherever located, as of the date of entry of the Order. The Liquidator has, pursuant to Insurance Law Article 74, appointed David Axinn, Special Deputy Superintendent ("Special Deputy"), as her agent to carry out her duties as Liquidator. The Special Deputy carries out his duties through the New York Liquidation Bureau ("Bureau"), 180 Maiden Lane, New York, NY 10038. The Order provides that:

- I. The Liquidator is permitted to deal with the property and business of Fresenius in Fresenius' name or in the name of the Liquidator;
- II. All persons and entities are permanently enjoined and restrained from wasting the assets of Fresenius, and all persons are permanently enjoined and restrained, except as authorized by the Liquidator, from transacting Fresenius' business or disposing of Fresenius' property;
- III. All persons and entities are permanently enjoined and restrained from interfering with the Liquidator or the proceeding, obtaining any preferences, judgments, attachments, or other liens, making any levy against Fresenius, its assets, or any part thereof, and commencing or prosecuting any actions or proceedings against the Liquidator, Fresenius, or the Bureau, or their present or former employees, attorneys or agents, relating to the proceeding or the discharge of their duties under Insurance Law Article 74 in relation thereto;
- IV. The Liquidator is vested with all rights in Fresenius' contracts and agreements, however described, and the Liquidator is permitted to, in her discretion, reject any contracts to which Fresenius is a party, in which case all liability under such contracts or agreements shall cease and be fixed as of the date of rejection;
- V. Any bank, savings and loan association, other financial institution, or any other entity or person, that has on deposit or in its possession, custody, or control any of Fresenius' funds, accounts (including escrow accounts), or assets shall immediately, upon the Liquidator's request and direction: (a) turn over custody and control of such funds, accounts, or assets to the Liquidator; (b) transfer title of such funds, accounts, or assets to the Liquidator; (c) change the name of such accounts to the name of the Liquidator; (d) transfer funds from such bank, savings and loan association, or other financial institution; and (e) take any other action reasonably necessary for the proper conduct of the liquidation proceeding;

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- VI. All persons or entities having property, papers (including attorney work product and documents held by attorneys) and/or information, including, but not limited to, plans offered by Fresenius providing Medicare Advantage Chronic Special Needs Plans (“Plans”), underwriting data, any reinsurance or other insurance policies, claims files (electronic or paper), software programs and/or bank records owned by, belonging to, or relating to Fresenius shall preserve such property and/or information and immediately, upon the Liquidator’s request and direction, assign, transfer, turn over, and deliver such property and/or information to the Liquidator;
- VII. The Liquidator is authorized, permitted, and allowed to sell, assign, or transfer any and all stocks, bonds, or other securities at the best price reasonably obtainable at such times and upon such terms and conditions as, in her discretion, she deems to be in the best interest of the creditors of Fresenius, and is further authorized to take such steps and to make and execute such agreements and other papers as may be necessary to effect and carry out such sales, transfers, and assignments, without the further approval of the Court;
- VIII. The date by which all claims against Fresenius, other than the Liquidator’s claims for administrative expenses, and all evidence supporting such claims, must be submitted to the Liquidator (“Bar Date”) is the earlier of: (a) the contractual time period established for the timely submission of claims in all Plans or agreements between Fresenius and a hospital or other provider of healthcare services (“Provider”) for the provision of such services to beneficiaries under the Plans (“Members”); or (b) the date that is six (6) months from the date of entry of the Liquidation Order, and all claims submitted after the Bar Date are barred and discharged;
- IX. In accordance with Insurance Law § 4307(d); (a) no former Member shall be liable to any Provider for any services covered by Fresenius; (b) no Provider shall collect, or attempt to collect, any amounts owed by Fresenius from any former Member; and (c) no Provider shall maintain any action against any former Member to recover any such amount; provided that the foregoing shall not apply with respect to any coinsurance amounts, copayments, and/or deductibles owed by any former Member;
- X. The Liquidator is authorized, in her discretion, to refrain from adjudicating claims of any class unless and until she determines, within her business judgment, that assets will be available to pay administrative costs of such adjudication, and that it is in the best interests of the estate;
- XI. Immunity is extended to the Superintendent in her capacity as Liquidator of Fresenius, her successors in office, the Bureau, and their agents and employees, for any cause of action of any nature against them, individually or jointly, for any act or omission when acting in good faith, in accordance with the orders of the Court, or in the performance of their duties pursuant to Insurance Law Article 74;
- XII. Any distribution of assets shall be in accordance with the priorities set forth in Insurance Law Article 74;
- XIII. The Liquidator may at any time make further application to the Court for such further and different relief as she sees fit;
- XIV. The Court shall retain jurisdiction over this matter for all purposes; and
- XV. All communications relating to Fresenius and to the liquidation proceeding thereof should be addressed to:



New York Liquidation Bureau  
180 Maiden Lane, 15<sup>th</sup> Floor  
Attention: General Counsel  
New York, NY 10038  
(212) 341-6400

A copy of the Order may be viewed at <http://www.nylb.org>. To the extent there are any discrepancies between this notice and the Order, then the language of the Order controls.

ADRIENNE A. HARRIS  
Acting Superintendent of Financial Services of  
the State of New York as Liquidator of  
Fresenius Health Plan of New York, Inc.

DAVID AXINN  
Special Deputy Superintendent  
and Agent of the Liquidator