IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No.: 3:09-cv-0298-N
	§	
STANFORD INTERNATIONAL BANK, LTD., STANFORD GROUP COMPANY, STANFORD CAPITAL MANAGEMENT, LLC, R. ALLEN STANFORD, JAMES M. DAVIS, and LAURA PENDERGEST-HOLT,	§	
	§	
Defendants,	§	
and	§	
	§	
STANFORD FINANCIAL GROUP, and THE STANFORD FINANCIAL GROUP BLDG INC.,	§	
	§	
Relief Defendants.	§	
	§	

PLAINTIFF'S RESPONSE TO RECEIVER'S MOTION FOR APPROVAL OF THIRD INTERIM FEE APPLICATION

I. PRELIMINARY STATEMENT

The Commission opposes the Receiver's third fee application, for many of the same reasons it has objected to the first two applications. Even taking into account the court-ordered 20% hold back in fees and expenses that the Receiver has applied to this application, the third fee application reflects continued excessive spending, particularly when that spending is viewed in the context of the estate's financial condition. In this case, this spending is counterproductive and contrary to the Receiver's mandate.

II.
ARGUMENT

A. RECEIVERSHIP FEES ARE CLOSELY SCRUTINIZED TO AVOID EVEN THE APPEARANCE OF A WINDFALL.

Courts scrutinize fee applications to ensure they are reasonable. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). Even in the absence of an objection, courts must carefully examine the fee application to determine whether the time spent, services performed, hourly rates charged, and expenses incurred by the Receiver are justified under the factors set forth in *Johnson v. Georgia Highway Express, Inc*., 488 F.2d 714 (5th Cir. 1974). *See SEC v. Megafund Corp*., 2008 WL 2839998, *2 (N.D. Tex. June 24, 2008). The amount of the award, and any reduction of the sought-for award, is within the discretion of the trial court. *See, e.g., United States Football League v. National Football League*, 887 F.2d 408, 415 (2nd Cir. 1989). However, in a securities receivership, opposition or acquiescence by the Commission to the fee application will be given great weight. *See, e.g., SEC v. Fifth Ave. Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973).

The factors set forth in *Johnson* include (1) the time and labor required, (2) the novelty and difficulty of the questions, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the "undesirability" of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases. *Johnson*, 488 F.2d 714, 716-717. This approach is consistent with the way in which other circuits analyze receivership fee applications. *See, e.g., SEC v. Byers*, 590 F. Supp. 2d 637, 645 (S.D.N.Y. 2008)

(factors to be considered in scrutinizing fee applications include, *inter alia*, the complexity of the problems faced, the benefits to the receivership estate, the quality of the work performed, and the time records presented.) *Id*. (citations omitted).

Here, these factors do not warrant the high fee payment requested by the Receiver. There has been no showing of other more profitable work that the Receiver or the professionals he has retained have given up as a result of this engagement. Moreover, as the Fifth Circuit has recognized, the sheer volume of individuals billing time on this matter suggests significant duplication of effort. *Johnson*, 488 F.2d at 717 (noting that "[i]f more than one attorney is involved, the possibility of duplication of effort along with the proper utilization of time should be scrutinized."). Likewise, time limitations or pressures that may have been present at the very beginning of the receivership are, for the most part, diminished.

In short, while many of the tasks performed have been necessary, there has been no showing that these tasks have been performed efficiently, within the context of this case. More troubling, many of the tasks, including the extraordinarily expensive effort the Receiver has taken to sue innocent investors, are not necessary or appropriate in the first place. Those claims, even if ultimately permitted, will not provide meaningful relief to individual investors and those investors should therefore not have to pay to have those claims pursued.

Given the public service nature of equity receiverships, awards granted should avoid even the *appearance* of a windfall. *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 469 (2nd Cir. 1974) (emphasis added). "In considering applications for compensation by receivers and their attorneys, the courts have long applied a rule of moderation, recognizing that 'receivers and their attorneys engaged in the administration of estates in the courts of the United States … should be awarded only moderate compensation.'" *See Byers*, 590 F. Supp. 2d at 645 (quotation omitted).

Or, as the Fifth Circuit explained in *Johnson*: "to put these guidelines into perspective and as a caveat to their application, courts must remember that they do not have a mandate … to make the prevailing counsel rich ... [c]ourts should take particular care to scrutinize fee applications 'to avoid even the appearance of a windfall.'" *Johnson*, 488 F.2d 714 at 719.

In light of this guidance, it is not surprising that the amount recovered is a factor that should be considered in determining a "reasonable" fee. *See SEC v. Goren*, 272 F. Supp. 2d 202, 207 (E.D.N.Y. 2003). The dire financial straits of the receivership are well documented. The Receiver has already been paid a significant portion of available assets, providing even stronger grounds to closely safeguard the assets available for eventual distribution. *Cf. Byers*, 590 F. Supp. 2d at 648 ("[w]hile [receiver's counsel] has worked hard, it is simply too early to tell the extent to which its efforts will benefit the receivership estate. This is all the more reason to apply a rule of moderation now.")

B. THE FEE APPLICATION'S SUPPORTING RECORDS ARE DEFICIENT.

In seeking payment of receivership fees, the applicants bear the burden of providing that the compensation request is reasonable. *In re Bennett Funding Group, Inc.*, 213 B.R. 234, 244 (Bankr. N.D.N.Y. 1997). To satisfy this burden, the applicant must keep and present records from which the court may determine the nature of the work done, the need for it, and the amount of time reasonably required. *See F.H. Krear & Co. v. Nineteen Named Trustees*, 810 F.2d 1250, 1265 (2nd Cir. 1987). This requirement is especially important in this case, where the ultimate benefit to the receivership estate is unknown, losses to investors are massive, and the Receiver has expended significant resources on activities objected to by the Commission and the Examiner.

1. Lack of Supporting Documentation

The Receiver's application does not include records that allow the Court, the parties and defrauded investors to properly evaluate the reasonableness of the requested fees and to assess whether activities have been carried out efficiently. And, the information that has been provided suggests there is ample reason, particularly given the estate's dire condition, to further reduce the fees charged in this receivership. For example, as with prior applications, for example, there is insufficient information to evaluate the work performed by FITS, one of the Receiver's consultants (seeking payment of $510,552 in fees and $81,193.73 in expenses). *See F.H. Krear & Co. v. Nineteen Named Trustees*, 810 F.2d 1250, 1265 (2nd Cir. 1987).

2. Improper "Lumping" of Fees

The Commission reiterates its objection that, in large measure, the Receiver's application "lumps" work performed in a day by a particular timekeeper, frequently involving multiple projects, without breaking the time into increments assignable to specific tasks. Without knowing how much is spent on particular tasks, it is simply not possible to evaluate that work. *See, e.g., In re Bennett Funding Group, Inc.*, 213 B.R. 234, 244-45 (Bankr. N.D.N.Y. 1997) (disallowing compensation for all "lumped" entries in their entirety); *In re Poseidon Pools of Am., Inc.*, 180 B.R. 718, 750 (Bankr. E.D.N.Y. 1995) (allowing only partial compensation for such entries.

C. THE APPLICATION REFLECTS IMPROPER USE OF HIGH BILLING-RATE PROFESSIONALS, TASKS OF LIMITED VALUE TO THE ESTATE, AND UNREASONABLY HIGH FEES CHARGED TO PREPARE THE FEE APPLICATION

In addition, the records that have been submitted suggest myriad activities charged here warrant a particularly steep discount from the normal rates firm might otherwise charge for sophisticated professional advice. For example, many entries relate to tasks arising from closing

office spaces (for example, removing and selling furniture) or other more "administrative" tasks. While the tasks themselves may have been appropriate, they do not appear to be the type of specialized work normally associated with premium billing rates. At a minimum, there has been no showing justifying such high rates for these activities. *Cf. Goren*, 272 F. Supp. 2d 202, at 208 (noting that while attorneys practicing in specialized fields frequently bill at higher rates, activities such as marketing real estate and other assets, answering investor questions, performing title searches, and preparing sales agreements did not require the type of legal expertise which would justify a premium rate).

Likewise, the application seeks reimbursement on several occasions for time spent preparing fee applications or otherwise working on matters related to seeking payment. It appears that over $30,000 is sought for time spent on such work. The Commission believes it would be inappropriate and unjust to charge investors in this case for the time spent preparing (and defending) fee applications, particularly here where the applications are subject to significant objections and extensive fees relate to actions taken against those same investors.

Across the board, it appears that significant numbers of high-rate professionals continue to bill hours on the engagement. For example, the application indicates that for the period covered, work has been performed by:

- 61 lawyers and 22 para-profesionals from Baker Botts;
- 21 lawyers from Thompson Knight;
- 43 professionals (senior managing directors, managing directors and senior consultants and consultants) from FTI;

This, of course, does not include the numerous other professionals hired by the Receiver.

Even in complex cases, courts recognize that overstaffing "necessarily contributes to duplication of effort and learning curve costs…" *See In re Keene Corp.*, 205 B.R. 690, 709

(Bankr. S.D.N.Y. 1997); *see also Byers*, 590 F. Supp. 2d 637, 646 (noting that, "notwithstanding the complexity of the situation, the number of hours expended simply is not reasonable" where seventy-six different personnel worked on the matter in the first twenty days alone and time records confirmed excessiveness and redundancy). That is the case here, where every report, letter and document appears to have been reviewed by numerous attorneys and commented on at every turn.

The manner in which the Receiver's team has approached the claw back issue is a prime example. On May 21, 2009, the Examiner filed his first report and recommendation, which addressed primarily the customer account freeze and the Receiver's intention of pursuing claw back claims against innocent investors. A conservative estimate is that between May 21 and June 5 at least 7 Baker Botts lawyers (4 billing at a rate of $555/per hour and 3 billing at rates ranging from $212 to $380 per hour) and 3 non-lawyers (billing at rates ranging from $100-$160 per hour) worked on a response challenging that report. And, this is likely an understatement, because it is taken only from the portion of Baker Botts invoice that relates specifically to "Examiner issues" (whereas there are entries in other sections that appear to relate to that response) and because some timekeepers' entries in that section are "lumped" and included work on the response but that time has not been added here.

Moreover, that was far from the extent of time spent researching issues raised in the Examiner's report. For example, during July at least 6 Thompson Knight lawyers billing at rates ranging from $308 per hour to $528 per hour researched and analyzed the claw back and account holder freeze issues. Even that does not encompass the number of lawyers who have worked on or the time and money that has been spent on those issues. As noted above, the Commission does not believe these efforts are, on a collective basis, worthwhile. Regardless, however, of that

general view, there has been no showing at all that investors will derive any benefit at all from having 10 high-priced attorneys billing extensive hours to work on and brief those issues.[1]

There are other significant expenses that seem to provide no benefit to investors. As noted in prior objections, the Receiver has failed to justify the immense sums he is spending to bring claw back actions against innocent investors, or even clearly articulated how much has spent on that task to date. For the same reasons articulated in prior objections, investors should not be required to pay those sizable fees and expenses. Other tasks also provided minimal, if any, value to the estate. For example, it appears that at least $30,000 is requested for high rate-billing attorneys whose work appears to have concerned preparing for requested Congressional hearings and statements. Presumably these issues again arise from the Receiver's decision to pursue actions against innocent investors. In any event, there has been no showing that such expenditures are reasonable under the circumstances or even that this work is at all beneficial to investors. Therefore, investors should not have to pay those fees.

D. THE APPLICATION INCLUDES IMPROPER EXPENSES.

In addition to objections noted above to the requested fees, the Receiver's application improperly seeks payment from the estate for certain expenses. As noted in previous objections, the Receiver has not adequately justified these expenses. For example, the Receiver seeks reimbursement for a variety of travel expenses. Some entries relate to international travel, but provide no detail to allow the Court to determine whether the travel was necessary or conducted cost-efficiently. Other travel expenses concern individuals not based in Houston. Other than bald assertions that the non-local personnel were appropriate, there is little, if any, explanation as

[1] This is an illustrative example. Though it is difficult to identify precisely how much has been spent on specific tasks, it appears that many motions, for example, routinely are worked on by multiple lawyers at high rates. There has been no showing that such abundant review adds meaningful value to the investor estate.

to why they were necessary. Again, as with prior applications, these travel expenses are significant. At a minimum, firms seeking travel-related reimbursement should be required to detail the expenses comprising that travel and the Receiver should provide a fuller explanation as to why the travel was required.

Likewise, as before, the application seeks reimbursement for costs that may be, in reality, overhead costs for the firm. These costs include over $50,000 in "computer research services" and over $50,000 in photocopying. These expenses should not be reimbursed, especially absent further documentation to support the manner in which these costs were incurred. For example, were the firms performing the "computer research" invoiced a cost from the vendor, or is the service provided on a monthly or other periodic rate? Likewise, it is not possible to determine how the photocopying costs were incurred, i.e., at cost by a vendor or at a rate per page copied internally.

Many of these representative fees expenses may be small in comparison to the size of the estate or of the fraud committed by Mr. Stanford, but they too must be examined, justified and supported. In the absence of such justification, these fees and expenses should not be paid.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 26, 2009, I electronically filed the foregoing document with the Clerk of the court for the Northern District of Texas, Dallas Division, by using the CM/ECF system which will send notification of such filing to all CM/ECF participants and counsel of record.

s/ David B. Reece
David B. Reece