

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CASE NO.: 8:20-cv-394

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

KINETIC INVESTMENT GROUP, LLC, and
MICHAEL SCOTT WILLIAMS,

Defendants, and

KINETIC FUNDS I, LLC,
KCL SERVICES, LLC d/b/a LENDACY,
SCIPIO LLC,
LF42, LLC,
EL MORRO FINANCIAL GROUP, LLC,
and KIH, INC. f/k/a KINETIC INTERNATIONAL, LLC,

Relief Defendants.

**DEFENDANT MICHAEL WILLIAMS' RESPONSE TO THE RECEIVER'S
FIRST INTERIM OMNIBUS APPLICATION [DE 73]**

Defendant MICHAEL SCOTT WILLIAMS ("Williams"), through undersigned counsel, responds to the *Receiver's First Interim Omnibus Application For Allowance And Payment Of Professionals' Fees And Reimbursement Of Expenses For March 6, 2020 through March 31, 2020* (DE 73 "First Application") and states as follows:

Defendant is essentially responding to the Receiver's First Application in hindsight, with his new counsel only just recently having appeared in a case that has been vigorously litigated for

over three months, and without the benefit of being able to review many of the documents referenced in the First Application and at issue in this case.

That said, Defendant does not dispute that a receiver is entitled to reasonable compensation and expense reimbursement in the performance of his or her duties under an order of appointment, as was ordered in this case. [DE 34 at ¶53]; *see also F.T.C. v. Worldwide Info Servs., Inc., et al.*, 2014 WL 12611353 at *1 (M.D. Fla. Apr. 24, 2014). Likewise, Defendant does not dispute that the Receiver, his law firm, and the professionals hired by him are competent and professional in all work performed for the Court thus far. In determining a reasonable fee for a receiver, “[a] basic consideration is the nature and complexity of the legal problems confronted and the skill necessary to resolve them.” *F.T.C. v. Information Mgmt. Forum, Inc.*, 2013 WL 6086047 at *2 (M.D. Fla. Nov. 19, 2013) (citations omitted).

It is not unreasonable, however, to examine and question the fees and expenses submitted by the Receiver for payment. The Receiver is an officer of the court, and he (and his law firm and all professionals he hires) must exercise proper billing judgment in seeking fees from the Receivership Estate and should limit his (and their) work to only that which is reasonable and necessary. *See Worldwide Info Servs., Inc., et al.*, at *1-2. After all, “[n]o receivership is intended to generously reward court-appointed officers.” *S.E.C. v. Aquacell Batteries, Inc.*, 2008 WL 276026 at *3 (M.D. Fla. Jan 31, 2008).

Moreover, a receiver is charged with the duty of monitoring his or her identification and recovery of funds and determining the point at which “the goal of good stewardship shifts from the continued expenditure of limited funds in an effort to obtain any asset, to preserving as much of the estate as possible, for distribution to the investors.” *Id.* at *5. As stated by this Court, “[a] Michelangelo should not charge Sistine Chapel rates for painting a farmer's barn.” *Aquacell*

Batteries, Inc., at *4. Stated differently, the Receiver and his counsel have an obligation to evaluate whether the client (*i.e.*, the Receivership Estate) is best served by the use of the most expensive attorneys for reviewing documents and e-mails and for handling phone calls and to act accordingly. *See id.* at *4-5.

The First Application

Legal Fees

Defendant first notes that the Receiver's total request for a payment of \$211,171.46 for his first 25 days of work after appointment equals approximately 42% of the total legal fee budget for Mr. William's defense suggested by his former counsel — for all work through an eight-day trial in 2021 — a defense budget that was apparently described by the Receiver as “unreasonable.”¹

In his First Application, the Receiver requests, for his own fees and for those of Quarles & Brady, a total amount of \$112,927 based on 280.4 hours of billable time. [DE 73 at p.14].² According to the First Application, Quarles & Brady billed 369.3 hours in assisting the Receiver but is seeking compensation for only 280.4 of those hours. [DE 73 at p.14] Based on these numbers, Quarles & Brady billed nearly 14.8 hours per day, seven days per week, for the 25 days encompassed in the First Application. And since the firm's billing records reveal few billings on weekend days, the actual per day billing comes closer to 18 hours per day by its attorneys.

The Quarles & Brady fee records reveal a number of billings for inter-office conferences and conferrals. Defendant acknowledges that courts may award attorney's fees for conferences or meetings that allow different attorneys with different strengths to collaborate. *See Kearney v. Auto-*

¹ The Receiver's request equates to a per day burn rate of \$8,446.85.

² The Receiver points to a reduction of “nearly \$100,000”; however, such reduction is simply based upon a reduction of his customarily charged rates (which are as high as \$625/hour) and not on a reduction of any time actually spent. [DE 73 at p.13].

Owners, Ins. Co., 713 F.Supp.2d 1369, 1378 (M.D. Fla. 2010). From the fee records, however, it is difficult to determine the need for any specific conference on any specific day. In addition, the firm’s fee records reveal billing for “travel” time but fail to state the amount of time spent traveling compared to the amount of time doing legal work. *See id.* (“[E]ven the most industrious attorney cannot work the entire time while traveling.”). The billing records also indicate several trips to Puerto Rico by Quarles & Brady counsel; however, it is unclear from the records provided whether such travel was necessary — particularly in light of the fact that the Receiver has retained local counsel in Puerto Rico, the Fuesté Firm, to assist the Receiver’s counsel in locating and securing assets in Puerto Rico. According to Quarles & Brady’s billing records, on March 8, 2020, its counsel traveled with local counsel from the Fuesté Firm to various locations in Puerto Rico to inspect and document those locations. [DE 74-9 at p.21]. In the new *Zoom* age, however, especially in the middle of the very pandemic referenced by the Receiver in his First Application, meetings with counsel in other countries can now easily be accomplished remotely at much lower cost.

Defendant acknowledges that upon the Receiver’s appointment, the Receiver and his counsel could not have known in advance the amount of effort or personnel necessary to accomplish his court-ordered goals. An overall review of both the Receiver’s First Interim Report [DE 60], the First Application, and the extensive exhibits attached thereto show a significant effort to marshal the assets and to analyze a large caché of documents. The hourly rates being charged by the Receiver and the Quarles & Brady firm appear reasonable, and the work accomplished, by and large, appears necessarily incurred. Subject to the above-discussion, and relying upon the Court’s experience and discretion in such matters, Defendant does not object to the hourly rates being charged by the Receiver and Quarles & Brady nor to the amount of billable hours being sought.³

³ If the Court determines that, in the best interest of the Receivership Estate, the fee application by both the Receiver and Quarles & Brady should be reduced, Defendant respectfully suggests — because the fee records are voluminous

While the Receiver's initial request is somewhat high for such a short period of time, Defendant takes comfort in the fact that the Receiver has stated in his Interim Report that he "believes he has identified and, if applicable, frozen most, *if not all*, of any assets that are attributable to investor funds." [DE 60 at Sec. VI.A., p.69 (emphasis added)]. As such, it would appear that the bulk of the Receiver's work in marshalling and safeguarding investor assets has been accomplished, thereby resulting in significantly lower billings going forward.

Costs

As to the \$1,619.92 in total costs sought by the Receiver, Defendant objects to only one cost: The attorney travel costs totaling \$948.04 as listed under "Disbursements." [DE 74-9 at p.60]. Because an "[a]ttorney's travel and lodging expenses are not taxable costs under 28 U.S.C. § 1920," Defendant does not believe such costs should be awarded in a court-appointed Receivership.

Yip & Associates

The First Application seeks payment to Yip & Associates, a forensic accounting firm, in the amount of \$49,666.50 for its billable time. Defendant objects to full payment and suggests a 5-10% across-the-board reduction of the fees for Yip & Associates.

The First Application alludes to the fact that, due to the "extraordinary impact of the COVID-19 pandemic," the work of Yip & Associates was complicated. [First Application at p.15]. The Receiver points to the situation where Yip & Associates' work was going to be hampered or delayed due to the inability of the financial institution at which the Receivership Defendants maintained their primary bank account to quickly produce records. According to the First Application,

— an across-the-board percentage cut in either the hourly rates or number of hours claimed. *See Loranger v. Stierheim*, 10 F.3d 776, 783 (11th Cir. 1994) ("When faced with a massive fee application, however, an hour-by-hour review is both impractical and a waste of judicial resources").

the bank could not “immediately provide the supporting documentation necessary for Yip & Associates’ forensic analysis and reconstruction of Receivership banking information” [DE 73 at pp.15-16]. According to the Receiver, a delay of nearly six weeks without being able to understand the Receivership Defendants’ financial transactions “would have severely impacted the Receiver’s ability to timely and effectively perform his duties.” [DE 73 at p.16]. As a result, Yip & Associates personnel were forced to pursue other efforts to obtain necessary documents, including a “review of documents maintained by the Receivership Entities at its offices.” [DE 73 at p.16]. The inference to be made is that Yip & Associates expended more time than it otherwise would have expended had documents been quickly produced by the financial institution (which was apparently closed due to the pandemic).

The problem is that the First Application simply discusses a possible delay in the examination of the banking records (because of the situation created by the pandemic) but not any actual inability to examine those records. In fact, according to the First Application, Yip & Associates appear to have been able to avoid any delay and examined the records they needed by a “review of documents maintained by the Receivership Entities at its offices.” [DE 73 at p.16]. Additionally, while the First Application alludes to the belief that the inability of the Receiver to quickly review certain banking records would severely impact his ability to timely and effectively perform his duties, it fails to explain why that is so, especially when the same records were apparently available for review at the offices of the Receivership Entities.

It is difficult to discern from the billing records of Yip & Associates what additional work they had to do based upon the inability to quickly obtain banking records for the Receivership Entities. And while the First Application does not expressly discuss why the situation involving banking records (and the inability to quickly obtain them from the bank) resulted in more work

(i.e., additional hours) for Yip & Associates, there would be no need for the discussion about this issue unless that was the case. As a result, the Defendant believes that a 5-10% reduction in time to the fees being sought by Yip & Associates is warranted.

WHEREFORE, Defendant Michael Scott Williams responds to the *Receiver's First Interim Omnibus Application For Allowance And Payment Of Professionals' Fees And Reimbursement Of Expenses For March 6, 2020 through March 31, 2020*.

Respectfully Submitted,

By: /s/ Timothy W. Schulz
Timothy W. Schulz, Esq., FBN 073024
TIMOTHY W. SCHULZ, P.A.
224 Datura Street, Suite 815
West Palm Beach, Florida 33401
Telephone: (561) 659-1167
Facsimile: (561) 659-1168
Email: schulzt@twslegal.com
Email: e-service@twslegal.com
Co-Trial Counsel for Defendants

By: /s/ Jon A. Jacobson
Jon A. Jacobson, Esq., FBN 155748
JACOBSON LAW P.A.
224 Datura St., Suite 812
West Palm Beach, FL 33401
Telephone: (561) 880-8900
Facsimile: (561) 880-8910
Email: jjacobson@jlpa.com
Email: e-service@jlpa.com
Co-Trial Counsel for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 3, 2020, the foregoing document was filed with the Clerk of the Court using the CM/ECF system. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List via transmission of the Notice of Electronic Filing generated by CM/ECF.

By: /s/ Jon A. Jacobson

By: /s/ Timothy W. Schulz

Service List

SECURITIES AND EXCHANGE COMMISSION

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United States District Court, Middle District of Florida

QUARLES & BRADY, LLP

Jordan D. Maglich, Esq.

101 E. Kennedy Blvd., Suite 3400

Tampa, Florida 33602

Telephone: (813) 387-0300

Facsimile: (813) 387-1800

Email: Jordan.maglich@quarles.com

Email: docketfl@quarles.com

Counsel for Receiver

Christine Nestor, Esq.

Stephanie M. Moot, Esq.

John T. Houchin, Esq.

Barbara Veniegra, Esq.

Securities and Exchange Commission

801 Brickell Avenue, Suite 1950

Miami, Florida 33131

Counsel for Plaintiff