
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 15-1329-JLS (JCGx)

Date: January 25, 2018

Title: Consumer Financial Protection Bureau et al. v. Pension Funding, LLC et al.

Present: **Honorable JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE**

Terry Guerrero
Deputy Clerk

N/A
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF: ATTORNEYS PRESENT FOR DEFENDANT:

Not Present

Not Present

PROCEEDINGS: (IN CHAMBERS) ORDER (1) GRANTING RECEIVER’S SEVENTH INTERIM APPLICATION FOR PAYMENT OF FEES AND REIMBURSEMENT OF EXPENSES; AND (2) GRANTING GENERAL COUNSEL’S SEVENTH INTERIM APPLICATION FOR PAYMENT OF FEES AND REIMBURSEMENT OF EXPENSES (Docs. 159, 160)

Before the Court are two Interim Fee Applications filed by Krista Freitag, the court-appointed receiver, and Allen Matkins, her general counsel. (Freitag App., Doc. 159; Allen Matkins App., Doc. 160.) The Court finds these matters appropriate for disposition without oral argument. *See* Fed. R. Civ. P. 78(b); C.D. Cal. R. 7-15. Accordingly, the hearing on these Applications scheduled for January 26, 2018, at 2:30 p.m. is VACATED. For the reasons provided below, the Court GRANTS both Applications. Moreover, on its own motion, the Court ORDERS that the Receiver, in the next Status Report, provide an estimated timeline as to when she expects to complete unwinding the receivership assets and resolving the subject transactions.

I. BACKGROUND

On August 20, 2015, CFPB brought an enforcement action against Defendants Pension Funding, LLC, Pension Income, LLC, Steven Covey, Edwin Lichtig, and Rex Hofelter. (Compl., Doc. 1.) The Complaint alleged violations of the Consumer Financial

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Protection Act and various New York regulations stemming from Defendants purported involvement with and sale of so-called “pension advances,” defined as “lump-sum payments that consumers could receive in return for agreeing to redirect all or part of their pension payments, over eight years, to repay the funds.” (*Id.* ¶ 1.)

On January 7, 2016, pursuant to a stipulation between CFPB and all of the Defendants except Covey (Stip., Doc. 57-1), the Court entered a preliminary injunction enjoining certain conduct by Defendants (PI, Doc. 61). In relevant part, the injunction appointed Freitag, of E3 Advisors, as the “receiver of Pension Funding, LLC and Pension Income, LLC[.]” (*Id.* at 3.) In her role as receiver, Freitag was permitted to “employ attorneys, accountants, and others to investigate, advise, and where appropriate, to institute, pursue, and prosecute all claims and causes of action of whatever kind and nature which may now or hereafter exist[.]” (*Id.* at 6.)

Subsequently, on March 1, 2016, Freitag filed a motion in aid of receivership. (Mot., Doc. 71.) In that motion, Freitag sought to retain Allen Matkins as legal counsel. (*Id.* at 1.) Additionally, Freitag requested the Court’s approval, consistent with Local Rule 66-6.1, to file interim fee applications on a quarterly basis. (*Id.* at 14-15.) On April 13, 2016, the Court granted Freitag’s motion subject only to the limitation that the Court would defer, rather than waive, Local Rule 66-5’s requirement that Freitag file a list of Defendants’ creditors. (Order, Doc. 86.)

On July 7, 2016, the Court granted Freitag and Matkins’ First Interim Fee Applications, which covered the period from January 8, 2016, to March 31, 2016. (First Interim Fee Applications Order, Doc. 95.) The Court likewise approved Matkins’ request for \$36,163.35 in fees and \$2,057.79 in expenses. (*Id.* at 7–8.) On October 19, 2016, the Court granted Freitag and Matkins’ Second Interim Fee Applications. (Second Interim Fee Applications Order, Doc. 115.) Specifically, the Court approved a payment of \$65,706.30 in fees and \$460.33 in expenses to Freitag and \$30,655.35 in fees and \$600.06 in expenses to Matkins. (*Id.* at 4, 6.) And on December 14, 2016, the Court generally approved the Receiver’s report and recommendations on how to unwind the receivership assets. (Report and Recommendations, Doc. 116; Order Granting R&R, Doc. 125.)

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On January 17, 2017, the Court approved the Receiver’s Third Interim Fee Request for \$81,093.60 in fees and \$135.00 in expenses and General Counsel’s Third Interim Request for \$59,112.45 in fees and \$3,820.26 in expenses. (Order at 8, Doc. 129.) On March 22, 2017, the Court granted Freitag’s Fourth Interim Fee Application for \$30,685.95 in fees and \$1,786.87 in expenses and her General Counsel’s request for \$35,832.15 in fees and \$447.84 in expenses. (Order at 8, Doc. 137.) On July 25, 2017, the Court granted Freitag’s Fifth Interim Fee Application for \$50,256.45 in fees and \$5,504.47 in expenses, and General Counsel’s request for \$44,138.25 in fees and \$252.37 in expenses. (Order at 8, Doc. 150.) Finally, on September 27, 2017, the Court approved Freitag’s Sixth Interim Fee Application for \$40,659.12 in fees and \$2,427.53 in expenses, and General Counsel’s request for \$32,539.68 in fees and \$4,711.69 in expenses. (Order at 8, Doc. 157.)

II. LEGAL STANDARD

“A receiver appointed by a court who reasonably and diligently discharges his duties is entitled to be fairly compensated for services rendered and expenses incurred.” *SEC v. Byers*, 590 F. Supp. 2d 637, 644 (S.D.N.Y. 2008). This entitlement to reasonable compensation extends to the professionals employed by the receiver. *See Drilling & Expl. Corp. v. Webster*, 69 F.2d 416, 418 (9th Cir. 1934). “The receiver bears the burden to demonstrate to the court [any] entitlement to [the] payment of fees and costs in the amount requested.” *SEC v. Total Wealth Mgmt., Inc.*, No. 15-CV-226-BAS-DHB, 2016 WL 727073, at *1 (S.D. Cal Feb. 24, 2016) (citing 65 Am. Jur. 2d, Receivers § 228 (2d ed. Feb. 2016 update)). “The court appointing the receiver has full power to fix the compensation of [the] receiver and the compensation of [professionals employed by the receiver],” *Drilling & Expl. Corp.*, 69 F.2d at 418, and the court has considerable discretion in fashioning a fee award that is appropriate under the circumstances, *Gaskill v. Gordon*, 27 F.3d 248, 253 (7th Cir. 1994). Generally, receivers and any assisting

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professionals should charge a reduced rate to reflect the public interest involved in preserving funds held in a receivership estate. *Byers*, 590 F. Supp. 2d at 646-47.

“An award of interim fees is appropriate ‘where both the magnitude and the protracted nature of a case impose economic hardships on professionals rendering services to the estate.’” *SEC v. Small Bus. Capital Corp.*, No. 5:12-CV-03237 EJD, 2013 WL 2146605, at *2 (N.D. Cal. May 15, 2013) (citation omitted). In determining the reasonableness of the fees and costs requested, the court should consider the “economy of administration, the burden that the estate may safely be able to bear, the amount of time required, although not necessarily expended, and the overall value of the services to the estate.” *In re Imperial ‘400’ Nat’l, Inc.*, 432 F.2d 232, 237 (3d Cir. 1970). However, courts will “[f]requently . . . withhold a portion of the requested interim fees because ‘until the case is concluded the court may not be able to accurately determine the “reasonable” value of the services for which the allowance of interim compensation is sought.’” *Small Bus. Capital Corp.*, 2013 WL 2146605, at *2 (citation omitted).

III. DISCUSSION

A. Freitag’s Seventh Interim Application

Freitag’s Application, which covers the period from July 1, 2017, through September 30, 2017, seeks interim approval of \$26,637.75 in fees and \$637.50 in expenses. (Freitag App. at 1.) Freitag seeks an order from the Court authorizing payment on an interim basis of 80 percent—or \$21,310.20—of her fees, and 100 percent of her expenses. (*Id.*) The twenty percent holdback would be recoverable at the conclusion of the receivership. (*Id.*)

The Receiver’s work during the application period falls into the following six broad categories: (1) general receivership (6.3 percent of requested fees), (2) asset investigation and recovery (9.3 percent of requested fees), (3) reporting (5.0 percent of requested fees), (4) operations & asset sales (41.1 percent of requested fees), (5) claims & distributions (35.4 percent of requested fees), and (6) employment/fees (2.7 percent of

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requested fees). (*Id.* at 3.) Freitag’s fee request represents an approximately 47 percent decrease from the Fifth and Sixth Application Periods.

As in the last fee period, the first three categories involve comparatively small expenses. First, the Receiver’s general receivership duties involved “income tax matters, agency requests, and website updates.” (*Id.* at 4.) In the Seventh Application Period, the Receiver’s work in this category focuses on income tax matters and agency requests. (*Id.*) The Receiver asserts that her work in this category is “largely non-recurring” and will likely “reflect minimal time on a go-forward basis.” (*Id.*) The Receiver’s total fees for this category amounts to \$1,698.30. (*Id.*) Second, the Receiver’s asset investigation and recovery work related to recovery of the agreed upon legal fees incurred in connection with the Lynk Loan Sale, and Pensioner research and collection efforts. (*Id.*) Totals fees for this category equal \$2,491.65. (*Id.*) Third, the Receiver’s reporting work, totaling \$1,342.80, focused on preparing the Sixth Interim Report. (*Id.*)

The Receiver’s largest category was operations and asset sales. This work consisted of “monthly Pensioner payment collections, analysis of pensioner accounts, continued reconciliations of more than 150 Pensioner power of attorney accounts and other operational matters.” (*Id.* at 4–5.) The Receiver says that the power of attorney account reconciliations are “ongoing[] but nonrecurring.” (*Id.* at 5.) Overall, the Receiver describes her work in this category as “consistent” and “crucially important.” (*Id.*) Total fees for operations and asset sales amounted to \$10,955.25. (*Id.*)

The Receiver’s work in claims and distributions accounted for \$9,432.90 in fees, a nearly 74 percent decrease for this category from the previous period. (*Id.* at 6.) The Receiver’s work during the Seventh Application Period involved responding to inquiries from Pensioners, Investors, agents, and others regarding the status of their investments or debts. (*Id.* at 5.) The Receiver states that these inquiries “have and should continue to decrease materially as the Receivership progresses.” (*Id.*) The Receiver also processed

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the remaining interim distribution payments and continued to confer with Pensioners on monthly payment matters. (*Id.* at 6.)

The last category, employment and fees, covers the Receiver’s time spent preparing the Sixth Interim fee request. (*Id.* at 6.) Total fees in this category amounted to \$716.85. (*Id.*)

In support of her fee, Freitag submits a nine-page chart detailing the hours billed. A review of this chart shows that six practitioners with billing rates ranging from \$112.50 to \$265.50 performed work during this fee period. (Receiver’s Timesheets, Ex. A to Freitag App., Doc. 159.) These rates are consistent with the rates proposed by Freitag in her application to serve as receiver and reflect a ten percent discount on Freitag’s regular billing rate. (“E3 Receiver Credentials,” Ex. A to Stip. at 2, Doc. 57-2.) Accordingly, this chart appears consistent with Freitag’s representation that she “anticipate[s] a blended hourly billing rate of less than \$225[.]” (*Id.*)

Separately, Freitag seeks to recover expenses totaling \$637.50 in postage. (Freitag App. at 6.) The majority of these expenses relate to costs of FedEx postage for Pensioner and Investor communications. (*Id.*)

The Court finds that the requested fees are reasonable and adequately supported. Based on the Application and the evidence submitted in support thereof, the Court concludes that Freitag’s Application is reasonable, and the Court ORDERS payment of 80 percent of Freitag’s receivership fees and 100 percent of her requested expenses. Separately, the Court notes that January 7, 2018, marked two years since the Court appointed Freitag as Receiver. (*See* PI.) The Court therefore finds it appropriate to order an updated estimated timeline as to when the Receiver will have completed unwinding and resolving the transactions that are the subject of this case. The Receiver is ORDERED to brief this updated timeline in the Receiver’s next Status Report.

B. Matkins’ Seventh Interim Application

Matkins’ Application, which also covers the period from July 1, 2017 through September 30, 2017, seeks interim approval of \$22,736.70 in fees and \$387.83 in expenses. (Matkins App. at 1.) Like Freitag, Matkins requests an order authorizing

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interim payment of 80 percent—or \$18,189.36—of the firm’s fees and 100 percent of its expenses. (*Id.*) The firm’s fees fall into the following six categories of work: (1) asset investigation (30.3 percent), (2) reporting (6.1 percent), (3) operations and asset sales (0.5 percent), (4) claims and distributions (8.7 percent), (5) third party recoveries (45.5 percent), and (6) employment/fees (8.9 percent). (*Id.* at 2.) Matkins’ fee request represents a 44 percent decrease compared to the Sixth Application Period.

Asset investigation covers Matkins’ work representing the Receiver’s interests in thirty-five contracts where the Pensioner has entered bankruptcy and eleven contracts where the receivership entities have obtained default judgments or settlements. (*Id.* at 3.) During this period, Matkins continued monitoring the bankruptcy cases for status and payments to the Receivership Entities. (*Id.*) The firm’s work involved reviewing case dockets and key filings, preparing and filing necessary proofs of claim, representing the receivership’s interests in bankruptcy proceedings, and creating a log of bankruptcy cases. (*Id.*) Like in the last two Application periods, Matkins has written off 2.7 hours of billed time, converting the effective hourly rate to \$433.79. (*Id.* at 3–4.) Considering this write-off and the 52 percent decline in the amount billed in this fee category as compared to the Sixth Interim Fee Application, the Court finds that the \$6,885.90 billed for asset investigation is fair and reasonable. (*Id.* at 3.)

The work performed under the second category, reporting, consisted of drafting the Sixth Interim Report, which includes a detailed description of the Receiver’s activities during that quarter. (*Id.* at 4.) Total expenses for this category amount to \$1,362.30. (*Id.*)

Matkins’ operations and asset sales work involved obtaining reimbursement for legal fees incurred in connection the assignment of the Lynk Capital loan participation. (*Id.*) Total fees for this category equal \$107.10. (*Id.*)

Matkins’ work in the fourth category, claims and distributions, focused on responding to inquiries from investors, pensioners, and their counsel; and advising and assisting the Receiver in preparing investor notices regarding distributions. (*Id.* at 4–5.) Matkins’ fees for this category total \$1,981.35. (*Id.* at 5.)

The third party recoveries fee category, totaling \$10,335.15, covers Matkins’ work obtaining default judgments against two of four defaulted pensioners. (*Id.*) The firm also

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communicated with the other two defaulted pensioners to discuss mediation and discovery. (*Id.*) An associate performed the majority of this work at a discounted rate of \$306.00. (*Id.*)

Matkins’ work under the final fee category, “employment/fees,” consisted of preparing the Sixth Interim Fee Applications. (*Id.*) Total fees for this category amount \$2,034.90. (*Id.*)

In support of this Application, Matkins has submitted detailed billing records organized by the category of work performed. (Gen. Counsel Timesheets, Ex. A to Matkins App., Doc. 153.) These billing records indicate that three attorneys performed work on this case during the Sixth Interim period with hourly billing rates between \$306.00 and \$562.50. (*See id.* at 16, 28.) An associate and two partners with billing rates of \$306, \$535.50, and \$562.50 performed the majority of the work. (*Id.* at 16, 17, 19, 21, 28.) Additionally, the billing chart provides an itemized accounting of the \$387.83 in expenses for which the firm seeks reimbursement. (*Id.* at 15–16.) These expenses are primarily comprised of messenger fees and postage. (*See id.*)

The Court finds Matkins’ fees and expenses fair and reasonable—particularly in light of Matkins’ delegation of some work to an associate and the write-off of 2.7 hours—and ORDERS immediate payment of 80 percent of Matkins’ requested fees and 100 percent of the firm’s expenses.

IV. CONCLUSION

For the reasons stated above, the Court GRANTS both Freitag and Matkins’ Applications. The Court ORDERS immediate payment of 80 percent—or \$21,310.20—of Freitag’s fees, and 100 percent of her expenses. Further, the Court ORDERS immediate payment of 80 percent—or \$18,189.36—of Matkins’ fees and 100 percent of the firm’s expenses. The 20 percent holdback of each applicant’s fees will be recoverable, with the Court’s approval, upon the conclusion of the receivership. Lastly, the Court ORDERS that the Receiver, in the next Status Report, provide an updated estimated timeline as to when she expects to complete unwinding and resolving the subject transactions.