
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 8:18-cv-00597-JLS-KES

Date: September 19, 2018

Title: Federal Trade Commission v. American Home Servicing Center, 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 FIRST INTERIM APPLICATION FOR PAYMENT OF FEES AND REIMBURSEMENT OF EXPENSES (Doc. 83); AND (2) GRANTING GENERAL COUNSEL’S FIRST INTERIM APPLICATION FOR PAYMENT OF FEES AND REIMBURSEMENT OF EXPENSES (Doc. 84)

Before the Court are the First Interim Fee Applications filed by Krista Freitag, the court-appointed Receiver, and Allen Matkins, her general counsel, respectively. (Freitag App., Doc. 83; Matkins App., Doc. 84.) Defendants Christine and Sergio Rodriguez (the “Rodríguezes”) opposed the Applications. (Doc. 105.) The Court finds this matter 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 September 21, 2018, at 2:30 p.m. is VACATED. For the reasons provided below, the Court GRANTS both Applications.

I. BACKGROUND

On April 12, 2018, the Federal Trade Commission (“FTC”) brought an enforcement action against Corporate Defendants American Home Servicing Center, LLC, National Advocacy Center, LLC, National Servicing Center, LLC, and Capital Home Advocacy Center, as well as Individual Defendants Christine Rodriguez, Sergio Rodriguez, Maricus Fierro and Jaime Aburto. (Compl., Doc. 1.) The Complaint alleges

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violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) and the “MARS Rule,” Regulation O of the FTC Act, 12 C.F.R. §§ 1015, *et seq.* (*Id.* ¶¶ 83–106.)

Based on the evidence of fraudulent conduct filed in connection with the Complaint, on April 13, 2018, the Court entered a Temporary Restraining Order against Defendants and appointed the Receiver for the Corporate Defendants on a temporary basis. (TRO, Doc. 20.) On April 27, 2018, the Court entered a Preliminary Injunction and appointed the Receiver on a permanent basis. (PI, Doc. 43.)

Pursuant to her appointment, the Receiver was empowered to take custody, control, and possession of all assets and documents of the Receivership Entities.¹ (*Id.* at 15–20.) Moreover, the Receiver was permitted to “employ attorneys, accountants, appraisers, and other independent contractors and technical specialists, as the Receiver deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Order.” (*Id.* at 17.) The Receiver promptly determined that counsel was necessary due to the scope and complexity of the duties of her appointment and thus engaged Allen Matkins as Receiver’s Counsel. (Matkins App. at 6.)

On April 24, 2018, the Receiver filed her First Status Report, which covered activities occurring between April 13, 2018, and the date of the report. (FSR, Doc. 35.) In that time, the Receiver took possession of the two physical locations associated with the operations of Capital Home Advocacy Center (“Capital Home”) and National Advocacy Center and recovered approximately \$11,302.76 in cash from bank accounts associated with the Receivership Entities. (Ex. A to FSR at 15, Doc. 35.)

Thereafter, the Receiver and her Counsel filed the instant Applications, seeking compensation for the work done from April 13, 2018 through May 31, 2018. However, the Receiver failed to file a second status report in connection with the Applications, and the Court was unable to “determine what strategy the Receiver intend[ed] to pursue, if any, to recover assets to pay the requested fees and expenses in light of the limited funds available.” (Order Continuing App. at 1, Doc. 104.) Accordingly, the Court ordered the

¹ The “Receivership Entities” is defined to include the Corporate Defendants and any other entity that is owned or controlled by any Defendant and conducts business related to the fraudulent conduct alleged in the Complaint. (*See* PI at 6–7.)

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Receiver to file both a second status report and supplemental briefing on her proposal for distribution of compensation. (*Id.* at 1–2.)

On August 22, 2018, the Receiver filed both documents. The Receiver stated that she has now recovered a total of \$22,130.00 from the Receivership Entities and “does not expect to recover much more from assets currently in her possession and control.” (Suppl. Br. at 1, Doc. 110.) Moreover, the Receiver proposed distribution of the funds to herself and her Counsel on a *pro rata* basis. (*Id.* at 5.)

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 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

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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).

When, there are insufficient funds in a receivership estate to satisfy all claims, the costs and expenses of the receiver and her retained professionals are entitled to highest priority of distribution, as consistent with principles of bankruptcy law. 2 *Clark on Receivers* § 482 (3d 2d. 1992). See C.D. Cal. R. 66-3 (“[A] receiver shall administer the estate as nearly as possible in accordance with the practice in the administration of estates in bankruptcy.”); 11 U.S.C. § 507(a)(1)(C).

III. DISCUSSION

As noted above, the Applications cover the period from April 13, 2018 through May 31, 2018. In the Applications as originally filed, the Receiver sought interim approval of \$49,601.25 in fees, \$17,125.11 in expenses, and an order authorizing payment of 80% of her fees, and 100% of her expenses. (Freitag App. at 1.) Counsel similarly sought interim approval of \$32,470.20 in fees and \$1,771.35 in expenses, and an order authorizing payment of 80% of fees and 100% of expenses incurred.

However, when the Receiver filed her Supplemental Brief and Second Status Report, she stated that she has recovered only \$22,130.00 from the Receivership Entities and does not expect additional recovery. (Suppl. Br. at 1.) Therefore, she now proposes a *pro rata* distribution of the assets recovered and an order authorizing payment of those distributions. (*Id.* at 5.) The Court thus considers each Application in light of this request.

A. Receiver’s First Interim Application

As an initial matter, the Court addresses the general objections to the Receiver’s Application raised by the Rodriguezes. (*See Opp.*) The Rodriguezes argue that the Receiver should not be compensated because “she has acted solely to convert the assets of the defendants into cash as quickly as possible, without regard to their real value.” (*Id.* at 3.) In support of this argument, Christine Rodriguez submitted an affidavit in which

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she states that the Receiver improperly discontinued operation of Capital Home and then sold assets belonging to Capital Home at a price that she believes was below market value. (C. Rodriguez Affidavit at 1–2, Doc. 105.)

However, the Court does not find that these arguments constitute a basis for denying the Application. Pursuant to the Preliminary Injunction, the Receiver was authorized to “suspend business operations of the Receivership Entities if in the judgment of the Receiver such operations cannot be continued legally and profitably,” and was also charged with performing all acts necessary to preserve the value of the assets of the Receivership Estate. (PI at 16, 19.) Pursuant to the Receiver’s First Status Report, she determined that there was no identifiable legal source of operating income for Capital Home and no assets available for “imminently due operational expenses like payroll, utilities, and rent”; accordingly, and pursuant to her authorization, she determined that shut-down of operations of Capital Home was necessary and prudent. (FSR at 6.) Moreover, because of the lack of available resources to make rental or storage payments and the resulting need to vacate the premises, the Receiver determined that the most effective way to preserve the value of the Receivership Estate was to sell the general office equipment and other personal property being held at Capital Home. (Freitag Decl. ¶ 4, Doc. 110-1.) Evacuation of this property from the Capital Home premises allowed the Receiver to conduct negotiations with Capital Home’s landlord concerning a return of the security deposit notwithstanding early termination of the lease. (*Id.*) Thus, the Receiver’s decision to sell the property to the highest bidding auction company was consistent with her obligation to preserve the value of the Receivership Estate as a whole.

Thus, the Court turns to the substance of the Application to determine whether the requested fees are reasonable in light of the circumstances of this case. *Byers*, 590 F. Supp. 2d at 644. According to her Application, the Receiver’s work falls into the following five broad categories: (1) general receivership (59% of requested fees), (2) asset investigation and recovery (1% of requested fees), (3) reporting (4% of requested fees), (4) operations and asset sales (29% of requested fees), and (5) customer correspondence and claims (7% of requested fees). (Freitag App. at 2.)

The Receiver’s Application also provides a description of each category of work completed to date. With regard to her general receivership duties, the Receiver’s work

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has focused on securing the premises and assets of Capital Home and National Advocacy Center, coordinating imaging of the Receivership Entities' electronic devices, setting up case-specific lines of communication to provide contact information for the Receivership, providing notice to customers and vendors of the Receivership, and preparing for the Preliminary Injunction hearing. (*Id.* at 4.) Total fees relating to general receivership duties are \$29,227.95. (*Id.*) The Receiver acknowledges that these fees are "significant" because of the time-intensive nature of her activities in this category. (*Id.* at 3.) However, because recovery of additional funds to pay administrative expenses going forward is "very unlikely," she anticipates moving to conclude the Receivership in short order. (Suppl. Br. at 1–2.)

The second category of the Receiver's work relates to asset investigation and recovery and concerned securing the bank accounts associated with Receivership Entities and investigating \$15,500 in funds that were withdrawn by Defendant Sergio Rodriguez from a Capital Home bank account.² (Freitag App. at 4.) Total fees in this category were \$714.14. (*Id.* at 5.)

The third category of work relates to reporting and focused on the Receiver's preparation of her First Status Report. (*Id.*) Total fees arising from this category of work amount to \$1,930.05. (*Id.*)

The next category of work relates to operations and asset sales. (*Id.*) According to the Application, the Receiver's time in this category was spent organizing and boxing

² The \$15,500 from the Capital Home bank account were the subject of a motion for civil contempt filed by the FTC, which the Court granted after finding that Mr. Rodriguez violated the TRO by refusing to transfer those funds to the Receiver. (*See* Order Holding Sergio Rodriguez in Contempt, Doc. 96.)

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records, vacating the office premises, and monitoring significant amounts of mail. (*Id.*) Total fees relating to this category currently amount to \$14,343.30. (*Id.*)

The fifth category of work relates to the Receiver’s work corresponding with consumers. The total fees relating to this category amount to \$3,385.80. (*Id.*)

In support of these various fee categories, Freitag submits a chart detailing each billing time entry for which she seeks to recover fees.³ A careful review of this chart reveals that four different individuals performed work in aid of the Receivership at hourly rates ranging from \$72.00 to \$292.50. (Ex. A to Freitag App., Doc. 83.) These rates are consistent with rates proposed by the Receiver in the FTC’s Receiver Recommendation, and reflect a ten percent discount on the Receiver’s regular billing rate. (Receiver Recommendation at 3, Doc. 9.)

Separately, the Receiver seeks to recover expenses totaling \$17,125.11. (Freitag App. at 5.) Of these expenses, \$13,257.02 relate to “the forensic computer imaging” which the Receiver deemed necessary to preserve and protect the Receivership Entities’ electronic records. (*Id.*) The remaining \$3,686.09 in expenses related to the labor and takeover of the office premises, copying, postage, supplies, and maintenance of the Receivership website. (*Id.* at 6.)

Based on the Application and the evidence submitted in support thereof, the Court concludes that the Receiver’s request for a *pro rata* distribution of the assets recovered from the Receivership Estate is appropriate.

B. Counsel’s First Interim Application

The Court now turns to Counsel’s First Interim Application, which seeks a *pro rata* distribution of \$32,470 in fees and \$1,771.35 in expenses. (Matkins App. at 2, 5.) Counsel’s fees relate to the following six categories of work: (1) general receivership (48% of requested fees), (2) asset investigation and recovery (36% of requested fees), (3) reporting (9% of requested fees), (4) operations and asset sales (2.5% of requested fees),

³The Rodriguez Defendants argue that the Receiver has “failed to provide an accounting” of her fees and expenses (Opp. at 3), but in light of the detailed billing records submitted in connection with the Application, the Court finds this objection without merit.

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(5) claims and distributions (4% of requested fees), and (6) pending litigation (0.5% of requested fees). (*Id.* at 2.)

Counsel’s work relating to general receivership duties focused on review and analysis of key orders, pleadings, and the evidence filed by the FTC in order to advise the Receiver on her responsibilities and duties and to ensure “prompt transition of management and control of the Receivership Entities and its assets.” (*Id.* at 2–3.) The total fees arising from this category of work amount to \$15,604.65. (*Id.* at 3.)

The second category of work relates to asset investigation. (*Id.*) According to the Application, much of the time in this category related to “gathering and reviewing critical documents and information, investigating the Receivership Entities’ assets, ... and advising the Receiver on actions necessary to preserve and protect such assets.” (*Id.*) Also included in this category is the time spent drafting communications providing notice to third parties of the TRO, landlords regarding the termination of leases of Receivership Entities, and Sergio Rodriguez regarding his violation of the TRO. (*Id.*) Fees in this category total \$11,671.20.

The third category of work, reporting, consisted of Counsel’s time spent preparing the Receiver’s First Status Report. (*Id.* at 3–4.) The total fees in this category were \$2,891.70.

The remaining three categories of work — operations and assets sales, claims and distributions, and pending litigation — account for only 4.3 hours of billed time. (*Id.* at 2.) Much of this time was spent advising the Receiver on operating issues and communicating with customers regarding the termination of operations. (*Id.* at 4.) The aggregate fees from these three categories amount to \$2,302.65. (*Id.*)

Additionally, Counsel seeks to recover \$1,771.35 in expenses. (*Id.*) These expenses relate to postage and messenger fees, costs associated with service of process, and court filing fees. (*Id.*)

In support of the Application, Counsel submits detailed billing records, organized by the category of work performed, that document the time spent on this matter and for which the firm seeks to recover fees. (Ex. A to Matkins App., Doc. 84.) These billing records reflect that three attorneys have performed work on this case at hourly billing rates between \$342.00 and \$715.50. (*Id.* at 19.) The bulk of the work on this matter has

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thus far been performed by Edward Fates, a partner whose hourly rate is \$535.50. (*Id.* at 18, 29.) Counsel also notes that its request reflects a 10% discount from the firm’s customary billing rates. (Matkins App. at 6.)

The Rodriguez Defendants object that Counsel’s hourly billing rates are excessive given the type of tasks performed. (*See Opp.* at 4.) The Court agrees that the average billing rate for Counsel’s work appears relatively high in the context of a receivership proceeding. *See Sec. & Exch. Comm’n v. Schooler*, No. 3:12-CV-2164-GPC-JMA, 2017 WL 1321299, at *1 (S.D. Cal. Apr. 10, 2017) (finding a similar range of hourly rates asserted by the same Counsel “higher than comparable professionals”); *Small Bus. Capital Corp.*, 2013 WL 2146605, at *4. However, having stated its reservations, the Court need not make a determination about what a reasonable billing rate should be in the circumstances of this case; because of the limited assets available from the Receivership Estate and the Receiver’s stated intent to promptly terminate the Receivership, Counsel will necessarily receive only a fraction of its requested compensation, and therefore the *de facto* billing rate will be reduced significantly.

Accordingly, the Court finds that a *pro rata* distribution of the assets recovered from the Receivership Estate is appropriate to compensate Counsel for its work in this matter.

C. Calculation of the Distributions

As discussed above, the total recovered from the Receivership Estate is \$22,130.00, and the Receiver and her Counsel each seek a *pro rata* distribution as the highest priority claimants. (Suppl. Br. at 5.) *See 2 Clark on Receivers* § 482 (3d 2d. 1992). Therefore, the Court orders payment as follows:

The Receiver and her Counsel shall each be reimbursed for 100% of their expenses incurred. Payment shall be made to the Receiver for \$17,125.11 in expenses and payment shall be made to Counsel for \$1,771.35 in expenses.

Thus, \$3,233.54 remains for distribution in fees. The *pro rata* division of this amount results in the Receiver and Counsel each receiving 4% of total fees incurred. Thus, payment shall be made to the Receiver in the amount of \$1,954.24 in fees (4% of

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\$49,601.25), and payment shall be made to Counsel in the amount of \$1,279.30 in fees (4% of \$32,470.20).

IV. CONCLUSION

For the reasons stated above, the Court GRANTS the Receiver's and Counsel's Applications as to their request for a *pro rata* distribution. The Court ORDERS payment to the Receiver in the amount of \$17,125.11 in expenses and \$1,954.24 in fees. Further, the Court ORDERS payment to Counsel in the amount of \$1,771.35 in expenses and \$1,279.30 in fees.

Initials of Preparer: tg