UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. BENJAMIN DANIEL DEHAAN AND LIGHTHOUSE FINANCIAL PARTNERS, LLC, Defendants,	)	FILE NO. 1:12-CV-1996-TWT

CREDITORS ANATOLIY MELAMUD'S AND YELENA MELAMUD'S OBJECTION TO SIXTH APPLICATION OF RECIEVER FOR AUTHORITY TO PAY PROFESSIONAL FEES AND TO REIMBURSE COSTS

Anatoliy Melamud and Yelena Melamud (collectively, "Movants") hereby object to the Sixth Application of Receiver For Authority to Pay Professional Fess and to Reimburse Costs ("Application") filed by the receiver, S. Gregory Hays, ("Receiver"), and state as follows:

I. INTRODUCTION

On July 2, 2012, the Receiver was appointed to administer the estate of Lighthouse Financial Partners, LLC (the "Estate") for the benefit of Lighthouse's creditors (the "Creditors"). The majority of the Creditors are victims of a Ponzi scheme run by Lighthouse's former-principal, Benjamin DeHaan, who

misappropriated millions of dollars of the Creditors' funds for DeHaan's and Lighthouse's own benefit. Experiencing déjà vu, the Creditors now face another principal ransacking the Estate for its own benefit, namely the Receiver, who has failed to administer the Estate in an efficient or equitable manner. Indeed, in the 13 months that the Receiver has been administering the Estate, it has incurred fees and expenses totaling $570,069.26, an amount that is over half of the assets actually recovered for the benefit of the Creditors (*i.e.* $1,039,712.03). Even more troubling, the Receiver has incurred the lion's share (over 60%) of its fees and expenses since October 2012, despite the fact that the Receiver failed to recover any further assets for the Creditors' benefit during that time.

The Receiver has estimated $7,280,534.57 in anticipated allowed claims against the Estate. (See D.E. # 48 at ¶ 13); of this total, the Receiver estimates $5,180,529.78 in allowed claims based on misappropriations of investor funds. (See D.E. #48 at ¶ 17). The Receiver states that, as of February 28, 2013, it has recovered a total of $1,039,712.03 for the benefit of the Creditors. (See D.E. # 48 at ¶ 20). Moreover, because of the Receiver's and his agents' inefficiency in administering the Estate, the Estate actually holds less for the benefit of the Creditors than it did six-months ago.[1]

[1] $524,877.10 held by Receiver for the benefit of the Estate as of August 16, 2013 (See D.E. # 57 at ¶ 31), as compared to $684,134.32 as of February 28, 2013 (See D.E. # 48 at ¶ 22).

Between the Receiver's First and Fifth applications, the Receiver has been awarded fees totaling $474,213.75 and expenses totaling approximately $3,791.89. (See Section III.A, *infra*.) In the instant Application, the Receiver seeks an additional award of $91,810.25 and expenses of $252.37. (D.E. # 57 at ¶¶ 18, 20). The amount of assets left to compensate the Creditors is now eclipsed by the amount of fees and expenses incurred by the Receiver. Additionally, the Application seeks payment of fees for redundant and unnecessary legal work performed by the Receiver's counsel that has failed to meaningfully benefit the Estate. Lastly, the time records provided to substantiate the Receiver's (and his agents') fees are vague, ambiguous, and insufficient to properly place the Creditors on notice of the nature of these charges.

Accordingly, the Court should deny the Application in full and order the Receiver and its agents to provide, at their own expense, sufficient detail by which the Court and the Creditors can gauge the reasonableness of any and all fees and expenses for which the Receiver seeks authority or reimbursement in any future applications.

II. LEGAL STANDARD

The "primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court for the benefit of creditors." *S.E.C. v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986); *see also Bendall*

v. Lancer Mgmt. Grp., LLC, 12-16068, 2013 WL 3441101 (11th Cir. July 9, 2013). Indeed, a receiver is an officer of the Court and has a fiduciary obligation to exercise diligence to take possession of and preserve the assets of the estate. *See Crites, Inc. v. Prudential Ins. Co. of Am.*, 322 U.S. 408, 414-15 (1944); *Golden Pac. Bancorp. v. F.D.I.C.*, 375 F.3d 196, 201 (2d Cir. 2004) ("[A] receiver owes a duty of strict impartiality to all persons interested in the receivership estate, and also must endeavor to realize the largest possible amount for assets of the estate. It is undisputed that, as a receiver, the FDIC owes a fiduciary duty to the Bank's creditors and to Bancorp."). Moreover, a receiver is bound to act within the power granted to him by the order establishing the receivership. *Stuart v. Boulware*, 133 U.S. 78, 81-82 (1890) ("The receiver is an officer of the court, and subject to its directions and orders"); *see, e.g. S.E.C. v. Mikula*, 1:08-CV-3097-BBM, 2009 WL 910751 (N.D. Ga. Feb. 13, 2009); *In re Wiand*, 8:05-CV-1856, 2007 WL 963162 (M.D. Fla. Jan. 12, 2007) (indicating the receiver is bound by both the order of appointment and applicable law). Accordingly, "a district court's power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad." *S.E.C. v. Hardy*, 803 F.2d at 1037.

More specifically, the court has broad discretion to determine the appropriate amount of compensation to award court-appointed receivers and the

professionals that assist them. *See S.E.C. v. Byers*, 590 F. Supp. 2d 637, 644 (S.D.N.Y.2008); *accord Gaskill v. Gordon*, 27 F.3d 248, 253 (7th Cir.1994) (citing *Crites, Inc. v. Prudential Ins. Co.*, 322 U.S. at 408); *United States v. Code Prods. Corp.*, 362 F.2d 669, 673 (3d Cir. 1966). Indeed, the order appointing the Receiver in the instant action explicitly provides that "the Receiver and any person engaged or employed by the Receiver, are entitled to reasonable compensation from the assets of the Receiver Estate, subject to the prior approval of the Court."[2] In considering compensation applications of receivers, the courts have long applied a rule of moderation, recognizing that "receivers and attorneys engaged in the administration of estates in the courts of the United States ... should be awarded only moderate compensation." *In re New York Investors, Inc.*, 79 F.2d 182, 185 (2d Cir. 1935) (citing *Newton v. Consolidated Gas Co.*, 259 U.S. 101 (1922), *United States v. Equitable Trust Co. of N.Y.*, 238 U.S. 738 (1931), and *Realty Assocs. Sec. Corp. v. O'Connor*, 295 U.S. 295 (1935)). The rule of moderation makes particular sense in Ponzi scheme cases, where hundreds of investors and creditors have been defrauded and victims are likely to recover only a fraction of their losses. *S.E.C. v. Byers*, 590 F. Supp. 2d 637, 645 (S.D.N.Y. 2008).

In order to determine whether a compensation request is reasonable, the Court should consider the circumstances of the case and a variety of factors, such

---

[2] D.E. # 11 at Section XV.

as: (1) the complexity of the problems faced; (2) the benefits to the receivership estate; (3) the quality of the work performed; (4) the time records presented; and (5) the fair value of the time, labor, and skill expended based upon business standards. *See S.E.C. v. Byers*, 590 F. Supp. 2d at 644; *United States v. Code Prods. Corp.,* 362 F.2d at 673.[3] However, "[h]ours that are excessive, redundant, or otherwise unnecessary are not 'reasonably expended' and should be excluded from the initial fee calculation." *S.E.C. v. Goren,* 272 F.Supp.2d 202, 208–09 (E.D.N.Y. 2003) (reducing fees awarded to receiver's counsel because time records suggested duplication of services rendered and overstaffing that did not result in "meaningful progress towards the receivership's goals"); *accord S.E.C. v. Byers*, 590 F.Supp.2d at 646 (reducing fee award because time records suggested redundancy or duplicative services).

III. ARGUMENT

A. The Application Seeks An Award of Fees That Is Unreasonable and Excessive Given The Limited Recovery For The Receivership Estate To Date And Includes Unnecessary and Duplicative Legal Fees Charged

The Receiver has been enriching himself and his agents at the expense of the victims of DeHaan and Lighthouse, and currently stands to receive a greater payoff

[3] Although the Receiver relies upon *Ass'n of Disable Americas v. Neptune Designs, Inc.*, 469 F.3d 1357, 1359 (11th Cir. 2006) as the applicable standard for approving compensation, that case did not involve a receivership and simply focused on the standard for awarding attorney fees to a prevailing party in a lawsuit. With respect to attorney fees, the court multiplies the number of hours reasonably expended on the litigation by the customary fee charged in the community for similar legal services. *Id.* at 1359.

from the Estate than the defrauded beneficiaries of the Estate. Through his five prior fee applications,[4] the Receiver has been awarded fees totaling approximately $474,213.75 and expenses totaling approximately $3,791.89.[5] The Receiver now seeks an additional award of $91,810.25 in fees and $252.37 in expenses through the instant Application.[6] If the Receiver were awarded the total amount of fees sought in the Application, he will have received approximately $566,024.00 over the duration of this case—which is more than the total investor and creditor body stands to recover from the receivership estate, which currently has assets totaling $524,877.10 and would have only assets totaling $432,814.48 if the Application were approved in full.[7]

The Receiver has continued to charge the Estate for substantial fees, even though he has not recovered any assets for the benefit of the Estate since October 2012. Indeed, the Receiver recovered ***100 percent*** of the assets recovered to date within the ***first four months*** of his appointment, from July 2, 2012 to October 31,

---

[4] Movants notified the Court of their intent to object the Fifth Application for Fees and filed an objection on June 3, 2013, but the Court entered an order approving the Fifth Application for Fees shortly before the objection was filed. (See D.E. #55 & 56.)

[5] *See* D.E. # 29 at ¶¶ 11, 13 (1st Application: $158,108.89 in fees, $961.64 in expenses); D.E. # 42 at ¶¶ 12, 14 (2nd Application: $66,798.00 in fees, $292.73 in expenses); D.E. # 44 at ¶¶ 14, 16 (3rd Application: $100,137.25 in fees, $1,082.37 in expenses); D.E. # 49 at ¶¶ 16, 18 (4th Application: $54,442.50 in fees, $1,204.04 in expenses); D.E. # 54 at ¶¶ 17, 20 (5th Application: $95,213.75 in fees, $251.11 in expenses).

[6] *See* D.E. # 57 at ¶¶ 18, 20.

[7] *See* D.E. # 57 at ¶ 31.

2012.[8] Yet, that time period only accounts for 39.7 percent of the fees and 31 percent of the costs incurred in this case to date.[9] Shockingly, the Receiver incurred ***60.3 percent of the fees*** and ***69 percent of the costs*** in this case from November 1, 2012 to June 30, 2013, even though he did not recover any additional assets for the benefit of the Estate during that period.[10] This is an appalling departure from the "rule of moderation" that is intended to guide compensation to receivers. *See In re New York Investors, Inc.*, 79 F.2d at 185.

The Receiver's continued depletion of Estate assets is utterly inappropriate in this case, where the victims of DeHaan and Lighthouse's fraud are already poised to recover only a small fraction of their losses. *Cf. S.E.C. v. Byers*, 590 F. Supp. 2d at 645. These individuals do not deserve to have the Receiver, who is supposed to marshal assets for their benefit, drain the limited resources of the estate for Receiver's (and his agents') benefit. Yet, through the last four fee applications (including the current Application) (i.e. Applications #3-6, covering the Receiver's activities from November 1, 2012 through June 30, 2013), the

---

[8] *See* D.E. # 29 at ¶ 19(j) (recovery of approximately $750,000 from bank accounts, legal counsel, and other sources); D.E. # 42 at ¶ 20(h) (recovery of approximately $200,000 from sale of a property in Tennessee]; D.E. # 44 at ¶¶ 22 & Ex. A [no recovery reported]; D.E. # 49 at ¶¶ 24 & Ex. A [no recovery reported); D.E. # 54 at ¶ 28 & Ex. A (no recovery reported); D.E. # 57 & Ex. A (no recovery reported).

[9] *See* D.E. # 29 at ¶¶ 11, 13; D.E. # 42 at ¶¶ 12, 14; D.E. # 44 at ¶¶ 14, 16; D.E. # 49 at ¶¶ 16, 18; D.E. # 54 at ¶¶ 17, 20; D.E. #57 at ¶¶ 18, 20.

[10] *Id.*

Receiver has siphoned over $340,000 from the Estate without adding a single dollar of value.[11]

In the current Application, the Receiver has charged the Estate for redundant and unnecessary legal services. For example, even though the Receiver hired Dovin Malkin & Ficken, LLC ***on a contingency basis*** to pursue any and all claims against professionals formerly employed by Lighthouse, including Page Perry LLC ("Page Perry Litigation"),[12] the Receiver seeks recovery of ***hourly fees*** incurred by his counsel, James C. Frenzel, P.C. ("Frenzel P.C.") with respect to the same litigation.[13] The issues presented in the Page Perry Litigation are not so complex as to merit the retention of—and payment for—the services of contingency- ***and*** hourly-counsel.[14] Likewise, the Receiver seeks recovery of other legal fees for

---

[11] *See* D.E. #44 at ¶ 25 [reporting liquid assets of $741,193.66], D.E. #57 at ¶¶ 18, 20, 31[reporting liquid assets of $524,877.10 but seeking payment of $91,810.25 in fees and $252.37 in expenses].

[12] *See* D.E. #48 at ¶ 8; D.E. #49, Ex. A.

[13] For example, the Application includes charges for internal conferences held by Frenzel, P.C to discuss the potential Page Perry Litigation, the preparation of legal memoranda regarding the same, multiple conference calls regarding the matter, and preparation of pleadings. *See* D.E. #57, Ex. D at 4 (entry dated 5/6/2013 by JCF for 1.5 hours), 5 (entry dated 5/7/2013 by JCF for 1.2 hours), 6 (entries dated 5/8/2013 by JCF for .4 hours, 5/9/2013 by JCF for 2.3 hours, 5/9/2013 by EJS for 4.1 hours (of which 3.7 is objectionable)), 7 (entries dated 5/10/2013 by JCF for 1.1 hours, 5/13/2013 by JCF for 1.9 hours), 8 (entries dated 5/14/2013 by JCF for 1.8 hours and by EJS 1.7 hours (of which .7 is objectionable)), 9-10 (entry dated 5/16/2013 by JCF for 3.3 hours (of which 1.5 is objectionable)).

[14] The Page Perry Litigation is a straight-forward legal malpractice action wherein a regulatory compliance firm that billed Lighthouse for over $200,000 over the course of three years allowed a Ponzi scheme to operate through and by Lighthouse and its principal, DeHaan.

unnecessary legal services, such as a motion to stay litigation[15] and subpoenas[16] that served no legitimate purposes and yielded no benefit to the Estate.

This is patently unreasonable, particularly since this is a straight-forward Ponzi scheme case involving misappropriation of over $5 million of investor funds.[17] Accordingly, the Court should deny the Application in full.

B. The Receiver has Failed to Adequately Justify The Fees and Expenses It Seeks to Recover in The Application Requests

It is the Receiver's burden to justify any and all costs incurred by the Receiver for which the Receiver seeks reimbursement. *See Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1303 (11th Cir. 1988) ("The fee applicant bears the burden of establishing entitlement and documenting the appropriate hours and hourly rates.") Here, the Receiver attempts to recover fees for which it

---

[15] *See* D.E. #57, Ex. D at 3 [entry dated 5/2/2013 by JCF for .8 hours (of which .2 is objectionable)], 5 [entry dated 5/6/2013 by EJS for 1.4 hours (of which .5 is objectionable)], 15-16 [entry dated 5/29/2013 by JCF for .7 hours], 17 [entry dated 6/3/2013 by JCF for 1.9 hours], 19 [entries dated 6/6/2013 by JCF for .6 hours and .9 hours, and by EJS for 2.5 hours (of which 1.6 is objectionable)], and 6/7/2013 by JCF for .2 hours], 20 [entry dated 6/11/2013 by JCF for 1.5 hours], 21 [entries dated 6/11/2013 by EJS for .4 hours and 6/12/2013 by JCF for .9 hours], 23 [entry dated 6/14/2013 by EJS for 2.8 hours]. This motion to stay litigation was never filed.

[16] *See* D.E. #57, Ex. D at 18 (entries dated 6/5/2013 by JCF for 1 hour and .6 hours), 21 (entry dated 6/12/2013 by JCF for .7 hours), 22-23 (entry dated 6/14/2013 by JCF for 1.8 hours), 25 (entry dated 6/21/2013 by JCF for .6 hours), 26 (entries dated 6/24/2013 by EJS for 2.3 hours, 6/25/2013 by EJS for .2 hours, 6/27/2013 by EJS for 1.3 hours and 6/28/2013 by JCF for .4 hours).

[17] *See also* D.E. # 48 at ¶ 13 (reporting $7,280,534.57 in anticipated allowed claims of creditors); D.E. 48 at ¶ 17 (reporting $5,180,529.78 in allowed claims based on misappropriations of investor funds); D.E. # 48 at ¶ 20 (reporting $1,039,712.03 in assets held by the Estate for the benefit of the Creditors as of February 28, 2013).

provides little to no information – whether by redaction or lack of detail or explanation – by which either this Court or the Creditors can determine the reasonableness of such requests for reimbursement.[18] As such, the Receiver and its agents should be required, at their own expense, to provide sufficient detail by which this Court and the Creditors can gauge the reasonableness of any and all fees and expenses for which the Receiver seeks reimbursement in any future fee applications. At a minimum, the Receiver and his professional should be required to include more detailed – and/or unredacted – narratives on their time records,[19] provide individual time entries for tasks and services related to discrete and/or disparate matters, and should produce copies of any and all documents and/or written communications for which they seek to recover fees.

IV. CONCLUSION

Since the Sixth Fee Application contains excessive, redundant, unnecessary, and inadequately-justified charges, the Court should deny the Application in full. Additionally, the Court should require that the Receiver and its agents provide, at

---

[18] *See e.g.*, D.E. #57, Ex. D at 2 (entry dated 5/1/2013 by JCF for 2.4 hours for "Emails from Greg Hays re: [REDACTED] and forward information re: [REDACTED] (.2); emails to and from Allison Ficken re: [REDACTED]; Professor Bullard Statement (.3); review pleadings by Page Perry (.1); telephone call with Greg Hays re: [REDACTED] (.2); emails to and from Allison Ficken re: [REDACTED] (.2); emails to and from Greg Hays re: [REDACTED] (.1) . . . ."), 3 (entry dated 5/1/2013 by EJS for 1 hour for "Review and revise pleadings and exhibits"), 4 (entry dated 5/3/2013 by EJS for 1.5 hours for "Revise exhibits and pleadings (.5); revise exhibits and pleadings (1.0)").

[19] For example, the Receiver and his agents should provide a general description of the purpose of – and issues involved in – their numerous unexplained emails and conference calls.

their own expense, sufficient detail by which the Court and the Creditors can gauge the reasonableness of any and all fees and expenses for which the Receiver seeks reimbursement in any future applications for authority to pay professional fees and to reimburse costs.

Dated this 30th day of August, 2013.

Respectfully submitted,

JOSEPH D. WARGO
Ga. Bar No. 738764
RYAN D. WATSTEIN
Ga. Bar No. 266019
Counsel for Anatoly and Yelena Melamud

WARGO & FRENCH LLP
999 Peachtree Street, N.E., 26th Floor
Atlanta, Georgia 30309
(404) 853-1500 – Telephone
(404) 853-1501 – Facsimile

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. BENJAMIN DANIEL DEHAAN AND LIGHTHOUSE FINANCIAL PARTNERS, LLC, Defendants,	)	FILE NO. 1:12-CV-1996-TWT

CERTIFICATE OF SERVICE

This is to certify that I have this day served Plaintiff or his/her attorney in the foregoing matter with a copy of the foregoing Objection to Sixth Application of Receiver for Authority to Pay Professional Fees and to Reimburse Costs by depositing same in the U.S. Mail in a properly addressed envelope with adequate postage affixed thereto, addressed as follows:

Edward G. Sullivan, Esq.
U.S. Securities and Exchange Commission
3475 Lenox Road
Suite 1000
Atlanta, GA 30326

S. Gregory Hays, Receiver
Hays Financial Consulting, LLC
3343 Peachtree Road, NE, Suite 200
Atlanta, GA 30326

Howard Weintraub, Esq.
Benjamin B. Alper, Esq.
Counsel for Benjamin Daniel DeHaan
Law Offices of Howard J. Weintraub, P.C.
1355 Peachtree Street, NE, Suite 1250
Atlanta, GA 30309

Christine L. Mast, Esq.
Matthew G. McLaughlin, Esq.
Counsel for Page Perry, LLC
Hawkins Parnell Thackston & Young, LLP
4000 SunTrust Plaza
303 Peachtree Street NE
Atlanta, GA 30309

James C. Frenzel, Esq.
Suite 155, East Tower
Atlanta Financial Center
3343 Peachtree Road, NE
Atlanta GA 30326

Dated this 30th day of August, 2013.

Respectfully submitted,

JOSEPH D. WARGO
Ga. Bar No. 738764
RYAN D. WATSTEIN
Ga. Bar No. 266019
Counsel for Anatoly and Yelena Melamud

WARGO & FRENCH LLP
999 Peachtree Street, N.E., 26th Floor
Atlanta, Georgia 30309
(404) 853-1500 – Telephone
(404) 853-1501 – Facsimile