

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**-vs-**

**Case No. 6:07-cv-1920-Orl-22DAB**

**ROBERT E. LANE,  
WEALTH POOLS INTERNATIONAL,  
INC., and RECRUIT FOR WEALTH, INC.,**

**Defendants,**

**T-N-T EDUCATION COMPANY, INC.,  
RICHARD H. LANE, MUNDO TRADE,  
INC., RENEE BECKER, JULIA LANE and  
FIRST FIDUCIARY BUSINESS TRUST**

**Relief**

**Defendants**

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**Order and Notice of Hearing**

This cause came on for consideration without oral argument on the following motion filed herein:

**MOTION: "UNOPPOSED" MOTION FOR ORDER AWARDING FEES, COSTS, AND REIMBURSEMENT OF EXPENSES TO RECEIVER AND AKERMAN SENTERFITT (Doc. No. 182)**

**FILED: September 24, 2009**

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**THEREON it is ORDERED that the motion is DEFERRED, pending hearing set forth herein.**

As set forth in the motion, Denise D. Dell-Powell, the prior court-appointed Receiver,<sup>1</sup> moves for an Order awarding interim fees and expenses in the total amount of \$580,593.00 – an amount that exceeds the current estimated value of the Receivership Estate.<sup>2</sup> The Receiver proposes that she and the law firm she has retained “be paid \$300,000 now, and that the remaining amounts requested herein be paid upon transfer of at least \$1,000,000 of cash from Relief Defendants or other sources.” For the reasons set forth herein, the motion is **deferred**.

In making any determination with respect to an appropriate award of Receiver and attorney’s fees, a Court generally must (1) determine the nature and extent of the services rendered; (2) determine the value of those services; and (3) consider the factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). Part of “determining the nature and extent of the services rendered,” includes an analysis as to the reasonableness of the services rendered, bearing in mind the nature of a receivership. As the Supreme Court has noted:

The receiver is an officer of the court, and subject to its directions and orders . . . . [H]e is . . . permitted to obtain counsel for himself, and counsel fees are considered as within the just allowances that may be made by the court. . . . So far as the allowances to counsel are concerned, it is a mere question as to their reasonableness. . . . The compensation is usually determined according to the circumstances of the particular case, and corresponds with the degree of responsibility and business ability required in the management of the affairs intrusted to him, and the perplexity and difficulty involved in that management.

*Stuart v. Boulware*, 133 U.S. 78, 81-82 (1890).

As noted in the papers, the Receiver is entitled to reasonable compensation and expenses, pursuant to the Order of appointment. The Court has traditionally determined reasonableness by utilizing the familiar lodestar approach, calculating a reasonable hourly rate in the relevant market and

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<sup>1</sup>Michael Goldberg has since been substituted as Receiver in this matter. See Doc. No. 185.

<sup>2</sup>The Receiver notes that she expects to receive approximately \$1,376,686.00 in additional cash, and non-liquid assets (mostly real estate) valued at approximately 1.4 million dollars, as a result of judgments against the Relief Defendants.

the reasonable number of hours expended. *See, e.g., SEC v. Aquacell Batteries, Inc., et al.*, Case No. 6:07cv608-Orl -22DAB, 2008 WL 276026 (M.D. Fla., January 31, 2008); *FTC v. Peoples Credit First, LLC*, No.8:03cv2353T17TBM, 2005 WL 3981599, at \* 3 (M.D. Fla. April 19, 2006)(citing *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974)); *see also Norman v. Hous. Auth.*, 836 F.2d 1292, 1299-1302 (11th Cir. 1988). Similarly, requests for reimbursement of expenses must be supported by sufficient information for the Court to determine that the expenses are actual and were necessarily incurred. *See Peoples Credit First, LLC*, 2005 WL 3981599, at \* 5; *see also In re Southeast Banking Corp.*, 314 B.R. 250, 271 (S.D. Fla. 2004).

The Receiver and all professionals must exercise proper billing judgment in seeking fees from the receivership estate, and should limit their work to that which is reasonable and necessary. *See, e.g., Peoples Credit First, LLC*, 2005 WL 3981599, at \* 4. After all, “[n]o receivership is intended to generously reward court-appointed officers.” *SEC v. W. L. Moody & Co.*, 374 F.Supp. 465, 483 (S.D. Tex. 1974), *aff’d*, 519 F.2d 1087 (5th Cir. 1975)). This is particularly true when, as in the present case, the receivership estate will not recover sufficient assets to pay full restitution to the victims of the fraud alleged in the complaint. In the end, “Whether a receiver merits a fee is based on the circumstances surrounding the receivership, and ‘results are always relevant.’” *SEC v. Elliott*, 953 F.2d 1560, 1577 (11th Cir. 1992) (*quoting SEC v. Moody*, 374 F.Supp. 465 (S.D. Tex. 1974), *aff’d*, 519 F.2d 1087 (5th Cir. 1975)).

The present request evidences that the nature and extent of the services rendered is significant by any measure. Indeed, the invoices show over 30 professionals<sup>3</sup> charged fees in excess of one million dollars, *including* a 10% discount from all timekeepers’ fees and a reduced rate of \$325 an

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<sup>3</sup>Shareholders, associates, law clerks, paralegals, and systems personnel at rates varying from \$50 to \$500 an hour.

hour for the Receiver's time.<sup>4</sup> The results of this massive call to arms, however, is far less impressive. According to the Receiver:

The Receivership Entities boasted of raising over \$134,000,000.00 and, given this information, the Receiver and the SEC thought that there was a substantial likelihood of recovering many millions of dollars for the estate. The Receiver and her attorneys have almost exhausted their investigations, including looking for potential off-shore bank accounts or real estate holdings. Unfortunately, no significant assets have been located and the assets gathered are significantly less than what the Receiver had expected to recover in the beginning of this case.

(Doc. No. 182 at p.6). Indeed, in an October 9, 2009 letter to Investors posted on the receivership's website,<sup>5</sup> newly appointed Receiver Michael Goldberg advises that:

[O]ur preliminary review of the claims show that people are claiming that they are owed over \$66 million from Wealth Pools. You will see that any distribution of assets will likely be only pennies on the dollar based upon the amount of the assets that we have actually recovered and the anticipated amount of recovery pursuant to the Consent Judgements described about. Any distribution of assets will not occur for many, many months, *if at all*.

(emphasis added). It thus appears possible, if not likely, that the only persons to receive anything other than nominal recompense from the Receivership Estate are the Receiver herself, and her attorneys.

With the above in mind, the Court takes issue with the Receiver's representation that the motion is "unopposed." While it appears that the Receiver and her counsel properly contacted counsel for the other parties (the SEC, Defendants and Relief Defendants) who have made an appearance in this litigation, she did not confer with those persons most likely to have a real and substantial interest in the fee request— the Investors themselves. Although the fee request seeks fees and reimbursement for, among other things, work involved in operating a website for cost-effective communication with the thousands of Investors whom have filed claims, the Receiver has not posted

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<sup>4</sup>According to the motion, the SEC had objected to the amount of time billed to the estate and the Receiver and her attorneys agreed to further "heavily discount" their invoices to the present request.

<sup>5</sup><http://www.wealthpoolsreceiver.com/>, accessed October 22, 2009.

the motion on the website, nor is there any mention of this fee request (and the impact the granting of the request would have on the Estate) anywhere on the site.<sup>6</sup> In view of this omission, and in the interest of due process, the Court finds it appropriate to **defer** action on this motion, in order to give the Investors an opportunity to review it.

The Receiver and Counsel are therefore advised to **TAKE NOTICE** that a hearing on the motion to address these matters will be held before the undersigned on **MONDAY, NOVEMBER 9, 2009, at 2:00 P.M.** in Courtroom #6D, George C. Young U.S. Courthouse and Federal Building, 401 W. Central Boulevard, Orlando, Florida. The Receiver<sup>7</sup> shall appear in person. The Receiver is directed to publish the motion and all supporting papers, as well as this Notice, on the receivership website.

**DONE and ORDERED** in Orlando, Florida on October 26, 2009.

*David A. Baker*

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DAVID A. BAKER  
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

Counsel of Record  
Unrepresented Parties

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<sup>6</sup>The website has a section entitled "Court Filings" which contains some filings, but nothing at all since March 10, 2008. Moreover, the fee request is not mentioned elsewhere on the site.

<sup>7</sup>The Court recognizes that Mr. Goldberg is recently appointed and has had limited direct involvement in the fee request at issue. It is suggested that he familiarize himself with the issues sufficient to address the matter at hearing. Alternatively, counsel may wish to perform that task.