

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 0:17-60907-CIV-MORENO/SELTZER

FEDERAL TRADE COMMISSION, *et al.*,

Plaintiffs,

v.

JEREMY LEE MARCUS, *et al.*,

Defendants.

**RECEIVER'S SEVENTH MOTION FOR AWARD OF
PROFESSIONAL FEES AND REIMBURSEMENT OF EXPENSES**

Jonathan E. Perlman, Receiver for the Receivership Entities, files his Seventh Motion for Award of Professional Fees and Reimbursement of Expenses (the "Seventh Application") seeking approval to pay professional fees and costs incurred for the 4-month period of November 1, 2019 through February 29, 2020 (the "Application Period").

I. INTRODUCTION

1. During the Application Period, the Receiver and his professionals auctioned and sold Receivership real estate; auctioned and sold Receivership personal property; continued to operate and maintain the Nantucket Cove real estate development located in Beecher, Illinois; and continued negotiating the attempted liquidation of the Receivership's secured interests in an operating coal mine located in Kentucky. In addition, during the Application Period, the Receiver transferred to the Plaintiffs \$16.3 million for consumer redress.

2. During this period, the Receiver also spent significant time and effort investigating potential claims against third parties that may substantially increase victim redress, as the Court has directed. As a benefit to the Receivership Estate, the Receiver and GJB counsel have not included their time for work performed in investigating, developing or drafting such lawsuits in

this fee application, in light of the Court's July 22, 2019 Order approving the Receiver's retention of counsel on a contingency fee to pursue claims against certain third parties, including the lawsuits the Receiver filed against PNC Bank and American Express.

3. The Receiver made cash recoveries during this period of \$214,416.72.

4. The Receivership bank accounts currently have a balance of \$3,014,443.67. Based upon the work and efforts of the Receiver and his professionals during the Application Period, the Receiver anticipates recovering additional funds in the future.

5. As discussed below, the Receiver, in this application, seeks approval to pay his counsel, Genovese Joblove & Battista, P.A. ("GJB") \$129,383.50 in fees and \$4,563.08 in reimbursement of costs for services rendered during the Application Period; his forensic accountants, KapilaMukamal ("KM")¹ \$1,725.65 in fees and \$7.50 in costs for the Application Period; his Kentucky counsel, McBrayer, McGinnis, Leslie & Kirkland PLLC ("MMLK") \$1,225.00 in fees and \$0 in costs; and his North Carolina counsel, Carter & Carter, P.A. ("C&C") \$13,727.50 in fees and \$301.70 in costs for the time period of February 2020 through April 2020. Prior to filing the Seventh Application, the Receiver provided Plaintiffs with the supporting documents for the fees and costs sought herein. The Receiver will provide the supporting documentation to the Court upon request.

II. APPLICATION

6. On May 8, 2017, the Federal Trade Commission ("FTC") and the Office of the Attorney General, State of Florida, Department of Legal Affairs ("Florida AG") (collectively, the "Plaintiffs"), commenced this action by filing a complaint for permanent injunction and other relief

¹ KM will submit its requests for professional fees and costs associated with litigation support by a separate application in the future.

(the “Complaint”), and a motion for a temporary restraining order and other equitable relief against Jeremy Lee Marcus, Craig Davis Smith, Yisbet Segrea (collectively, the “Individual Defendants”), the named corporate defendants and the named relief defendants, (the Individual Defendants, named corporate defendants and relief defendants may be referred to herein collectively as the “Defendants”). Plaintiffs alleged that the Individual and corporate defendants violated Sections 5(a) of the FTC Act, 15 U.S.C. § 45(a), the FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310 and the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), Chapter 501, Part II, Florida Statutes (2016), Fla. Stat. § 501.201 *et seq.* and the Telemarketing Act, 15 U.S.C. §§ 6101-6108. [ECF No. 1, “Compl.”].

7. On May 9, 2017, this Court granted the Plaintiffs’ application for a temporary restraining order with asset freeze against Defendants and entered an Order freezing assets belonging to any of the Individual Defendants and corporate defendants (the “TRO”). [ECF No. 13]. In connection with the TRO, the Court appointed Jonathan E. Perlman as temporary receiver over the Receivership Defendants identified in the Complaint. [*Id.*].

8. On May 17, 2017, the Court entered the Preliminary Injunction (the “PI”) [ECF No. 21] which appointed Jonathan E. Perlman as permanent receiver, and directed him to assume full control of the Receivership Entities and their affiliates, subsidiaries, divisions, and sales operations. The PI further directed the Receiver to take exclusive custody, control, and possession of all assets and documents of, or in the possession, custody, or under the control of, the Receivership Defendants, wherever situated. Under the PI, the Receiver shall have “full power to divert mail and to sue for, collect, receive, take in possession, hold, and manage all assets and documents of the Receivership Defendants and other persons or entities whose interests are now held by or under the direction, possession, custody, or control of the Receivership Defendants.”

The PI further directed the Receiver to investigate potential actions to preserve or recover the assets of the Receivership Defendants, including against third parties, and institute such actions where the Receiver deems prudent.

9. The Receiver's appointment commenced on May 9, 2017. The Receiver, a shareholder with GJB, retained GJB as his lead counsel. The Receiver also retained KM to provide accounting, forensic accounting, and tax-related services in this matter. In addition, the Receiver retained MMLK to provide him with legal services and advice in Kentucky associated with a defaulted secured loan on an operating coal mine in Kentucky.

10. Under the express terms of the PI, the Receiver and all personnel hired by the Receiver, as herein authorized, including counsel to the Receiver and accountants, are entitled to "reasonable compensation for the performance of duties undertaken pursuant to the Orders and for the cost of actual out-of-pocket expenses incurred from the assets now held by or in the possession or control of, or which may be received by, the Defendants." [ECF No. 21 at Section F].

11. Further, pursuant to the PI, the Receiver shall file with the Court, and serve on the parties, periodic motions for the payment of such compensation. To date, the Receiver submitted six applications for payment of professional fees and reimbursement of costs, all of which have been approved by this Court.

12. To preserve assets for consumers, GJB, KM, MMLK, and C&C have billed at a reduced agreed upon rate. All GJB timekeepers are billed at 10-20% below their regular hourly billing rate. In addition, the Receiver is billed at \$425 per hour, representing a 19% reduction from his normal hourly rate.

13. The Receiver and GJB have provided a further discount to the Estate in this Fee Application by not requesting reimbursement for the fully compensable work performed by

members of the Receiver's team employed by GJB who provided critical functions in IT, internal accounting, bookkeeping and consumer relations services during the fee Application Period.

14. The Receiver and GJB have also agreed to bear any costs they have incurred for faxes and Westlaw research to further conserve the Receivership's assets. Further, the Receiver and GJB have agreed to charge a reduced price per page for photocopies and printing.

15. In addition, all forensic accounting and tax professionals, per an agreement negotiated by the Receiver, are billed at 15% below their regular hourly billing rate.

16. The Receiver and GJB hereby submit for approval GJB's fees for \$129,383.50 for 365.60 hours of service during the Application Period, and expenses in the sum of \$4,563.08. Besides the aforementioned discounted hourly rates, GJB has voluntarily agreed to forego an additional \$15,308.00 in fees and certain expenses.

17. The Receiver also hereby submits for approval payment to KM for \$ 1725.65 in fees for service during the Application Period, and expenses of \$7.50. This request for payment reflects a 15% reduction on KM's normal hourly rates and a 50% reduction on the rate of the Receiver's construction consultant, Karen Fugate.

18. The Receiver also hereby submits for approval payment to MMLK for \$1,225.00 in fees for service during the Application Period. This request for payment reflects a 15% reduction on MMLK's normal hourly rates.

19. The Receiver also hereby submits for approval payment to C&C for \$13,727.50 in fees for February 24, 2020 through April 24, 2020, and expenses of \$301.70. This request for payment reflects a 15% reduction on C&C's normal hourly rates.

III. WORK PERFORMED BY THE RECEIVER'S PROFESSIONALS

20. During the Application Period, the Receiver liquidated real estate holdings, secured the payment of certain loan obligations, and liquidated certain personal property. In addition, the Receiver continued his efforts to liquidate highly complex assets, including a real estate development in Beecher, Illinois and a coal mine in Kentucky.

21. As a result of these efforts during the Application Period, the Receiver recovered in excess of \$214,000 for the estate and with these efforts, also likely to lead to future recoveries for the Receivership Estate.

IV. MEMORANDUM OF LAW

22. This Court has broad power to appoint a receiver and to award the receiver fees for his services and for expenses incurred by the receiver in the performance of his duties. *See Donovan v. Robbins*, 588 F. Supp. 1268, 1272 (N.D. Ill. 1984) (“[T]he receiver diligently and successfully discharged the responsibilities placed upon him by the Court and is entitled to reasonable compensation for his efforts.”); *see also Securities & Exchange Commission v. Elliott*, 953 F. Supp. 1560 (11th Cir. 1992) (receiver is entitled to compensation for faithful performance of his duties).

23. In determining attorneys’ fees, a court 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), *abrogated on other grounds, Blanchard v. Bergeron*, 489 U.S. 87, 109 S.Ct. 939, 103 L.Ed.2d 67 (1989). In *Johnson*, the court set forth twelve factors a court should consider in determining reasonableness of an attorneys’ fees award in a particular case. They are as follows: (1) the time and labor required; (2) the novelty and difficulty of the questions presented; (3) the skill required to perform the legal

services properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee for similar work in the community; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or by the circumstances; (8) the amount involved and results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Id.*, 488 F.2d at 717-719. The Eleventh Circuit adopted these *Johnson* factors in *Norman v. Housing Authority of City of Montgomery*, 836 F.2d 1292 (11th Cir. 1988).

A. APPLICATION OF THE JOHNSON FACTORS

1. The Time and Labor Required.

24. The Receiver and his team have focused on identifying, marshaling, preserving, and liquidating the assets of the Receivership Estate. Based upon the scope and complexity of the issues associated with the Receiver discharging his obligations under the PI, this appointment has been extremely time intensive.

25. While the Receiver and his professionals always work with a cost/benefit equation in mind as to each task, in the general context of litigation and, more specifically, in the administration of receiverships, the Receiver must sometimes pursue work that does not immediately present a quick benefit. In fact, much of the work done to date will likely lead to significant benefit to the estate and consumers down the road with significantly less professional fees. However, the Receiver and his professionals are determined to pursue only those tasks that are essential to completing the tasks assigned by the Court and to maximizing consumer recovery.

2. The Novelty and Difficulty of the Questions Presented.

26. By its very nature, a receivership is unique and complex. This case is no different.

The Receiver in this case is regularly faced with novel and difficult legal questions and challenges in the administration of the Estate. The Receivership Estate is vast and complicated and requires the Receiver and his professionals to devote significant time and effort in addressing and resolving these questions and challenges.

3. The Skill Required to Perform the Legal Services Properly.

27. The Receiver possesses the requisite skills to perform the services of receiver in this matter. The Receiver is an attorney with 30 years of experience. The Receiver regularly represents parties in complex litigation and has both brought and defended numerous actions under the Federal Trade Commission Act. The Receiver is AV rated by the Martindale Hubbell Attorney Directory. He currently serves as the court appointed Receiver over various entities that perpetrated a multi-million dollar Ponzi scheme in *SEC v. Creative Capital Consortium, LLC et al.*, Case No. 08-81565-CIV-HURLEY/HOPKINS.

28. In addition, both GJB and KM possess the requisite skills to represent the Receiver. Both firms have significant experience in representing fiduciaries in complex cases.

29. MMLK also possesses the requisite skills to represent the Receiver. MMLK has significant experience in representing fiduciaries including previously representing a receiver of the same coal mine that the Receivership Estate currently has an interest in.

30. C&C also possesses the requisite skills to represent the Receiver. C&C has significant experience in commercial litigation, creditors rights, and foreclosure matters in North Carolina where the Receivership Estate had a mortgage interest.

4. The Preclusion of Other Employment by the Attorney due to Acceptance of the Case.

31. Although this case has required an extensive investment of professional and paraprofessional time, it has not been necessary for the Receiver, GJB, KM, MMLK, or C&C to

turn away other work due to this assignment.

5. The Customary Fee for Similar Work in the Community.

32. The hourly rates charged by the attorneys and accountants providing work to the Receiver, as well as the Receiver's hourly rate, are below the customary rates of the attorneys working on this case and below those charged by attorneys or accountants with comparable skills in the jurisdiction where they practice for similar work. The hourly rates charged have been discounted by GJB, KM, MMLK, and C&C for the benefit of the consumers.

6. Whether the Fee is Fixed or Contingent.

33. The Receiver and his professionals' compensation in this matter is comprised of fixed discounted hourly rates subject to the final approval of this Court. The Court should consider that the Receiver, GJB, KM, MMLK, and C&C have assumed the risk of non-payment and delay in payment. At present, the Receiver expects that there will be sufficient funds available in this Receivership to make such payment. The Receiver continues his efforts to follow leads to other Receivership assets. These efforts will not only secure funds to fund the administration of the Receivership, but will also benefit consumers by bringing funds into the Receivership Estate that can be used for possible restitution at the conclusion of the case.

7. Time Limitations Imposed by the Client or by the Circumstances.

34. The nature of this case has required careful time management by the professionals involved because of the need to resolve issues efficiently and economically. Based upon the size and breadth of the Estate, this case does require an extensive investment of professional time. However, at this point, the Receiver has fewer task members on his team to handle the case.

8. The Amount Involved and Results Obtained.

35. The evidence thus far gathered and analyzed points to over \$85 million dollars in

net revenues for the Receivership Entities and related entities. Thus far, the Receiver has conferred a substantial benefit to the Receivership Estate by managing and protecting the Receivership's assets. During the Application Period, the Receiver recovered \$214,416.72 for the benefit of the Receivership Estate.

9. The Experience, Reputation and Ability of the Professionals.

36. The principal attorneys on this case are experienced professionals and litigators in the Southern District of Florida. The Receiver has 31 years of experience in civil litigation and is well-respected in the legal community. He has served as a Federal Equity Receiver in cases before Judge Daniel T. Hurley (*SEC v. Creative Capital Consortium, LLC et al.*, Case No. 08-81565-Civ-Hurley/Hopkins (S.D. Fla.)); Judge Cecilia Altonaga (*FTC v. Hispanic Global Way Corp., et al.*, Case No. 14-22018-Civ-Altonaga/O'Sullivan (S.D. Fla.) and *FTC v. Pointbreak Media, LLC, et al.*, Case No. 18-61017-Civ-Altonaga/Seltzer (S.D. Fla.)); Judge Darrin P. Gayles (*FTC v. World Patent Marketing, et al.*, Case No. 17-cv-20848-Gayles-Otazo-Reyes (S.D. Fla.)); Judge Jose E. Martinez (*FTC v. VGC Corp. of America, et al.*, Case No. 11-21757-Martinez-Goodman (S.D. Fla.)). To date, these Honorable Judges have approved all of the Receiver's Fee Applications.

37. KM has experienced accountants well known in this community for representing and providing accounting, forensic accounting, and tax-related services to fiduciaries and others for over 25 years. The principals of KM often serve as fiduciaries in cases similar to this case.

38. MMLK possesses the requisite skills to represent the Receiver. MMLK has significant experience in representing fiduciaries including previously representing a receiver of the same coal mine that the Receivership Estate currently has an interest in.

39. C&C possesses the requisite skills to represent the Receiver. C&C has over 39 years of experience with creditors' rights and foreclosure matters under North Carolina law.

10. The Undesirability of the Case.

40. This case is not undesirable; the Receiver and the professionals under his authority are privileged to be involved.

11. Awards in Similar Cases.

41. The Receiver believes the fees and costs submitted to the Court for consideration in this Application are similar to those awarded in other receivership cases in the Southern District of Florida.

IV. CERTIFICATION

42. Pursuant to Local Rule 7.1.A.3, undersigned counsel hereby certifies that he conferred with counsel for Plaintiffs, the FTC and Florida AG and provided a draft of this Application and the supporting invoices prior to filing this Application. The FTC and State of Florida have authorized the Receiver to state that they take no position on the Application and will not be filing any response thereto.

WHEREFORE, the Receiver, Jonathan E. Perlman, Esq., respectfully requests this Court to enter an order (i) granting this Motion for Award of Fees and Reimbursement of Expenses approving all fees and expenses; (ii) authorizing payment to GJB of fees and expenses incurred during the Application Period in the amount of \$133,946.58 (\$129,383.50 in fees and \$4,563.08 in expenses); (iii) authorizing payment to KM of fees and expenses incurred during the Application Period in the amount of \$1,733.15 (\$1,725.65 in fees and \$7.50 in expenses); (iv) authorizing payment to MMLK of fees and expenses incurred the Application Period in the amount of \$1,225.00 (\$1,225.00 in fees and \$0 in expenses); and (v) authorizing payment to C&C of fees and expenses incurred during the Application Period and going through April 30, 2020 in the amount of \$14,029.20 (\$13,727.50 in fees and \$301.70 in expenses). A proposed form of order is attached.

Respectfully submitted this 11th day of June 2020.

s/Jonathan E. Perlman

Jonathan E. Perlman, Esq., Receiver, and
GENOVESE JOBLOVE & BATTISTA, P.A.

Attorneys for Jonathan E. Perlman, Esq.

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of June 2020, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record and entities, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/Jonathan E. Perlman

Jonathan E. Perlman

[10675-006 / 3152661/2]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
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FEDERAL TRADE COMMISSION, *et al.*,

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JEREMY LEE MARCUS, *et al.*,

Defendants.

**ORDER GRANTING RECEIVER'S SEVENTH MOTION FOR AWARD OF
PROFESSIONAL FEES AND REIMBURSEMENT OF EXPENSES**

THIS CAUSE came before the Court upon Jonathan E. Perlman, Esq.'s, the court-appointed Receiver (the "Receiver") for the Receivership Entities,¹ Seventh Motion for Award of Professional Fees and Reimbursement of Expenses [ECF No. ____] (the "Seventh Fee Application"), filed on June 11, 2020.

The Court has considered the Seventh Fee Application, the pertinent portions of the record, and being otherwise fully advised in the premises, it is

ADJUDGED that the motion is GRANTED. The Seventh Fee Application is APPROVED.

¹ Receivership Entities are Financial Freedom National, Inc. f/k/a Institute for Financial Freedom, Inc. and Marine Career Institute Sea Frontiers, Inc. d/b/a 321 Loans, Instahelp America, Inc., Helping America Group, United Financial Support, Breeze Financial Solutions, 321Financial Education, Credit Health Plan, Credit Specialists of America, American Advocacy Alliance, and Associated Administrative Services, 321Loans, Inc., f/k/a 321 Loans, Inc. d/b/a 321Financial, Inc., Instahelp America, Inc. f/k/a Helping America Team, Inc. d/b/a Helping America Group, Breeze Financial Solutions, Inc. d/b/a Credit Health Plan and Credit Maximizing Program, US Legal Club, LLC, Active Debt Solutions, LLC f/k/a Active Debt Solutions, Inc. d/b/a Guardian Legal Center, Guardian LG, LLC d/b/a Guardian Legal Group, American Credit Security, LLC f/k/a America Credit Shield, LLC, Paralegal Support Group LLC f/k/a Paralegal Support LLC, Associated Administrative Services, LLC d/b/a Jobfax, Cockburn & Associate LLC, JLMJP Pompano, LLC, Halfpay International, LLC, Halfpay NV, LLC, HP Properties Group, Inc., HP Media, Inc., Omni Management Partners, LLC, Nantucket Cove of Illinois, LLC, Discount Marketing USA, S.A., Viking Management Services, LLC, White Light Media LLC, Blue42, LLC, National Arms, LLC, and 110 Gloucester St., LLC, and their divisions, subsidiaries, affiliates, predecessors, successors, and assigns. [ECF Nos. 21, 102, 222, 286].

ADJUDGED that the Receiver and Genovese Joblove & Battista, P.A.'s fees of \$129,383.50 and expenses of \$4,563.08 are APPROVED. The Receiver is authorized to pay Genovese Joblove & Battista, P.A. the sum of \$133,946.58 representing 100% of the approved fees (\$129,383.50) and 100% of expenses (\$4,563.08) incurred during the Application Period of November 1, 2019 through February 29, 2020.

ADJUDGED that the Receiver is authorized to pay KapilaMukamal the sum of \$1,733.15 representing 100% of the approved fees (\$1,725.65) and 100% of expenses (\$7.50) incurred during the Application Period of November 1, 2019 through February 29, 2020.

ADJUDGED that the Receiver is authorized to pay McBrayer, McGinnis, Leslie & Kirkland PLLC the sum of \$1,225.00 representing 100% of the approved fees (\$1,225.00) and 100% of expenses (\$0) incurred during the Application Period of November 1, 2019 through February 29, 2020.

ADJUDGED that the Receiver is authorized to pay Carter & Carter, P.A. the sum of \$14,029.20 representing 100% of the approved fees (\$13,727.50) and 100% of expenses (\$301.70) incurred during the time period of February 2020 through April 2020.

DONE and ORDERED at Miami-Dade County, Florida this ___ day _____, 2020.

FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

cc: All counsel of record