

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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IN RE:

THE BENNETT FUNDING GROUP, INC.

Debtors

CASE NO. 96-61376

Chapter 11

Substantively Consolidated

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APPEARANCES:

KAYE, SCHOLER, FIERMAN, HAYES &  
HANDLER, LLP

425 Park Avenue  
New York, New York 10022

ARTHUR STEINBERG, ESQ.

Of Counsel

GUY VAN BAALEN, ESQ.

Assistant U.S. Trustee

10 Broad Street

Utica, New York 13501

Hon. Stephen D. Gerling, Chief U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

The Court considers herein the First Interim Application of Kaye, Scholer, Fierman, Hays & Handler, LLP ("First Application") ("Kaye Scholer"), which was filed with the Court on October 4, 1998. Kaye Scholer was retained pursuant to an Order of this Court dated February 26, 1998, to represent the Official Early Investors Committee ("Investors Committee"). The First Application covers the period February 11, 1998 through September 30, 1998, and seeks professional fees in the amount of \$375,928 and reimbursement of expenses in the amount of \$24,758.22.<sup>1</sup> The First Application was submitted to Stuart, Maue, Mitchell and James, Ltd.

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<sup>1</sup> Kaye Scholer consensually adjusted its fee and expense request as reflected in its Response to Fee Auditors Report regarding First Interim Application filed on December 1, 1998

(“Fee Auditor”) in accordance with the Court’s Amended Order dated December 2, 1996, regarding Fee Applications subject to review by the Fee Auditor (“Amended Order”). The report of Fee Auditor (“Auditor’s Report”) was filed with the Court on November 18, 1998. The First Application came on for a hearing before the Court on December 3, 1998, at which time the Court approved a provisional award of \$300,000.00 in fees and \$20,000.00 in expenses to Kay Scholer. Objection to the First Application was filed by the United States Trustee (“UST”).

### **JURISDICTIONAL STATEMENT**

The Court has core jurisdiction of this contested matter pursuant to 28 U.S.C. §§ 1334(b) and 157(a),(b)(1) and (b)(2)(A) and (O).

### **FACTS, ARGUMENTS & CONCLUSIONS**

As is customary, the Auditor’s Report identified entries in Kaye Scholer’s time records filed in support of the First Application as falling into seven categories which “Appear to Violate Court Guidelines.” In addition, the Auditor’s Report isolates approximately twenty-eight more specific and limited categories or tasks which the Auditor calls to the Court’s attention for further review and analysis.

Kaye Scholer filed its Response to the Auditor’s Report on December 1, 1998 and

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(“Kaye Scholer’s Response”). The net adjusted fee is \$364,502.70 and the adjusted expense total is \$24,645.22.

consented to certain adjustments to its fees and expenses. As a result of one of the Fee Auditor's observations, the Court, on July 15, 1999, required Kaye Scholer to file supplemental time records to remedy what had been identified as "blocked" or "lumped" entries in those records. On July 28, 1999, the Court received the supplemental time records. It now appears that the "blocked or lumped" entries have been corrected.

With regard to the Fee Auditor's observations, the Court has reviewed the Response of Kaye Scholer in light of the various Exhibits submitted with the Auditor's Report and concludes that with the exception of categories designated as "General Fee Applications" and "Kaye Scholer Retention" it will make no further adjustments to the First Application. While the Court has some concerns with the percentage of partner time devoted to the representation (approximately 46%), which in turn generated approximately 59% of the total billing, it will make no adjustment to the instant Application. It is also suggested, that Kaye Scholer might make greater use of paralegals to perform many tasks performed during the instant time period by associates. The First Application reflects that only 3.52% of Kaye Scholer's total hours were consumed by paralegals representing only 0.67% of the total fees.

With regard to the time claimed for the category "General Fee Applications," the Court will allow the sum of \$1,500, thus, disallowing \$9,400.20 and with regard to the category "Kaye Scholer Retention," the Court will allow \$3,050, thus, disallowing \$8,800.49. The adjustment to "General Fee Applications" is generally in keeping with the Courts 3% rule regarding allowance of fees in connection with the compensation of professionals. (*See* Memorandum Decision and Order of the Court dated February 9, 1998 at page 16.) The adjustments to "Kaye Scholer Retention" category results from the Court's review of Exhibit KK supplementing the

Auditor's Report and its conclusion that the allowed fee is reasonable, again considering that the services generally benefit no one other than Kaye Scholer. The Court makes no further adjustment to the First Application.

Turning to Kaye Scholer's request for expense reimbursement, the Fee Auditor has called the Court's attention to a number of categories. In its Response to the Fee Auditor's Report, Kaye Scholer has provided supporting documentation for all of the allegedly unreceipted expenses. Kaye Scholer has adjusted its expense request for "service department overtime" by deleting \$98, but insists that the Court's Guidelines authorize reimbursement for postage expense. The Court agrees.

Concerning "Meals," while Kaye Scholer addresses the Fee Auditor's observations regarding "Lunches" by accepting a \$15 reduction, it does not address "conference meals" (\$55.60) and it does not satisfactorily respond to the inquiries regarding "Local Transportation" (\$7.00) or "Messenger/Courier Service" (\$1,885.74). Finally, the Fee Auditor isolates some \$4,370.36 in expenses which it contends either were not described or the description was so inadequate that the nature of the expense couldn't be determined. Kaye Scholer disputes this allegation, suggesting that it was the Fee Auditor's methodology of extracting the expenses from its First Application that made the expenses vague. The Court concludes that before it can approve the expenses itemized on Exhibit PP submitted with the Fee Auditor's Report, as well as the unexplained expenses referenced above, Kaye Scholer will be required to provide a supplemental adequate description of the expenses. Thus, the Court will at this juncture disallow \$4,370.36.

In summary, the Court makes the following reduction to fees and expenses sought in the

## First Application:

<u>Total Fee Requested</u>	\$375,928.80
<u>Disallowances:</u>	
General Fee Applications	\$ 9,400.20
Kaye Scholer Retention	\$ 8,800.49
Travel Time (consensual)	\$ 10,337.10
Double Billing (consensual)	\$ 1,089.00
Provisional Award granted on 12/3/98	\$300,000.00
<u>Total Net Fee Allowed</u>	<u>\$ 46,302.01</u>
<u>Total Requested Expenses</u>	\$ 24,758.22
<u>Disallowances:</u>	
Service Department Overtime (consensual)	\$ 98.00
Lunches (consensual)	\$ 15.00
Conference meals	\$ 55.60
Local Transportation	\$ 7.00
Messenger/Courier Service	\$ 1,885.74
Vaguely Described Expenses	\$ 4,370.36
Provisional Award Expenses granted 12/3/98	\$ 20,000.00

Total Net Expenses Allowed

(\$ 1,673.48)<sup>2</sup>

Dated at Utica, New York

this 15th day of October 1999

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STEPHEN D. GERLING  
Chief U.S. Bankruptcy Judge

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<sup>2</sup>As set forth herein, Kaye Scholer shall either file a supplemental application addressing the conditional disallowance of expenses within twenty days of the date hereof or within said period shall reimburse the consolidated estates in the sum of \$1673.48