

November 24, 1997

Jeffrey S. Machelski, J.D.
Stuart, Maue, Mitchell & James, Ltd.
3840 McKelvey Road
Saint Louis, Missouri 63044

Guy Van Baalen, Esq.
Assistant U.S. Trustee
10 Broad Street
Utica, New York 13501

RE: The Bennett Funding Group, Inc.
Case No. 96-61376 Chapter 11 Substantively Consolidated

LETTER DECISION AND ORDER

On July 8, 1997, the Court heard argument on the Second Application For Allowance of Interim Compensation and Reimbursement of Expenses (“Second Interim Application”) of Stuart, Maue, Mitchell and James, Ltd. (“SMMJ”), the fee auditor appointed herein by Order of the Court dated October 15, 1996.

Opposition to the Second Interim Application, which seeks a fee of \$130,730 and expense reimbursement of \$3,577, was interposed by the United States Trustee (“UST”). The Second Interim Application covers the period January 22, 1997 through May 29, 1997.

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). Familiarity with the Court's Memorandum-Decision, Findings of Fact, Conclusions of Law and Order dated May 19, 1997, addressing SMMJ's First Interim

Application (“May Order”) is assumed herein.

The UST again criticizes the Second Interim Application asserting that the “technocratic” services provided by SMMJ need not be performed by attorneys billing at \$175 per hour. Additionally, the UST asserts that rather than heed the admonition contained in the Court's May Order, SMMJ has actually increased attorney participation in the auditing process during the period covered by the Second Interim Application.

SMMJ contends that it did heed the Court's warning in that it expended 522.60 attorney hours to review total requested fees during the period of approximately \$5.9 million. That, asserts SMMJ, represents 38.9 less hours to review 32.49% more in fees than reflected in the First Interim Application regardless of the total attorney hours actually expended.

The second objection advanced by the UST is that much of the work performed by SMMJ's attorneys could be performed by paralegals or paraprofessionals, which SMMJ admittedly does not employ.

SMMJ responds that it is not a law firm, and while it employs “staff attorneys,” their function is limited to reviewing billing entries for compliance with Court guidelines, a function that SMMJ asserts cannot be performed by any computer.

While the argument of the UST is inviting, it would necessitate either a restructuring of SMMJ's business operations or it would require an overall reduction in the billing rates of SMMJ's staff attorneys to bring them in line with those of paralegals or paraprofessionals. The Court does not believe that either of those significant options are reasonable or necessary given the overall benefit provided to the Court, and ultimately the estate, by SMMJ.

While the Court is well aware of the criticism directed at fee auditor retention in chapter 11

cases, as well as the recent proposal of National Bankruptcy Review Commission to eliminate entirely the concept of fee auditing in title 11 cases, the Court finds the role of the fee auditor to be an indispensable one to the management of this unique chapter 11 case. While that does not suggest giving SMMJ a “blank check,” the Court cannot conclude that the Second Interim Application runs afoul of 11 U.S.C. §§ 330 or 331 nor the May Order.

The Court, therefore, will approve the Second Interim Application in its entirety, both as to fees and expenses, credit SMMJ with the provisional award of \$50,000 already authorized and direct the Trustee to compensate SMMJ as to the balance of fees and expenses forthwith.

IT IS SO ORDERED.

Dated at Utica, New York

this 24th day of November 1997

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge

cc: M.O. Sigal, Jr., Esq.
Harry Gutfleish, Esq.