

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

THE BENNETT FUNDING GROUP, INC.

Debtors

CASE NO. 96-61376

Chapter 11

Substantively Consolidated

APPEARANCES:

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

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

The Court considers herein the Third Interim Fee Application (“Third Application”) of Simpson, Thacher & Bartlett (“STB”) attorneys for Richard C. Breeden as trustee in the consolidated case (“Trustee”). The Third Application seeks payment of professional fees in the amount of \$2,402,922 and reimbursement of expenses in the amount of \$354,432.42 incurred during the period November 4, 1996 through February 28, 1997. This Third Application was submitted to Stuart, Maue, Mitchell and James, Ltd. (“Fee Auditor”) in accordance with the

Court's Amended Order dated December 2, 1996, regarding Fee Applications subject to review by the Fee Auditor. The report of the Fee Auditor ("Auditor's Report") was filed with the Court on July 7, 1997. The Third Application came on for a hearing before the Court on July 22, 1997, at which time the Court awarded STB a provisional award of \$800,000 in fees and \$200,000 in expenses and reserved on the balance of the Third Application. Opposition to the Third Application was interposed by the United States Trustee ("UST") and the Official Committee of Unsecured Creditors ("Committee").

JURISDICTIONAL STATEMENT

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

FACTS AND ARGUMENTS

Familiarity with the prior decisions of this Court which dealt with the first two fee applications of STB is presumed and they will be referenced herein to the extent necessary.¹

The Auditor's Report generally identifies entries in STB's time records offered in support of the Third Application as falling into five general categories which appear to violate Court

¹ The Court entered Memorandum-Decisions, Findings of Facts, Conclusions of Law and Order dated February 5, 1997 and August 13, 1997. STB moved to reconsider the latter Order and on February 9, 1998, the Court entered a Memorandum-Decision, Finding of Fact, Conclusion of Law and Order reconsidering its August 13, 1997 Order. Familiarity with this Memorandum-Decision is also presumed.

guidelines. In addition, the Auditor's Report isolates approximately ninety-three much more specific and limited categories or tasks which it calls to the Court's attention for review and analysis.

STB provided specific replies to the Auditor's Report in a Response filed July 17, 1997. In that Response STB indicates that it has voluntarily reduced the Third Application by the sum of \$4,594 which the Auditor's Report indicated was the result of duplicate billing errors. STB has also conceded that its fee should be reduced by \$340 due to its erroneous inclusion of travel time billed at the full hourly rate.

STB once again challenges the Auditor's Report insofar as it questions "Vaguely Described Tasks," "Multiple Attendance at Events" and "Administration and Clerical Tasks" making many of the same observations that it has made previously in criticizing the Auditor's Reports relating to its First and Second Fee Applications. Those criticisms need not be reiterated a third time in this decision.

With regard to the ninety-three more specific categories identified by the Fee Auditor which "The Court May Wish to Examine for Relevance Necessity and Reasonableness," STB focuses its reply on the Fee Auditor's highlighting of members of the firm who billed less than 20 hours during the current reporting period and those who recorded more than 12 hours in any one day during the same period. While the former observation by the Fee Auditor may suggest "padding" of time records, the Court does not reach that conclusion. Concerning the latter observation highlighting 12 hour plus days, the Court is personally familiar with the preparation that preceded the so-called "§ 362(d) trials" and does not find 12 hour plus days unusual during the current reporting period.

The Court does once again focus on STB’s time devoted to “Vaguely Described Tasks,” “Multiple Attendance at Events,” “Intra Office Conferences,” “Administrative and Clerical Tasks” and “Fee Applications”. Having written three prior decisions dealing with each of the foregoing categories, the Court will not reiterate the basis for its adjustments.

Vaguely Described Tasks

Subdivided into three categories; Conferences, Research and Review. Upon an analysis of STB’s time records as isolated by the Fee Auditor on its Exhibits C, D and E, the Court makes the following adjustments:

Fee Auditor’s Exhibit C - disallow \$	295.50
Fee Auditor’s Exhibit D - disallow \$	1,150.50
Fee Auditor’s Exhibit E - disallow \$	2,107.50
Total disallowance	\$3,553.00

Multiple Attendance at Events

As reflected on Fee Auditor’s Exhibit F - disallow \$15,073

Intra Office Conferences

As reflected on Fee Auditor’s Exhibit O - disallow \$33,450.92

Administrative and Clerical Tasks

As reflected on Fee Auditor’s Exhibit G-1 through Exhibit G-13, specifically Exhibits G-1, Filing/Organizing/Retrieving - disallowed \$28,350.08; G-2, Distribution of Documents/Materials; G-6, Assist in Service of Documents and G-12, Miscellaneous Clerical

Tasks, combined disallowance, \$25,320.06. This disallowance represents one-third of the total fees reflected on Fee Auditors Exhibits G-1, 2, 6 and 12.

Fee Applications

As reflected on Fee Auditor's Exhibits CC-1 through CC-8. In its February 9, 1998 Memorandum-Decision, Findings of Fact, Conclusions of Law and Order, the Court indicated that it would limit STB's fees in connection with the preparation and defense of fee applications to 3% of the total fees billed for the interim period for services related to the preparation and defense of fee applications. The Third Application seeks total fees of \$128,200.50 in connection with fee applications.² Thus, the Court disallows \$124,354.48.

Finally, the Court will disallow a fee of \$2,885 which is attributable to services rendered in connection with the Lady Kathleen which the Court has previously concluded was not an asset of the consolidated estate.

Expenses

The Fee Auditor has identified \$3,888 as an "apparent double billing" of expenses and STB has conceded that analysis is correct. The Fee Auditor has also identified \$12,348.54 in expenses for which STB initially provided no receipts. On July 17, 1997, STB provided the Court with additional receipts which appear to support all but \$694.97 of requested expense reimbursement.

STB has once again sought reimbursement for expense items described as "Word

² The Court has not included the fees reflected in Fee Auditors Exhibit CC-1 except to the extent of \$3,917.50 which reduced amount was reflected in letter from the Fee Auditor to STB dated July 17, 1997.

Processing,” “Overtime Transportation,” “Overtime Meals,” “Lunches,” “Valet” and “In-Room Movies”. These expenses total \$59,158.93. In addition, and in spite of the Court’s admonition in its Memorandum-Decision, Findings of Fact and Conclusions of Law and Order dated August 13, 1997 on STB’s Second Interim Fee Application, STB seeks \$16,573.06 for “Messenger/Courier Service.”

Notwithstanding the Affidavit of Christopher A. Conroy, the Court resists the temptation to provide STB with a “blank check” regarding expenses. The Court is unable to find any justifiable rationale to change its prior position. Thus, it will disallow \$59,158.93 in “overhead expenses.” With regard to “Messenger/Courier Service” expense, the Court acknowledging that preparation for the “§ 362(d) trials,” undoubtedly, increased reliance on “Messenger/Courier Service,” however, the Court continues to be of the opinion that these services are utilized on an indiscriminate basis and accordingly it will disallow \$4,000 of \$16,573.06 being sought.

In summary, the Court makes the following reductions to fees and expenses sought in the Third Application:

<u>Total Requested Fees</u>	\$2,402,922.00
<u>Disallowances:</u> ³	
Inadvertent Double Billing identified in Auditor’s Report	- 4,954.00
Charges for travel time identified in Auditor’s Report and undisputed by STB	- 340.00
Vague Documentation of Services	-3,553.00
Intra Office Conferences and Multiple Attendance at Events	-48,523.92

³ The Auditor’s Report indicates that it computed STB’s fees as reflected in the Third Application at \$2,403,461, however, given the fact that this is a de minimus discrepancy and the fact that the Court cannot award more than what is requested, the Court will utilize STB’s figure.

Filing, Organizing and Retrieving	
Distribution of Documents/Materials,	- 28,350.08
Assist in Service of Documents and	
Miscellaneous Clerical Tasks	- 25,320.06
Fee/Employment Application of STB	
(allowed at 3% of total)	-124,354.48
Provisional Fee Award granted on July 22, 1997	-800,000.00
<u>Net Total Fee Allowed</u>	\$1,367,526.46
<u>Total Requested Expenses</u>	\$ 354,432.42 ⁴
Apparent double billings	- 388.00
Unreceipted Travel Expenses	- 694.97
Office Overhead	- 59,158.93
Messenger/Courier Service	- 4,000.00
Provisional Expense Award granted on July 22, 1997	-200,000.00
<u>Net Total Expenses Allowed</u>	\$90,190.52

Based on the foregoing, it is

ORDERED that the fees and expenses requested by STB in its Third Application shall be disallowed as detailed above; and it is further

ORDERED that payment of the remaining balance of allowed fees and expenses, and any amount still due and owing on any prior award, shall not be made from encumbered assets of the consolidated estate.

⁴ The Auditor's Report computes Total Expenses at \$354,422.91. The Court will accept STB's total in light of the de minimus nature of the discrepancy.

Dated at Utica, New York

this 20th day of March 1998

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge