

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 the Third Interim Fee Application ("Fee Application") of Zolfo Cooper, LLC ("ZC") financial advisor to the Official Committee of Unsecured Creditors ("CC"). The Fee Application seeks payment of professional fees in the amount of \$103,645.50 and reimbursement of expenses in the sum of \$3,160.08 incurred during the period from November 1, 1996 to February 28, 1997. The Fee Application was submitted to Stuart, Maue, Mitchell & 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 (“Report”) was filed with the Court on June 18, 1997, and a hearing on the Fee Application was held on July 22, 1997 at which time the Court awarded ZC a provisional award of \$50,000. Prior to the hearing an Objection to the Fee Application was filed by the United States Trustee (“UST”). Following the July 22nd hearing the Fee Application was submitted for further review and a written decision.

JURISDICTIONAL STATEMENT

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

FACTS AND DISCUSSION

ZC has filed two prior interim fee applications with this Court and has to date been awarded \$152,792.50 in total fees and \$8,329.37 in total disbursements.

The Fee Auditor performed a review of ZC's Fee Application and submitted the aforementioned Report to assist the Court in its analysis of the Fee Application. The Fee Auditor identified various time and expense entries that appeared to violate Court guidelines or that were brought to the Court's attention for further review.

On July 21, 1997, ZC responded to the Report of the Fee Auditor and the objection of the UST (“Response”).

The UST adopted significant portions of the Report of the Fee Auditor, but emphasized specifically its opposition to ZC's utilization of multiple-participants at “intra-office conferences, telephone conferences, meetings and the like.” *See* Objection of UST dated July 9, 1997, at paragraph 5. Additionally, the UST objects to excessive time devoted to preparation of fee applications, which the Auditor calculated to be 52.80 hours in the instant Fee Application. The UST observes that such a time increment results in a fee of \$15,474, or 15% of the entire Fee Application, and is therefore excessive.

ZC replies to both the Fee Auditor and the UST in its Response filed July 21, 1997. With regard to the assertion that it has over utilized multiple-participants at various intra-office conferences, etc., ZC points out that utilizing two of its professionals, Leonard LoBiondo and Paul Dzera in tandem, actually minimizes its overall fee request, and ZC suggests that if it assigned Lo Biondo exclusively to this assignment its fee request would be \$2,500 higher. Conversely, one could speculate that if Dzera were ZC's sole representative on the assignment, the fee request would be correspondingly less. ZC does not, however, provide any plausible explanation for why both Lo Biondo, a Partner/Principal, and Dzera, a Project Manager, were required to devote almost an equal number of hours attending approximately a dozen of the same meetings or conferences. It would not appear to be an efficient use of resources to have both partner and subordinate attending conferences with third parties on so many occasions over a four month period. *See* Exhibit B attached to Auditor's Report.

The Court shall disallow \$3,200 in fees for multiple attendance of professionals. The Court notes that, absent acceptable explanation, attendance of multiple professionals at meetings and conferences with third parties will not be considered favorably in future fee applications.

See, e.g., Seigal v. Merrick, 619 F.2d 160, 164 n.9 (2d Cir. 1980) (“Ample authority supports reductions in the lodestar figure for overstaffing as well as other forms of duplicative work”).

Turning to the UST's criticism of the allegedly excessive time devoted to ZC fee applications, the Court again notes the Fee Auditor's calculation of some 52.80 hours representing \$15,474 in fees. ZC responds that the Report of the Fee Auditor skews the actual time devoted to preparation of the Fee Application by including in the generic category of “Fee Applications” such tasks as “compliance with Fee Auditor Order,” “Committee meetings/conferences re: other professional's fee applications,” “Response to U.S. Trustee's objections to 2nd fee application,” etc. *See* Response of ZC filed July 21, 1997 at page 4.

While it is true that the Fee Auditor perhaps has painted various discrete tasks with too broad a brush, that does not dissuade the Court from concluding that with the exception of the input provided to the CC regarding the fees of other professionals, none of the remaining 46.2 hours benefit anyone other than ZC. Thus, the Court will reduce the overall Fee Application by \$7,505, allowing only the 6.6 hours devoted to advising the CC on the fees of other professionals and the 22.2 hours devoted directly to the preparation of this Fee Application. *See In re The Bennett Funding Group, Inc.*, No. 96-61376, slip op. at 21-22 (Bankr. N.D.N.Y. August 13, 1997) (discussing compensability of time relating to preparation of fee application).

Finally, with regard to ZC's request for reimbursement of expenses, the Fee Auditor identifies for the Court's consideration what it designates as “computerized research” or “computerized legal research.” ZC, however, refers to the disbursement as “External Data Research Services.” Since the Court is not sufficiently advised as to the purpose of this disbursement in this Fee Application, it will withhold reimbursement pending a later explanation.

In summary, the Court approves ZC's Fee Application in the sum of \$92,940.50 in fees and \$2,210.63 in expenses. Crediting the Trustee in the cases with the \$50,000 provisional award, ZC shall recover an additional \$42,940.50 in fees and \$2,210.63 in expenses.

IT IS SO ORDERED.

Dated at Utica, New York

this 1st day of December 1997

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge