

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

RICHARD C. BREEDEN, Trustee of THE
BENNETT FUNDING GROUP, INC., et al.

Plaintiff

vs.

ADV. PRO. NO. 98-70477

ARTHUR ANDERSON & CO.

Defendant

APPEARANCES:

ROBERT J. ROCK, PRINCIPAL
Jay Alix & Associates
4000 Town Center, Suite 500
Southfield, MI 48075

GUY A. VAN BAALEN, ESQ.
Assistant U.S. Trustee
10 Broad Street
Utica, NY 13501

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

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

The Court considers the Second Interim Fee Application (“Fee Application”) of Jay Alix & Associates (the “Firm”), expert consultants retained by Richard C. Breeden, chapter 11 trustee (the “Trustee”) of The Bennett Funding Group, Inc., et al., in connection with an adversary

proceeding commenced by the Trustee against Arthur Andersen & Co. on March 27, 1998. The Fee Application, which was filed on May 29, 2001, seeks payment of professional fees in the sum of \$186,615.50 and reimbursement of expenses in the sum of \$16,526.01 for the period from February 1, 2000 through April 30, 2001. The Fee Application was reviewed by Stuart, Maue, Mitchell & James, Ltd. (“Fee Auditor”), and a report filed with the Court on June 25, 2001. The Firm filed a response (“Response”) to the report on June 29, 2001. Opposition to the Fee Application was filed by the U.S. Trustee (“UST”) on July 5, 2001.

A hearing on the Fee Application was held on July 12, 2001, in Utica, New York. At the hearing, the Court granted a provisional award of \$175,000 for services rendered and \$15,000 for reimbursement of expenses, for a total award of \$190,000. On July 26, 2001, the Court signed an Order authorizing the Trustee to pay the provisional award of fees and expenses from the unencumbered funds of the consolidated estate (“Estate”).

JURISDICTIONAL STATEMENT

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

FACTS AND DISCUSSION

By Order of this Court, dated September 4, 1998, the non-core claims in the adversary

proceeding commenced by the Trustee against Arthur Anderson & Co. were severed and the reference withdrawn to the U.S. District Court for the Northern District of New York (“District Court”). On September 25, 1998, the District Court transferred the claims to the U.S. District Court for the Southern District of New York. Approximately one year later, the Trustee filed an Ex Parte Notice of Application, dated September 14, 1999, seeking to employ the Firm as trial expert and consultant regarding the liability and accountant malpractice of Arthur Anderson & Company. The Court signed an Order approving the Firm’s retention on September 23, 1999, retroactive to September 14, 1999.

Multiple Professionals in Attendance at a Meeting or Event

The Firm billed the Estate \$21,448.25 in fees for the attendance of more than one professional at a hearing or event. The UST opposed said fees, arguing that no explanation had been provided for the necessity of multiple professionals at any single hearing or event. In its Response, the Firm explained that

because of the accelerated time table that was put on this case, JA&A was required to break up certain tasks and assign the different elements to different personnel Allowing only one professional at certain events or meetings would be inefficient, and would require additional meetings with others to reiterate discussions or decisions from previous meetings.

Response at 4-5.

The Court has reviewed the entries for attendance of multiple professionals at any one meeting or conference. Two such entries consisted of a conference calls between Robert Rock (“Rock”), a principal in the Firm, and Julie Severso (“Severso”), a senior associate. Two

meetings were held in September 2000 and October 2000 in New York City with Rock and Severso, as well as the Trustee and special counsel to the Trustee, Arthur Steinberg (“Steinberg”), in attendance. Severso and Gordon Schreur (“Schreur”), another senior associate of the Firm, also met with Bennett personnel in Syracuse, New York, and reviewed documents at the Bennett offices. The Court concludes that the fees of \$21,893.25, which included 76.4 of billable hours, including travel time billed at one-half the normal fee, are reasonable.

“Blocked” Billing Entries

The Fee Auditor identified 69.5 hours of blocked billing entries. The Firm has provided the Court with a breakdown of most of those entries. *See* Response at Exhibit C. With this clarification, the Court finds that the fees of \$21,484 are reasonable.

Administrative/Clerical Tasks

The UST objected to 31.95 hours identified by the Fee Auditor as incurred in connection with tasks that might be considered administrative or clerical, including organizing documents, indexing work papers and reviewing files. These tasks were performed by “Consultants” at a billing rate of \$130-\$140 per hour in connection with depositions to be conducted of Arthur Anderson personnel. Of the total fees originally billed totaling \$5,293.50, the Firm has agreed to reduce its fees by \$2,255. *See id.* at Exhibit A. The reduction of these fees by \$2,255 represents approximately 16 hours of time based on a rate of \$140 per hour, or almost one-half of that originally billed. Based on these reductions, the Court will approve fees of \$3,038.50 in this category.

Intra-Office Conferences

The Fee Auditor identified 29.95 hours of intra-office conferences for total fees of \$12,571.50. The Firm points out in its Response to the Fee Auditor's report that all of the work performed was under Rock's supervision. "This requires meetings to exchange information and feedback, and to provide overall supervision. In addition, it is necessary for staff members who performed different tasks to communicate the results of their work and its impact on the case and ultimately the opinions reached by Mr. Rock in this matter." Response at 9.

The Court, in the past, has indicated that routine billing by two or more attorneys attending intra-office conferences will, in most instances, not be compensated. The Court has reviewed the conferences identified by the Fee Auditor as ones that "the Court may wish to examine for relevance, necessity and reasonableness." Of the 39.95 hours, 14.80 were attributable to Rock and 19.65 to Severso and included both meetings and telephone conferences. Only one of the conferences involved more than two members of the Firm. That teleconference occurred on November 21, 2000, and involved Rock, Schreur and Severso, as well as Steinberg, and lasted for 2.3 hours. The Court concludes that the nature of the Firm's retention, which required a coordinated effort over a relatively short period of time for it to review countless documents and reports and to assist with the preparation of a number of depositions, warrants compensation in the amount of \$12,571.50.

Expenses

The Fee Auditor raised concerns regarding the charges for Messenger/Courier Service in the amount of \$296.09 and for Limousine Service in the amount of \$64.26. The Firm voluntarily

reduced its request by the amount of \$360.35. *See id.* at Exhibit A.

In summary, the Court will approve the Firm's Fee Application in the sum of \$184,360.50 in fees, a reduction of \$2,255, consistent with the discussion above, and \$16,165.66 in expenses, a reduction of \$360.35. Crediting the Firm with a provisional award of \$175,000 in fees and \$15,000 in expenses, the Firm shall recover an additional \$10,526.16, payable from unencumbered funds of the Estate.

IT IS SO ORDERED.

Dated at Utica, New York

this 4th day of June 2004

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge