

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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Of Counsel

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

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

The Court considers herein the Second and Third Interim Fee Applications (“Second Application”) (“Third Application”) of Baker & Botts (“B&B”), special counsel to Richard C. Breeden, as Trustee in the consolidated case (“Trustee”). The Second Application seeks payment of professional fees in the amount of \$58,098.50 and reimbursement of expenses in the amount of \$10,071.50 incurred during the period September 16, 1996 through January 15, 1997. The Third Application seeks payment of professional fees in the amount of \$82,780 and

reimbursement of expenses in the amount of \$15,602.35 incurred during the period January 16, 1997 through December 31, 1997. A hearing was held before the Court with regard to the Second and Third Applications on May 21, 1998. The Court continued that hearing on August 27, 1998 and approved a provisional award for the Second Application in the amount of \$25,000 in fees and \$5,000 in expenses and a provisional award for the Third Application in the amount of \$50,000 in fees and \$10,000 in expenses. Opposition to the Second and Third Applications was interposed by the United States Trustee (“UST”) and the Official Committee of Unsecured Creditors (“Committee”).¹

JURISDICTIONAL STATEMENT

The Court has core jurisdiction over this contested matter pursuant to 28 U.S.C. §§ 1134(b), and 157 (a), (b)(1), and (b)(2)(A).

FACTS ARGUMENTS AND CONCLUSIONS

Because the Second and Third Applications are each requesting fees amounting to less than \$100,000, these applications are not subject to review by the Court appointed legal auditing

¹ On March 20, 1997, April 20, 1998 and August 24, 1998, respectively, the UST filed two objections and a supplemental statement to the Second Application and the Third Application. In addition, on March 20, 1997, May 5, 1998 and August 20, 1998, respectively, the Committee filed two objections and a supplemental statement to the Second Application and the Third Application. In response to these objections, B&B filed their response to the supplemental statement of the Committee on August 26, 1998. (“B&B Response”)

firm. *See* Amended Order Appointing Fee Auditor and Directing Related Procedures and Standards Concerning the Interim Payment of Compensation and Consideration of Fee Applications filed by the Court on December 2, 1996 (“Court Guidelines”) at ¶ 16. However, in reviewing the Second and Third Applications, the Court has applied the same compensation guidelines as it would use in reviewing a similar application requesting fees in excess of \$100,000. *See id.*

The Court has reviewed the Second and Third Applications, the objections of the UST and the Committee, and the response of B&B to the Supplemental Statement of the Committee. In their objections and supplemental statements to the Second and Third Applications, both the UST and the Committee focus their attention on the following: (1) work performed by B&B for non-debtor entities, (2) the amount of fees requested for preparing and arguing in defense of B&B’s First Application for Interim Expenses (“First Application”) and the Second Application, (3) various tasks performed which the Committee and the UST claim were merely clerical tasks, and (4) vaguely described tasks. The Court will discuss each of these objections individually.

Work Performed By B&B for Non-Debtor Entities

In their objections to the Second Application, the UST and the Committee both contend that B&B is seeking compensation for services performed for one or more “non-debtor entities.”² The Court has reviewed the Second Application and determined that approximately 73.7 hours were spent performing services relating to Shamrock during the period covered by that

² The “non-debtor entity” is Shamrock Holdings Group, Inc. (“Shamrock”). At the time the instant applications were filed, Shamrock had not yet filed its Chapter 11 petition.

Application. For this work, B&B is requesting fees totaling \$16,903.50. This is approximately thirty percent of the total fees requested in the Second Application.³ Because B&B has now requested the balance of the Second, Third and all future fee applications be paid from the Shamrock estate, the Court will make no disallowance of these fees at this time, but will reserve to itself, the right to reconsider the allocations of these fees, if any, in connection with the Shamrock estate at a later time.

Fee Application

The Second Application seeks total fees of \$22,755.50 in connection with the preparation and defense of B&B's First Application. The Third Application seeks total fees of \$9,375.00 in connection with the preparation of its Second Application. Both the UST and the Committee argue that these fees are excessive. The figure in connection with preparation and defense of the First Application encompasses approximately forty percent of all of the fees requested in the Second Application. The Court finds these amounts to be both excessive and impermissible and will disallow \$20,500.00 from those fees in connection with the preparation and defense of the First Application and will disallow \$8,000.00 of those fees requested in connection with preparation of the Second Application for the same reasons.

³ On April 13, 2000, B&B, by Bobbie Shell, Esq., appeared before this Court regarding B&B's Final Fee Application in the Shamrock case. During that appearance, Ms. Shell stated that any fees awarded to B&B from applications in either estate, in addition to those previous provisional awards, would be paid from the Shamrock estate. As a result, the concerns voiced by the Committee and the UST regarding allocation of fees paid to B&B has become a moot issue. However, the Court renders no decision concerning reimbursement to the instant estates by the Shamrock estate for previous fees paid in the form of provisional awards to B&B.

Clerical Tasks

In its review of B&B's time records supporting the Second Application and the objections of the UST to the Third Application, the Court has identified various entries which were performed by paralegals which appeared to require no formal training in the law. The total fees requested in connection with these tasks were \$444.50 in the Second Application and \$1,401 in the Third Application.⁴ As these identified tasks need not have been undertaken by paralegals, the fees should have been incorporated into those expenses associated with overhead. Accordingly, those fees associated with clerical tasks in the Second Application will be reduced by \$444.50. In addition, those fees associated with clerical tasks in the Third Application will be reduced by \$1,401. However, the Court makes this adjustment pending a further explanation by B&B concerning these hours.

Vaguely Described Tasks

In addition to those time entries which required no legal expertise, upon review, the Court discovered numerous time entries which contained vague narratives. The Court determined that a total of 10.3 hours or fees totaling \$553.50 in the Second Application and 31.1 hours for fees totaling \$1,562 in the Third Application were expended in connection with vaguely described tasks. The Court Guidelines specifically state the following: "At a minimum, the task description should identify each service separately and in sufficient manner to permit the Court to ascertain the benefit derived from such service, and the time expended for each item of service." *See Court*

⁴ Those time entries found by the Court in the Second Application to be clerical in nature are listed herewith in Exhibit A. Those time entries found by the Court in the Third Application to be clerical in nature are listed herewith in Exhibit B.

Guidelines at ¶ 9(a). Those entries identified by the UST in their objection to the Third Application contain narratives that were worded in such a vague manner that it is not possible for the Court to ascertain what, if any, benefit these tasks provided to the estate.⁵ Accordingly, those vaguely described tasks will be reduced by \$553.50 in the Second Application and \$1,562 in the Third Application.

Expenses

In its objections to the Second Application, the UST and the Committee object to one of B&B's attorneys seeking reimbursement for first class airplane seating. In examining B&B's receipts, it appears that on September 23, 1996, one of B&B's attorneys flew first class from Dallas to Detroit and then flew from Detroit to Syracuse and from Syracuse back to Dallas seated in coach. The total cost of her ticket was \$1,300. Similarly, on September 23, 1996, another of B&B's attorneys flew coach from Dallas to Syracuse. The total cost of her ticket was \$1,300. Because there was no difference between the cost of these two tickets, the Court will not reduce B&B's expenses for flying first class. In addition, the Court will not reduce B&B's requested expenses for the Third Application.

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

Second Application:

⁵ Those time entries in the Second Application found by the Court to contain vaguely described tasks are detailed in Exhibit C. Those time entries in the Third Application found by the Court to contain vaguely described tasks are detailed in Exhibit D.

<u>Total Requested Fees</u>	_____	\$ 58,098.50
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Disallowances:

Fee Application		\$ 20,500.00
Clerical Tasks		444.50
Vaguely Described Tasks		553.50
Provisional Fee Award granted on August 27, 1998		25,000.00

<u>Net Total Fee Allowed</u>		\$ 11,600.50
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<u>Total Requested Expenses</u>	_____	\$ 10,071.50
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Provisional Expense Award pursuant to Order dated August 27, 1998		5,000.00
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<u>Net Total Expenses Allowed</u>	_____	\$ 5,071.50
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Third Application:

<u>Total Requested Fees</u>	_____	\$ 82,780.00
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Disallowances:

Fee Application		\$ 8,000.00
Clerical Tasks		1,401.00
Vaguely Described Tasks		1,562.00
Provisional Fee Award granted on August 27, 1998		50,000.00

<u>Net Total Fee Allowed</u>		\$ 21,817.00
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<u>Total Requested Expenses</u>	_____	\$ 15,602.35
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Provisional Expense Award pursuant to Order dated August 27, 1998		10,000.00
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<u>Net Total Expenses Allowed</u>	_____	\$ 5,602.35
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Based on the foregoing, it is

ORDERED that the fees and expenses requested by B&B for its Second and Third Applications shall be allowed and disallowed as detailed above; and shall be paid from the assets of the Shamrock estate, and it is further

ORDERED that payment of the remaining balance of allowed fees and expenses, totalling \$44,091.35, and any amount still due and owing on any prior award, shall not be made from encumbered assets of the Shamrock estate.

Dated at Utica, New York

this 5th day of June 2000

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge