

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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IN RE:

THE BENNETT FUNDING GROUP, INC.  
  
Debtors

CASE NO. 96-61376  
Chapter 11  
Substantively Consolidated

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

Plaintiff

vs.

ADV. PRO. NO. 98-70339

THE AEGIS CONSUMER FUNDING GROUP,  
INC., AEGIS SECURITIZED ASSETS, INC.,  
AEGIS CONSUMER FINANCE, INC., AEGIS  
FINANCIAL ADVISORS, AEGIS CAPITAL  
MARKETS, AEGIS AUTO FINANCE, INC.,  
AEGIS ACCEPTANCE CORP., JOHN DOES  
1-100, WHITEHALL FINANCIAL SERVICES  
GROUP, INC., PCG MANAGEMENT, INC.,  
ATLAS HOLDINGS GROUP, INC., ROBERT  
I. WEINGARTEN, GERRY R. GINSBERG,  
ILENE S. WEINGARTEN, PHILIP A. FITZPATRICK,  
RITA C. VILLA, GARY WINNICK, ABBOTT BROWN  
AS TRUSTEE OF THE BROWN LIVING TRUST,  
PALOMBA WEINGARTEN AND JOHN DOES  
101-200

Defendants

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APPEARANCES:

HISCOCK & BARCLAY  
Attorneys for § 1104 Trustee  
Financial Plaza  
Post Office Box 4878  
Syracuse, New York 13221-4878

ROBERT LIDDELL, ESQ.  
Of Counsel to Quinn Emanuel  
Urquhart Oliver and Hedges, LLP

GUY A. VAN BAALEN, ESQ.  
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10 Broad Street  
Utica, New York 13501

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 Quinn Emanuel Urquhart Oliver and Hedges, LLP (the “Firm”), special counsel 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 The Aegis Consumer Funding Group, Inc., et al. on March 26, 1998. The Fee Application, which was filed on February 4, 2003, and amended on February 21, 2003, seeks payment of professional fees in the sum of \$262,950.25 and reimbursement of expenses in the sum of \$55,241.26 for the period from June 1, 2002 through December 31, 2002. The Fee Application was reviewed by Stuart, Maue, Mitchell & James, Ltd. (“Fee Auditor”), and a report filed with the Court on March 20, 2003 (“Report”). Opposition to the Fee Application was filed by the U.S. Trustee (“UST”) on March 21, 2003. The Firm filed a response (“Response”) to the Fee Auditor’s Report, as well as to the UST’s objections on March 26, 2003.

A hearing on the Fee Application was held on March 27, 2003, in Binghamton, New York. At the hearing, the Court granted a provisional award of \$150,000 for services rendered and \$45,000 for reimbursement of expenses, for a total award of \$195,000. On April 4, 2003, 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 the adversary proceeding and this contested matter pursuant to 28 U.S.C. §§ 1334, 157(a), (b)(1) and (b)(2)(A) and (O).

### **FACTS AND DISCUSSION**

As noted above, the Trustee commenced an adversary proceeding on March 26, 1998. In his complaint, the Trustee alleged that certain Debtors had transferred their shares in Aegis Consumer Funding Group, Inc. in 1996 for approximately \$1.27 per share, which the Trustee asserted represented a fraction of their fair market value, to the defendants. On September 9, 1998, the defendants filed a motion with the U.S. District Court for the Northern District of New York (“District Court I”) seeking to withdraw the reference of the adversary proceeding. On March 8, 2000, District Court I granted the defendants’ motion to withdraw the reference. On February 2, 2001, District Court I ordered the action transferred to the U.S. District Court for the Central District of California (“District Court II”). District Court II ordered that local counsel be retained. On October 25, 2001, the Trustee made application to this Court for an order approving the Firm’s retention as special counsel. On December 7, 2001, the Court signed an Order approving the Firm’s retention, retroactive to June 16, 2001. On February 6, 2004, District Court II dismissed the litigation with prejudice upon stipulation of the parties. This Court approved a settlement agreement providing for a mutual release of claims by the Estate and the defendants

in the adversary proceeding on February 25, 2004.

Payment pursuant to Amended Order of January 10, 2003

The Court signed an Order on January 10, 2003, which established certain procedures with respect to compensation of professionals after June 28, 2002, the effective date of confirmation. The UST suggested that under the terms of that Order the Firm had already been paid 70% of the fees requested and 90% of the expenses requested. The Firm responded by indicating that all of its fees and expenses for June 2002 to November 2002 remain unpaid. *See* Response at ¶ K. It acknowledges that it did submit a request for 70% of its fees and 90% of its expenses in connection with its fees and expenses for the month of December 2002, which was separately filed with the Court on February 28, 2003.

Compliance with Order of June 17, 2002, Confirming the Plan

On August 6 2002, the Firm was sent via U.S. mail

the Trustee's Notice Regarding (A) Entry of Order confirming the Chapter 11 Plan of Richard C. Breeden, as Trustee, for the substantively consolidated Bennett Funding Group debtors, (b) Occurrence of effective date, (C) Plan injunction and (D) Various bar dates . . .

Certificate of Service of Linda L. Calabria, filed August 8, 2002. The Notice was mailed to the Firm at 865 S. Figueroa Street - 10<sup>th</sup> Floor, Los Angeles, CA 90017, Attention: Aaron Craig, Esq.<sup>1</sup>

The Notice contains a provision addressing "Final Fee and Substantial Contribution Bar

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<sup>1</sup> According to the Firm's Response, Mr. Craig left it in November 2002. *See* Response at I.

Date” which provides, *inter alia*, that

ON OR BEFORE NINETY (90) DAYS AFTER THE EFFECTIVE DATE, THE TRUSTEE, ALL PROFESSIONALS EMPLOYED IN THE CASE PURSUANT TO SECTION 327 OF THE BANKRUPTCY CODE . . . SHALL FILE THEIR FINAL APPLICATION FOR PAYMENT FOR SERVICES OR CONTRIBUTIONS RENDERED ON OR BEFORE THE EFFECTIVE DATE OR BE FOREVER BARRED FROM SEEKING ADMINISTRATIVE CLAIMS IN THIS CASE FOR SERVICES OR CONTRIBUTIONS RENDERED ON OR BEFORE THE EFFECTIVE DATE. . . .

Notice at ¶ 4(A); *see also* ¶ 6.4 of the Confirmed Chapter 11 Plan.

In accordance with the foregoing Notice, the UST asserts that \$49,819 billed by the Firm for pre-confirmation time is not compensable. The Firm takes the position that its failure to comply with the bar date was due to “inadvertent error or mistake.” Response at ¶ B. It asks that the Court “forgive its error” and grant reimbursement for the fees requested for services rendered prior to June 28, 2002.

The Firm filed its original application for compensation for the period beginning June 2002 on November 29, 2002, which it later withdrew on or about January 29, 2003. The Firm does not deny that it received the Notice, which provided that it would be “forever barred” from seeking payment for its pre-confirmation services if it failed to seek compensation within 90 days of the effective date of the Plan. The fees, which are the subject of the UST’s objection, were incurred during the four weeks prior to the effective date of confirmation. The Court is aware that the Firm continued to provide additional services after June 28, 2002, and that those services ultimately resulted in a settlement of the adversary proceeding in February 2004. Therefore, under those circumstances, the Court concludes that it will not disallow the entire amount of fees

for the pre- June 28, 2002 period based on the Firm's failure to comply with the terms of the Plan. However, it will reduce the amount of fees allowed for the month of June 2002 from \$49,819 to \$24,910, a reduction of 50%, due to that non-compliance.

#### Administrative/Clerical Tasks

The UST objects to the billing of 430.30 hours or \$58,648 for administrative and clerical tasks identified by the Fee Auditor, including creating and organizing files, attempting to locate witnesses and updating files and document logs. It is the Firm's position that the majority of these tasks (425.2 hours) were performed by two paralegals, and that they required "the exercise of judgment and discretion, and, therefore, their work cannot be characterized as clerical in nature." Response at ¶ F.

The Court has reviewed the tasks identified by the Fee Auditor in Exhibit H of its Report. Three of the entries, which comprise fees totaling \$382.50, were incurred during the month of June 2002 and included faxing documents to a witness and sending copies of subpoenas recently served to a Brian Kelly, as well as culling the complaint and documents. Consistent with the Court's prior ruling, these have already been disallowed to the extent of 50% and need not be considered.

The UST refers the Court to its prior Memorandum-Decision in this case, dated February 5, 1997, in which the Court disallowed 15% of the total fees requested for administrative or clerical tasks. *See In re The Bennett Funding Group, Inc.*, 213 B.R. 234 (Bankr. N.D.N.Y. 1997). In that decision, the Court noted that it was "keenly aware of the necessity for paralegals with specialized skills in today's legal arena and does not seek to substitute its own judgment to

broadly reclassify certain types of activities performed by them as clerical or administrative services.” *Id.* at 248. The Court was particularly concerned with entries such as “‘prepared papers for filing,’ ‘copying documents for distribution,’ ‘file same with court,’ and ‘checked faxes and delivered them to appropriate persons,’ all with significant fees attached to them.” *Id.*

In this case, a majority of the entries, including the blocked billing entries, reference organizing and preparing, as well as updating witness files and reviewing and revising document indices.<sup>2</sup> Based on a review of the entries in this adversary proceeding, the Court concludes that the services were appropriately provided by the Firm’s paralegals and, accordingly, it finds no basis to disallow any of the \$58,648 in the category of administrative and clerical services, other than to the extent mentioned above with respect to the services provided during June 2002.

#### Time Related to Fee Application

The Firm billed the Estate for 47.5 hours in connection with the preparation of the Fee Application for total fees of \$11,620.50. The Firm has agreed to write-off one-half of its fees in the amount of \$5,810.25. Response at ¶ L.

#### Intraoffice Conferences

The Fee Auditor noted 46.40 hours in attendance at intraoffice conference for total fees of \$15,133. *See* Exhibit M of the Report, including 1.20 hours representing multiple attendance

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<sup>2</sup> There are several blocked billing entries for which the Firm indicated it would provide revisions under separate cover. Response at ¶ H. A review of the docket in the adversary proceeding indicates no such subsequent filing, however.

at the intraoffice conferences at fees of \$234. *Id.* The Fee Auditor points out that “[t]here is only one instance where more than one timekeeper billed for the same conference.” Report at 14. The Court also notes that of the 182 entries for intraoffice conferences, 28 occurred during the pre-confirmation period in June 2002. Thus, the Court has already reduced the allowance of fees by 50% for that four week time period and finds no reason to make any further adjustments. In addition, the Firm has agreed to reduce its fees by the amount of \$54 for the multiple attendance at the conferences of a “lower-billing professional.” Response at ¶ J.

#### Travel Time

The Firm has agreed to reduce its fee request by \$668.75 in connection with 3.5 hours of local travel to the settlement conference, which apparently was billed at the attendees’ full billing rate.

#### Expenses

The UST has identified \$33,126.82 in expenses which it asserts should be denied on the basis that they “appear to violate the guidelines set forth in the Amended Fee Auditor Order.” The largest category of expense is for computer-assisted legal research in the amount of \$21,980.38. In its Report, the Fee Auditor notes that it could not “determine whether the firm was being billed at a flat fee per month or whether they were receiving a usage discount . . . .” Report at 19. The Amended Fee Auditor Order also requires “sufficient detail for the Court to determine the substantive nature of the research . . . .” The Firm responded by indicating that its description lacked specificity so as to protect its work product; “a more detailed description



would have prejudiced the estate in the ongoing adversarial proceeding.” Response at ¶ E.

The Court finds this to be a reasonable explanation although it would have preferred some additional details. However, the Court will allow the expense, except for one half of the charges of \$8,335.43, which were incurred in June 2002, or \$4,167.72, based on the Court’s prior ruling. *See Report at Exhibit T.*<sup>3</sup>

There are also charges for process service and investigative fees, totaling \$1,611.75, which were incurred during the pre-confirmation period in June 2002, which the Court will disallow to the extent of 50% or \$805.87. *See Report at Exhibit Q.*

The Firm has agreed to the following reduction in expenses:

Messenger services	\$ 37.50
Marked up telephone charges	68.39
Local calls	7.10
Facsimile charges	<u>259.10</u>
	\$372.09

The Court has reviewed the voluntary reductions and deems them appropriate.

There also charges for travel of \$498.07 for which the Firm was unable to locate receipts. The Firm indicates that the expenses for taxi, hotel and parking were incurred in connection with a deposition in New York City on November 13, 2002. While the Court acknowledges that the amount is fairly minimal, nevertheless, as with other requests for expense reimbursement, the Court will disallow the \$498.07, subject to allowance in the future in the event that the receipts are located and provided to the Court.

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

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<sup>3</sup> The billing date for the computer-assisted research is June 30, 2002. The Court will take judicial notice that June 30, 2002 was a Sunday and that any research billed for June 2002 occurred at the latest on the effective date of June 28, 2002.

in the Firm's Third Interim Fee Application:

Total Requested Fees	\$262,950.25
<u>Disallowances</u>	
Noncompliance with Confirmation Order	\$ 24,909.00
Fee Application (voluntary reduction)	5,810.25
Multiple Attendance at Events (voluntary reduction)	54.00
Non-Working Travel (voluntary reduction)	668.75
Provisional Fee Award granted April 4, 2003	<u>150,000.00</u>
<u>Net Total Fees Allowed</u>	\$ 81,508.25
Total Requested Expenses	\$ 55,241.26
<u>Disallowances</u>	
Computer-assisted Legal Research	\$ 4,167.72
Process Service and Investigative Fees	805.87
Consensual Expense Reductions	372.09
Non-receipted Travel Expenses	498.07
Provisional Expense Award granted April 4, 2003	<u>45,000.00</u>
<u>Net Total Expenses Allowed</u>	\$ 4,397.51

Accordingly, the Firm shall recover an additional \$85,905.76, payable from the unencumbered funds of the Estate, subject to any reduction for payments made by the Trustee pursuant to the Court's Order of January 10, 2003, in regard to the Firm's separate fee

application, filed on February 28, 2003, which covered just the month of December 2002.

IT IS SO ORDERED.

Dated at Utica, New York

this 10th day of June 2004

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STEPHEN D. GERLING  
Chief U.S. Bankruptcy Judge