

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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Attorneys for Official Committee of Unsecured

Creditors

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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 Ninth Interim Fee Application ("Ninth Application") of Zolfo Cooper LLC ("ZC"), financial adviser to the Official Committee of Unsecured Creditors ("Committee"). The Ninth Application, which was filed on March 1, 2000, seeks payment of \$161,233 in professional fees, \$1,612.50 for paraprofessional/support fees and \$4,048.56 in reimbursement of expenses and covers the period June 1, 1999 through December 31, 1999. The Ninth Application was submitted to Stuart, Maue, Mitchell & James, Ltd. ("Fee Auditor") in accordance with the Court's Amended Order dated December 2, 1996. The report of the Fee Auditor ("Auditor's Report") was filed with the Court on March 16, 2000, and a hearing on the

Fee Application was held on April 13, 2000, at which time the Court awarded ZC a provisional award of \$100,000 in fees and \$3,000 in expense reimbursement. Objection to the Ninth Application was interposed by the United States Trustee (“UST”).

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 eight prior fee applications with this Court to date. While the Auditor’s Report raises certain issues, it is the objection of the UST that focuses the Court’s attention on the services performed by ZC during the current application period. The UST asserts that ZC consumed some 322.90 hours or \$109,072 in fees for services related to Equivest.¹ The UST acknowledges that some portion of those services rendered by ZC in the instant application are within the scope of its retention by the Committee. However, the UST suggests that ZC has “exceeded the ‘spirit’ of the May 7, 1998 Order during the Eighth (*sic*) application period.” *See* United States Trustee Objection to the Ninth Interim Fee Application of Zolfo Cooper filed April 6, 2000 at ¶ 5.

¹ Equivest is a non-debtor in which the consolidated estate owns a majority of the shares of stock which shares are the subject of an intended liquidation by the Trustee. The Trustee presently functions as Chief Executive Officer of Equivest.

Initially ZC responds to the UST and asserts that all services included in the instant application were performed at the request of the Committee or its counsel “on behalf of the Committee.” *See* Response of Zolfo Cooper, LLC to United States Trustee’s Objection and to Fee Auditor Report Concerning Ninth Interim Fee Application filed April 12, 2000 (“Ninth Response”) at 5. Specifically, ZC states that the Committee has requested that it actively monitor Equivest’s progress in the initial public offering of Equivest shares and its efforts to maximize the recoveries from that IPO. *See id.* During at least the latter portion of the time frame covered by the instant Ninth Application, the Trustee’s efforts to accomplish a public offering of Equivest shares had been essentially abandoned. Nevertheless, ZC continued to devote significant amounts of time to the task as reflected in Exhibits J-1, 2, 4 and 5 to the Auditor’s Report.

Notwithstanding the foregoing and the Court’s authority pursuant to 11 U.S.C. § 328(a), the Court finds it inappropriate to disallow compensation for services which the Court believes were rendered in reasonable reliance upon the orders of this Court, specifically the Order dated May 7, 1998, as well as directions from the Committee and the Trustee. Thus, the Court will not disallow any portion of the hours devoted to advice regarding the initial public offering of Equivest stock through the end of 1999.

Turning to other concerns, the Court focuses on that portion of the Auditor’s Report that identifies 54.4 hours or \$20,799.50 for multiple professionals at the same meeting and/or conference. *See* Auditor’s Report Exhibit A. The UST restates its objection that the “use of its personnel in these circumstances is excessive and should not be borne by the estate.” *See* UST Objection to Ninth Interim Fee Application of Zolfo Cooper, LLC filed April 6, 2000 at ¶ 6. ZC responds to the concerns of the UST stating that it has “never charged fees to the Estate for more

than one professional at a Court hearing, or more than two professionals at a meeting/conference.” *See* Ninth Response at 5. The Court notes that in the past it has permitted the attendance of at least two ZC professionals at meetings and conferences following an acceptable explanation. *See* Memorandum-Decision and Order of the Court dated August 20, 1998 (ZC’s Fourth Interim Application). A review of the applicable exhibits confirms that no more than two ZC professionals attended those meetings cited in the Fee Auditor’s exhibits. As a result, the Court will make no adjustment to ZC’s fees with regard to multiple professional attendance at this time. However, the Court reserves unto itself the right to adjust those fees associated with Multiple Professional attendance at meetings and conferences in the future should the Court determine it is warranted.

Turning, finally, to services rendered by ZC which benefit only ZC. The Auditor’s Report identifies one category which relates to these self serving activities; Zolfo Cooper Fee Application (Exhibit K-1). That exhibit totals \$10,228 and will be reduced, in keeping with the Court’s prior policy regarding similar services, to \$1,000.

With regard to the reimbursement of expenses, the Auditor’s Report identified a total of \$104 in unreceipted travel and meal expenses. In the Ninth Response, ZC provides a copy of a receipt which appears to satisfy this criticism.

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

<u>Total Requested Professional and Paraprofessional/Support² Fees:</u>	\$162,845.50
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² ZC seeks compensation for so-called “paraprofessional and support fees;” it is not clear from the Ninth Application the exact nature of these services nor the qualifications of the

Disallowances:

Fee Application	9,228.00
Provisional Award granted on April 19, 2000	100,000.00
Paraprofessional/Support Fees	1,612.50

Net Total Fee Allowed \$ 52,005.00

Total Requested Expenses: \$ 4,048.56

Provisional Award granted on April 19, 2000 3,000.00

Net Total Expenses Allowed \$ 1,048.56

Based on the foregoing, it is

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

ORDERED that payment of the remaining balance of allowed fees and expenses totaling \$53,053.56 shall not be made from encumbered assets of the consolidated Estates.

Dated at Utica, New York

this 4th day of January 2001

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge

individuals performing them. Thus, absent a further explanation, they will be disallowed.