

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 15-81783-CIV-COHN/SELTZER

DAVID M. LEVINE, not individually,
but solely in his capacity as Receiver for
ECAREER HOLDINGS, INC. and
ECAREER, INC.,

Plaintiff,

v.

JOSEPH AZZATA;
CARLA AZZATA; SETERUS, INC.;
SPECIALIZED LOAN SERVICING LLC;
and INTERNAL REVENUE SERVICE,

Defendants.

**RECEIVER'S VERIFIED MOTION FOR ATTORNEYS' FEES AND COSTS
AND INCORPORATED MEMORANDUM OF LAW**

Plaintiff, David M. Levine, not individually, but solely in his capacity as the court-appointed receiver (the "Receiver") for eCareer Holdings, Inc. and eCareer, Inc. (collectively, "eCareer"), pursuant to the Court's Order entered on November 30, 2016 [D.E. 74], hereby moves for an award of his reasonable attorneys' fees and costs against Defendants, Carla Azzata ("CA") and Joseph Azzata ("JA") (collectively, the "Azzatas").

I. INTRODUCTION

The parties negotiated a settlement of all claims pending in this action, but the Azzatas refused to execute the final Settlement Agreement and attempted to negotiate different terms after the settlement was reached, requiring the Receiver to file the Motion to Enforce Settlement Agreement (the "Motion to Enforce") [D.E. 68]. On November 30, 2016, this Court held a hearing on the Motion to Enforce, which it denied as moot because the Azzatas executed the

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Settlement Agreement *the day before* the hearing. In its Order, the Court permitted the Receiver to “file a separate motion for reasonable attorneys’ fees and costs incurred in his settlement efforts on or before December 14, 2016.” [D.E. 74].

In connection with his efforts to enforce the Settlement Agreement against the Azzatas, the Receiver incurred a total of \$5,520.00 in attorneys’ fees and \$12.00 in costs. The attorneys’ fees sought represent the actual amounts billed by the Receiver’s Court-approved counsel, the law firm of Levine Kellogg Lehman Schneider + Grossman, LLP (“LKLS+G”).¹ In total, LKLS+G expended 25 hours in order to enforce the Settlement Agreement against the Azzatas.

In total, the Receiver seeks to recover an award of \$5,532.00. All of the attorneys’ fees and costs sought in this motion are verified by the affidavit of the Receiver’s counsel, Matthew J. McGuane, which is attached hereto as Exhibit “A.” The Receiver and his counsel have fully reviewed their time records and supporting data, and certify that this motion is well grounded in fact and justified.

II. ARGUMENT

A. The Receiver is Entitled to His Reasonable Attorneys’ Fees and Costs

A party that successfully moves to enforce a settlement agreement is entitled to reasonable attorneys’ fees and costs when the agreement contains a provision authorizing attorneys’ fees and costs to any party that prevails in an action to enforce the agreement. *See BASF Corp. v. Collision One, Inc.*, No. 09-60328-CIV, 2010 WL 1797750, *1 (S.D. Fla. May 4, 2010) (Cohn, J.) (“Here, Plaintiff brought a successful motion to enforce the settlement

¹ The Court granted the Receiver’s motion to employ LKLS+G as counsel in the SEC’s enforcement action, styled as *Securities and Exchange Commission v. eCareer Holdings, Inc., et al.*, Case No. 15-80446-CIV-COHN/SELTZER (the “SEC Enforcement Action”). [See D.E. 82, 84 in SEC Enforcement Action].

agreement and, therefore, qualifies as a prevailing party entitled to fees and costs.”).

Here, the Settlement Agreement provides that “[i]n any action related to the enforcement of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party its reasonable costs, reasonable expenses and reasonable attorneys’ fees.” [D.E. 68-1 at ¶ 19]. For the reasons stated in detail in the Motion to Enforce, the Settlement Agreement was enforceable against the Azzatas. [D.E. 68]. Despite this, the Azzatas refused to execute the Settlement Agreement, thereby requiring the Receiver to incur unnecessary attorneys’ fees and costs to enforce it. The day before the hearing on the Motion to Enforce, the Azzatas conceded that the Settlement Agreement was enforceable and signed it. Under the prevailing party attorneys’ fee provision of the Settlement Agreement, the Receiver is entitled to reimbursement of the reasonable attorneys’ fees and costs he had to incur to enforce the Settlement Agreement.

B. The Applicable Standard

Federal courts apply the “lodestar” method for determining the reasonableness of attorneys’ fees. *See Loranger v. Stierheim*, 10 F.3d 776, 781 (11th Cir. 1994). The “lodestar” amount is calculated by “multiply[ing] the number of hours reasonably expended by a reasonably hourly rate.” *Id.* “A lodestar figure that is based upon a reasonable number of hours spent on a case multiplied by a reasonable hourly rate is itself strongly presumed to be reasonable.” *Resolution Trust Corp. v. Hallmark Builders, Inc.*, 996 F.2d 1144, 1150 (11th Cir. 1993). “Consequently, the courts have severely limited the instances in which a lawfully found lodestar amount may be adjusted to a higher or lower level.” *Id.*

“A reasonably hourly rate is the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience and reputation.”

Loranger, 10 F.3d at 781. The party requesting attorneys' fees must produce "satisfactory evidence that the requested rate is in line with prevailing market rates." *Id.*

In terms of the reasonableness of the hours expended, the prevailing party's attorney "must exercise their own billing judgment to exclude any hours that are 'excessive, redundant, or otherwise unnecessary.'" *Galdames v. N & D Inv. Corp.*, 432 F. App'x 801, 806 (11th Cir. 2011); *Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1302 (11th Cir. 1988) ("There is nothing inherently unreasonable about a client having multiple attorneys, and they may all be compensated if they are not unreasonably doing the same work and are being compensated for the distinct contribution of each lawyer."). The "court may reduce excessive, redundant or otherwise unnecessary hours in the exercise of billing judgment." *Galdames*, 432 F. App'x at 806. And, "if the court concludes that the number of claimed hours is excessive, it may engage in 'an across-the-board cut,' so long as it provides adequate explanation for the decrease." *Id.*

As discussed below, LKLS+G's hourly rates are reasonable as was the amount of time it expended to enforce the Settlement Agreement against the Azzatas.

C. The Hourly Rates Charged by LKLS+G Are Reasonable

The rates charged by LKLS+G in this matter are reasonable in light of their experience, reputation, and abilities. LKLS+G has extensive experience in receivership and insolvency work. The Receiver is the Co-Chair of LKLS+G's Receivership Practice Group. In terms of the hourly rates charged, LKLS+G agreed to reduce its standard billing rates by almost 50 percent, and to cap billing at \$300.00 per hour for partners and \$200.00 per hour for associates. [See D.E. 82, 84 in SEC Enforcement Action].

In the SEC Enforcement Action, counsel for the SEC moved to appoint the Receiver as receiver for eCareer expressly noting the Receiver's significantly discounted hourly rates as a factor in support of his appointment. [D.E. 68 at 2 in SEC Enforcement Action]. The Receiver's discounted rates are reasonable compared to those charged by lawyers in the community with reasonably comparable skills, experience and reputation for providing receivership services as evidenced by the quotes submitted by the other laws firms bidding for this specific receivership appointment. [See D.E. 68-3, 68-4 in SEC Enforcement Action]. This Court granted the SEC's motion to appoint the Receiver. [D.E. 72 in SEC Enforcement Action]. In addition, the Court granted the Receiver's motion to retain LKLS+G as his counsel at the reduced hourly rates stated above. [D.E. 82, 84 in SEC Enforcement Action]. The foregoing establishes by satisfactory evidence that LKLS+G's rates are reasonable.

D. The Number of Hours Expended by LKLS+G Is Reasonable

LKLS+G spent a total of 25 hours in order to enforce the settlement reached with the Azzatas. The majority of this time was spent preparing and filing the Motion, and attending the hearing on same. [See D.E. 68]. Additional time was also spent communicating with CA's counsel and JA regarding their refusal to execute the Settlement Agreement, and with the other parties to the settlement and the SEC's counsel regarding same. As evidenced by the attached affidavit, which contains a copy of the relevant billing entries, the amount of time expended by LKLS+G to enforce the Settlement Agreement was reasonable and, in fact required, to enforce the settlement. See Ex. A. Thus, because both the reduced hourly rate charged by LKLSG+ and the hours expended to enforce the Settlement Agreement are reasonable, the Receiver is entitled

to an award of attorneys' fees in the loadstar amount of \$5,520.00.²

The Receiver also incurred costs of \$12.00 in relation to his settlement enforcement efforts. *See* Ex. A.

E. A Portion of the Award Should Be Added to the Receiver's Equitable Lien

Pursuant to the Settlement Agreement, the Receiver is granted a \$100,000 equitable lien against the property that will be sold to satisfy the various liens at issue in accordance with the terms of the Settlement Agreement. [D.E. 68-1 at 2, ¶ 3]. By initially refusing to comply with the settlement, the Azzatas required the Receiver to incur additional attorneys' fees and costs that will ultimately reduce the amount distributed to the Receivership Estate. As a result, the Receiver respectfully requests that the Court increase the Receiver's equitable lien by \$3,500 of the total amount awarded so that the Receivership Estate is not prejudiced by the Azzata's bad-faith conduct in refusing to execute the Settlement Agreement and requesting changes to settlement terms after the agreement was reached.

The IRS is the only party with a lien subordinate to the Receiver's equitable lien, and counsel for the IRS confirmed that the IRS has no objection to the Receiver's request to add up to \$3,500 to his \$100,000 equitable lien as a result of the fees and costs incurred to enforce the settlement.³ Thus, the Receiver respectfully requests that up to \$3,500 of any award for fees and costs related to his settlement enforcement efforts be added to his equitable lien and increase the

² Matthew McGuane spent a total of 19.8 hours (at \$200 per hour) and Mr. Levine spent a total of 5.2 hours (at \$300 per hour). *See* Ex. A.

³ Because Seterus, Inc. and Specialized Loan Servicing LLC have mortgage liens superior in priority to the Receiver's equitable lien, and their liens will be paid in full before any proceeds from the sale of the property are distributed to pay the Receiver's equitable lien, they will not be prejudiced by a \$3,500 increase in the amount of the Receiver's equitable lien.

amount of his equitable lien to \$103,500.

III. CONCLUSION

The Receiver is entitled to an award of \$5,532.00 for the reasonable attorneys' fees and costs incurred by him to enforce the Settlement Agreement. The rates charged by LKLS+G are reasonable, and the number of hours expended by LKLS+G to enforce the Settlement Agreement were also reasonable. The attorneys' fees and costs the Receiver seeks reimbursement for are compensable under Paragraph 19 of the Settlement Agreement. The Receiver respectfully requests that this Court enter an Order against the Azzatas in the amount of \$5,532.00, and further providing that \$3,500.00 of the \$5,532.00 award shall be added onto the Receiver's equitable lien against the subject property so the total amount of the Receiver's equitable lien is \$103,500.

CERTIFICATE OF GOOD FAITH CONFERENCE PURSUANT TO L.R. 7.1(a)(3)

I hereby certify that on December 6, 2016, at 11:21 a.m., I made a reasonable effort to confer in writing with JA and counsel for CA in a good-faith effort to resolve the issues raised in this motion, but has been unable to do so.

Dated: December 7, 2016

Respectfully submitted,

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By: /s/ Matthew J. McGuane
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CERTIFICATE OF SERVICE

I hereby certify that, on December 7, 2016, a true and correct copy of the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which automatically sends an electronic notification to all counsel of record and other CM/ECF participants.

By: /s/ Matthew J. McGuane
MATTHEW J. MCGUANE