

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

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

DAVID M. LEVINE,

Plaintiff,

v.

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

Defendants.

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**ORDER GRANTING MOTION FOR ATTORNEYS' FEES AND COSTS**

**THIS CAUSE** is before the Court upon Receiver David M. Levine's Verified Motion for Attorneys' Fees and Costs [DE 75] ("Motion"). The Court has considered the Motion, Defendant Carla Azzata's Response [DE 77], Receiver's Reply [DE 78], and the record in this case, and is otherwise advised in the premises. For the reasons stated herein, the Court will grant the Motion.

On November 23, 2016, Receiver filed a Motion to Enforce Settlement Agreement [DE 68] ("Motion to Enforce"), seeking to compel Defendants Carla Azzata and Joseph Azzata to execute a written Settlement Agreement after they had agreed to all of its provisions via email.<sup>1</sup> Under the terms of the Settlement Agreement, Receiver is entitled to an equitable lien against the Azzatas' residential property in Boca Raton, Florida ("Property") in the amount of \$100,000 for the benefit of the Receivership

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<sup>1</sup> Carla Azzata consented to the terms of the Settlement Agreement through the communications of her counsel. DE 68-8. Joseph Azzata personally told Receiver's counsel via email that he would agree to any settlement that Carla Azzata accepted. DE 68-2.

Entities' defrauded investors. See DE 68-1 ¶ 3. On November 30, 2016, the Court held a hearing on the Motion to Enforce, which it denied as moot because the Azzatas had decided to execute the Settlement Agreement the day before the hearing. DE 73 & 74. In its Order, the Court permitted Receiver to file a separate motion for reasonable attorneys' fees and costs incurred in his settlement enforcement efforts pursuant to Paragraph 19 of the Settlement Agreement. DE 74. Paragraph 19 entitles the "prevailing party" to reasonable attorneys' fees and costs incurred "[i]n any action related to the enforcement of [the] Agreement." DE 68-1 at ¶ 19.

Accordingly, Receiver timely filed the instant Motion seeking to recover \$5,532 in attorneys' fees and costs incurred in connection with his settlement enforcement efforts. DE 75 at 2, 7. Receiver supports this request with billing records and a receipt, which have been verified by the affidavit of Receiver's counsel. DE 75-1. Receiver also requests that \$3,500 of the \$5,532 award be added to Receiver's equitable lien against the Property, bringing the total amount of Receiver's equitable lien to \$103,500. DE 75 at 6–7. Receiver believes that he is unlikely to collect the full award from the Azzatas directly due to their current financial situation, and adding a portion of the award to the equitable lien will ensure that the Azzatas actually pay for their settlement misconduct. DE 78 at 3–4. Additionally, the Internal Revenue Service ("IRS") is the only party with a lien subordinate to Receiver's equitable lien, and it does not object to Receiver's request to add the \$3,500 to his equitable lien. DE 75 at 6.

Joseph Azzata did not file a response to the Motion, and Carla Azzata's Response does not challenge the reasonableness of Receiver's requested attorneys'

fees and costs.<sup>2</sup> Rather, Carla Azzata argues that the Settlement Agreement's prevailing party attorneys' fee provision did not become effective until she signed the Settlement Agreement on November 29, 2016. DE 77 at 1–2. Therefore, she argues, Receiver is not entitled to any enforcement-related costs and fees incurred before that date. Id.

Paragraph 19 is not as narrow as Carla Azzata suggests. That provision awards the prevailing party reasonable costs and attorneys' fees in "any action related to" enforcement of the Settlement Agreement, not solely in those actions initiated after all parties had executed the formal, written document. DE 68-1 at ¶ 19 (emphasis added). The Motion to Enforce was plainly an action related to enforcement of the Settlement Agreement, which Receiver brought after Carla Azzata had agreed to all of its terms. See DE 68-8. Receiver had a good-faith basis for bringing the Motion to Enforce because both Carla Azzata and Joseph Azzata had expressed a clear intent to be bound by the Settlement Agreement prior to executing it. See Reed ex rel Reed v. United States, 717 F. Supp. 1511, 1517 (S.D. Fla. 1988) ("[T]he physical act of signing a document is a mere formality where the parties clearly intend to be bound."). Thus, as the prevailing party, Receiver is entitled to an award of reasonable costs and attorneys' fees pursuant to Paragraph 19 of the Settlement Agreement. With the Azzatas waiving any challenge to the reasonableness of the costs and fees incurred, the Court will award Receiver the full amount requested.

Additionally, the Court sees no reason to deny Receiver's request to add a portion of the costs and fees award to his equitable lien, particularly given the lack of

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<sup>2</sup> Upon review of the materials submitted in support of the Motion, the Court does not find the costs and fees requested unreasonable.

any objection from the IRS. Although Carla Azzata opposes increasing the equitable lien, she provides no argument for why the Court should deny such relief. Receiver's request to add \$3,500 to his equitable lien therefore will be granted. Accordingly, it is

**ORDERED AND ADJUDGED** as follows:

1. Receiver's Motion for Attorneys' Fees and Costs [DE 75] is **GRANTED**.
2. Receiver David M. Levine shall recover a total of \$5,532 in reasonable attorneys' fees and costs from Defendants Carla Azzata and Joseph Azzata, plus interest thereon at the rate of 0.79% per annum from November 30, 2016, for which let execution issue.
3. \$3,500 of the \$5,532 award shall be added to Receiver's equitable lien against the subject Property, bringing the total amount of Receiver's equitable lien to \$103,500.

**DONE AND ORDERED** in Chambers at Fort Lauderdale, Broward County, Florida, this 28th day of December, 2016.

  
JAMES I. COHN  
United States District Judge

Copies provided to:  
Counsel of record via CM/ECF  
Joseph Azzata (*pro se*)