

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In Re:

Estate of Prince Rogers Nelson,
Decedent,

Case Type: Special Administration
Court File No.: 10-PR-16-46
Judge: Kevin W. Eide

and

Tyka Nelson,

REDACTED

Petitioner.

**LOMMEN ABDO'S MEMORANDUM OF
LAW FOR THE APPROVAL OF
PAYMENT OF ATTORNEYS' FEES AND
COSTS**

Lommen Abdo, P.A. respectfully submits this memorandum of law in support of its motion for an order approving the payment of certain attorneys' fees and costs from the assets of the Estate of Prince Rogers Nelson ("Estate") for services performed over the course of six months that directly benefited the Estate, including work relating to the [REDACTED] and other entertainment deals, establishment and operation of the Paisley Park Museum, the Official Family Tribute concert, the PRINCE Act, determination of rightful heirship, and selection of the successor personal representative. In addition to the brief factual and legal summary below, this Motion is supported by a Memorandum of Law, the Affidavit of Kenneth J. Abdo, and the files, records, and proceedings herein, including the Special Administrators motions for fees, and other non-excluded heirs' counsel motions for fees.

FACTUAL BACKGROUND

From April 27, 2016 up to November 10, 2016, Lommen Abdo was counsel of record for three of the six non-excluded heirs: Sharon Nelson, Norrine Nelson, and John Nelson. (Ken Abdo Aff. at ¶ 3.) As set forth in summary form below and the Affidavit of Kenneth J. Abdo,

given Lommen Abdo's experience and knowledge in complex entertainment law and intellectual property matters, Lommen Abdo played a leadership role on behalf of its former clients, but for the direct benefit of the Estate in a variety of matters.

A. ██████████ Other Entertainment Deals.

From the outset of these proceedings, Lommen Abdo was called upon by the Special Administrator to provide input and assistance with respect to numerous agreements and proposals relating to Prince's music and intellectual property. (Abdo Aff., ¶ 9.) It was evident from an early stage that gaining an understanding of Prince's music and intellectual property deals and rights was critical to determining the financial condition of the Estate and its options moving forward. Communicating the current state of affairs to all potential heirs, including the non-excluded heirs – Sharon, Norrine, John, and Tyka Nelson; Omarr Baker; and Alfred Jackson (collectively “the Family” or “Heirs”) – was also vital to the functionality of the Special Administrator vis-à-vis the Heirs.

At first, Lommen Abdo worked closely with the Special Administrator to assist in achieving and understanding Prince's music catalog and portfolio, as well as to evaluate the operative agreements that bound the Estate. [*Id.* ¶ 9.) Once the monetization experts (“Advisors”) were appointed, Lommen Abdo took the lead in working with the Advisors and Special Administrator's counsel in evaluating certain entertainment deals and proposals. (*Id.*) Lommen Abdo submitted a revised proposed order, which would ultimately become the court-approved protocol that facilitated the evaluation and communications between the Heirs on the one hand, and the Special Administrator and its Advisors on the other. (*Id.* ¶10.) Ultimately, this protocol – which was later amended as proposed by Lommen Abdo and approved by the Special

Administrator and Court – lead to the [REDACTED] entertainment deals as set forth in the [REDACTED] Order [REDACTED]).

Pursuant to the [REDACTED] Order, Lommen Abdo was appointed as one of the Heirs' representatives responsible to negotiate [REDACTED] [REDACTED]. Over the course of several weeks, Lommen Abdo attorneys who have decades of experience worked hand-in-hand with the Special Administrator, its counsel (Stinson Leonard Street), the Advisors and other Heirs' counsel to finalize [REDACTED] [REDACTED] deals. The details of the work performed for the benefit of the Estate in this regard is further detailed in the Affidavit of Ken Abdo (*Id.* ¶ 10-14) and Invoices attached as Exhibit C.

In addition to working on the [REDACTED] deals, Lommen Abdo was also asked by the Special Administrator to provide feedback, comments and revisions to other deals relating to the licensing of Prince's music or intellectual property. This work, which benefited the Estate, is detailed on Invoice – Miscellaneous Entertainment Matters – and further addressed in Ken Abdo's Affidavit. (*Id.* ¶ 28.).

B. Paisley Park Museum.

Early monetization efforts by the Special Administrator included turning Paisley Park into a public museum and working with the Family and Heirs' counsel to do so. By August 2016, Lommen Abdo had taken the lead on behalf of the Heirs to help the Special Administrator negotiate the best deal possible with [REDACTED] [REDACTED]. (*Id.* ¶ 15), which culminated with the enhancement and finalization of the [REDACTED] [REDACTED] Agreement during and after a day-long summit with the Special Administrator, the Advisors, and Heirs at Stinson Leonard Street's offices in downtown Minneapolis.

In addition to the establishment and operation of the Paisley Park Museum, Lommen Abdo worked with the Special Administrator to negotiate and finalize [REDACTED] agreements between the Heirs and Museum. These agreements, which were originally prepared and marshalled by Lommen Abdo at the Special Administrator's request, facilitated contributions by the Heirs to the Museum at [REDACTED] request, and resulted in the payment of [REDACTED]

The Paisley Park Museum opened to the public on a limited basis in mid October and then fully by late October to great fanfare and national acclaim. (*Id.* ¶ 17 and Exhibit D.) Again, at the Special Administrator's request, Lommen Abdo worked with Heirs' counsel to prepare press releases and statements on behalf of the Family to help publicize the Museum. (*Id.* ¶ 16.) The Special Administrator and [REDACTED] estimated that [REDACTED] will visit the Paisley Park Museum each year. It will be a cornerstone Estate asset for many years to come.

C. Official Family Tribute Concert.

Much like the Paisley Park Museum, the Special Administrator and its Advisors determined early on that the Estate would benefit from an official Prince Family Tribute concert sponsored by the Estate and sanctioned by the Family. (*Id.* ¶ 18.) The Special Administrator asked the Heirs to provide it with proposals to consider. Again, Lommen Abdo used its connections and experience to provide [REDACTED]. (*Id.*) The Special Administrator also wanted to announce the Official Family Tribute as early as it could so that it could put on the best concert possible. Accordingly, Lommen Abdo worked with the Special Administrator and other Heirs' counsel to

draft a press release to help market the Official Family Tribute at US Bank Stadium for the benefit of the Estate. (*Id.*)

By late September, it became clear [REDACTED] and that the concert was in jeopardy. (*Id.* ¶ 19.) In short order, and over the course of the Labor Day holiday weekend, Lommen Abdo worked with [REDACTED] to salvage the concert to benefit the Estate. Indeed, all parties, including Lommen Abdo's former clients and other Heirs, were greatly concerned [REDACTED]. Fortunately, the Official Family Tribute was saved and held at the Xcel Energy Center on October 13, 2016 to much success and national acclaim, due in large part to the efforts of several parties, including Lommen Abdo. The details are discussed further in Mr. Abdo's Affidavit at ¶¶ 19-22, Exhibit E.

D. The PRINCE Act.

One of the first collaborative efforts for the benefit of the Estate between counsel for the Heirs and the Special Administrator focused on what eventually became known and formally introduced at the Minnesota Legislature as "The PRINCE Act." In short, this proposed legislation sought to codify the post-mortem right of publicity in Minnesota for the protection and benefit of the estates of Minnesota artists and other celebrities, such as Prince. Due to Lommen Abdo's position as one of the leading entertainment law firms in the region, and more specifically, Ken Abdo's 30+ years' experience and connections in the entertainment industry, the Special Administrator requested Lommen Abdo's valuable feedback regarding the policy, purpose, structure and wording of the PRINCE Act. (*Id.* ¶ 25.) Ken Abdo was asked to work with the Special Administrator's counsel and lobbyists at the State Capitol, and provided key

testimony at the Legislature in support of the bill. (*Id.* ¶ 25.) Mr. Abdo and Mr. Gislason also worked with the Special Administrator's marketing team to help publicly promote the Act through various media outlets. As a direct result of Lommen Abdo's connections and efforts, several celebrities (Lommen Abdo clients) publicly endorsed the PRINCE Act. (*Id.* ¶ 25.) The details relating to Lommen Abdo's work and contributions to benefit the Estate in this regard are discussed at ¶ 25 in Ken Abdo's Affidavit and Exhibit C attached thereto.

E. Determination of the Rightful Heirs and Related Appeals.

In the days following the May 2, 2016 hearing and Order Confirming Appointment of Special Administrator, Lommen Abdo and others Heirs' counsel engaged in several conferences and various communications with the Special Administrator and its counsel to focus on the primary task at hand in this probate proceeding: identifying the rightful heirs. The Special Administrator requested each potential heir to gather and submit evidence to support his or her claim of heirship. (*Id.* ¶ 23.) Ultimately, the Special Administrator's request for information and genetic testing was incorporated into Protocol promulgated by the Special Administrator and approved by the Court (*see, e.g.*, May 18, 2016 Order).

Pursuant to the Protocol and Court's Order, Lommen Abdo and its former clients worked diligently to provide the information specifically requested by the Special Administrator, including information relating to the marriage and divorce of John L. Nelson and Vivian Nelson, the probate proceedings of John L. Nelson, and facts relating to Duane Nelson, Sr. (*Id.* ¶ 24.) These facts were incorporated into great detail in the Affidavits of Heirship submitted by Sharon Nelson, Norrine Nelson, and John Nelson, and later cited and relied upon by the Special Administrator and Heirs in legal memoranda and court hearings to establish the rightful heirs. *See, e.g.*, Petition Heirs' Joint Memorandum of Law in Response to Objections to Protocol Prior

to Genetic Testing (July 15, 2016); Non-Excluded Heirs' Memorandum of Law in Response to Brianna Nelson's and V.N.'s Legal Basis for Heirship (October 17, 2016). Through Lommen Abdo's efforts, including evidence marshalled by and through its former clients, the Estate successfully defeated the spurious heirship claims by several parties, including Brianna Nelson, V.N., Corey Simmons, and Venita Jackson, which prevented the further dilution of Estate assets *See e.g.*, Order Regarding Genetic Testing Protocol and Heirship Claims (July 29, 2016); Order and Judgment Denying Heirship Claims of Brianna Nelson, V.N. and Corey Simmons (October 26, 2016).

F. Appointment of Special Administrator and Selection of Successor Personal Representative.

When first retained, Lommen Abdo was contacted by the Special Administrator to participate in a meeting with its counsel, Petitioner Tyka Nelson and her counsel, to discuss various issues and procedures relating to the general administration of the Estate, including the Petition to appoint Bremer Trust as the Special Administrator. (Abdo Aff. at ¶ 27.) Pursuant to the forms drafted by Stinson Leonard, Lommen Abdo worked with its former clients to evaluate the need for a Special Administrator, the qualification of Bremer Trust to serve as the Special Administrator, the proposed 6-month term for special administration, and to obtain the consent of its former clients to appoint Bremer Trust for the benefit of the Estate. On May 2, 2016, Lommen Abdo's former clients provided their consents and an order was issued granting Tyka Nelson's Petition to appoint Bremer Trust the Special Administrator for a 6-month term.

In light of the Special Administrator's [REDACTED] term, Lommen Abdo and other Heirs' counsel began researching and vetting Personal Representative candidates [REDACTED]

[REDACTED]. (*Id.* ¶ 22.) Over the course of several

weeks, Lommen Abdo worked closely with other Heirs' counsel to locate and interview several Personal Representative candidates. The details relating to Lommen Abdo's work and contributions to benefit the Estate in this regard are discussed at ¶ 22 in Ken Abdo's Affidavit.

ARGUMENT

Minnesota law provides that "an attorney for any interested person" shall be paid a reasonable fee if that attorney's services "contribute to the benefit of the estate...." Minn. Stat. § 524.3-720.¹ The law prescribes compensation regardless of whether the attorney's client also benefits from the services rendered. *See In re Estate of Kane*, No. A15-1033, 2016 WL 1619248, at *7 (Minn. Ct. App. Apr. 25, 2016) (noting that Court of Appeals has "rejected the argument that, in order to contribute to the benefit of the estate, interested persons must not themselves benefit from the proceedings."); *Gellert v. Eginton*, 770 N.W.2d 190, 197-98 (Minn. Ct. App. 2009), review denied (Minn. Oct. 20, 2009). The Court looks to several factors to determine what is a fair and reasonable attorney's fee:

- (1) the time and labor required;
- (2) the experience and knowledge of the attorney;
- (3) the complexity and novelty of problems involved;
- (4) the extent of the responsibilities assumed and the results obtained; and
- (5) the sufficiency of assets properly available to pay for the services.

Minn. Stat. § 524.3-720(b)(1-5).

Minnesota courts have held that compensation is required where an interested person "act[s] for the benefit of the estate by keeping a major asset intact," *see In re Estate of Van Den*

¹ Minnesota law in this regard departs from the Uniform Probate Code ("UPC"), which provides for the payment of fees only when "any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith." Uniform Probate Code § 3-720; *see also* Minn. Stat. § 524.3-720; *see also In re Estate of Zonas*, 42 Ohio St.3d 8, 536 N.E.2d 642 (1989) (observing that "[a] few statutes are broadly written and do not limit recovery of attorney fees to counsel retained by an executor or administrator."). Unlike Minnesota, the UPC does not expressly provide for the payment of fees to an attorney of an interested party even when that attorney's work benefits the entire estate.

Boom, 590 N.W.2d 350, 354 (Minn. Ct. App. 1999), prevents the conversion of estate assets; *see In re Trust Agreement of Sudheimer*, No. A06-97, 2007 WL 46090, at *3 (Minn. Ct. App. Jan. 9, 2007); *In re Estate of Rutt*, No. A09-2336, 2010 WL 3958649, at *8 (Minn. Ct. App. Oct. 12, 2010), or litigates and finally determines a genuine controversy as to the validity or construction of a will, *see In re Estate of Torgersen*, 711 N.W.2d 545, 555 (Minn. Ct. App. 2006). Several other states have likewise permitted a beneficiary to recover attorney fees where the attorney's services "benefited the estate as a whole or increased a common fund in which others might share." *See In re Estate of Zonas*, 42 Ohio St. 3d 8, 12, 536 N.E.2d 642, 645 (1989) (citations omitted); *Jones v. Kuhn*, 650 P.2d 999, 1001 (Or. App. 1982) (holding that award of attorney fees was appropriate where heir successfully brought action to declare invalid an option to purchase family farm from intestate decedent); *In re Parr's Estate*, 287 P.2d 906, 908 (Okla. 1955) (noting that "where the services of the attorney employed by some of the heirs or legatees are beneficial to the estate as a whole, the court may, if the facts justify it, allow out of the estate a reasonable fee for such services").

As set forth in Lommen Abdo's itemized billing attached as Exhibit C to Ken Abdo's Affidavit, Lommen Abdo seeks reasonable compensation for services rendered for the benefit of the Estate, which also benefited Lommen Abdo's former clients and all other beneficiaries. These services include:

- The successful negotiation of several [REDACTED], which the Court found to be in the best interests of the Estate. (*Id.* ¶¶ 9-14.)
- The successful negotiation of the other entertainment deals, including the Heirs' successful challenge of the [REDACTED], which the Court agreed with Lommen Abdo that it was for the benefit of the Estate that the Special Administrator not enter that deal. (*Id.* ¶¶ 9-14, 28.)
- Successfully negotiating and drafting agreements that resulted in the establishment and operation of the Paisley Park Museum. (*Id.* ¶ 15.)

- Successfully negotiating and drafting agreements that saved and resulted in a sold-out Official Family Tribute concert at Xcel Energy Center. (*Id.* ¶¶ 18-21.)
- Successfully opposing motions by several claimants seeking status as beneficiaries of the Estate, thus reducing the expenses of administration and increasing the share of the Estate available for all beneficiaries. (*Id.* ¶¶ 23-24.)

Although the facts of the instant matter are exceptional, longstanding principles of Minnesota law support the payment of reasonable attorneys' fees from the Estate. Lommen Abdo's services in this matter have increased the Estate assets shared by all beneficiaries and assisted in the final determination of controversies affecting the administration of the Estate. In doing so, Lommen Abdo has relied on their experience with and knowledge of entertainment contracts and the music industry, confronted novel and complex transactional issues, and expended substantial time and labor as set forth in the submitted billing records. *See In re Connelly*, No. CX-01-1476, 2002 WL 264806, at *1 (Minn. Ct. App. Feb. 26, 2002) (setting forth factors to be considered in determining whether an attorney's fee is reasonable under Minn. Stat. § 524.3-720).

CONCLUSION

For the foregoing reasons, Lommen Abdo respectfully request that the Court issue an order authorizing and directing the Special Administrator to pay \$334,616.65 in attorneys' fees and costs from the Estate assets.

Dated: December 20, 2016

LOMMEN ABDO, P.A.

BY /s/ Kenneth J. Abdo
Kenneth J. Abdo, I.D. No. 149585
Adam P. Gislason, I.D. No. 0324176
1000 International Centre, 920 Second Avenue South
Minneapolis, MN 55402
(612) 339-8131; FAX: (612) 339-8064
ken@lommen.com; agislason@lommen.com

Attorneys for Claimant Lommen Abdo, P.A.