

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

Court File No. 10-PR-16-46

In the Matter of:

Estate of Prince Rogers Nelson,

Decedent.

**ORDER & MEMORANDUM ON
SECOND SPECIAL
ADMINISTRATOR'S MOTION FOR
RETURN OF FEES**

**FILED UNDER SEAL
[REDACTED]**

The above-entitled matter came before the undersigned on January 23, 2019 pursuant to the Second Special Administrator's Motion for Return of Fees. Appearances were noted on the record.

Now therefore, based upon the file and proceedings herein, the Court makes the following:

ORDER

1. The Second Special Administrator's Motion for Return of Fees is GRANTED in part.
2. Within thirty (30) days of the entry of this Order, former Estate Entertainment Advisors NorthStar Enterprises Worldwide, Inc. (providing the services of L. Londell McMillan) including its officers, directors, shareholders, employees, agents, assigns and successors (collectively "NorthStar") and CAK Entertainment, Inc. (providing the services of Charles Koppelman) including its officers, directors, shareholders, employees, agents, assigns and successors (collectively "CAK") shall refund to the Estate all compensation received as a result of the terminated Jobu transaction and rescinded UMG transaction.
 - a. Jobu Transaction: NorthStar shall refund the [REDACTED] received from the terminated Jobu transaction. CAK and NorthStar are jointly and severally liable to the Estate for this sum.
 - b. UMG Transaction: CAK and NorthStar shall return the [REDACTED] they collectively received from the rescinded UMG transaction. CAK and NorthStar are jointly and severally liable to the Estate for this sum.
3. Failure to adhere to this Order and return funds within thirty (30) days will result in CAK and NorthStar being held in contempt of court until such time as the refunds are made in full.

4. This shall be deemed a temporary order to protect the assets of the Estate. The refunded commissions shall be held in a designated escrow account by the attorneys for the Estate and not distributed until further order of the Court. No determinations on rights to the funds from the Jobu transaction shall be made until after completion of the litigation in Court File 10-CV-17-368. With regards to the funds from the UMG transaction, the parties shall cooperate in establishing a schedule for any necessary discovery and setting the matter on for an evidentiary hearing to establish what, if any, compensation the Advisors are entitled to from that transaction.
5. This matter shall be scheduled for a conference call with the SSA and counsel for the Advisors to address the scheduling issues referenced herein on April 2, 2019 at 8:30 a.m.
6. The attached Memorandum is incorporated herein.

BY THE COURT:

Dated: March 11, 2019

Kevin W. Eide
Judge of District Court

NOTICE: A true and correct copy of this Order/Notice has been served by EFS upon the parties. Please be advised that orders/notices sent to attorneys are sent to the lead attorney only.

MEMORANDUM

The issue presently before the Court stems from an Advisor Agreement between the Estate's first Special Administrator and its former entertainment advisors, CAK Entertainment, Inc./Charles Koppelman ("Koppelman") and NorthStar Enterprises Worldwide, Inc./L. Londell McMillan ("McMillan") (collectively "the Advisors"). The Advisors were hired with the approval of the Court to assist the Special Administrator with monetizing Estate assets. Pursuant to the Advisor Agreement, the Advisors were paid on two contracts which were subsequently terminated or rescinded. The details of those agreements and their terminations are set forth in the parties' pleadings. The first contract was with Jobu Presents, LLC ("Jobu") for promotional services for a Prince Tribute concert. The second contract was with Universal Music Group ("UMG") for the distribution and marketing of certain recordings. Both the Jobu and UMG contracts provided for advances to be paid to the Estate. McMillan was paid ██████████ in connection with the Jobu agreement. The Advisors were collectively paid ██████████ in connection with the UMG agreement. Pursuant to the Advisor Agreement, those payments were made directly by Jobu and UMG to the Advisors. When the Jobu and UMG agreements were later terminated and/or rescinded, the Estate refunded the entirety of the advances paid by Jobu and UMG, including the fees which had been paid directly to the Advisors.

The Second Special Administrator ("SSA") has now moved the Court for an order requiring the Advisors to refund the commissions paid in connection with the terminated agreement with Jobu and the rescinded agreement with UMG. The SSA argues that pursuant to Minn. Stat. § 524.3-721, the Court has the authority to order refunds of overpayments or unreasonable compensation to any person who has performed services on behalf of the Estate, and that the Advisors are not entitled to retain the commissions paid on the Jobu and UMG transactions because neither resulted in any monetary value to the Estate. The SSA further argues the Advisors' commissions are subject to disgorgement based upon the language of the Advisor Agreement and principles of equity.

In response, Koppelman and McMillan argue the Estate's decisions to return the Jobu advance and rescind the UMG agreement were voluntary business decisions, and the current motion is an attempt to disgorge their commissions without any discovery or a fair opportunity to be heard. The Advisors further argue this dispute should be first subject to non-binding mediation pursuant to the Advisor Agreement; that application of Minn. Stat. § 524.3-721 would abrogate

the Advisors' rights under the Advisor Agreement and violate their rights to due process under the United States Constitution, and to a jury trial under the Minnesota State Constitution; and that the Advisors are entitled to the commissions based upon the terms of the Advisor Agreement.

Minn. Stat. § 524.3-721 provides:

“After notice to all interested persons or on petition of an interested person or on appropriate motion if administration is supervised, the propriety of employment of any person by a personal representative including any attorney, auditor, investment advisor or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for personal representative services, may be reviewed by the court. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.” Minn. Stat. § 524.3-721 (2018).

As did the parties, the Court has looked extensively at Minnesota case law addressing Minn. Stat. § 524.3-721 and was unable to find a case where the statute was applied to a third party “auditor, investment advisor or other specialized agent or assistant” as proposed by the Second Special Administrator. Because Minn. Stat. § 524.3-721 was modeled after Uniform Probate Code § 3-721, the Court also reviewed cases listed nationally addressing matters under UPC § 3-721. None of those cases involved application of the Code to third parties such as the Advisors, either. The unique nature of this Estate again leads the Court into uncharted waters.

The Advisors argue the SSA's motion under Minn. Stat. § 524.3-721 is improper, unprecedented, beyond the intent of the statute and in violation of their rights to due process and a jury trial. They further argue they are entitled to the commissions paid on the Jobu and UMG agreements based upon the terms of the Advisor Agreement. The plain language of the statute, however, grants the Court the authority to review compensation of an “attorney, auditor, investment advisor or other specialized agent or assistant,” determine whether such compensation was excessive, and order appropriate refunds. This authority is not subject to nor limited by the statute to consideration of contract rights between an estate and the attorney, advisor or agents. The Advisors herein fall into the category of “specialized agents,” and are thus subject to the provisions of Minn. Stat. § 524.3-721. It is then to the Court to determine whether their compensation was unreasonable or excessive, and should be refunded to the Estate.

If the Court were considering the reasonableness of attorney compensation under Minn. Stat. § 524.3-721, the Court would consider

- (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. § 525.515
- (b) (2018) (*emphasis added*).

Case law interpreting Minn. Stat. § 525.515 requires proof of a benefit to an estate before an attorney may be paid for providing services for the estate. *In Re Estate of Evenson*, 505 N.W.2d 90, 92 (Minn. Ct. app. 1993); *citing In re Estate of Opsahl*, 448 N.W.2d 96, 103 (Minn. Ct. App. 1989) (construing Minn. Stat. § 525.515 as requiring estate to pay attorney fees only when attorney services actually benefit the estate). The Court sees no basis on which to consider the reasonableness of the Advisors' compensation by a different standard.

With regards to the Jobu Agreement, Jobu advanced ██████████ to the Estate on August 5, 2016, (paying McMillan directly ██████████ as his commission) as the first payment required under a short form contract for Jobu to promote a Tribute concert shortly after Prince's death. That agreement collapsed later that month, and Jobu demanded repayment of its advance. The Estate refunded the entirety of the advance, including McMillan's ██████████ commission. McMillan not only retained his Jobu commission, but went on to personally benefit from promoting the Tribute concert that was ultimately held without Estate involvement on October 13, 2016. While Koppelman was not paid directly on the Jobu transaction, he otherwise benefited personally from the transaction, creating a conflict of interest with the Estate.

With regards to the UMG Agreement, on or about January 31, 2017, UMG advanced ██████████ to the Estate (paying the Advisors ██████████) as an advance in connection with a licensing and distribution agreement for the exploitation of certain Prince recordings. Shortly after the agreement was announced, Warner Brothers Records, Inc. ("WBR") began expressing concerns that the UMG agreement infringed on rights held by WBR. With litigation on both fronts imminent, the Estate rescinded the UMG agreement and refunded the entirety of the advance, including the Advisors' ██████████ commission. Neither of the Advisors refunded the commissions received for the UMG agreement to the Estate.

While Minn. Stat. § 524.3-721 may give the Court leave to review the reasonableness of the Advisors' compensation, it does not mandate that the Court do so in a vacuum, without regard to the Advisor Agreement. The Advisor Agreement provides that the Advisors were to be paid

commissions of “ten percent (10%) on all Gross Monies (as defined herein) in connection with written contracts, amendments, extensions, additions, substitutions, replacements and modifications [...]” The Advisor Agreement defines “Gross monies” as including all forms of income, payments, compensation, emoluments and/or any other thing of value given to the Estate in lieu of compensation. The Advisor Agreement further provides that the ‘Advisor shall be deemed to have earned Advisor’s Commission simultaneously with the payment to Administrator or Administrator’s affiliates of Gross Monies [...]” In addition, the Advisor Agreement states, “[The Advisors] agree to be jointly and severally liable for each and every obligation pursuant to this Agreement.” While the Advisor Agreement includes details as to when commissions are to be paid to the Advisors, it is silent as to when, or the circumstances under which, commissions would be refunded to the Estate.

The Court is aware that many factors were involved in the termination of the Jobu agreement and rescission of the UMG agreement, and the Court is deeply concerned that the Estate may be out over [REDACTED] as a result. The Court will not, however, make a final determination as to the Estate’s entitlement to a refund of the Advisor fees without a full record and consideration of the provisions of the Advisor Agreement. As a result, and pursuant to Minn. Stat. § 524.3-721, it is appropriate that the Advisors be required to refund the Jobu and UMG commissions to the Estate, and that they be held pending further proceedings and order of the Court.

K.W.E.