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STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF CARVER | FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In the Matter of:

The Estate of Prince Rogers Nelson,

Decedent.

Court File No.: 10-PR-16-46
Honorable Kevin W. Eide

THE SECOND SPECIAL ADMINISTRATOR'S PRE EVIDENTIARY HEARING BRIEF

[REDACTED VERSION]

INTRODUCTION

This Court's August 28, 2020 order granting summary judgment in favor of the Second Special Administrator ("SSA") limits the scope of the evidentiary hearing to determining the "reasonable compensation" CAK and NorthStar (collectively, "the Advisors") should receive, if any, for their work in respect of the UMG transaction. Specifically, what is reasonable compensation for identifying UMG as an entertainment industry partner and for negotiating the UMG Agreement. The evidence will show the Advisors are entitled to no, or at best minimal, compensation for their efforts for recommending and endorsing the UMG proposal and thereby subjecting the Estate into conflict with two prominent record labels and the significant costs to the Estate as a result.

BACKGROUND

At the time of his death, Prince had three categories of sound recordings: (1) recordings initially released by Warner Brothers Records, Inc. ("WBR Masters"), including his major hits from 1979-1995; (2) recordings independently released by Prince's recording company, NPG Records, Inc. ("NPG Masters"); and (3) unreleased recordings ("Vault Masters"). The NPG Masters and the Vault Masters were not being fully commercially exploited. The WBR Masters were licensed to WBR

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pursuant to a License and Distribution Agreement dated April 16, 2014, by and between WBR on the one hand, and Prince, PRN Music Corporation, Paisley Park Enterprises, Inc., and NPG Records, Inc., on the other hand ("2014 WBR Agreement").

The 2014 WBR Agreement provides WBR with, among other things, [redacted] (emphasis not in original).

The 2014 WBR Agreement did not define the term "Records" but rather, incorporated the definition of that term used in prior Agreements between Prince and WBR: "All terms used herein but not defined below shall have the meanings ascribed to them in the Agreements." The 1983 and 1986 Agreements between Prince and WBR define the term [redacted] The 1991 Agreement provided that [redacted]

The proposal for a recorded music agreement with UMG recommended, negotiated and endorsed by the Advisors contemplated licensing, distribution, and marketing of Prince's sound recordings to UMG, including those that were then [redacted]. The proposal with UMG further contemplated an advance of [redacted], including a [redacted] advance payment upon signing of an Agreement.

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The UMG draft proposal (together with other proposed entertainment transactions) was submitted by Bremer and its counsel to the Court in September 2016. Upon hearing, over the objection of the Heirs, and based the recommendation and endorsement of the Advisors, the Court approved the UMG short-form proposal, and authorized Bremer and the Advisors to negotiate an agreement with UMG consistent with the terms of the short-form proposal. In recommending and endorsing the UMG proposal, the Advisors and Bremer with the expertise of the Advisors took the position that under the , WBR only had rights with respect to

The Estate, principally through Mr. McMillan, negotiated the long-form agreement with UMG. Counsel to the Heirs raised concerns, as they did in respect of the short-form proposal, regarding the interaction between the Universal deal and existing deals including the WBR Agreement. Bremer and the Advisors, remained steadfast that the , granted WB

. Largely, it was McMillan who communicated with UMG, in summary fashion, the nature and scope of WBR's rights under the 2014 Agreement. The "understanding" that McMillan conveyed was all rights to the WBR Masters would

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On January 31, 2017, Bremer and UMG entered into an agreement (the "UMG Agreement").) The UMG Agreement provided that in exchange for an immediate advance of (plus additional advances to be triggered by future events), the Estate granted UMG certain rights to the . Specifically, the UMG Agreement provided UMG with exclusive United States rights to

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. As a result of the UMG Agreement, the Advisors were paid a commission of directly from UMG. January 31, 2017 also marked the final day of the Advisors' term that was coterminous with the end of Bremer's appointment as Special Administrator.

Comerica Bank & Trust, N.A. ("Comerica") was appointed Special Administrator to the Estate on February 1, 2017. The UMG Agreement was announced on February 9, 2017. The next day, February 10, 2017, WBR contacted Comerica expressing its concern that the UMG Agreement infringed on rights held by WBR until December 31, 2020. WBR claimed that WBR and UMG had been "ill-used by Bremer Trust, their lawyers and their advisors, as [UMG had] been granted rights that the Estate [did] not possess." In light of the issues pertaining to the grant to UMG of rights claimed by WBR, UMG threatened litigation unless Comerica agreed to rescind the UMG Agreement.

Facing claims by WBR and UMG, Comerica investigated the issue. Bremer and McMillan continued to insist there was no overlap between WBR's and UMG's rights. Upon completing its investigation, Comerica brought a motion before this Court recommending rescission of the UMG Agreement. Comerica concluded it was in the best interests of the Estate to "avoid protracted litigation" in bringing its motion and in connection therewith asked the Court for an Order rescinding the UMG Agreement and to return the advanced by UMG in exchange for mutual releases with UMG. In response to Comerica's motion to rescind, the Advisors (and especially McMillan) went "to great lengths to try to preserve the more than in commissions paid to McMillan associated with the UMG Agreement." The Court agreed with Comerica that the motion to rescind was in the best interests of the Estate and granted the motion for rescission. The Estate returned the advance to UMG which included the paid to the Advisors. To date, the Advisors have failed to return the commissions.

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ARGUMENT

I. The Advisors' "Reasonable Compensation" for the Failed UMG Agreement is Zero.

This Court has the authority to set a reasonable fee. "[T]he language of Minn. Stat. § 524.3-721 is clear and unambiguous, and there is nothing in the statute indicating that a contract establishing any type of fee arrangement deprives the district court of authority to decide the reasonableness of compensation received." *In Re Estate of Neslon*, 936 N.W.2d at 908. And, "[t]he statute also plainly and unambiguously allows the district court to order any specialized agent who has 'received excessive compensation from an estate for services rendered' to 'make appropriate refunds.'" *Id.* at 906 (quoting Minn. Stat. § 524.3-721).

Having decided the Advisors are not permitted to retain the entire [redacted] from the rescinded UMG Transaction, this Court now will consider whether the Advisors should be permitted to retain any of the commission for the effort they put forth. In short, the entire [redacted] of commissions being retained by the Advisors is excessive. However, in considering whether any fees are reasonable, there are two frameworks to guide the Court. Other sections of the Probate Code provide factors for consideration when deciding the reasonableness of personal representative fees and attorneys' fees. It is submitted that the Court should apply those same considerations.

A personal representative is entitled to "reasonable compensation for services." Minn. Stat. § 524.3-719(a). In order to determine "reasonable compensation" for a personal representative, the court is to consider three factors;

> (i) the time and labor required;
> (ii) the complexity and novelty of problems involved; and
> (iii) the extent of the responsibilities assumed and *the results obtained.*

Minn. Stat. § 524.3-719(b) (emphasis added).

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An attorney performing services for an estate at the instance of a personal representative is similarly entitled to fees as are "just and reasonable." Minn. Stat. § 525.515(a). Five factors are considered in determining what amount, if any, of attorneys' fees are "just and reasonable;"

(i) the time and labor required;
(ii) the experience and knowledge of the attorney;
(iii) the complexity and novelty of the problems involved;
(iv) the extent of the responsibilities and *the results obtained*; and
(v) sufficiency of assets properly available to pay for the services.

Minn. Stat. § 525.515(b) (emphasis added). Regardless of the factors, an attorney requesting fees must present "**proof of a benefit** to an estate before an attorney may be paid for providing 'services' for the estate at the request of the personal representative." *In re estate of Evenson*, 505 N.W.2d 90, 92 (Minn. App. 1993) (interpreting Minn. Stat. § 525.515(b)) (emphasis added); see also *In re estate of Weisberg*, 64 N.W.2d 370, 372 (Minn. 1954) ("[C]ourts have the duty to prevent dissipation of estates through allowance of exorbitant fees to those who administer them."). As the test for attorneys' fees replicates the test for personal representative but adds two factors, it make sense to adopt this more expansive framework to analyze the Advisors' fees.

It is incumbent upon the Advisors to specifically, and in detail, provide to the Court the time and labor they actually expended in soliciting and negotiating the rescinded UMG transaction. *See In re Bush's Estate*, 304 Minn. 105, 127, 230 N.W.2d 33, 45 (1975). If and only if the Advisors can properly document and prove the actual time and labor so expended can they show entitlement to any sum of "reasonable compensation." Because of the nature of the Advisors arrangement with the Estate, through the Advisor Agreement, it is doubtful the Advisors adequately tracked and documented their time. Based upon the evidence to date, it is apparent that CAK spent almost no time soliciting or negotiating the UMG transactions. The Advisors were negotiating several contracts (as many as seven) from the onset. As a result, the evidence will show that Mr. McMillan/NorthStar was tasked with and did solicit and negotiate the UMG transaction while CAK/Koppelman did so in respect of the

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publishing agreement with UMPG, the two largest transactions entered into by the Estate during the tenure of Bremer and the Advisors.[1]

Indeed, the email correspondence, makes clear that NorthStar was involved with the negotiations of the UMG Agreement. It is also clear that NorthStar through Mr. McMillan is the one that had copies of the prior WBR agreements. And it was Mr. Millan that represented to UMG that WBR's rights pressing and distribution rights related to "physicals only." If NorthStar spent time reviewing the WBR agreements, it was not time well spent because it either came to the wrong conclusion about their import or ignored the substantial conflict giving rise to the rescission. Because the nature of those agreements can be ascertained from the plain language, it must be assumed that NorthStar either did not review those documents or did not possess the expertise it represented it did and on which Bremer relied. NorthStar's involvement, then, seems to have extended to sending emails and negotiating the long form agreement – for which some of the heirs had significant concerns. While this may constitute "effort," the results of the effort were not just worthless, they cost the Estate substantial sums in fees and costs in the form of Stinson LLP and Comerica's counsel, Fredrikson & Byron, in connection with negotiations of the UMG Agreement (Stinson LLP) and the investigation and motion to rescind the UMG Agreement (Fredrikson & Byron). These amounts will be presented to the Court at the evidentiary hearing in this matter. They are well in excess of $100,000.

It is submitted that in determining if the Advisors are entitled to any compensation and, if so what is reasonable that the monetary costs to the Estate must be factored into the analysis as they are part and parcel of the results obtained" from that effort. When that is done, and whatever effort NorthStar claims it expended on the UMG Agreement, it is readily apparent that no amount by way of fees on the UMG Agreement can credibly be characterized as reasonable.

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[1] Apart from the [redacted] at issue, the Advisors have collected approximately [redacted] in commissions over a period of nine (9) months in respect of other entertainment-related transactions entered into by the Estate during their tenure.

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CONCLUSION

Having not only failed to deliver any recognized monetary value to the Estate, but rather, costing the Estate hundreds of thousands of dollars in costs and fees, the Advisors are not entitled to retain any of the [redacted] in commissions. Stated otherwise, the SSA is confident that on the evidentiary record, the Court will conclude that no amount constitutes reasonable compensation.

Date: October 5, 2020

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