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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF CARVER FIRST JUDICIAL DISTRICT
PROBATE DIVISION
Case Type: Special Administration

Court File No. 10-PR-16-46

In the Matter of:

Estate of Prince Rogers Nelson,

Decedent.

ORDER ON SUMMARY JUDGMENT

The above entitled matter came on before the Court on July 31, 2020, for a remote hearing through VMR. Appearances were noted on the record. On April 20, 2020, the Court filed a Scheduling Order regarding the Second Special Administrator's motion to recoup commissions paid to Charles Koppelman (hereinafter "Koppelman") and CAK Entertainment, Inc. (hereinafter "CAK"), and L. Londell McMillian (hereinafter "McMillian") and NorthStar Enterprises Worldwide, Inc. (hereinafter "NorthStar") from an agreement entered into between the Estate of Prince Rogers Nelson (hereinafter "the Estate") and Universal Music Group, Inc. (hereinafter "UMG"). The Estate, Koppelman with CAK, and McMillan with NorthStar have all brought summary judgment motions, primarily based upon the terms of the Advisor Agreement entered into between the Estate, Koppelman, CAK, McMillan and NorthStar.

Now, therefore, the Court makes the following:

FINDINGS OF FACT

1. On April 27, 2016, the Court appointed Bremer Trust, National Association ("Bremer") as Special Administrator of the Estate. On June 2, 2016, Bremer requested authority from the Court to employ the Advisors – Koppelman with CAK, and L. Londell McMillian with NorthStar – and advised the Court of the proposed scope of the retention. On June 8, 2016, the Court authorized Bremer to retain the Advisors and Bremer did so through the formalization of an Advisor Agreement[1].

[1] Citations to the Advisor Agreement are herein referred to as "AA," followed by the specifically referred to clause.

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2. Bremer requested authority of the Court to retain the expert Advisors in order to "preserve and protect the assets of the Estate." (AA, 13th WHEREAS clause.) To effectuate that purpose, Bremer sought and then retained the Advisors, entertainment industry professionals Koppelman, on behalf of CAK, and McMillan, on behalf of NorthStar, for their "expertise, management, monetization abilities, advice and services." (AA, 7th WHEREAS clause and § 2.)

3. The industry professionals were identified as appropriate by counsel and Bremer to expertly fulfill the role of providing their advice and services to monetize the assets of the Estate. Bremer and the Advisors executed the Advisor Agreement effective June 16, 2016 based upon Bremer's June 2, 2016 recommendation and the Court's June 8, 2016 authorization. This Court authorized the Advisors "to advise and assist [Bremer], and as contemplated by Minn. Stat. § 524.3-715(21), 'to perform any active administration, whether or not discretionary.'" In its Order, the Court recognized the ". . . unique challenges and opportunities" presented by the Estate and the requirement for:

> . . . the Special Administrator to take all prudent steps to monetize the Estate's intellectual property, and to raise funds necessary for the administration of the Estate and for the payment of estate taxes.

4. The appointment under the Advisor Agreement initially lasted 90 days but was extended on September 14, 2016 for a term contemporaneous with Bremer's appointment as Special Administrator. On January 31, 2017, Bremer's appointment as the Special Administrator came to an end and thus, the Advisor Agreement terminated as did the Advisors' roles.

5. During the term of appointment and consistent with the Court's June 8, 2016 Order, the Advisors agreed to "collaborate and work together as a united team as they have provided services in the capacity as a "manager," "advisor," and "consultant" in the business of guiding and advising various companies, brands, artists, performers, actors, and others in connection with their business matters in the Entertainment Industry (as defined herein)…." (AA, 4th WHEREAS clause.) "Entertainment Industry" was defined as "all services and activities in such fields of endeavor as phonograph records (including but not limited to, recording and production),... digital media,…and any other media of entertainment for which Administrator may transact business for the Estate…." (AA, 9th WHEREAS clause.)

6. Section 5 ("Services") of the Advisor Agreement provided that, during the term of the Advisor Agreement, the Advisors agreed to provide services including, among others,

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"maximally capitalizing upon" the Estate's intellectual property assets, "the adoption of proper formats for presentation of Estate's rights in the Entertainment Industry," "the solicitation of Financial Transactions and advisory services," "the negotiation and provision of advisory services in connection with all business in the Entertainment Industry and licenses or 'brands'", and the "terms subject to and governed by Orders issued by the Carver County District Court including…Order and Memorandum authorizing Special Administrator's employment of entertainment industry experts dated June 8, 2006…" upon which [Bremer] should render services or license rights to third parties related to the Entertainment Industry."

7. The Advisors were the exclusive monetization experts to the Estate during the term of the Advisor Agreement. (AA, 8th WHEREAS clause.) Section 5 ("Services") of the Advisor Agreement further provided:

> During the Term, Administrator agrees to promptly refer to Advisors and to instruct all third parties to refer to Advisor for advice and counsel all verbal and written leads, communications or requests in connection with all engagements and arrangements that are within the scope of this Agreement.

8. The Advisors' compensation was contractually agreed to be commission-based only. Section 6(a) of the Advisor Agreement set forth the commission amount and what transactions were commissionable:

> (a). Commissions: Administrator hereby agrees to promptly pay commissions (the "Commission") to Advisor in an amount equal to ten percent (10%) on all ***Gross Monies*** (as defined herein) in connection with written contracts, amendments, extensions, additions, substitutions, replacements and modifications (including without limitation amendments, extensions, additions, substitutions, replacements and modifications to existing pre-Term contracts) for sponsorship, endorsement, licensing of rights owned or controlled by Administrator related to the Artist and the Estate, or the acquisition, disposition or sale of rights owned or controlled by Administrator related to the Artist and the Estate, or the rendering of services in the Entertainment Industry in connection with Artist or the Estate, regardless of when rendered, that are entered into during the Term or substantially negotiated during the Term and Executed within one hundred and twenty (120) days after the Term expires (each a "Commissionable Contract") . . . The interest and compensation set forth in this Agreement which shall be paid to Advisor shall be a continuing interest, and shall not be revocable by Administrator unless modified as outlined in Paragraph 3 above.

(*Id*. at 3, § 6(a).)

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Section 6(c) of the Advisor Agreement defined "Gross Monies" as:

> (c). "Gross Monies" as used herein shall include all forms of income, payments, compensation, emoluments and/or any other thing of value given to the Estate in lieu of compensation, for Entertainment Industry services and affairs, including without limitation, salaries, advances, fees, royalties, bonuses, gifts, shares of receipts or profits, stock and stock options (provided Advisor pays its pro-rata shares of costs of such stock), received by or credited to the Estate or applied for the Estate's benefit directly or indirectly (i.e., to any corporation, partnership, or other entity in which the Estate has an interest), regardless of by whom procured, received by or on behalf of the Estate or for the Estate's account as a result of the Estate's activities and affairs in and throughout the Entertainment Industry.

(*Id*. at 3, § 6(c).)

9. All compensation was split evenly between the Advisors. Bremer was to use good faith efforts to ensure the Advisors received their "Commission directly from the source in connection with any Commissionable Transaction." The Advisor Agreement made clear that for any commissions to be paid to the Advisors, the commission was to be calculated based upon the "Gross Monies" paid to the Estate. To that end, Section 6(d) of the Advisor Agreement provided as follows:

> Notwithstanding anything to the contrary contained herein, it is specifically understood that compensation payable to third parties by Administrator, including, but not limited to, compensation to agents, attorneys, accountants, or otherwise, shall not be deducted from Advisors' share of Gross Monies as defined herein, nor shall such third party compensation otherwise affect Advisor's compensation hereunder. Advisor shall be deemed to have earned Advisor's Commissions simultaneously with the payment to Administrator or Administrator's affiliates of Gross Monies, and Advisor's Commissions will be treated as and held in a constructive trust by Administrator or Administrator's affiliates for Advisor, and paid, as aforesaid, but in no event more than thirty (30) days after receipt by Administrator of such Gross Monies as provided herein unless there is a good faith dispute regarding the amount of the Commission due and owing.

(*Id*. at 4, § 6(d)(ii).)

10. In Section 3 of the Advisor Agreement, the Advisors agreed and acknowledged "that the power of the Administrator is limited by laws applicable to the Special Administration as well as orders of Court." In addition, the Advisors "agree[d] to be jointly and severally liable for each and every obligation pursuant to [the Advisor Agreement]."

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11. 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 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").

12. The 2014 WBR Agreement provides WBR with, among other things, the exclusive United States rights to license and distribute soundtracks, non-soundtrack Existing Works within the United States, and non-soundtrack Existing Works outside the United States through June 30, 2018. After June 30, 2018, WBR lost its exploitation rights to the WBR Masters but maintained the rights to "the pressing and distribution of Records embodying such Existing Works in the US" through December 31, 2020.

13. 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 "record" as "all forms of reproductions now or hereinafter known, manufactured or distributed primarily for home use, school use, juke-box use, or use in means of transportation . . ." The 1991 Agreement provided that "all master recordings made hereunder… may be released in any one or 'New Medium' configurations" and "the term 'New Medium' means a record in any audio only medium' including, without limitation, DAT and digital compact cassette ('DDC') which is not in general commercial distribution in the United States as of the date hereof."

14. The proposal for a recorded music agreement with UMG recommended and negotiated by the Advisors contemplated licensing, distribution and marketing of Prince's sound recordings to UMG, including those that were then the object of the 2014 WBR Agreement. The proposal with UMG further contemplated an advance of $36 million, including a $31 million advance payment upon signing of an Agreement.

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15. The UMG draft proposal (together with other proposed entertainment transactions) was submitted by Bremer and its counsel to the Court in September 2016. In a Memorandum of Law in Support of Non-Excluded Heirs' Opposition to Special Administrator's Motion to Approve Recommended Deals filed September 28, 2016, counsel for some or all of the current heirs argued that there was an overlap between the rights granted in the 2014 Warner Brothers contract and the contract being proposed with UMG. Counsel for the heirs wrote, "The UMG Vault Agreement concerns masters that are subject to an existing agreement with Warner Bros. that do not revert to Prince until 2020, not 2018 as stated in the UMG Vault Agreement."

16. In recommending and endorsing the UMG proposal, Bremer and the Advisors took the position that under the "pressing and distribution" grant, WBR only had rights with respect to physical records and all rights, with the exception of distribution of physical records, to the WBR Masters in the United States reverted to the Estate on June 30, 2018. In its Order, this Court noted that the proposed deals were "'short-form deals' and the drafting, and perhaps negotiation, may need to take place before the parties could execute a 'long-form deal.'"

17. Upon hearing, and over the objection of the Heirs, the Court accepted the representation by the Advisors and Bremer that there was no overlap of rights. 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.

18. 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 $31 million (plus additional advances to be triggered by future events), the Estate granted UMG certain rights to the WBR Masters, NPG Masters, and Vault Masters. Specifically, the UMG Agreement provided UMG with exclusive United States rights to "all modes of exploitation other than physical records" for the WBR Masters upon the reversion of such rights to NPG Records, Inc. on June 30, 2018. As a result of the UMG Agreement, the Advisors were paid a commission of $3.1 million (i.e. 10%) 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.

19. Comerica Bank & Trust, N.A. ("Comerica") was appointed Personal Representative to the Estate on February 1, 2017, and the UMG Agreement was announced on

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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. Specifically, 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.

20. Facing claims by WBR and UMG, Comerica conducted an investigation of 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 $31 million 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 $1.5 million in commissions paid to McMillan associated with the UMG Agreement."

21. The Court ultimately 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 $31 million advance to UMG which included the $3.1 million paid to the Advisors. To date, the Advisors have failed to return the commissions.

CONCLUSIONS OF LAW

1. The Court incorporates as Conclusions of Law the decision of the Minnesota Court of Appeals addressing this Court's previous ruling on a temporary injunction. *In Re Estate of Nelson*, 936 N.W.2d 897 (Minn. Ct. App. 2019).

2. The district court has jurisdiction over "all subject matter relating to estates of decedents," and the power "to take all…action necessary and proper to administer justice in matters which come before it." Minn. Stat. §524.1-302 (2019).

3. The plain language of Minn. Stat. Section 524.3-721 provides that the power afforded the district court includes the authority to review the "reasonableness of the compensation of any person" employed by the personal representative, as well as to order the refund of excessive

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compensation received. Further, there is nothing in Section 524.3-721 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 Nelson,* 936 N.W.2d at 908.

4. The district court did not approve the Advisor Agreement entered into between Bremer Trust, CAK and NorthStar.

5. The Court did approve the contract entered into between the Estate and UMG. The Court did so understanding that the Advisors would receive a ten-percent commission (3.1 million dollars).

6. Minn. Stat. § 524.3-721 allows an interested person (the Second Special Administrator) to seek review by the district court of the "reasonableness of the compensation" paid to a specialized agent (the Advisors). The Statute also allows the district court to order a refund of "excessive compensation" paid for "services rendered." *In Re Estate of Nelson,* 936 N.W.2d at 907.

7. Under the facts of this case, the rescission of the UMG contract resulted in the extinguishing of the contract, which abrogates it and undoes it from the beginning. *Graves v. Wayman*, 859 N.W.2d 791, 799 (Minn. 2015).

8. The Advisor Agreement provides that the Advisors receive commissions on all Gross Monies in connection with written contracts, amendments, extensions, additions, substitutions, replacements and modifications of contracts. The Advisor Agreement is silent as to contracts which are rescinded.

9. The intent of the Advisor Agreement is to compensate the Advisors when value is received by the Estate. Here no value was received from the rescinded UMG Agreement.

10. The Estate is not challenging the ten-percent commission rate established in the Advisor Agreement. Instead, the Estate is challenging the reasonableness of the Advisors' compensation in light of the terminated and rescinded contract under which the Estate received nothing of value.

11. The potential overlap in the rights conveyed in the Warner Brothers contract and the negotiated UMG agreement was clearly pointed out to the Advisors by counsel for the heirs during the hearing where the Court was asked to approve the proposed UMG short-form agreement. The Advisors continued to recommend the approval of the UMG Agreement.

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12. The Court relied upon the advice of Bremer, the Advisors and the attorneys for the Estate and accepted the representations that there was no potential overlap in the rights conveyed in the Warner Brothers contract and the negotiated UMG agreement.

13. While it is true that attorneys for the Estate could have addressed this potential overlap further with the Court, the Advisors were contractually the exclusive representative of the Estate in connection with all business dealings in the Entertainment Industry. The Advisors held themselves out to be uniquely knowledgeable regarding the Entertainment Industry and the music assets of the Estate.

14. The Court reaffirms its Order & Memorandum Granting Motion to Approve Rescission of Exclusive Distribution and License Agreement issued on July 13, 2017. Specifically, the Court reaffirms its decision that it was reasonable and prudent for the Personal Representative to seek, and for the Court to authorize, the rescission of the UMG Agreement in light of the threat of protracted litigation in various jurisdictions and the resulting delay in the ability to monetize certain music rights belonging to the Estate.

ORDER

1. The motion of the Second Special Administrator for summary judgment is GRANTED in part.

2. CAK and NorthStar shall not be entitled to receive the $3.1 million they received as commission from the UMG Agreement.

3. CAK and NorthStar shall be entitled to receive reasonable compensation for their work identifying UMG as an entertainment industry partner and for negotiating the UMG Agreement.

4. CAK and NorthStar shall reimburse the Estate for any monies received as commissions that exceed the amount of reasonable compensation.

5. The motions of CAK and NorthStar are hereby DENIED.

6. The evidentiary hearing scheduled for October 13, 2020, shall remain on the calendar. The issue to be addressed at that hearing will be the determination of the reasonable compensation CAK and NorthStar should receive for their work in identifying UMG as an entertainment industry partner and for negotiating the UMG Agreement.

7. The underlying motion for recoupment of the commissions paid to the Advisors from the UMG Agreement was brought by the Estate. Therefore, the Court will direct that the Second

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Special Administrator shall call any witnesses to establish the Estate's position as to value of the Advisors' services during the morning of October 13, 2020. CAK shall have from 1:30 pm on October 13, 2020 to 12:00 noon on October 14, 2020, to present its witnesses. NorthStar shall have from 1:30 on October 14, 2020, to 12:00 noon on October 15, 2020, to present its witnesses. The Second Special Administrator shall call any rebuttal witnesses during the afternoon of October 15, 2020. The parties shall confer before and during the evidentiary hearing to determine the time needed for the various witnesses and to advance this time schedule if the full allotted time is not necessary. Pre-hearing memorandum are invited, and post-hearing written arguments shall be submitted by November 2, 2020.

8. The parties shall participate in a form of ADR to attempt to reach a resolution of this dispute no later than October 1, 2020.

9. Previous scheduling orders issued by the Court not amended by this Order remain in effect.

BY THE COURT:

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Dated: August 28, 2020

Kevin W. Eide
Judge of District Court

MEMORANDUM

CAK and NorthStar argue, as they did before the Minnesota Court of Appeals, that the terms of the Advisor Agreement dictate that they are contractually entitled to the full amount of their commissions. They suggest that the Court of Appeals was even giving the District Court subtle direction in indicating that the "Advisor Agreement may ultimately dictate whether the Advisors are entitled to retain their commissions." In the next sentence in the opinion, however, the Court of Appeals states, [b]ut the language of Minn. Stat. Section 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 the compensation received." This Court interprets that language to state that the district court retains the power and jurisdiction to determine the reasonableness of the compensation and that the Advisor Agreement is not controlling.

If the Court retains the power and jurisdiction to determine the reasonableness of the compensation received, it would not matter whether the rescission of the UMG Agreement results in the total abrogation of the Agreement and undoes it from the beginning. Even if this were not the case, the Court would still have the authority to determine the reasonableness of the compensation. However, this Court finds the argument of the Second Special Administrator on

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this point to be persuasive. The Court has ruled on this issue with the intent that it would allow efficient appellate review if that becomes necessary.

CAK and NorthStar argue a series of cases addressing rescission that arise out of real estate transactions. They opine that the finding of UMG as an entertainment partner and the negation of the UMG agreement can be analogized to a real estate agent finding a buyer and negotiating a sales contract that is agreed to by the parties. In that series of cases, the real estate agent was allowed to retain their commission, even if one of the parties terminates or seeks rescission of the contract. The agent has done their work and they should be paid. This Court finds this analogy to miss the point.

Here, this Court has found that, due to a fully investigated and persuasively stated concern that the UMG Agreement and the 2014 Warner Brothers Agreement contained conflicting licenses to the same music rights, it was reasonable and prudent for the Personal Representative to seek, and for the Court to authorize, the rescission of the UMG Agreement in light of the threat of protracted litigation in various jurisdictions and the resulting delay in the ability to monetize certain music rights belonging to the Estate. Returning to the analogy of a real estate sales contract, it would be more analogous to question whether a real estate agent should be entitled to his or her commission if the contract is rescinded after it was determined that the agent attempted to sell real estate where he knew that the seller didn't own the title to the land or, at the very least, there was such a significant cloud on the title that it would take years of litigation to sort it all out.

CAK and NorthStar also argue that rescission was not reasonable because the UMG Agreement contained a provision that would allow the parties to sever out any music rights that the Estate was unable provide to UMG. While it is possible that the parties might ultimately have been able to negotiate a reduction in the advance of funds and terms of the UMG agreement pursuant to this severance provision, this option was not presented to the Court. The only options presented to the Court in 2017 were to rescind the UMG Agreement or to face years of litigation in multiple jurisdictions involving the Estate and massive entertainment businesses.

CAK and NorthStar have argued that they are contractually entitled to their full commission based upon the terms of the Advisor Agreement. With this Court's ruling today, and specifically with the Court's determination that rescission of the UMG Agreement abrogates the UMG Agreement and undoes it from the beginning, the Second Special Administrator has argued, and may continue to argue, that under the Advisor Agreement, CAK and NorthStar should receive nothing. This Court has, in relying significantly on the decision of the Minnesota Court of Appeals, ruled that "nothing in the statute indicat[es] that a contract establishing any type of fee arrangement deprives the district court of authority to decide the reasonableness of compensation received." Stated another way, this Court will not determine that the Advisor Agreement compels a decision that the Advisors are entitled to all of their commissions, nor can it determine that it compels a decision that the Advisors are entitled to nothing. This Court retains the statutory authority to determine the reasonableness of the Advisor's compensation from the rescinded UMG Agreement.

The Court is sure that litigation costs in this matter are already in the upper atmosphere. The Court is unsure of the position the parties will take as to the reasonableness of the Advisors'

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compensation for a rescinded agreement. The evidentiary hearing and briefing will increase the cost to the parties. Further appeals may occur. The Court has required another attempt to use ADR to reach a resolution in this matter and the Court urges the parties to reach a compromise that the they can live with.

K.W.E.

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.