

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In Re:

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

Estate of Prince Rogers Nelson,
Decedent,

And

Tyka Nelson,

Petitioner.

**MEMORANDUM IN SUPPORT OF
OMARR BAKER'S OBJECTION TO
SPECIAL ADMINISTRATOR'S REQUEST
FOR FEES AND COSTS AND
ATTORNEYS' FEES THROUGH
DECEMBER 31, 2016**

INTRODUCTION

Omarr Baker ("Objectant"), by and through his counsel, hereby objects to the Special Administrator's Attorney Fee Affidavit, December 2016 Billing Statement, and Special Administrator Fee Affidavit in support of its request for the payment of fees from the Estate of Prince Rogers Nelson ("Estate").

The Special Administrator bears the burden of proving both the amount and the reasonableness of the fees for which it seeks reimbursement from the Estate. However, the Special Administrator has not provided a calculation of its fees and costs based on the fee schedule it submitted. The Special Administrator has similarly failed to prove in sufficient detail how the astounding \$1,596,068.00 in legal fees and \$12,395.68 in legal costs benefitted the Estate.

Objectant hereby reiterates the objection to payment of the Special Administrator's legal fees filed on January 17, 2017 on the basis that the fees are not just and reasonable or commensurate with the benefit to the Estate. Objectant similarly objects to the payment of the Special Administrator's fees on the basis that they are not reasonable. In light of the missing

information and outstanding issues, Objectant therefore respectfully requests that the Special Administrator's request for fees, costs, and legal fees be scheduled for a formal hearing.

FACTS

Following Prince Rogers Nelson's death on April 21, 2016, Bremer Trust, National Association ("Bremer") was appointed Special Administrator for the Estate. Bremer retained Stinson Leonard Street ("Stinson") as counsel and began to administer the Estate. Since that time, Bremer and its attorneys have performed work for the Estate. On October 28, 2016, the Court granted Bremer's initial attorneys' fees and set forth a procedure for approving future fees. Under the procedure, within 30 days of the end of each month, Bremer is authorized to pay its fees. (*See* Order Approving Fees and Costs and Expenses and Establishing Procedure for Review and Approval of Future Fees and Costs and Expenses ("Order"), p. 7.) Pursuant to the Order, on a quarterly basis, the Special Administrator is required to submit to the Court an affidavit attaching unredacted copies of all itemized billing statements. The Special Administrator is required to serve unredacted copies to counsel for the non-excluded heirs. (*Id.*) The non-excluded heirs have 10 days after service to submit written objections. (*Id.*)

On December 16, 2016, the Special Administrator filed its Petition for Order Approving Accounting, Distribution of Assets, and Discharge of Special Administrator ("Petition"). The Petition requests the Estate pay the Special Administrator's legal fees through December 31, 2016. In the Petition, the Special Administrator represented that it "will file its legal fees through December 31, 2016 prior to the January 12, 2017 hearing." At the time of filing its Petition, the Special Administrator did not provide to the Objectant its itemized billing statements, even for the completed months of October and November 2016.

On December 19, 2016, the Court entered an order holding that any objections to the Petition must be filed with the Court prior to or raised at the hearing scheduled for January 12, 2017. (*See* Notice and Order of Hearing on Petition for Order Approving Accounting, Distribution of Assets and Discharge of Special Administrator.) The Court's December 19 Order did not specify whether the Special Administrator's request for attorneys' fees would also be heard on January 12. The Court's subsequent order, dated December 28, 2016, similarly did not give any indication.

On January 5, 2017, nearly twenty days after filing the Petition, the Special Administrator finally served the Objectant with its October and November invoices. However, it did not provide its December invoice, nor did it serve a copy prior to the January 12 hearing. At the January 12 hearing, the Special Administrator's request for attorneys' fees was not discussed in detail by the Special Administrator or by the Court.

Following the procedure as outlined in the Court's October 28 Order, Omarr Baker and Tyka Nelson filed an objection 10 days after receipt of the October and November invoices, on January 17, 2017. The objection submitted that the requested fees were facially excessive and it is unclear from the material submitted as to whether there was a benefit to the Estate. After the objection was filed, the Special Administrator filed affidavits in support of its own fees and Stinson's fees, as well as Stinson's December invoice, on January 19, 2017. As such, the Objectant hereby submits this objection 10 days after receipt of the affidavits and the December invoice, pursuant to the Court's October 28 Order. Objectant respectfully requests the Court schedule the Special Administrator's request for fees and costs for a formal hearing and require Bremer to respond to discovery to facilitate a meaningful hearing.

ARGUMENT & AUTHORITIES

1. Standards of Review

A. *Standard of Review for Special Administrator's Fees and Costs*

Under Minnesota Statutes § 524.3-719(a), a special administrator is entitled to *reasonable* compensation for services rendered on behalf of an estate. “[T]he reasonableness of a personal representative’s compensation depends upon: (1) the time and labor required; (2) the complexity and novelty of the problems involved; and (3) the extent of the responsibilities assumed and the results obtained.” *Id.*, subd. (b). Any award of compensation to a fiduciary is subject to the trial court’s discretion. *In re Pamela Andreas Stisser Grantor Trust under Second Amendment*, 818 N.W.2d 495, 507 (Minn. 2012). The reasonable value of such an award is a question of fact. *Id.*; *see also In re Baumgartner’s Estate*, 144 N.W.2d 574, 580 (Minn. 1966); *In re Doyle*, 788 N.W.2d 342, 347 (Minn. Ct. App. 2010).

B. *Standard of Review for Awards of Attorneys’ Fees and Costs*

As party seeking to recover fees and expenses from the Estate, the Special Administrator has the burden to demonstrate that the fees incurred *actually benefitted the Estate*. *In re Estate of Evenson*, 505 N.W.2d 90, 92 (Minn. Ct. App. 1993).

Under Minnesota Statutes § 525.515(b), a personal representative (and by extension, a special administrator)’s counsel is entitled to *reasonable* compensation for services rendered on behalf of an estate. In assessing requests for attorneys’ fees reimbursements in this context, the Court must consider the following factors; (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. *Id.*; *see also Milner v. Farmers Ins. Exch.*, 748 N.W.2d 608, 621

(Minn. 2008). The Court has wide discretion in approving and denying motions for reimbursement of attorneys' fees from an estate. *In re Estate of Balafas*, 225 N.W.2d 539, 541 (Minn. 1975).

Even when authorized by statute, the ability to allow fees should be cautiously exercised. While Minnesota courts have not clearly defined "benefit" to the estate, they have allowed recovery from an estate in varying circumstances. *See, e.g., Gellert v. Eginton*, 770 N.W.2d 190, 198 (Minn. Ct. App. 2009); *In re Estate of Van Den Boom*, 590 N.W.2d 350, 354 (Minn. Ct. App. 1999).

In granting attorneys' fees, a district court has discretion. *See* Minn. Stat. §§ 525.515, 524.3-720 (2016); *In re Estate of Wesberg*, 64 N.W.2d 370 (Minn. 1954) (holding that the district court's decision to reduce the requested amount of attorneys' fees was not an abuse of discretion). However, the decision "is discretionary only in the sense that no fixed rules determine the proper allowance, and it is not discretionary in the sense that courts are at liberty to give anything more than a *fair* and *reasonable* compensation." *In re Simmons' Estate*, 8 N.W.2d 222, 222 (Minn. 1943) (emphasis added).

2. The Special Administrator Has Not Established that the Requested Fees and Costs are Reasonable

Bremer bears the burden of proving both the amount and reasonableness of its requested fees. *See* Minn. Stat. § 524.3-719(a). Before approving the Special Administrator's fees, Objectant respectfully requests the Court clarify several issues, as outlined below.

First, In the Court's October 28 Order, Judge Eide approved the "flat" fee schedule proposed by the Special Administrator. (*See* Order at pp. 3-4) (2% for the first \$1,000,000; 1.5% of the next \$4,000,000; 1% for the next \$5,000,000; and 0.5% of any estate assets over \$10,000,000, with an additional hourly rate for excessive, unusual or complex administrative services at a minimum rate of \$150 per hour). In the Affidavit of Craig Ordal filed on January 19,

2017, the Special Administrator again cites to the fee schedule. (*See* Affidavit of Craig Ordal, Ex. A.)

However, it is unclear exactly how the fee that Bremer requests is calculated based upon this fee schedule, and Bremer has not, to date, provided a calculation. The fees should be a percentage of the fair market value of the Estate's assets on date of death. This value is represented as \$25 million in the accounting. As a result, Bremer's fees should be based on that amount and not some other value. As noted in the objection filed on January 11, 2017, Bremer's submitted accounting failed show a calculation of fees. Bremer also failed to provide a calculation with the Ordal Affidavit. When Bremer does provide a calculation, it should be based on the value of the Estate as represented in the accounting. It similarly follows that Bremer's fees the Court previously approved must be reconsidered to the extent Bremer was paid more than what it is entitled to pursuant to the fee schedule based on the accounting value.

Additionally, it is unclear whether the fees from Patrick A. Mazorol are based upon the \$150 per hour allotted for "excessive, unusual or complex administrative services," or whether these are attorneys' fees Bremer requests in conjunction with Stinson's fees. Objectant requests that before the Court approve the Special Administrator's request for fees, Bremer provide its exact calculations based upon the fee schedule and clarify Mr. Mazorol's fees.

Second, there is a significant delta between the accounting value reported and the purported value of the Estate. Although it is not entirely clear, Bremer's fees may be based on a presumptive value of the Estate established as of January 11, 2017—which is not yet undisputed. As the incoming personal representative continues to gather information about the estimated value of the Estate and its unique assets, the Court will gain a better understanding of whether the amount Bremer is requesting from the Estate is reasonable.

Third, Bremer's fee schedule appears to be based upon a full representation. However, the special Administrator worked for less than eight months on the Estate and never provided a full accounting of the Estate. It is unclear from this perspective the exact value of the services provided. Prior to approving Bremer's requested fees, the Court should consider how the fees were calculated subject to the value of the Estate and the work Bremer provided to date. Objectant wants to ensure the Estate will not be forced to provide a full percentage to both Bremer and the incoming personal representative, Comerica Bank & Trust, N.A. This would be overly burdensome for the Estate—especially considering Bremer voluntarily elected to terminate its special administration.

For all these reasons, Objectant respectfully requests the Court deny Bremer's request for fees and costs until Bremer provides the additional information necessary to properly calculate the fees, or in the alternative, put the requested fees and costs to a formal hearing.

3. The Special Administrator Has Not Established that the Attorneys' Fees Incurred Benefitted the Estate

As stated in the prior objection filed on January 17, 2017, the services provided by Stinson appear to be internally largely duplicative and redundant. It is unclear how Stinson's fees produced work that exclusively benefitted the Estate. It is well-established that Bremer, as special administrator, has powers similar to a personal representative. *See* Minn. Stat. § 524.3-617. Objectant acknowledges that the Special Administrator has played an important role in the Estate. However, the Court should not approve fees that fail to comport to the standards courts have set for determining if the fees are reasonable.

A careful examination of Stinson's fees demonstrates that the fees are clearly excessive—especially in light of the exceptional work done by counsel for the Non-Excluded Heirs. Since Bremer's appointment as Special Administrator, counsel for the Non-Excluded Heirs have worked

tirelessly to ensure the Estate is administered fairly—and have, at times, corrected mistakes by the Special Administrator.

Additionally, since the Court appointed the Special Administrator in April 2016, it has become clear that Stinson’s fees are much greater than the fees approved and paid to Bremer. (*See, e.g.,* Order at p. 9; Oct. 14, 2016 Mem. in Support of Mot. to Approve Payment of Special Administrator’s and Attorneys’ Fees and Costs Through Sept. 30, 2016 at p. 2). In the Affidavit of Laura Halferty filed on January 19, 2017, Stinson requests an astounding \$1,596,068.00 in fees and \$12,395.68 in costs. Before the Court approves these fees, it should hold a formal hearing to ensure they are just and reasonable and commensurate with the benefit to the Estate. *See In re Weisberg’s Estate*, 64 N.W.2d 370, 372 (Minn. 1954) (“[t]he courts have a duty to prevent dissipation of estates through the allowance of exorbitant fees to those who administer them”).

Accordingly, the Objectant respectfully requests the Court deny Stinson’s fees and costs in their entirety, or, in the alternative, to put the fees and costs to a formal hearing. The Court, the Estate, and the Objectant deserve an explanation.

CONCLUSION

For all the foregoing reasons, Omarr Baker respectfully reiterates the objections filed on January 17, 2017 and requests the Court deny the Special Administrator’s request for payment of its fees and its attorneys’ fees from the Estate. In the alternative, Omarr Baker respectfully requests the Court put the Special Administrator’s requested fees, costs, and attorneys’ fees to a formal hearing.

Dated: January 30, 2017

COZEN O'CONNOR

By /s/Thomas P. Kane
Steven H. Silton (#260769)
Thomas P. Kane (#53491)
Armeen F. Mistry (#397591)
33 South Sixth Street, Suite 4640
Minneapolis, MN 55402
Telephone: (612) 260-9000
ssilton@cozen.com
tkane@cozen.com
amistry@cozen.com

Jeffrey Kolodny, *pro hac vice*
277 Park Avenue
New York, NY 10172
Telephone: (212) 883-4900
jkolodny@cozen.com

Attorneys for Omarr Baker