

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
PROBATE DIVISION
FIRST JUDICIAL DISTRICT

In Re:

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

Estate of Prince Rogers Nelson,
Decedent.

**LOMMEN ABDO, P.A.'S
MEMORANDUM IN SUPPORT OF
APPLICATION FOR DETERMINATION
AND ESTABLISHMENT OF
ATTORNEY'S LIEN AND ENTRY OF
JUDGMENT FOR SAID LIEN AGAINST
SHARON NELSON, NORRINE NELSON,
AND JOHN NELSON PURSUANT TO
MINN. STAT. SEC. 481.13**

INTRODUCTION

This Memorandum is submitted by Lommen Abdo, P.A. ("Lommen Abdo") in support of its application for determination of its attorney's lien and entry of judgment on its lien pursuant to Minn. Stat. § 481.13, subd. 1(c). Lommen Abdo provided legal services to its former clients, Sharon L. Nelson, Norrine P. Nelson and John R. Nelson (the "Nelsons"), from April 27, 2016 through November 29, 2016. Lommen Abdo was awarded fees and costs from the Estate for its services that the Court determined were provided for and contributed to the benefit of the Estate in its March 21, 2017 Order. With this Application, Lommen Abdo seeks an order from the Court determining that it is entitled to a lien in the amount of the balance of the fees and costs that were incurred during its representation of the Nelsons and the entry of judgment in the amount of that lien pursuant to Minn. Stat. § 481.13, subd 1(c). Additionally, Lommen Abdo requests that the Court's Order establish the priority of the liens for attorney's fees that are determined as to the Nelsons at this time to avoid subsequent disputes among the former lawyers

of the Nelsons over their entitlement to payment from the proceeds of the Estate or other available assets of the Nelsons.

FACTUAL BACKGROUND¹

Lommen Abdo was engaged by the Nelsons in April 2016 to provide legal services relating to their interests in being determined Heirs in the above-captioned Estate. (O'Neil Affidavit at ¶ 3 & Exhibit 1.) From April 27, 2016 (the effective date of its engagement) through November 29, 2016 (the date it completed the file transfers to substituted counsel for the Nelsons), Lommen Abdo provided legal services to the Nelsons and advanced costs on their behalf to protect their interests in the above-captioned Estate. Investigation, discovery, determination of Heirs to the Estate, and assistance to protect the assets of the Estate were performed to bring a resolution for determination of the Nelsons being established as Heirs to the Estate. (O'Neil Affidavit at ¶ 4.)

During the tenure of its representation of the Nelsons, Lommen Abdo professionals made time entries for services provided to the Nelsons in connection with their interest in Prince's Estate, and all costs incurred during the representation were tracked and documented. (O'Neil Affidavit at ¶ 5.) Multiple professionals provided services to the Nelsons in a variety of practice areas and billed time to the various sub-files that were opened and maintained during the representation. (O'Neil Affidavit at ¶ 5).

¹ This Memorandum incorporates by reference the supporting papers that it filed in support of its Motion for Approval of Payment of Attorney's Fees and Costs from the Estate in January 2017, including the Memorandum submitted in support of that Motion and the Affidavit of Kenneth J. Abdo that were filed under seal on January 26, 2017. Lommen Abdo additionally incorporates by reference the papers that it submitted in Opposition to Personal Representative's Motion for Approval for Consultant Payments that were filed on October 12, 2018. Unless otherwise identified, the Exhibits referenced herein are attached to the Affidavit of Barry A. O'Neil that is submitted with this Application.

In January 2017, Lommen Abdo sought the Court's approval for payment of attorneys' fees and costs by the Estate pursuant to Minn. Stat. § 524.3-720, and in connection with its March 21, 2017 Order, the Court granted Lommen Abdo's motion in part and ordered the Estate to pay the amounts it found contributed to the benefit of the Estate as a whole and were deemed payable by the Estate under Minn. Stat. § 524.3-720. (O'Neil Affidavit at ¶ 5, Table A.) In addition to the balance of the fees that the Court found were not payable under Minn. Stat. § 524.3-720, which totals \$68,021.50, Lommen Abdo seeks a determination by the Court that it is entitled to a lien for the all of the fees and costs that were incurred in connection with its representation of the Nelsons in this matter. (O'Neil Affidavit at ¶¶ 5 & 6, Table A.)

The additional fees and costs that are payable under the terms of its Engagement Agreement with the Nelsons that were not submitted for approval as contributing to the benefit of the Estate as a whole in January 2017 total \$154,635.16. Accordingly, the total amount of the lien that Lommen Abdo seeks with this Application is \$214,652.11, of which \$213,350.46 is for legal services rendered and \$1,301.65 is for costs incurred. (O'Neil Affidavit at ¶¶ 5-9 & Table A.) Although the Nelsons were provided with the Lommen Abdo invoices detailing the services provided and the fees and costs that are due and owing, the Nelsons have never indicated that they objected to any of the fees or time entries after receipt of the Lommen Abdo Invoices and have made no payments toward the balance of these invoices. (O'Neil Affidavit at ¶¶ 8 & 9.)

Lommen Abdo timely served and filed a Notice of Intent to Claim Attorney's Lien on the Nelsons and the Personal Representative of the Estate. Lommen Abdo also perfected its lien by filing a UCC Financing Statement ("UCC-1") with the Minnesota Secretary of State pursuant to Minn. Stat. § 481.13, subd. 2. Specifically, on August 10, 2018, Lommen Abdo served its Notice of Intent to Claim Attorney's Lien on the Nelsons and the Personal Representative of the

Estate by U.S. Mail, and the UCC-1 was filed with the Minnesota Secretary of State on September 4, 2018. The Nelsons and the PR were served with the UCC-1 and the Notice of Intent that were filed with the Minnesota Secretary of State on October 1, 2018. (O'Neil Affidavit at ¶ 10.) In October 2018, a search of the UCC records with the Minnesota Secretary of State did not reveal that any attorneys or firms had filed a notice of a lien as to any of the Nelsons prior to Lommen Abdo's filing. (O'Neil Affidavit at ¶ 10.)

With this Application, Lommen Abdo requests that the Court determine that Lommen Abdo is entitled to an attorney's lien in the amount of \$214,652.11 pursuant to Minn. Stat. § 481.13 upon the Nelsons' interests in the above-captioned Estate, and all costs incurred in seeking the Court's determination in the above-captioned Estate. Lommen Abdo also requests that the Court enter judgment in its favor in the amount of the lien and that the Court's Order establish the priority of its lien over the liens of the other attorney's lien claimants as to the Nelsons.

ARGUMENT

I. THE COURT SHOULD ESTABLISH AND DETERMINE THAT THE AMOUNT OF LOMMEN ABDO'S ATTORNEY'S LIEN IS \$214,652.11 PURSUANT TO MINN. STAT. § 481.13.

An attorney's lien is intended to prevent a client from benefiting from an attorney's services without compensating the attorney for his or her services. *Dorsey & Whitney LLP v. Grossman*, 749 N.W.2d 409, 420 (Minn. Ct. App. 2008). While it originated in the common law, attorney's liens in Minnesota are now governed entirely by statute. *Id.* (citation omitted) (internal quotation marks omitted); *see also* Minn. Stat. § 481.13 and Minn. Stat. § 525.491.

Minn. Stat. § 481.13 provides:

Subdivision 1. **Generally.** (a) **An attorney has a lien for compensation whether the agreement for compensation is expressed or implied** (1) upon the cause of

action from the time of the service of the summons in the action, or the commencement of the proceeding, and (2) **upon the interest of the attorney's client in any money or property involved in or affected by any action or proceeding in which the attorney may have been employed, from the commencement of the action or proceeding, and, as against third parties, from the time of filing the notice of the lien claim, as provided in this section.**

(emphasis added). Minn. Stat. § 525.491 similarly provides:

When any attorney at law has been retained to appear for any heir or devisee, such attorney may perfect a lien upon the client's interest in the estate for compensation for such services as may have been rendered respecting such interest, by serving upon the personal representative before distribution is made, a notice of intent to claim a lien for agreed compensation, or the reasonable value of services. The perfecting of such a lien, as herein provided, shall have the same effect as the perfecting of a lien as provided in section 481.13, and such lien may be enforced and the amount thereupon determined in the manner therein provided.

The perfection of an attorney's lien in a client's personal property is governed by subdivision 2(b) of section 481.13, which provides:

If the lien is claimed on the client's interest in personal property involved in or affected by the action or proceeding, the notice must be filed in the same manner as provided by law for the filing of a security interest.

When an attorney or law firm files an application under section 481.13, subd. 1(c), the court then “must determine (1) the lienholder; (2) the subject of the lien as defined by the attorney-lien statute; and (3) the amount due.” *Dorsey & Whitney, LLP v. Grossman*, 749 N.W.2d 409, 422 (Minn. Ct. App. 2008).

The record in this matter demonstrates that Lommen Abdo's lien should be established and be determined to be \$214,652.11, the amount of the fees and costs due and owing under its Engagement Agreement with the Nelsons. As detailed in the supporting papers that were submitted with its Motion for Approval in January 2017 and the supporting papers with this Application, Lommen Abdo's professionals provided substantial services and significant expertise that benefited the interests of its former clients for which it has received no

compensation. The efforts of the Lommen Abdo professionals secured the Nelsons' position as heirs of the Estate and provided significant expertise during the critical initial stages of this proceeding. This Court in fact recognized the benefits that the efforts of Lommen Abdo's professionals provided to the Estate as a whole in its March 21, 2017 Order and the specific role that Lommen Abdo professionals played in connection with the negotiation, drafting and execution of the Consultant Agreements that provided direct financial benefit to the Nelsons.

The detail of the legal services that were provided by Lommen Abdo and the costs that were incurred is outlined in the invoices that were submitted to the Court in connection with the January 2017 Motion for Approval and the additional invoices that have been submitted with this Application. (O'Neil Affidavit, Exhibits 2 & 3.) The hourly rates that were billed for the various Lommen Abdo attorneys and support professionals were consistent with the rates charged by law firms in and around the Twin Cities with the experience and sophistication sufficient to provide legal services on complex probate and entertainment matters. (O'Neil Affidavit at ¶ 7.) The Court's review of the time entries will demonstrate that the time spent by the Lommen Abdo professionals was reasonable given: (1) the time and labor required; (2) the complexity of the problems and issues involved; and (3) the extent of the responsibilities assumed and the results obtained. Accordingly, the Court should issue an order establishing and determining that the amount of Lommen Abdo's lien for attorneys' fees is \$214,652.11. As provided in section 481.13, the Court should additionally direct that judgment be entered against the Nelsons and in favor of Lommen Abdo in the amount of \$214,652.11.

II. THE COURT'S ORDER SHOULD ALSO DETERMINE THAT LOMMEN ABDO'S ATTORNEY'S LIEN HAS PRIORITY OVER THE LIENS OF ANY OTHER ATTORNEY OR LAW FIRM AS TO THE NELSONS' INTEREST IN THE ESTATE OR OTHER ASSETS.

Lommen Abdo timely served and filed its Notice of Intent to Claim Attorney's Lien on the Nelsons and the Personal Representative of the Estate on August 10, 2018. (O'Neil Affidavit at ¶ 10.) Lommen Abdo also perfected its lien by filing a UCC Financing Statement ("UCC-1") with the Minnesota Secretary of State pursuant to Minn. Stat. § 481.13, subd. 2. (O'Neil Affidavit at ¶ 10.) In October 2018, a search of the UCC records with the Minnesota Secretary of State did not reveal that any attorneys or firms had filed a notice of an attorney's lien as to any of the Nelsons prior to Lommen Abdo's filing. (O'Neil Affidavit at ¶ 10.) Since the first perfected security interest has priority over any subsequently perfected or unperfected security interest under Article 9 of the Minnesota Uniform Commercial Code (Minn. Stat. § 336.9-322), the Court's Order establishing and determining Lommen Abdo's lien should additionally include a finding that Lommen Abdo's lien has priority over any other attorney's liens that are established as to the Nelsons' interest in the Prince Estate or any other assets available to satisfy a judgment in favor of Lommen Abdo.

CONCLUSION

Lommen Abdo is entitled to an attorney's lien in the amount of \$214,652.11 pursuant to Minn. Stat. § 481.13, subd. 1(c) upon the Nelsons' interests in the above-captioned Estate, and all costs incurred in seeking the Court's determination in the above-captioned Estate. The Court accordingly should enter judgment in the amount of \$214,652.11 against the Nelsons and in favor of Lommen Abdo and allow Lommen Abdo to recover the costs incurred in seeking this determination pursuant to Minn. Stat. § 481.13, subd. 1(c). The Court's order should additionally find that Lommen Abdo's lien has priority over any other attorney's liens that are

established as to the Nelsons' interest in the Prince Estate or any other assets available to satisfy a judgment in favor of Lommen Abdo.

Respectfully submitted,

Dated: December 21, 2018

LOMMEN ABDO, P.A.

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