

NOV 16 2010

SALT LAKE COUNTY **KF**
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH
SALT LAKE DEPARTMENT

DAVID A. BARNES, M.D.,
Plaintiff,

RULING AND ORDER
ON (1) RECEIVER'S APPLICATION FOR
COURT APPROVAL OF FEES AND
EXPENSES, AND (2) OTHER
MISCELLANEOUS ISSUES

v.

Case No. 080922273

FFCF INVESTORS, LLC.,
Defendant.

Judge Denise Posse Lindberg

FFCF INVESTORS, LLC.,
Plaintiff,

v.

RICHARD T. SMITH, et al.,
Defendants.

Before the Court is the Receiver's third application for approval of fees and expenses incurred in prosecuting this case on behalf of FFCF Investors, LLC ("FFCF"), Ascendus Capital Management, LLC, and Smith Holdings, LLC (the "Receivership Entities"). This third fee application was filed on October 25, 2010. In addition to his Application, the Receiver has submitted to the Court, for *in camera* review, detailed invoices supporting his fee application. Those invoices have not been filed with the Court because they contain information regarding the Receiver's strategies, negotiation plans, and other relevant discussions that would not be appropriate to include in the Court's public record.

No objections have been filed to the fee application, and time for doing so has run. The Court has carefully reviewed the Receiver's report and fee application, together with the supporting documentation. The Court recognizes that the amount requested for fees and expenses is significant—totaling \$98,714.92—for the period of April 1, 2010 through September 30, 2010. Nevertheless, this amount represents only half of the fees and expenses actually incurred on

behalf of the receivership Estate (totaling \$196,604.17). Having reviewed the detailed invoices, the Court is satisfied that the Receiver's (and his staff's) time has been well and fully accounted for. The Court further concludes that the amount of time spent, and fees charged, are reasonable given the complexity of the issues being addressed by the Receiver.

Notwithstanding the reasonableness of the time and effort expended, the Receiver has voluntarily reduced his fee request by half. These actions by the Receiver confirm the Court's conclusion that the fee and expense request of \$98,714.92 is appropriate under the circumstances.

The reasonableness of the fee request is further highlighted by the fact that through the Receiver's efforts, during the same time period for which he has requested fee/expense payment (March 31-Sept.30, 2010), the Receiver has recovered \$419,047.00 for the Receivership estate, and has succeeded in securing default judgments in favor of the Receivership estate totaling another \$84,415.60. Of the funds recovered, investor claim distributions of \$400,000 (plus \$16,032.92 as an administrative claim) have been made.


Based on the foregoing, the Court approves the Receiver's third application for fees and expenses in the amount of \$98,714.92. This Ruling and Order shall stand as the Court's final judgment on this issue; counsel need not prepare a separate Order and Judgment with respect to the Receiver's third fee application.

Miscellaneous issue.

In prior status conferences the Court informed the Receiver that by arrangement with the Presiding Judge Hilder and Judge Quinn, lawsuits initiated by the Receiver would all be assigned to Judge Quinn. At the last status conference the Receiver informed the Court that cases being filed by the Receiver on behalf of the Receivership Entities were still being assigned to other judges. The Court agreed to follow-up on this issue with the Presiding Judge.

Judge Hilder has advised that given existing Court processes, it is difficult for Court staff to screen "up front" the cases being filed by the Receiver so they can all be assigned to Judge Quinn. Accordingly, Judge Hilder has suggested that the Receiver assume responsibility to notify this Court on a regular basis (i.e., monthly), of his newly-filed cases, along with their case numbers and assigned judges. The Court will then refer those notices to the Clerk of Court so the Receiver's cases can be reassigned to Judge Quinn (and substitute cases can be assigned to the other judges). Judge Hilder's proposal makes sense to the Court. If the Receiver has any concerns with the proposed process he should notify the Court within the next twenty (20) days; otherwise, Judge Hilder's proposal will be implemented without further notice.

So Ordered by the Court this 16th day of November, 2010:



Judge Denise P. Lindberg

