

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

_____)	
SECURITIES AND EXCHANGE)	
COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 1:18-cv-01262
)	
TODD ELLIOTT HITT, KIDDAR)	
CAPITAL LLC, and KIDDAR GROUP)	
HOLDINGS, INC.,)	
)	
Defendants,)	
)	
and)	
)	
KIDDAR HERNDON STATION LLC,)	
KIDDAR HOMEBUILDING FUND I,)	
LLC, MELBOURNE RETREAT LLC,)	
KIDDAR MASS AVE LLC, KIDDAR)	
RIDGEVIEW LLC, ESA EMERSON)	
LLC, ESA HIGHWOOD LLC, and)	
KIDDAR AQ LLC a/k/a KIDDAR)	
AQUICORE LLC,)	
)	
Relief Defendants.)	
_____)	

**GORFINE, SCHILLER, AND GARDYN, P.A.’S FIRST AND FINAL
APPLICATION FOR ALLOWANCE OF COMPENSATION
AS TAX ADVISOR TO THE RECEIVER**

Gorfine, Schiller, and Gardyn, P.A. (“**Gorfine**”), tax advisor for Christopher L. Perkins (the “**Receiver**”) of the estates of Kiddar Capital LLC, Kiddar Group Holdings, Inc., Kiddar Homebuilding Fund I LLC, Melbourne Retreat LLC, Kiddar Mass Ave LLC, Kiddar Ridgeview LLC, ESA Emerson LLC, ESA Highwood LLC, and Kiddar AQ LLC, also known as Kiddar

Aquicore LLC (the “**Receivership Defendants**”), submits this First and Final Application for Allowance of Compensation and Expense Reimbursement as Tax Advisor to the Receiver (the “**Application**”) in accordance with the “Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission” (the “**Billing Instructions**”). In this Application, Gorfine seeks approval of compensation in the amount of \$300,341 for the period of February 17, 2019 through November 23, 2020 (the “**Application Period**”).**Jurisdiction and Venue**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 959.

Background

2. On October 5, 2018 (the “**Filing Date**”), the Securities and Exchange Commission (“**SEC**”) commenced a civil case (the “**Civil Case**”) by filing a complaint against the Receivership Defendants, among others, for violations of federal securities laws.

3. By Order dated October 12, 2018, this Court appointed the Receiver in this Civil Case (the “**Receivership Order**”). By Order dated December 13, 2019, this Court appointed the undersigned as substitute Receiver.

4. On February 7, 2020, this Court entered an order authorizing the employment of Gorfine as tax advisor to the Receiver, nunc pro tunc to February 17, 2019 (the “**Employment Order**”).

5. The terms of Gorfine’s employment are as follows: Gorfine charges financial and accounting consulting fees on an hourly basis at its professionals’ hourly rates, which are set in accordance with the professionals’ seniority and experience. Attached hereto as Exhibit A is the hourly rate schedule for Gorfine in this case.

Case Status

6. On October 29, 2020, the Receiver filed his most recent Quarterly Status Report [Docket No. 150] detailing, among other things, the amount of cash on hand, accrued expenses, funds received and disbursed, the status of creditor claims, and the value of Receivership assets. The Receiver incorporates the Final Status Report herein.

7. The SEC's Standardized Fund Accounting Report (the "**SFAR**") is attached hereto as Exhibit E.

Relief Requested

8. By this Fee Application, Gorfine is seeking approval of compensation for the Application Period in the amount of \$300,341 for professional services rendered to the Receiver, from and including February 17, 2019 through and including November 23, 2020.

Summary of Services Rendered During Application Period

9. The total amount of compensation requested by Gorfine for the Application Period is based on the discounted hourly rates agreed to be charged by the professionals who performed financial advisory services for the Receiver in this matter.

10. In the course of representing the Receiver during the Application Period, Gorfine has provided various services. Attached hereto as Exhibit B is a Summary of Time By Service. During the Application Period, Gorfine reviewed financial information of the estates, and prepared various federal and state tax returns to ensure regulatory compliance of the applicable Defendants and Receivership Defendants. Specifically, Gorfine communicated and collaborated with Gorfine, the Receiver's financial advisor, and certain representatives of the Internal Revenue Service. See Exhibit C for detailed time entries.

11. The fees sought by Gorfine are reasonable for the work it performed in the specialized area of insolvency and in practice before the United States District Court for the Eastern District of Virginia. Such fees are customary for receivership practice and are comparable in amount to services rendered by other professionals in the area. Further, Gorfine has adjusted their fees from \$397,208.50 as reflected in Exhibit B to the amount of fees sought with this application of \$300,341. The reduction in fees is approximately 24% of the fees for the services rendered. The fees sought herein in conjunction with the adjustment of 24% are reasonable considering the nature and extent of the work, the time spent, and the value of the services.

12. Under the “lodestar” approach, the Court should consider the number of hours of service reasonably devoted to the case multiplied by the attorney’s reasonable rates. Courts frequently consider the specific “lodestar” factors enumerated in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974). These lodestar tests were adopted by the Fourth Circuit in Barber v. Kimbrells, Inc., 577 F.2d 216, 226 (4th Cir.), cert. denied, 439 U.S. 934 (1978), and in Anderson v. Morris, 658 F.2d 246, 249 (4th Cir. 1981), where the Fourth Circuit held that the District Court should employ the lodestar approach, and then adjust the fee on the basis of the remaining Johnson factors in the case. The following are the Johnson factors,¹ and a discussion of each factor, which Gorfine respectfully requests that the Court consider in determining the reasonableness of the amount of professional compensation requested in this Application:

- The time and labor required. Gorfine expended 1,053.80 hours of professional services on behalf of the Receiver during the Application Period. During this period, the Receiver was involved in a variety of legal and other matters, which often required immediate response from legal professionals in order to preserve value to the estates.

¹ Johnson, 488 F.2d at 717-19; Barber, 577 F.2d at 226, n.28; Anderson, 658 F.2d at 248, n.2.

This period included ongoing efforts to identify, secure, and recover assets, claims solicitation and analysis, liquidation of assets, and other matters with which the Receiver required Gorfine's assistance. The time and labor spent by Gorfine was reasonable and necessary to provide the Receiver with the quality and extent of services required to appropriately fulfill its obligations.

- The novelty and difficulty of the case. The issues addressed by Gorfine in connection with its services to the Receiver were often novel and complex and required the expertise of professionals with a specialized background in bankruptcy, restructuring, and litigation.
- The skills requisite to perform the services properly. The services performed by Gorfine's professionals required the skills of trained receivership, creditors' rights, and real estate, and tax professionals with an appreciation and understanding of complex fraud schemes and asset disposition.
- The preclusion of other employment. Although Gorfine's services for the Receiver were often time-critical, this engagement did not preclude Gorfine from accepting other engagements. Nevertheless, a number of Gorfine professionals working on this matter were exclusively or substantially focused on this case, while other professionals were utilized on a limited basis to minimize costs to the Receiver while meeting required deadlines.
- The customary fee charged. Gorfine seeks allowance of professional fees based on hourly rates that are consistent with rates charged by Gorfine in matters similar to the magnitude and complexity present in this case. The hourly rates charged by Gorfine are within the range of those customarily charged by other professionals having comparable skills and expertise in similar matters.
- Whether the fee is fixed or contingent. Gorfine's fees are charged according to the time spent on behalf of the Receiver and Applicant's prevailing hourly rates.
- Time limitations imposed by the client or the circumstances. Many of the matters that arose in connection with this case presented time-critical challenges for Gorfine.
- The amount involved and the results obtained. Gorfine provided critical timely assistance to the Receiver in this ongoing case. The fees in the amount of \$ 300,341 are reasonable in light of the results obtained.
- The experience, reputation and ability of the professionals. Gorfine is well qualified to provide professional services for the Receiver. Gorfine's professionals collectively have extensive experience in financial restructuring, interim and crisis management,

regulatory compliance issues, complex business and commercial litigation and other matters relevant to this case.

- The “undesirability” of the case. While Gorfine is well-equipped and well-qualified to represent the Receiver as counsel, both the magnitude and time-sensitive nature of the case prevents Gorfine’s professionals from assisting the firm on other matters.
- The nature and length of the professional relationship with the client. Following appointment of the Receiver, Gorfine was engaged as tax advisor to the Receiver and has served in that capacity at that time. Both Gorfine’s excellent reputation and significant experience practicing in the Eastern District of Virginia provide the Receiver with significant added value.
- Awards in similar cases. Gorfine believes the professional fees sought herein are consistent with fees charged by similarly skilled professionals for comparable services in other cases. The fees sought by this Application are based on discounted hourly rates that commensurate with or below rates charged to other clients. Further, the hourly rates charged by Gorfine are within the range of those customarily charged by other professionals having comparable skills and expertise in similar matters.

13. Gorfine believes that the services rendered to the Receiver and the out-of-pocket expenses incurred therewith were necessary and reasonable in view of the Receiver’s obligations in this case and the scope and nature of the matters in which Gorfine was involved to competently represent the Receiver.

14. Upon information and belief, the rates charged by Gorfine are comparable to the fees charged by other professionals in similar cases. Gorfine believes that the fees requested herein clearly satisfy the Johnson factors as set forth above.

15. The SEC has reviewed and approved of the Application.

Certification

16. Gorfine certifies that it has read the Application.

17. Gorfine certifies, to the best of its knowledge, information, and belief formed after reasonable inquiry, the Application and all fees and expenses therein are true and accurate representations of the time incurred and the Application complies with the Billing Instructions.

18. Gorfine certifies that all fees contained in the Application are based on the rates listed in Gorfine's fee schedule attached hereto and such fees are reasonable, necessary and commensurate with the skill and experience required for the activity performed.

Notice

19. Notice of this Motion will be served upon: (a) the SEC; (b) counsel for the Defendants and the Receivership Defendants; (c) all parties filing a notice of appearance in this Civil Case, and (d) all parties receiving electronic notice in this Civil Case. In light of the foregoing and the nature of the relief requested herein, the Receiver submits that no other or further notice is required.

20. Pursuant to Local Rule 7(F)(1), the Receiver requests the Court waive any requirement for a separate memorandum of law. Pursuant to Local Rule 7(J), the Receiver requests the Court waive oral argument, as the Receiver believes this Motion is unopposed and hereby submits this Motion for ruling on this brief.

Conclusion

WHEREFORE, Gorfine respectfully requests that the Court enter an order in a form substantially similar to that attached hereto as Exhibit D: (i) providing approval of compensation during the Application Period in the amount of \$300,341 for professional services rendered to the Receiver from and including February 17, 2019, through and including November 23, 2020; (ii) authorizing the Receiver to pay the professional fees and expenses requested herein; (iii) approving

all prior fee applications on a final basis; and (iv) granting such other and further relief as the Court deems appropriate.

December 4, 2020

GORFINE, SCHILLER AND GARDYN, P.A.

/s/
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Receiver

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of December 2020, a true and correct copy of the foregoing was filed with the Court through the Clerk's CM/ECF filing system and served on all persons receiving electronic notice in this case, and/or by first-class mail, postage prepaid, to all parties listed below:

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