

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

DONALD F. PARSONS, JR.
VICE CHANCELLOR

New Castle County CourtHouse
500 N. King Street, Suite 11400
Wilmington, Delaware 19801-3734

Submitted: May 15, 2008

Decided: June 3, 2008

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Re: *Carpenter v. Dinneen, et al.*,
Civil Action No. 1804-VCP

Dear Counsel:

Currently before me are Petitioner's application for attorneys' fees and expenses and the parties' submissions for and against that application, as well as your respective proposed forms of final order and judgment. On the second matter, I have reviewed the proposed orders and decided to use the form suggested by Hughes. In addition, for the reasons briefly summarized below, I will include in the Judgment an award against

Respondent Hughes, individually, of Petitioner's reasonable attorneys' fees and expenses accrued through September 7, 2006 in the amount of \$191,605.00.

In Petitioner's application for attorneys' fees and expenses, the Estate of Mrs. Carpenter seeks a total of \$248,166.95, comprised of \$227,267.75 in fees and costs, \$15,337.50 in expenses to Dr. Carol A. Tavani, a psychiatric expert, and \$2,275.00 in expenses to Albero & Albero, an accounting firm.

Respondent Hughes opposes the application on several grounds. In general, Hughes contends the total amount of fees is excessive in relation to the nature of the claims asserted and Respondents' previous offers to repay the principal debt. Hughes also argues that the time spent by Petitioner's counsel on the various tasks related to the investigation and litigation from October 17, 2005 until September 7, 2006 was excessive. In that regard, Hughes identified eight specific tasks and the time Petitioner's lead counsel, Victor F. Battaglia, spent on them as illustrative of the excessiveness of the fees Petitioner's seek.¹ Those tasks include preparation for and attendance at various depositions and responding to or arguing certain motions. In each of Hughes' examples,

¹ It is not possible from the records presented to do a precise itemization of the time spent on each individual task. Indeed, the total amount of attorneys' fees incurred during the relevant time period was approximately \$265,000 and covered approximately 880 hours of work, but some of that amount relates to Petitioner's defense of the counterclaims of Hughes and Dinneen and was paid for by an insurance company. Petitioner does not seek reimbursement for the latter charges. Thus, the total amount of attorneys' fees Petitioner seeks is \$227,267.75 or approximately 85 percent of the fees actually incurred during the relevant period. Using that same percentage, I infer the total number of hours of work for which Petitioner seeks reimbursement is approximately 755.

the time spent by Petitioner's counsel exceeded by several times that spent by Hughes' counsel.

As Hughes asserts, an award of attorneys' fees should reflect the reasonable value of services rendered, as opposed to merely the amount actually billed.² The courts evaluate the reasonableness of fees under the standards of Rule 1.5(a) of the Delaware Lawyers' Rules of Professional Conduct, and normally exclude excessive, redundant, duplicative, or otherwise unnecessary hours.³

Turning to Hughes' objections, her general complaint that the fees and expenses claimed are disproportional to the benefit ultimately obtained echo the arguments she made on the merits regarding her various settlement offers before she actually repaid the misappropriated funds. For the same reasons stated in the posttrial opinion as to Hughes' argument on attorneys' fees related to obtaining repayment of the \$175,500 of allegedly misappropriated funds, I hold Hughes' general objection lacks merit. In addition, having reviewed the specific examples identified by Hughes in some detail and the remaining time entries more generally, I find the hours for which Petitioner seeks reimbursement to be excessive to a limited degree. With only a couple of exceptions, such as the preparation for and defense of the deposition of Frederick Fiechter (which presumably related at least in part to the counterclaims, for which no fees are sought), the specific

² See *Richmont Capital Partners I, L.P. v. J.R. Invs. Corp.*, 2004 WL 1152295, at *3 (Del. Ch. May 20, 2004).

³ *Id.*

examples cited by Hughes show the expenditures of time by Petitioner's counsel to be on the high side, but generally not unreasonable. Accordingly, to obtain a reasonable number of hours I reduced modestly by a factor of ten percent the number claimed by Petitioner. The total number of allowable hours, therefore, is 677.

Hughes also contends Petitioner's request for fees is excessive because it reflects a "blended hourly rate" for the lawyers and paralegal involved of just over \$300, compared to a blended rate for Hughes' counsel of only \$210 for less than one-third the number of hours. Petitioner's fee request involves four timekeepers: Battaglia at \$350 per hour; two associates at \$200 per hour each; and a paralegal at \$135 per hour. Of the 677 hours of time I have allowed, Battaglia worked 498 of them. Although Petitioner's counsel's firm is relatively small and therefore Battaglia, as a senior partner, could be expected personally to devote a significant amount of time to this case, approximately 75 percent of the total time spent strikes me as excessive. I therefore have reduced the hours chargeable at Battaglia's rate of \$350 per hour to fifty percent of the total or 339 hours. The 159 hours subtracted from Battaglia's total were distributed equally between the other two classes of timekeepers, with 79.5 hours being allocated to the two associate attorneys, collectively, and to the paralegal. This reallocation produces a modified blended billing rate of approximately \$257 per hour.

I find unpersuasive the other objections Hughes made to the attorneys' fees claimed by Petitioner. Thus, Petitioner is entitled to recover \$173,992.50 in reasonable attorneys' fees from Respondent Hughes.

In addition, Hughes urges the Court to deny Petitioner's request for reimbursement of Dr. Tavani's expert fees in total. Citing *Barrows v. Bowen*,⁴ Hughes contends the Court may deny expert witness fees when the expert's testimony did not assist the Court in drawing factual conclusions. Although I did not accept all of Dr. Tavani's opinions, I found her testimony helpful on certain issues and cited it on more than one occasion.⁵ In these circumstances, where I have found Hughes' breach of fiduciary duty to be "egregious and totally unjustified" and the services of Dr. Tavani were obtained early in the case before the full extent of the relevant issues was well delineated, the \$15,337.50 in expenses claimed for those services appears reasonable. I therefore reject Hughes' opposition to the claim for those expenses.⁶

In summary, for the reasons stated, I will enter judgment against Respondent Hughes, individually, for the Petitioner's reasonable attorneys' fees and expenses accrued through September 7, 2006 in the amount of \$191,605.00. Hughes shall modify paragraph 2 of its proposed form of order and judgment to conform to the preceding sentence. The parties also shall confer on the amount of allowable costs under Rule 54(d), as referred to in paragraph 5 of the proposed order and final judgment, and submit

⁴ *Barrows v. Bowen*, 1994 WL 514868, at *3 (Del. Ch. Sept. 7, 1994).

⁵ *See, e.g., Estate of Carpenter v. Dinneen*, 2008 WL 859309, at *6 n.77, *7 n.89 & *8 (Del. Ch. Mar. 26, 2008).

⁶ Hughes did not object to Petitioner's claim for reimbursement of the \$2,275.00 in expenses related to the work performed by the Estate's accountant, Albero & Albero.

an appropriately revised form of order and judgment within ten days of the date of this letter. Any disputes regarding costs must be fully submitted within the same time period.

IT IS SO ORDERED.

Sincerely,

/s/Donald F. Parsons, Jr.

Vice Chancellor

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