



COURT OF CHANCERY
OF THE
STATE OF DELAWARE

JOHN W. NOBLE
VICE CHANCELLOR

417 SOUTH STATE STREET
DOVER, DELAWARE 19901
TELEPHONE: (302) 739-4397
FACSIMILE: (302) 739-6179

May 21, 2009

Chad M. Shandler, Esquire
Richards, Layton & Finger, P.A.
920 North King Street
Wilmington, DE 19801

Thomas P. Preston, Esquire
Blank Rome LLP
1201 Market Street, Suite 800
Wilmington, DE 19801

Re: In the Matter of the Juan Carlos Fischberg Family Trust
C.A. No. 2527-VCN
Date Submitted: November 25, 2008

Dear Counsel:

Petitioner, The Capital Trust Company of Delaware (the "Trust Company"), serves as trustee of the Juan Carlos Fischberg Family Trust (the "Trust"), an asset protection trust established under Delaware law.¹ The State of New Jersey claimed that funds had been placed in the Trust that were the fruits of a criminal enterprise pursued by Dr. Fischberg. The State of New Jersey sought recovery of funds from the Trust and threatened sanctions if the Trust Company did not cooperate. The

¹ This action also involves the Gezel Villanueva 2003 Trust. No effort is made to distinguish between the trusts.

Chad M. Shandler, Esquire
Thomas P. Preston, Esquire
May 21, 2009
Page 2

underlying dispute between the State of New Jersey and Dr. Fischberg has now been resolved. Under the terms of the governing trust agreement, the Trust Company is entitled to an award of its reasonable legal fees. The Court has decided that the Trust Company has a right to recover its fees.² The remaining question, the one before the Court now, is whether the fees and expenses which the Trust Company seeks to recover are reasonable.

The issues confronting the Trust Company were unusual. In light of the position taken by the State of New Jersey and the potential conflict with its fiduciary duties to the Trust if it were to accede to the State of New Jersey's demands, the Trust Company filed a petition for instructions here. That effort required Delaware counsel. It also was drawn into litigation in New Jersey. Those proceedings required New Jersey counsel.

Together, these actions necessitated a number of hearings before the courts of both Delaware and New Jersey, although none was especially long or difficult. Because of the resolution of the underlying criminal litigation between the State of New Jersey and Dr. Fischberg, none of the issues directly involving the Trust

² Transcript of Bench Ruling at 42-43 (Oct. 17, 2008).

Chad M. Shandler, Esquire
Thomas P. Preston, Esquire
May 21, 2009
Page 3

Company was finally resolved on its merits. As a practical matter, the status quo was maintained until the prosecution in New Jersey was concluded.

The novel and complex issues confronting the Trust Company involved matters not only of Delaware law, but also of New Jersey law and implicated more esoteric issues, such as choice of forum, comity, full faith and credit, and the interface between a criminal prosecution and the fiduciary obligations of a trustee of a Delaware asset protection trust.³ Important questions of trust administration under 12 *Del. C.* § 3572 were clearly implicated.

The law firms providing services to the Trust Company were competent and skilled. The Fischberg family does not dispute that. Some time billed to Capital Trust was omitted (e.g., 11.5 hours from a June 14, 2007 invoice) from the fee petition. Moreover, additional efforts, not insignificant, required after June 2007 (when the form of the ultimate resolution was established) were not billed. This included the work necessary to formally resolve the dispute between the Trust Company and the Fischberg family, except for the remaining fee dispute. This additional work would have been billed for approximately \$24,000.

³ The Trust Company was also exposed to civil litigation risk.

Chad M. Shandler, Esquire
Thomas P. Preston, Esquire
May 21, 2009
Page 4

The Trust Company seeks an award of \$135,940.09 for its fees and expenses. This amounts to \$109,609.50 for Delaware counsel and \$19,922.50 for New Jersey counsel, together with \$6,408.09 in expenses. The Fischberg family has suggested a fee award of \$93,044.50 (\$80,260.50 to Delaware counsel and \$12,784 to New Jersey counsel, along with the expenses of \$6,408.09). Thus, approximately \$35,000 is in dispute.

I have reviewed the various invoices detailing the time spent, the attorney who spent the time, a brief explanation of the work performed, and the various billing rates.⁴ One can understand the frustration of the Fischberg family at the magnitude of the attorneys' fees and expenses. On the other hand, I am persuaded that the work was necessary and reasonably performed. The scope of the problems confronting the Trust Company was substantial. The issues of trust law, including the appropriate response to what, in substance, could have been viewed as the State of New Jersey's suggestion that the Trust Company would be viewed as part of a criminal enterprise are important and difficult. The legal fees are proportionate to the risks the Trust Company faced as the result of the interface of Delaware trust

⁴ I accept as accurate time records submitted.

Chad M. Shandler, Esquire
Thomas P. Preston, Esquire
May 21, 2009
Page 5

law and New Jersey criminal law. The expenses were necessarily incurred by the Trust Company as part of its performance of work as the trustee. In addition, they were incurred through no fault of its own.

In sum, I conclude that the attorneys' fees sought by the Trust Company are fair and reasonable under the circumstances. Its fees and expenses petition, accordingly, is granted in the amount of \$135,940.09.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K