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CHANCELLOR

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

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: March 11, 2005

Decided: March 29, 2005

William M. Lafferty
Morris, Nichols, Arsht & Tunnell
P.O. Box 1347
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William D. Johnston
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Re: *Tafeen v. Homestore, Inc.*
Civil Action No. 023-N

Dear Mr. Lafferty and Mr. Johnston:

This is my decision on defendant Homestore Inc.'s ("Homestore") exceptions to the Special Master's Final Report of February 24, 2005. This decision involves the determination of the reasonableness of plaintiff's request for advancement of attorney's fees. The plaintiff, Peter Tafeen, was employed as an officer of Homestore from September 22, 1997 through November 30, 2001, first as Vice President of Business Development and later as Executive Vice President of Business Development Ads and Sales. Homestore's bylaws contain broad advancement and indemnification provisions for officers and directors, as well as for former officers and

directors. Although the provisions are conditioned on the officer or director having acted in good faith, the advancement provision in Homestore's bylaws contains no requirement that a former officer or director execute an undertaking to repay advanced sums to which the former officer or director is ultimately found not to be entitled.

In mid-November 2001, Homestore's audit committee first reported to Homestore's board of directors the potential problems that led to an internal investigation and, on November 15, 2001, the board of directors authorized an internal investigation by Homestore's audit committee. Tafeen became aware of the internal investigation in mid-November 2001. In late December 2001, Homestore publicly announced that its audit committee was conducting an inquiry into potential improprieties in its accounting practices and financial statements and that certain financial results would be restated. A host of lawsuits followed, with the Securities and Exchange Commission ("SEC") and the Department of Justice ("DOJ") conducting investigations into possible criminal conduct by employees and former employees of Homestore.

In early 2002 Tafeen, through his counsel, requested an advancement from Homestore of his legal fees and costs and indemnification for the various proceedings in which he was involved. On April 30, 2002,

Homestore advised Tafeen that it would honor its indemnification obligations with respect to the pending proceedings. Regarding the advancement of expenses, Homestore informed Tafeen that he was required to execute an undertaking to repay all amounts advanced if it should be determined that he was not entitled to indemnification. Tafeen did not tender the required undertaking. On July 11, 2003, Tafeen again sought advancement and tendered a slightly different form of undertaking than Homestore had provided to him. Not having received the funds, Tafeen filed a complaint with this Court seeking advancement and requesting fees-on-fees. Homestore raised various defenses to Tafeen's claims.¹

In October of 2004, I concluded that Homestore had raised no valid defenses to Tafeen's advancement, and that Tafeen was entitled to have his reasonable fees advanced as specified in his contract as well as payment and advancement of his attorney's fees associated with this lawsuit.² Pursuant to Court of Chancery Rule 135, I appointed Stephen E. Jenkins as Special Master and assigned him the tasks of (1) examining for reasonableness the plaintiff's current fee requests, and issuing a report to this Court on his

¹ For a more thorough recitation of the facts, see *Tafeen v. Homestore, Inc.*, 2004 WL 556733 (Del. Ch.).

² See *Tafeen v. Homestore, Inc.*, 2004 WL 3053129 (Del. Ch.).

findings of fact and conclusions of law; and (2) making a recommendation on how future fee advancement requests should be handled in this matter.

A preliminary draft report was provided to the parties on January 20, 2005 pursuant to Court of Chancery Rule 144, and the parties provided comments. The Special Master then held a hearing on the exceptions on February 2, 2005. In his Final Report, which was submitted to the Court on February 24, 2005, the Special Master reduced certain portions of Tafeen's attorney's fees as being unreasonable, but for the most part, the Special Master, after considering the relevant facts and law, determined that the fee requests were reasonable. On March 11, 2005, Homestore filed exceptions to the Special Master's Final Report, asserting that the Special Master's recommendations on what fees were reasonable was in error, and that this Court should modify the Special Master's Final Report pursuant to Homestore's exceptions. For the reasons set out more fully below, I concur with all but one of the Special Master's conclusions, and I find that his Final Report, with one exception, should be approved.

I. STANDARD OF REVIEW

The standard of review for a special master's findings, both factual and legal, is *de novo*.³ “*De novo* review generally means a new trial on questions of fact,”⁴ but this is not necessary in all cases. “Only where exceptions raise a *bona fide* issue as to dispositive credibility determinations will a new hearing be inevitable.”⁵ The exceptions at issue in this matter do not require a hearing and, thus, I will proceed to resolve the arguments presented by defendant in its brief.

II. THE SPECIAL MASTER'S REPORT

The Special Master was charged with determining the reasonableness of Tafeen's attorney's fees. Under Delaware law,

the reasonableness of fees is evaluated under Rule 1.5(a) of the Delaware Lawyers' Rules of Professional Conduct. Factors include, but are not limited to, the time and labor required, the novelty and difficulty of the questions involved, the skill requisite to perform the legal services properly, the fee customarily charged in the locality for similar legal services, the nature and length of the professional relationship with the client, and the experience, reputation, and ability of the lawyer or lawyers performing the services.⁶

³ See *DiGiacobbe v. Sestak*, 743 A.2d 180 (Del. 1999).

⁴ *Id.* at 184.

⁵ *Id.*

⁶ *Richmont Capital Partner I, L.P. v. J.R. Investments Corp.*, 2004 WL 1152295, at *2 (Del. Ch. 2004).

In his Final Report, the Special Master first determined the reasonableness of the attorney's fees.⁷ The Special Master then drew legal conclusions on questions that may have affected the fee request. Lastly, the Special Master gave his final fee recommendation.

A. Special Master's Conclusions on Reasonableness

Tafeen was informed in 2001 of the audit committee's investigation and he was advised by Homestore's outside counsel that he should retain counsel. Homestore's outside counsel provided Tafeen with the names of some suitable attorneys. Robert Friese, the attorney Tafeen eventually hired, was one of the attorneys named.⁸ Friese testified that his firm, Shartsis, Friese incurred almost \$455,000 in responding to the SEC/DOJ investigations. Friese also testified that a great deal of effort had to go into preparing Tafeen's defense because the transactions that he was investigating, known as "round trip transactions," were both quite complicated and numerous.⁹ Additionally, Friese testified that Homestore made no materials available to him, and he was forced to recreate the relevant information on his own, without the aid of information already in

⁷ Special Master's Final Report, at 5 (in determining reasonableness, the Special Master considered the complete record and additionally had Robert C. Friese, Marc A. Fenster, and Peter Tafeen testify before him).

⁸ *Id.* at 6.

⁹ *Id.* at 7-8.

Homestore's possession.¹⁰ The Special Master concluded that the hiring of an attorney of Friese's caliber was reasonable considering both the severity of charges against Tafeen, the fact that Homestore had retained its own high caliber attorney, and the fact that Homestore's outside counsel had recommended Friese to Tafeen. Additionally, the Special Master raised no concerns regarding the work that Friese undertook to prepare Tafeen's defense.

Friese testified that it became necessary to hire additional counsel when he found out that the DOJ was investigating his client because Shartsis, Friese was not equipped to handle white-collar crime with the requisite level of expertise needed for Tafeen's case. Friese retained the Los Angeles firm of Irell & Minella to handle this aspect of Tafeen's case and Brian Hennigan was the lead attorney staffed on Tafeen's case.¹¹ Irell & Minella has billed approximately \$530,000 to date for its services in connection with the SEC/DOJ investigations, and Tafeen has been informed

¹⁰ *Id.* at 9-10 (Friese believed that Homestore refused to provide this information because of the SEC/DOJ's "Seaboard" policy. The DOJ and the SEC have informed companies subject to claims of accounting fraud that they will not themselves be prosecuted/subject to SEC enforcement action if they, among other things, clean house of all the suspected wrongdoers, provide them no aid and refuse to advance them attorney's fees. This is known as the "Seaboard" policy.).

¹¹ *Id.*

that this bill will greatly increase if he is indicted and goes to trial.¹² The Special Master found the hiring of Irell & Minella was reasonable because as Friese freely admitted, Shartsis, Friese was not equipped to handle the defense work necessary to Tafeen's criminal case.¹³ Additionally, Friese testified, and the Special Master agreed, that there most likely was some overlap in the work product between Friese and Irell & Minella.¹⁴ However, the Special Master concluded that overlap in this instance was reasonable because it resulted from Friese's supervision of both cases, and that necessitated some duplicative work. The Special Master noted that Friese had to supervise all ongoing litigation because all of the cases were intertwined, and one case could have drastic effects on the others.¹⁵

Shartsis, Friese was also involved in non-governmental civil matters including the present case, a consolidated federal securities class action, a variety of now-dismissed state derivative actions, other securities cases called *Pyform/Myers* and *Siegel*, and the defense of various actions brought by Homestore's directors' and officers' insurers seeking to rescind their

¹² *Id.* at 10-11.

¹³ *Id.* at 10.

¹⁴ *Id.* at 11-13.

¹⁵ *Id.* at 11-13.

policies.¹⁶ In total, Shartsis, Friese incurred an estimated \$1,850,000 defending Tafeen in these cases.¹⁷ With the exception of \$377,000 billed for the insurance cases, work on these cases was billed together and, therefore, bills reflecting the amount spent on each case are actually after the fact estimates.¹⁸ The Special Master found that given the factually interrelated nature of these cases, it was not inappropriate to bill these cases in this way.¹⁹ Nevertheless, the Special Master did conclude that objective evidence counsels in favor of a reduction in the amount that Homestore should be required to advance as concerns these matters, because although the Special Master cited no problems with the reasonableness of the fees charged, he did note that some of this work was duplicative, and that Homestore should not have to pay for the duplicative work in this instance.

Regarding the \$377,000 spent on the insurance cases, the Special Master concluded that this amount was reasonable, because although Homestore's attorneys were involved in these matters and alleged that they were sufficiently guarding Tafeen's interests, it was not unreasonable for Tafeen to have his own attorneys working on this matter given the

¹⁶ *Id.* at 13.

¹⁷ It should be noted that the Special Master found evidence that Tafeen continually requested that Shartsis, Friese keep their fees down with respect to these matters.

¹⁸ Special Master's Final Report, at 14.

¹⁹ *Id.*

adversarial nature of Homestore and Tafeen's relationship. Additionally, the Special Master noted that there was no evidence presented that called the reasonableness of the \$377,000 into question.

Shartsis, Friese is currently in the process of withdrawing as counsel and is being replaced by Russ, August & Kabat ("RAK"). There are two competing stories for why this occurred, but as this concerns the exceptions to the Final Report, which story proves true is unimportant. Marc A. Fenster was assisting Hennigan at Irell & Minella and a year after Irell was retained, Fenster left Irell and joined RAK. Fenster testified that Tafeen chose to bring his case to RAK because he was convinced that Fenster would provide the best counsel.²⁰ Friese, on the other hand, testified that Tafeen stopped paying Shartsis, Friese sometime in 2004, and that the management committee of Shartsis, Friese informed Friese to notify Tafeen that either he would have to pay his bill or Shartsis, Friese would withdraw as counsel.²¹ The reason that this change in counsel is significant, however, is because it generated transition costs. The Special Master found that from the time RAK became involved in the litigation that Tafeen incurred extra transaction

²⁰ *Id.* at 17, 20.

²¹ *Id.* at 17, 20.

and coordination costs, as there were now three different firms involved.²² Additionally, the Special Master concluded that knowledge had to be relearned by new lawyers, and this was knowledge that had already been gained by the Shartsis, Friese attorneys.²³ The Special Master concluded that

it is neither fair nor reasonable for Homestore to bear all these transition costs. [Put another way] ... it seems ... reasonable for a corporation advancing fees to pay for one set of attorneys to get up to speed. And it also seems reasonable to ask that corporation to advance the cost of getting specialist lawyers involved. But under ordinary circumstances I do not believe our courts will order a corporation to bear all – or perhaps even most – of the transition costs incurred when there is a switch of counsel.²⁴

The Special Master noted, however, that part of the reason these transition costs were incurred is because Homestore refused to advance Tafeen funds and that prevented him from paying Shartsis, Friese.

Lastly, the Special Master found that Tafeen has incurred approximately \$575,000 in this proceeding to date. The Special Master concluded that the amount of fees was reasonable, but he also found that

²² *Id.* at 18.

²³ *Id.*

²⁴ *Id.* at 19.

existing Chancery precedent required him to recommend a proportional reduction in the fees incurred in the reasonableness phase.

B. Special Master's Final Recommendations for Payment

a. Fees Incurred in the Advancement Action

Tafeen seeks \$576,423.63 for fees incurred in the entitlement phase of the suit. Homestore argued that while Tafeen was entitled to fees for this action, that these fees should be reduced in proportion to the reduction of the overall fee approved in this action. Homestore cited both *Reddy v. Electronic Data Systems, Corp.*²⁵ and *Fasciana v. Electronic Data Systems, Corp.*²⁶ to support this proposition. The Special Master, however, noted that in both *Reddy* and *Fasciana*, the plaintiffs seeking advancement were only partially successful at the entitlement proceeding and, therefore, only partially recovered their fees for the entitlement proceeding.²⁷ Tafeen, on the other hand, was entirely successful at the entitlement proceeding, and incurred most of his costs in this action at the entitlement stage. The Special Master did not find it appropriate to reduce the overall fee award in the current action based upon Homestore's assertions. Instead, the Special Master found it appropriate to reduce the overall fee award based upon the

²⁵ *Reddy v. Electronic Data Systems Corp.*, 2002 WL 1358761 (Del. Ch.).

²⁶ *Fasciana v. Electronic Data Systems Corp.*, 829 A.2d 160 (Del. Ch. 2003).

²⁷ Special Master's Report, at 26-27.

amount incurred for the reasonableness phase of this action, the phase of the litigation where Tafeen was not entirely successful. The Special Master requested that Tafeen's counsel present how much was spent on the reasonableness portion of the action, and they reported that it was \$20,000. Based upon the overall recommended reduction in fees, which turned out to be 4.3%, the Special Master reduced \$20,000 by 4.3%, for a deduction of roughly \$860.00, and recommended an award of \$575,563.63.

b. The Underlying Actions

Tafeen seeks \$3,557,563.23 in reimbursement. The Special Master recommended that Tafeen be paid the full \$1,089,504.40 incurred in the Audit Committee/SEC/DOJ investigations and the full \$377,000 in the insurance cases, arriving at a total of \$1,466,504.40.²⁸ This then leaves a total of over \$2.09 million in fees incurred in the Class Actions, *Pyfrom/Myers*, *Siegel* and the derivative action. The Special Master concluded that these fees should be reduced because of transition costs. However, the Special Master found Homestore responsible in part for the transition costs because of Homestore's failure to abide by their contract and advance Tafeen the necessary attorney's fees.²⁹ In total, RAK billed

²⁸ *Id.* at 30.

²⁹ *Id.* at 30-31.

\$441,475.19 on the non-governmental casework. After determining that not all the fees that RAK billed were duplicative (the Special Master noted that RAK accomplished significant amounts of work not undertaken by Shartsis, Friese), the Special Master recommended that these fees should be reduced by \$150,000.³⁰ The Special Master admits that this is a judgment based upon the evidence and his experience and that it is not a precise number.³¹ This is a reduction of approximately 4.3% of the amount sought and the total is \$1,941,058.83.

c. Interest Awarded

Both parties agreed that pre- and post-judgment interest should be awarded and should be set at five points above the Federal Reserve Discount Rate. The parties disagree, however, as to when the interest should begin to accrue. The Special Master noted that *Citadel Holding Corp. v. Roven* held that a demand must specify the amount of reimbursement demanded in order for interest to accrue.³² The Special Master then found that Tafeen did not specify the amount requested until after the complaint was filed and, in such cases, the Special Master believed that the interest normally begins to accrue

³⁰ *Id.*

³¹ *Id.* at 31.

³² 603 A.2d 818, at 826 (Del. 1992).

when the complaint is filed, which in this case was October 28, 2003.³³ Based upon this logic, the Special Master recommended that interest should begin to accrue as of October 28, 2003. The Special Master found that the discount rate was 2% on October 28, 2003 and, therefore, the interest rate should be 7%. The Special Master also recommended that post judgment interest should accrue at the same 7% rate as the pre-judgment interest.

III. EXCEPTIONS AND ANALYSIS

A. Reduction of Only \$150,000 In Fees and Expenses to be Advanced

Homestore's first exception is to the Special Master's recommendation that \$150,000 be deducted from the overall amount to be advanced. Homestore believes that the appropriate reduction should be \$1,145,000, roughly one third of \$3,557,563.23, the original amount requested by Tafeen. Homestore contends that its estimation of the appropriate reduction is based upon "the substantial amounts billed or allocated in connection with the insurance cases, the class action, the derivative action, and the *Siegel* case," as well as Homestore's "generous" calculation of transition costs.³⁴ Having independently reviewed both the record and the Special Master's Final Report, I accept the Special Master's

³³ *Id.* at 29.

³⁴ Def.'s Exception Letter, at 3.

recommendation of a reduction of \$150,000 from the total amount of fees to be advanced.

In regard to the insurance cases, Homestore has raised nothing to cause me to doubt Shartsis, Friese's billing of \$377,000. Shartsis, Friese kept separate billing records of the insurance matter, which I have no reason to call into question. Additionally, the fact that Homestore billed upwards of \$2 million on the same insurance matters is largely irrelevant. Homestore and Tafeen's interests may have been aligned, but Tafeen cannot be expected to rely on Homestore, with whom he was in an adversarial relationship, to protect his interests. To that end, no matter what Homestore spent on the defense of these cases, it does not undercut Tafeen's contractual right to be advanced attorney's fees in these matters. Therefore, as long as the amount billed is reasonable, which it is, I conclude that Tafeen is entitled to be advanced for his attorney's fees in the insurance cases.

Homestore's next exception is that the amount billed in the class action, the derivative action, and the *Siegel* case is both excessive and unreasonable because it cannot be accurately allocated between the separate actions. This exception is without merit. I agree with Homestore's contention that Shartsis, Friese's billing records make this inquiry far more difficult and far more uncertain than it should be. Nevertheless, I do not find

this flaw in billing practices to affect my judgment of the overall reasonableness of the fees charged for these matters. Having examined the billing records, I conclude that although I cannot be certain that the amounts allocated to each individual matter are accurate and therefore reasonable as to each action, I conclude that the overall amount billed for Tafeen's defense in these matters, roughly \$2.09 million, is reasonable. Tafeen's counsel, in addition to working on the SEC/DOJ investigations, was engaged in defending numerous cases in numerous jurisdictions, which most certainly required great amounts of work to be undertaken. It should be noted that in those same actions, Homestore incurred roughly \$2.98 million. Although not directly relevant, this figure can be used as a yardstick, and to some extent reinforces the Court's conclusion that these fees were reasonable. Based upon my review of the work required in these cases, I conclude that the amount incurred by Tafeen on these matters was reasonable.

Homestore's final exception concerning the \$150,000 reduction is that the Special Master's conclusion as to the amount of transition costs based upon fault was inaccurate. To the extent that transition fees were incurred, they occurred when Shartsis, Friese began the process of withdrawal in favor of RAK. RAK billed \$441,475.19 on the non-governmental matters, and based upon the substantial work that occurred in these matters after RAK

was substituted as counsel, I cannot conclude that all (or even most) of this work was duplicative. Nonetheless, as the RAK attorneys had to relearn information that the Shartsis, Friese attorneys had already billed time learning, at least some portion of RAK's work was duplicative and, therefore, fees should be reduced. I find that the \$150,000 estimation of transition fees to be reasonable, especially in light of the fact that Homestore was largely responsible for necessitating the transition (as will be explained below).

B. Cause of "Transition" Costs

Homestore's next exception is that the Special Master reduced the transition costs based upon a mistaken allocation of blame for the necessity of the change in counsel. The Special Master found, taking into account the conflicting testimony of Friese and Fenster, that Homestore was at least partly to blame for the change in counsel because of its failure to advance Tafeen attorney's fees. Homestore asserts that it is in no way to blame for the transition costs incurred and, therefore, that the transition costs should not be reduced based upon the grounds of fault. Having reviewed the record, I disagree with Homestore's assertion that it is not at fault for the change in counsel. Regardless of conflicts in testimony concerning the motivations for the change in counsel, the objective evidence is clear that

Shartsis, Friese was not being paid for their services because Homestore did not advance Tafeen attorney's fees. Whether Tafeen wanted to change counsel is largely irrelevant, because Shartsis, Friese was going to withdraw from the case without payment, payment that Tafeen could not make. Therefore, the transition fees stemmed from Homestore's failure to advance Tafeen attorney's fees. Because I find Homestore to be at fault for the change in counsel and the ensuing transition fees, I concur with the Special Master's reduction of the transition fees based upon fault.

*C. The Award of Fees-On-Fees in Connection
with the Entitlement Portion of the Case*

The Special Master recommended that Tafeen should be awarded 100% of the fees incurred during the entitlement phase of the case, and that any reduction in Tafeen's fees should only be reflected in the fees incurred in the reasonableness phase of the case. The Special Master recommended this course of action because Tafeen was 100% successful at the entitlement phase, and only lost partially at the reasonableness phase. Homestore contends that *Fasciana v. Electronic Data Systems*³⁵ compels the Court to reduce Tafeen's fees on the entitlement phase as well. I disagree. The plaintiff in *Fasciana* was only partially successful in asserting his right to

³⁵ 829 A.2d 178 (Del. Ch. 2003); *see also Fasciana*, 829 A.2d 160.

advancement at the entitlement phase, and the *Fasciana* Court determined that the plaintiff therefore was not entitled to all of the fees that were incurred during the entitlement phase.³⁶ The *Fasciana* Court held that “fees on fees award[s] must be proportionate to the success ... achieved and the efforts required to obtain that success.”³⁷ This holding, however, does not apply to Tafeen’s case. Unlike the plaintiff in *Fasciana*, Tafeen was 100% successful at the entitlement phase. In other words, I determined that, pursuant to his contract and Homestore’s advancement policies, Tafeen was entitled to have his attorney’s fees advanced in all the matters that he was asserting before me.³⁸ All that remained to be determined was whether the fees that he was asserting were reasonable. While the plaintiff in *Fasciana* lost at the entitlement phase and had the fees associated with that stage proportionally reduced, Tafeen lost only minimally at the reasonableness phase. I conclude that a reduction in the costs associated with the entitlement phase would be inappropriate because Tafeen was 100% successful at the entitlement phase. I therefore accept the Special Master’s recommendation that the only fees that are subject to reduction are those incurred during the reasonableness phase.

³⁶ 829 A.2d at 175-176.

³⁷ *Id.* (internal quotations omitted).

³⁸ *Tafeen*, 2004 WL 3053129.

D. No Proportionate Reduction of Expenses Portion of Fees-On-Fees Incurred During Reasonableness Phase of the Case

Homestore raises an exception arguing that although Tafeen’s fees on reasonableness were reduced by 4.3%, that there was no reduction in the expenses of the reasonableness phase. The Special Master found that a reduction in the expenses of the reasonableness phase was inappropriate because these expenses would have been incurred anyway. Homestore, quoting the *Fasciana* Court, argues that “the costs of indemnification are borne by corporations and ultimately by their stockholders. Fasciana’s right to obtain fees on fees for their arguments raised in his § 145 action that were unsuccessful does not outweigh the right of EDS’s stockholders to resist having to bankroll that part of Fasciana’s claim that EDS was correct to oppose.”³⁹ The *Fasciana* Court, however, went on to state that “there are some litigation expenses that Fasciana would have incurred even if he had merely sought advancement for the claims that I ultimately found to be advanceable.”⁴⁰ I agree with the Special Master’s recommendation that the expenses incurred from the reasonableness phase should not be reduced, because these are expenses that would have been incurred even if Tafeen had been 100% successful in his reasonableness defense (*i.e.*, hotel

³⁹ *Fasciana*, 829 A.2d at 186.

⁴⁰ *Id.* at 187.

accommodations, airfare) and, therefore, these are not costs associated with the losing portion of the reasonableness phase.

E. Date(s) From Which Pre-judgment Interest Should Accrue

The Special Master recommended that despite the fact that Tafeen did not satisfy the requirements of *Citadel v. Roven*⁴¹ or the general law, that Tafeen was entitled to pre-judgment interest from the date he filed the complaint, October 28, 2003, and that interest should also accrue on each successive group of statements sixty days after the end of the month in which the statement was sent to Tafeen.⁴² I disagree with the Special Master's recommendation on this point.

In Delaware, "prejudgment interest is to be computed from the date payment is due ... [and] [a]lthough the trial court has some discretion in fixing the amount of interest where there has been inordinate delay caused by one of the parties, the determination of the date when payment was due is ordinarily a question of law."⁴³ After reviewing Tafeen's employment agreement, it is clear to me that Tafeen must have made a demand on Homestore in order to obtain his advances. The *Citadel* Court, in a scenario

⁴¹ 603 A.2d at 818.

⁴² Special Master's Final Report, at 28-29.

⁴³ *Citadel*, 603 A.2d at 826; see also *Moskowitz v. Mayor & Council of Wilmington*, 391 A.2d 209, 210 (Del. 1978); *Watkins v. Beatrice Companies Inc.*, 560 A.2d 1016, 1020 (Del. 1989)(noting that when payment arises from a contractual provision, the contract must be examined to determine when payment was due).

almost identical to Tafeen's, defined demand as "the date when [the party] specified the amount of reimbursement demanded *and* produced his written promise to repay."⁴⁴ Tafeen, pursuant to his contract with Homestore, did not have to produce a written demand to repay, but he did have to specify what he was seeking advancement on. It is clear both from my review of the record and from the Special Master's report that Tafeen did not identify his expenses with any degree of specificity until May 19, 2004, the date of Tafeen's responses to Homestore's first set of interrogatories. Tafeen specified additional amounts in both July of 2004 and January of 2005. I, therefore, conclude that Tafeen is entitled to pre-judgment interest from the dates that he produced specific advancement expenses to Homestore. Accordingly, I ask that the parties confer with one another to establish what expenses were adequately specified on what dates, and then to reduce those expenses to the extent that any reduction was ordered in this Letter Opinion.

IV. CONCLUSION

For the reasons stated above, with one exception, I hereby approve the Special Master's Final Report and the recommendations contained therein.

⁴⁴ *Citadel*, 603 A.2d at 826 n.10.

IT IS SO ORDERED.

Very truly yours,

/s/ William B. Chandler III

William B. Chandler III

WBCIII:jsm