

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 06-20975-CIV-HUCK/O’SULLIVAN

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

JOHN P. UTSICK, et al.,

Defendants.

ORDER ON AMOUNT OF FEES
AWARDED TO DISALVO PROFESSIONALS

THIS CAUSE came before the Court on the Report and Recommendation of United States Magistrate Judge John J. O’Sullivan filed on April 29, 2009 (D.E. #523) and the Stipulation of the DiSalvo Professionals filed on June 2, 2009 (D.E. #552). On November 4, 2009, the Receiver filed his Motion to Approve the Settlement Agreement, Mutual Release and Covenant Not to Sue (“Settlement Agreement”). The Settlement Agreement included a provision allowing the Receiver to authorize an amount not to exceed \$700,000 to satisfy the reasonable attorneys’ fees incurred by certain of the attorneys for the DiSalvo parties (the “DiSalvo Professionals”), upon approval of the Court. The Court granted the Receiver’s Motion and approved the Settlement Agreement (D.E. #322 and #333) but withheld ruling on the amount of attorneys’ fees and costs requested by the DiSalvo Professionals pursuant to section 7.2.1 of the Settlement Agreement pending certain further proceedings. The Court then ordered the Plaintiff, Securities and Exchange Commission (“SEC”), to review the DiSalvo Professionals’ fee requests. The SEC filed it’s Report to the Court on Attorneys’ Fees Related to the Receiver’s Settlement with the DiSalvo Defendants (D.E. #381), some of the DiSalvo Professional’s filed objections to the SEC’s report (D.E. # 401). The Court then

entered an Order of Reference to Magistrate Judge O'Sullivan (D.E. #407). Magistrate Judge O'Sullivan issued his Report and Recommendation on April 29, 2009 (D.E. #523). Magistrate Judge O'Sullivan recommended (i) that the Court approve \$700,000 in attorneys' fees and costs to the DiSalvo Professionals and that the DiSalvo Professionals be permitted to allocate those funds among the various professionals and (i) the Amended Motion for Release and Payment of 50% of Professional Fees and Costs (D.E. #357) be denied as moot.

The DiSalvo Professionals' filed their Objections to the Report and Recommendation (D.E. #532) and a hearing before the Court on May 26, 2009, during which the Court heard from the DiSalvo Professionals, the Receiver, and the Plaintiff.

The Court having reviewed the record *de novo*, reviewed the Report and Recommendation, reviewed the DiSalvo Professional's Objections and held a hearing on this matter, adopts the Report and Recommendation in part. As stated at the hearing on May 26, 2009, there was merit to some of the DiSalvo professionals' objections, including a reduction in the award amount by \$180,000.00 for amounts already paid to Richman Greer, P.A., an addition in the amount of \$17,703.00 for Richman Greer, P.A. for amounts that were unnecessarily deducted from the total award and a deduction of \$50,000.00 from the maximum disbursement amount allowed by the Settlement Agreement to reflect amounts held by Bartko, Zankel, Tarrant & Miller, P.C. ("Bartko") in a trust account.

The DiSalvo professionals filed their stipulation as to allocation of attorneys' fees and costs on June 2, 2009. Thus, the Court now being fully informed that the DiSalvo Professionals unconditionally and fully stipulate and agree upon the entry of this Order, and further being fully informed that the Plaintiff and the Receiver agree to the entry of this Order, IT IS HEREBY ORDERED AND ADJUDGED that:

- 1) The Report and Recommendation (D.E. #357) is adopted in part as described herein;

- 2) The DiSalvo Professionals' request for the approval of reasonable attorneys' fees and costs pursuant to section 7.2.1 of the Settlement Agreement is hereby granted and approved in the total sum of \$650,000.00;
- 3) Pursuant to section 7.2.1 of the Settlement Agreement, the Receiver is hereby authorized and ordered to immediately disburse from the Estate Escrow Subaccount by wire to the Trust Account of Richman Greer, P.A. the total sum of \$650,000.00;
- 4) Richman Greer, P.A. shall disburse from its Trust Account to each DiSalvo Professional the agreed upon allocated sum;
- 5) Bartko and Lovitt & Hannan, Inc. are authorized to disburse to them from trust account the total sum of \$50,000.00;
- 6) The DiSalvo Professionals as set forth on the Stipulation unconditionally agree to waive any all appellate rights as it relates to their claims for attorneys' fees and costs herein; and
- 7) The Amended Motion for Distribution of Funds (D.E. #357) is denied as moot.

DONE AND ORDERED in Chambers, Miami, Dade County, Florida, this June 4, 2009.



PAUL C. HUCK
United States District Judge

Copies furnished to:
All counsel of record