

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:

Case No. 6:06-bk-02582-ABB
Chapter 7

MAIN STREET USA, INC.,

Debtor.

In re:

Case No. 6:06-bk-02583-ABB
Chapter 7

PYC DEVELOPMENT ONE, LLC,

Debtor.

In re:

Case No. 6:06-bk-02584-ABB
Chapter 7

PYC DEVELOPMENT IV, LLC,

Debtor.

ORDER

This matter came before the Court on the First Interim Application for Allowance and Payment of Compensation and Reimbursement of Expenses (Doc. No. 319) ("Application") filed by Berger Singerman, P.A. ("Applicant"), who is serving as counsel for Lewis B. Freeman ("Freeman"), the Chapter 7 Trustee herein. Hearings were held on May 5, 2008 and September 9, 2008 at which the Applicant, counsel for the Office of the United States Trustee, and other parties in interest appeared.

Applicant filed the Application on March 28, 2008 seeking payment of fees of \$502,721.50 and expenses of \$33,962.01 for services performed as counsel to the Chapter 7 Trustee for the period December 13, 2006 through February 29, 2008. An Order was entered on July 18, 2008 (Doc. No. 335) awarding Applicant, on an interim basis, expenses of \$33,962.01 and fees of \$50,000.00 based upon the Johnson¹ factors, and in particular, the results

¹ The reasonableness of attorney fees and costs is determined through an examination of the criteria

obtained *as of the Application's filing date* (i.e., the Trustee's actual and documented asset receipts).

The information regarding the results obtained by the Trustee and his counsel available to the Court on the date the Application was filed consisted of the Trustee's biannual financial reports for the period July 1, 2007 through December 31, 2007 filed on February 4, 2008 (Doc. Nos. 300, 301, 302). The reports reflected actual asset recoveries of \$531,260.24. Applicant asserted in its Application "it has been responsible or assisted in the recovery of close to \$2 million" Application, p. 11.

enunciated in In the Matter of First Colonial Corp. of America and Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974). The twelve Johnson factors are:

- (1) the time and labor required;
- (2) the novelty and difficulty of the questions involved;
- (3) the skill requisite to perform the legal service properly;
- (4) the preclusion of other employment by the attorney due to acceptance of the case;
- (5) the customary fee;
- (6) whether the fee is fixed or contingent;
- (7) time limitations imposed by the client or the circumstances;
- (8) the amount involved and the results obtained;
- (9) the experience, reputation, and ability of the attorneys;
- (10) the "undesirability" of the case;
- (11) the nature and the length of the professional relationship with the client;
- (12) awards in similar cases.

Johnson at 714. The Fifth Circuit Court of Appeals in In the Matter of First Colonial Corp. of America, 544 F.2d 1291 (5th Cir.1977) stated:

In order to establish an objective basis for determining the amount of compensation that is reasonable for an attorney's services, and to make meaningful review of that determination possible on appeal, we held in Johnson v. Georgia Highway Express, Inc., 488 F.2d at 717-19, that a district court must consider the following twelve factors in awarding attorneys' fees...

First Colonial at 1299.

Applicant provided no substantiation in the Application for such statement.

Administrative fees of \$429,094.51 had been awarded as of the date the Application was filed and administrative claims of \$1,107,929.60 (including the Application) were pending. This case was administratively insolvent when the Application was filed.

The July 18, 2008 Order concluded:

Accordingly, it is

...

ORDERED, ADJUDGED AND DECREED that the balance of the fees requested by Berger Singerman, P.A. in its Application shall be addressed upon the submission by the Trustee and the Court's review of current financial reports for the Debtors.

Doc. No. 335, p. 2. Applicant filed supplemental reports documenting the Trustee's current recoveries and disbursements (Doc. Nos. 331, 332, 333, 334, 341, 342).

After consideration of the estate's current financial reports and the Johnson factors, a fee award of \$300,000.00 is due to be awarded to Applicant. Such award is in addition to the fees of \$50,000.00 and costs of \$33,962.01 awarded to Applicant pursuant to the July 18, 2008 Order.

Accordingly, it is

ORDERED, ADJUDGED AND DECREED that Berger Singerman, P.A., on the balance of its Application (Doc. No. 319), is hereby awarded fees of \$300,000.00 to be paid from the estate as an administrative expense.

Dated this 16th day of September, 2008.

/s/Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge