

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

In re:

TAYLOR, BEAN & WHITAKER MORTGAGE  
CORPORATION, et al.,

Jointly Administered Under  
Case No.: 3:09-bk-7047-JAF  
Chapter 11

Debtors.

---

**ORDER GRANTING IN PART LENDER PROCESSING SERVICES, INC.'S  
APPLICATION FOR PAYMENT FOR SERVICES RENDERED PURSUANT TO THE  
CONFIRMED PLAN**

This matter is before the Court on Lender Processing Services, Inc.'s ("LPS") application for payment for services rendered pursuant to the confirmed plan of reorganization (Doc. 4140, the "Application"). The United States Trustee and Federal Home Loan Mortgage Corporation ("Freddie Mac") object to the Application (Docs. 4323, 4340). A hearing was held on November 14, 2011. At the conclusion of the hearing, the Court provided the parties-in-interest fifteen (15) days within which to file supplemental briefs. Such briefs having been filed (Docs. 4523, 4525, 4526, 4527), the matter is now ripe for review.

The Application seeks reimbursement of reasonable attorneys' fees and expenses pursuant to provisions of the Third Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors (Doc. 3240, the "Plan") and the Order confirming the Plan (Doc. 3420, the "Confirmation Order"). The Application does not seek payment of fees pursuant to Sections 503 or 330 of the Bankruptcy Code. Rather, the Application is based on the following provisions set forth in the Plan and the Confirmation Order:

**BAR DATE FOR PROFESSIONAL CLAIMS.** All Professionals, other Persons requesting compensation or reimbursement of expenses pursuant to any of sections 327, 328, 330, 331, 503(b) and 1103, **and certain creditors who engaged in conduct, through their counsel, that maximized recovery on Claims in their Class(es)** (each, a “Fee Claimant”) . . . shall File and serve on counsel for the Debtors or the Plan Trustee (as applicable) an application for final allowance of compensation and reimbursement of expenses accruing from the Petition Date to the Confirmation Date. . . . Fee Claimants shall receive reimbursement of their reasonable fees and expenses. Resolution of the requests for reimbursement of fees and expenses of the Fee Claimants in this manner is in the best interests of the Estates. . . .

(Doc. 3240 at 12, Art. 3.A.(3)(a); Doc. 3420 at 54, ¶ 94) (*emphasis added*).

The fee provisions, *supra*, were made available to interested parties in advance of their approval by the Court, and were negotiated and agreed to by the Official Committee of Unsecured Creditors and the Debtor (*see* Doc. 4527 at 2-3). The Court does not find these provisions were “inserted into the [P]lan vaguely without fair notice to the creditors,” as Freddie Mac contends (Doc. 4525 at 5). The Court made its findings after all parties had multiple opportunities to raise concerns or object. Freddie Mac and the United States Trustee, however, failed to do so. As such, the Plan is binding on all parties. *See* 11 U.S.C. § 1141(a).

Pursuant to the Plan language, the Court must make a finding as to whether LPS, through its counsel, Donald A. Workman, Esq., maximized recovery on claims within its class (*see* Doc. 3240 at 12, Art. 3.A.(3)(a); Doc. 3420 at 54, ¶ 94). Neither the Debtor, the Plan Trustee, nor the Official Committee of Unsecured Creditors (the “Committee”) objects to the Application. In fact, counsel for the Committee argued in support of the Application at the hearing. Further, the Debtor and the Plan Trustee each filed post-hearing briefs in support of the Application (Docs. 4523, 4526).

Neil F. Luria, Esq., the Plan Trustee, submitted a declaration in support of the Application, wherein he delineates the many ways in which he believes Mr. Workman

maximized recoveries for the unsecured creditors (Doc. 4523, Ex. A at 2-4). Mr. Luria attributes such maximization to Mr. Workman's prior experience in fidelity bond litigation and sub-prime mortgage company bankruptcies (*id.*). Mr. Luria states that Mr. Workman's participation in the case was pivotal to maximizing recoveries as he encouraged the different parties and constituencies to compromise rather than to litigate contentious matters (*see* Doc. 4523 at 7-9). Indeed, as counsel for the Debtor argued at the hearing, this complex case proceeded to plan confirmation without requiring a single evidentiary hearing. The Debtor, the Plan Trustee, and the Official Committee of Unsecured Creditors attribute this, in large part, to the knowledge and experience of Mr. Workman (*see, e.g.,* Docs. 4523, 4526).

Having considered the filings, the Court finds that, by helping to avoid costly litigation, Mr. Workman's efforts throughout the case maximized recoveries for the unsecured creditors. Therefore, pursuant to the terms of the Plan and the Confirmation Order, LPS is entitled to reimbursement of its reasonable attorneys' fees and expenses.

In the Application, LPS seeks a total of \$564,324.48 in attorneys' fees and expenses (Doc. 4140 at 4). This total represents 863.10 hours of attorney time, calculated at a "blended" hourly rate of \$641.24 for Mr. Workman and his associate, Robert L. Crowley, Esq. (which totals \$553,451.50), and \$10,872.98 in expenses (Doc. 4140-1 at 103, 127). In determining whether attorneys' fees are reasonable, a court must determine the "lodestar," the product of the number of hours reasonably expended and a reasonable hourly rate. *Grant v. Schumann Tire & Battery Co.*, 908 F.2d 874, 877 (11th Cir. 1990) (*citing Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)).

The calculation of the reasonableness of the rates and hours should take into account the following factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F. 2d 714 (5<sup>th</sup> Cir.

1974):<sup>1</sup> (1) the time and labor required; (2) the novelty and difficulty of the legal questions; (3) the skill required 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 for similar work in the community; (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 attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

A reasonable hourly rate is the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation. *Blum v. Stenson*, 465 U.S. 886, 895-896 n.11 (1984). Those seeking attorneys' fees "bear[ ] the burden of producing satisfactory evidence that the requested rate is in line with prevailing market rates." *Norman v. Housing Auth. of Montgomery*, 836 F.2d 1292, 1299 (11th Cir. 1988). Satisfactory evidence of rates may be provided in the form of direct evidence of rates charged by lawyers under similar circumstances or by opinion evidence. *Id.* Parties attempting to substantiate the reasonableness of a rate may wish to provide testimony of other lawyers to provide a basis for a court's analysis. *Id.* at 1300. Evidence of prevailing views among practitioners in the community often assists a court in its determination in this regard. *Id.* at 1301.

A failure of the parties to provide sufficient evidence to support the relief requested, however, will not prevent a court from determining a reasonable fee. Instead, the court "may make the [fee] award based on its own experience." *Id.* at 1303. As noted in *Norman*, "the court, either trial or appellate, is itself an expert on the question [of fees] and may consider its

---

<sup>1</sup> Decisions of the Fifth Circuit rendered on or before September 30, 1981 are binding precedent in the Eleventh Circuit. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11<sup>th</sup> Cir. 1981) (*en banc*).

own knowledge and experience . . . [in forming] an independent judgment either with or without the aid of witnesses as to value.” *Id.*

Here, the Plan Trustee, Neil F. Luria, Esq., stated in his declaration in support of the Application that, in his opinion, Mr. Workman’s fees are reasonable considering his level of experience and the complexities of the case (Doc. 4523 at 9). The Court, however, finds Mr. Workman’s “blended” hourly rate of \$641.24 to be slightly excessive given the prevailing market rate in the Middle District of Florida for similar services by lawyers of reasonably comparable skills, experience, and reputation. Accordingly, the Court will set Mr. Workman’s blended hourly rate at \$595.00, which is comparable to the hourly rates charged in this case by the other highly experienced bankruptcy and corporate restructuring attorneys (*see, e.g.*, Doc. 4132-1 at 46).

After reviewing the contemporaneous time records submitted with the Application (Doc. 4140-1 at 2-103), the Court finds the time expended by Mr. Workman and his associate, Robert L. Crowley, is reasonable. In addition, the Court finds the itemized expenses (Doc. 4140 at 104-27) to be reasonable.

Based on the foregoing, it is **ORDERED**:

1. Lender Processing Services, Inc.’s application for payment for services rendered pursuant to the Confirmed Plan (Doc. 4140) is granted to the extent set forth herein.

2. Lender Processing Services, Inc. is allowed reimbursement of attorneys’ fees in the amount of \$513,544.50 (\$595.00 x 863.10) and reimbursement of expenses in the amount of \$10,872.98, for a total allowable reimbursement of \$524,417.48.

3. The Debtor is authorized to pay the aforementioned sum to Lender Processing Services, Inc.

**DATED** this 20th day of December, 2011 in Jacksonville, Florida.

/s/ Jerry A. Funk  
**JERRY A. FUNK**  
United States Bankruptcy Judge

**Copies to:**

All Interested Parties