

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

In re:

Case No. 6:03-bk-04923-ABB
Chapter 7

AQUAMARINE USA, INC.,

Debtor.

ORDER

This matter came before the Court on the Final Application for Award of Compensation and Expenses for Services Rendered (Doc. No. 734) (“Final Application”) submitted by attorney Robert B. Branson (“Branson”) and the law firm of Robert B. Branson, PA (collectively, “Applicant”) as counsel for Aquamarine USA, Inc., the Debtor and former Debtor in Possession herein (“Debtor”). The United States Trustee (“UST”) filed an Objection to the Final Application (Doc. No. 755). A hearing was conducted on February 7, 2007 at which Branson, counsel for the Chapter 7 Trustee George E. Mills, counsel for the Official Unsecured Creditors Committee (“USCC”), and counsel for the UST appeared. The Application was addressed in open Court at a hearing on April 4, 2007 during which Branson and the USCC presented argument. The Court makes the following findings and conclusions after reviewing the pleadings, hearing live argument, and being otherwise fully advised in the premises.

The Debtor filed a voluntary Chapter 11 petition on May 1, 2003 and was authorized to engage Applicant as Debtor’s counsel pursuant to the Order entered on June 5, 2003 (Doc. No. 19). The case was converted to Chapter 7 on February 21, 2007 (Doc. No. 802) and jurisdiction was retained to address the fee applications filed by various applicants.¹ Branson spent a significant amount of time and effort on this case and his contributions were beneficial to the Debtor and the estate.

Applicant filed an Initial Application (Doc. No. 360) seeking an award of fees and costs of \$39,940.50, less the balance of funds held in trust for

¹ The USCC and the UST recommended conversion after an auction of estate and non-estate assets on January 25, 2007 failed to generate sufficient funds to satisfy administrative claims which were to be paid pursuant to the Amended Plan of Reorganization.

a total of \$34,688.72, for the period April 30, 2003 through May 14, 2004. An Order was entered (Doc. No. 411) approving the costs of \$448.42 and deferring “ruling on the reasonableness and payment of the fee claim until further hearing.” Applicant filed a Second Application (Doc. No. 451) seeking an award of fees of \$11,318.50 and costs of \$140.00 for the period May 14, 2004 through August 24, 2004. A hearing was held on September 14, 2004 and a ruling on the Second Application was deferred.

Applicant, in its Final Application, seeks an administrative award of fees of \$90,840.00 and costs of \$310.00 for services performed as counsel for the Debtor during the period August 24, 2004 through September 19, 2006. Applicant sets forth in the Final Application it spent 475.45 total hours attorney and paralegal time in this case and total outstanding fees of \$136,987.22 are due.

The Debtor, USCC, and Florida Land Reserve, Inc. (“FLRI”), an entity controlled by Earl Smith who also controlled the Debtor, resolved various claims through a Settlement Term Sheet and the Aquamarine Customer Trust Agreement (“Trust Agreement”) executed by the parties on September 21, 2004. The settlement was not consummated and USCC instituted an adversary proceeding² against FLRI. The parties’ claims were resolved through a global settlement memorialized in a Settlement Agreement dated February 15, 2006 (Doc. No. 634). Branson was actively involved in the settlement negotiations and executed the Settlement Agreement as counsel for the Debtor. The Settlement Agreement was approved by Order entered on March 24, 2006 (Doc. No. 656).³

The Settlement Agreement incorporates the Trust Agreement. The Trust Agreement was executed by Smith on behalf of the Debtor and FLRI and counsel for USCC as the Liquidating Trustee. Branson has been aware of the terms of the Trust Agreement at all times throughout his employment as Debtor’s counsel. Article XIV of the Trust Agreement sets forth a distribution scheme in which Applicant’s fees shall be paid after other

² The Official Committee of Unsecured Creditors of Aquamarine USA, Inc. v. Florida Land Reserve, Inc., Adversary Proceeding No. 6:05-ap-00164-ABB.

³ The Order at p. 2 provides: “The Customer Trust shall be deemed created with all powers, rights, duties and obligations pertaining thereto, vested upon entry of this Order.” The Settlement Agreement was amended on August 15, 2006 by deleting Paragraphs 17 and 18 (AP Doc. No. 26).

professionals are paid and caps Applicant's fees at \$65,000.00, which will be paid on a pro rata basis with claimants holding Allowed Customer Claims.⁴ Applicant is bound by the terms of the Trust Agreement.

The Initial, Second, and Final Applications are deficient in several respects. Applicant provided insufficient information for determining whether the fees requested are reasonable pursuant to the examination criteria enunciated in In the Matter of First Colonial Corp. of America⁵ and Johnson v. Georgia Highway Express, Inc.⁶ The time entries lack sufficient detail regarding the nature of the work performed. The Applicant fails to explain how services provided, particularly services rendered to or for Smith, benefited the Debtor and the estate. The time entries are not organized into project billing categories as required by the United States Trustee Guidelines for applications filed pursuant to 11 U.S.C. Section 330. The Applications fail to explain the substantial increases of Applicant's hourly billing rates from \$185.00 for attorneys and \$85.00 for paralegals in the Initial and Second Applications to \$275.00 for attorneys and \$100.00 for paralegals in the Final Application.

The costs sought by Applicant in its Initial, Second, and Final Applications are reasonable and are due to be awarded.

Accordingly, it is

ORDERED, ADJUDGED AND DECREED that the UST's Objection is hereby **SUSTAINED** and the Applicant's Initial, Second, and Final Applications are **DENIED** without prejudice to allow Applicant to file, within fourteen (14) days of the date of this Order, an omnibus

amended Application setting forth all fees sought by Applicant that apply to work performed *for the Debtor* and addressing each of the deficiencies identified hereinabove.

Dated this 12th day of April, 2007.

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

⁴ Doc. No. 719, Exhibit 1 at p. 13. provides distribution shall be made as follows: (i) compensation to the Liquidating Trustee pursuant to 11 U.S.C. Section 326(a); (ii) reasonable costs incurred by the Liquidating Trustee and approved fees of USCC counsel, the Examiner, Private Investigator, and Accountant; (iii) "holders of Allowed Customer Claims with post confirmation interest thereon or otherwise as set forth under the Plan or this Agreement on a pro rata basis along with Counsel to the Debtor (capped at \$65,000.00);" and (iv) "to the extent funds remain, the remainder shall be paid to Counsel for the Debtor to the extent unpaid in paragraph c, thereafter distributed to Florida Land Reserve."

⁵ In the Matter of First Colonial Corp. of America, 544 F.2d 1291 (5th Cir.1977).

⁶ Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974).