

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-60082-CIV-DIMITROULEAS/SNOW

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

FREDERIC ELM f/k/a Frederic
Elmaleh, *et al.*,

Defendants,

and

AMANDA ELM f/k/a Amanda
Elmaleh,

Relief Defendant.

REPORT AND RECOMMENDATION

THIS CAUSE is before the Court on the Receiver's Sixth Interim Application for Allowance and Payment of Fees and Expenses Incurred by the Receiver and Retained Counsel (ECF No. 188), which was referred to United States Magistrate Judge, Lurana S. Snow, for Report and Recommendation. The Defendants did not respond to the motion and it is ripe for consideration.

This was an action filed by the Securities and Exchange Commission (SEC) for temporary and permanent injunction against Defendant Frederic Elm and the corporate Defendants. On January 6, 2015, the Court appointed Grisel Alonso, Esq. to serve as receiver for the corporate Defendants. The Receivership Order provides, in pertinent part:

14. The Receiver, and any counsel whom the Receiver may select, are entitled to reasonable compensation from the assets now held by or in the possession or control of or may be received by ETIA and the Elm Tree funds; said amount or amounts of compensation shall be commensurate with their duties and obligations under the circumstances, subject to approval of the Court. . . .

(ECF No. 13 at 4-5)

The Receiver now seeks an interim award for the time period of January 1, 2017 - September 30, 2017 of \$54,695.50 for the services of herself and her staff attorneys for 216.30 hours of work and \$450.59 in expenses. The Receiver also requests \$85,616.00 in attorneys' fees for 337.4 hours of work by her retained counsel, the law firm of Broad and Cassel, together with expenses incurred by counsel in the amount of \$1,096.37, and \$1,272.50 in fees for 3.5 hours of work for the firm of Berliner Cohen LLP . (ECF No. 188-1 at 2-4) In support of her Application, the Receiver attached detailed billing records and invoices. (ECF No. 188-2 - 188-5).

This Court has found that the billing rates of the Receiver and her staff at Michael Moecker and Associates, Inc. (MMA), as well as the timekeepers at Broad & Cassel, are reasonable (ECF No. 113, 117). There has been no challenge to the billing rates for Berliner Cohen, which are consistent with those of Broad & Cassel. The undersigned has reviewed the records submitted by the Receiver and finds that the hours expended by them, as well as the claimed expenses, likewise are reasonable and should be approved. However, the undersigned notes that the Application lists the total claimed as \$143,425.96, while the listed amounts claimed actually total \$143,130.96. (ECF No. 188-1 at 2-4, 188-5).

CONCLUSION

This Court having considered carefully the pleadings, arguments of counsel, and the applicable case law, it is hereby

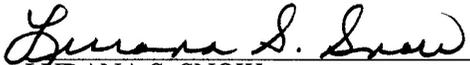
RECOMMENDED that the Receiver's Fifth Interim Application for Allowance and Payment of Fees and Expenses Incurred by the Receiver and Retained Counsel (ECF No. 188) be GRANTED, and that the Receiver be authorized to pay herself and MMA the total amount of \$55,146.09; to pay Broad and Cassell the total amount of \$86,712.37, and to pay Berliner Cohen the amount of \$1,272.50, for a total of \$143,130.96.

The parties will have 14 days from the date of being served with a copy of this Report and Recommendation within which to file written objections, if any, for consideration by The

Honorable William P. Dimitrouleas, United States District Judge. Failure to file objections timely shall bar the parties from a de novo determination by the District Judge of an issue covered in the Report and shall bar the parties from attacking on appeal unobjected-to factual and legal conclusions contained therein, except upon grounds of plain error if necessary in the interest of justice. See 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140, 149 (1985); Henley v. Johnson, 885 F.2d 790, 794 (1989); 11th Cir. R. 3-1 (2016).

DONE AND SUBMITTED at Fort Lauderdale, Florida, this 8th day of January, 2018.

Copies to:
All Counsel of Record


LURANA S. SNOW
UNITED STATES MAGISTRATE JUDGE