

Law Off. of Mark S. Helweil v Karambelas

2024 NY Slip Op 32693(U)

August 2, 2024

Supreme Court, New York County

Docket Number: Index No. 159060/2018

Judge: Joel M. Cohen

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JOEL M. COHEN **PART** 03M

Justice

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THE LAW OFFICE OF MARK S. HELWEIL, MARK S.
HELWEIL,

INDEX NO. 159060/2018

Plaintiff,

- v -

ANDREA KARAMBELAS,

Defendant.

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Receiver Robert Abrams seeks to confirm his receiver fees in this action. He requests fees and costs amounting to \$100,000.00 total, with \$10,664.01 of accrued fees to be paid to the Judgment Creditors, The Law Office of Mark S. Helweil and Mark S. Helweil (together, “Helweil”). The Judgment Debtor, defendant Andrea Karambelas, opposes the motion on the grounds that the CPLR requires capping Abrams’s receiver fees at \$75,000.00. For the reasons that follow, this Court determines that the correct commission for Mr. Abrams is **\$75,000.00**, and Katsky Korins is entitled to attorneys’ fees in the amount of **\$23,231.07**.

Standard

“A receiver, except where otherwise prescribed by statute, is entitled to such commissions, not exceeding five per cent upon the sums received and disbursed by him, as the court by which he is appointed allows” (CPLR § 8004[a]). The predecessor statute was construed not to “entitle a receiver to rents of 5 per cent[] of sums received and disbursed by him as a matter of right, but only to such commissions ‘not exceeding five per centum’ as the court in the exercise of its judgment may allow” (*Central Hanover Bank & Tr. Co. v Williams*, 244 AD

OTHER ORDER – NON-MOTION

566, 566 [1st Dept 1935]). Similarly, the CPLR provides “a maximum allowable fee but the receiver must earn his fee and it is his burden to demonstrate that he has in fact earned it” (*De Nunez v Bartels*, 264 AD2d 565, 566 [1st Dept 1999] [citing *Key Bank of N.Y. v Anton*, 241 AD2d 482 [2d Dept 1997]). The Court has “discretion to fix a lesser commission as the facts and circumstances of any particular case indicate” (*Weckstein v Breitbart*, 154 AD2d 305, 305 [1st Dept 1989]).

The “sums received and disbursed by” a receiver are typically the same amount, and “[w]here it is not, a commission is payable as a percentage of what the court ‘decided was the value of the assets which came into the hands of the receiver[], and which were disbursed or transferred by [the receiver]’” (*Eastrich Multiple Inv. Fund, L.P. v Citiwide Development Assocs.*, 218 AD2d 43, 44 [1st Dept 1996]). Some courts have fixed amounts greater than the statutory maximum if the 5% allowable by statute “would be ‘manifestly unfair’” (*Federal Home Loan Mortg. Corp. v S.E.A. Yonkers Assocs.*, 869 F Supp 187, 188 [SDNY 1994]; *see also Flotteron v JEL Realty*, 58 AD3d 677, 677 [2d Dept 2009]). A receiver is sometimes entitled to an allowance for the attorneys’ fees of outside counsel, but the Court must evaluate whether the attorneys’ fees are “reasonable in light of the legal services rendered” (*Chang v Zapson*, 67 AD3d 435, 435-36 [1st Dept 2009]).

On June 25, 2021, this Court entered an order appointing Robert Abrams as Receiver, allowing Abrams to recover a commission “which shall be based upon his usual and customary hourly billable rate for all services rendered in connection with all of” his duties (NYSCEF 265). On September 15, 2023, the Court permitted Abrams to retain Courtney Ferszt, Esq., at his firm—Katsky Korins LLP—to assist with the sale (NYSCEF 218). On June 24, 2024, the property was sold for a final sale price of \$1,500,000.00 (NYSCEF 272). The Settlement

Statement indicated \$113,664.61 to be held for Abrams (*id.*). In his Affirmation, Abrams stated only \$110,664.61 was earmarked for legal fees and expenses and held in the receivership account (NYSCEF 263 ¶¶ 3 n.1, 16). Abrams agreed with Helweil to reduce his commission to \$100,000.00, with the extra \$10,664.61 going to Helweil (*id.* ¶¶ 17-19). Abrams calculated the fee based on his hourly rate ranging between \$705 and 805 per hour during the relevant period, as well as the hourly rate of \$430 for Courtney Ferszt, Esq., an associate attorney at Abrams's firm.

In opposition, Karambelas argues Abrams's fees are in excess of the statutory maximum, and the agreement between a party and the Receiver is not enforceable (NYSCEF 276 ¶¶ 4-6, 12-13 [citing *Lubitz v Mehlman*, 95 AD2d 690, 691 [1st Dept 1983]; *Matter of Kane*, 75 NY2d 511, 513 [1990]]). She also argues that the Receiver billed at his legal services rate for non-legal services (NYSCEF 276 ¶ 31). She asserts the commission should be reduced by \$37,500.00, representing the services performed by the real estate agent Abrams hired, as well as by the amount for counsel which provided legal services (*id.* ¶¶ 32). Finally, she argues "[i]t would be an abuse of discretion to require the judgment-debtor to pay all the fees and expenses of the receiver. The judgment-creditor should be charged equally for the fees and expenses incurred by the receiver. The receiver was appointed by the court at the request of the judgment-creditor, and the proceeds of the sale effectuated by the receiver inured to the primary benefit of the judgment-creditor" (*id.* ¶ 33).

On reply, Abrams asserts the Court's order allowing the Receiver to be paid commission at "his usual and customary hourly billable rate for all services rendered" as receiver controls, and CPLR § 8004 does not apply (NYSCEF 277 ¶ 2). He also asserts the sale was complex,

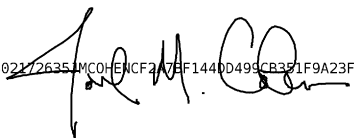
requiring a great deal of work (*id.* ¶ 11). Further, he calculates the Receiver’s commission, with attorneys’ fees, at \$98,231.07 in the event CPLR § 8004 applies (*id.* ¶ 9-10).

The Court is constrained to apply CPLR § 8004(a). There are no extraordinary circumstances warranting a higher amount. Accordingly, Abrams himself cannot earn a commission of more than 5% of the \$1.5 million he received and distributed, and his commission is capped at \$75,000.00. The Court had previously exercised its discretion and ordered that he would be compensated in accordance with his usual and customary billable hour rate for *all* services rendered, though this must be subject to the statutory maximum. Therefore, given the complexity of the sale, the maximum allowable amount is appropriate in this circumstance.

Katsky Korins is also entitled to recover attorneys’ fees. Abrams correctly asserts Karambelas disputes no line item of either his billed hours nor of his counsel. The Court finds the requested rates for counsel to be reasonable. Thus, the total amount authorized to be distributed to the Receiver’s commission is \$75,000.00. The total amount authorized to be distributed to Katsky Korins LLP is \$23,231.07.

Accordingly, it is

ORDERED that Robert Abrams’s commission as Receiver shall be \$75,000.00, and he shall distribute \$23,231.07 from the proceeds of the sale of the property to Katsky Korins LLP.

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JOEL M. COHEN, JSC

DATE: 8/2/2024

Check One:

Case Disposed

Non-Final Disposition

Check if Appropriate:

Other (Specify _____)