FOR PUBLICATION

E-FILED
CNMI SUPERIOR COURT
E-filed: Dec 17 2014 11:34AM
Clerk Review: N/A
Filing ID: 56483073
Case Number: 03-0079-CV
N/A

IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN RE: ESTATE OF)	**CIVIL CASE No. 03-0079-CV**
)	
RITA ROGOLOFOI,)	**ORDER DENYING CLAIMANT'S**
)	**CONTINGENT FEE RECOVERY; AND**
Deceased.)	
)	**ORDER APPROVING OTHER**
_____)	**ATTORNEY FEES**

I. INTRODUCTION

THIS MATTER came before the Court on September 16, 2014, at 1:30 p.m. in Courtroom 223A. Attorney Sheila N. Trianni appeared for the Administrator Clarence E. White. Claimant Attorney Brien Sers Nicholas appeared *Pro Se*.

On March 12, 2012, this Court ruled in its Order Granting in Part Petition for Instructions Re: Payment of Attorney's Fees and Costs-Expenses that "[i]f the Heirs approve the Contingency Fee then so will the Court. Otherwise, the Court will conduct a further analysis to determine whether the Retainer Agreement is valid and whether the Contingency Fee is reasonable." Order (Mar. 12, 2012) 4.

In re Malite, the Commonwealth Supreme Court held that "in the absence of a valid agreement between an attorney and client, or in cases where reasonable attorney fees are awarded pursuant to statute, MRPC Rule 1.5 factors must be considered when calculating reasonable attorney fees." 2010 MP 20 ¶44 n.31.

Accordingly, there are four issues present before the Court.

(1) Whether the Heirs approved the contingent fee agreement between Claimant and the Administrator;

(2) If not, whether the retainer agreement between Claimant and the Administrator, as twice amended, contains a valid contingent fee agreement;

(3) If not, whether Claimant's requested fee amount of $782,363.74[1] is reasonable under the relevant factors listed under the ABA Model Rules of Professional Conduct;

(4) And the amount of money that the Estate should pay Claimant for his legal services.

Based on review of the filings, oral arguments, and applicable law, the Court makes the following factual determinations and order.

The Court finds that the Heirs **HAVE NOT APPROVED** the contingent fee agreement between Claimant and the Administrator;

The Court finds that the Retainer Agreement, as twice amended, **DOES NOT CONTAIN** a valid contingent fee agreement;

The Court finds that Claimant's requested recovery of $782,363.74 was **NOT REASONABLE** under the relevant factors listed in the Model Rules of Professional Conduct; and

The Court finds that **$170,263.01** is a reasonable fee and, accordingly, orders the Estate to pay an additional **$99,256.76** to Claimant for his legal services, which is the Retainer Agreement fee balance after deducting the $71,006.25 previously paid to Claimant.

II. FACTUAL BACKGROUND

On November 9, 2004, then-Administrator Seman retained the services of Claimant Biens Ser Nicholas to represent him in the above entitled probate matter ("Probate Case") and in the separate, but related, action: *The Board of Marianas Public Lands Authority v. The Heirs of Rita Rogolifoi*, Civil Action No. 05-0197A (NMI Super. Ct.) ("Quiet Title Action"). Then-Administrator Seman and Claimant executed a retainer agreement ("the Retainer Agreement"), wherein the Administrator agreed to pay Claimant $175.00 per hour for his legal services on the Probate Case, and a contingent fee based on any recovery obtained in

[1] The $782,363.74 figure is Claimant Biens Sers Nicholas's total contingent fee of $853,369.99, less $71,006.25 that the Estate paid to Claimant.

the Quiet Title Action. The Retainer Agreement outlined the contingent fee as follows:

1. Twenty Percent (20%) if recovery is obtained before any Judgment is obtained;

2. Thirty Percent (30%) if recovery is obtained after any Judgment is obtained; and

3. Forty Percent (40%) if recovery is obtained after any appeal (or any other form of appellate proceeding) is filed by any party.

Claimant's Attach. A.

On October 7, 2005, Claimant and then-Administrator Seman signed an Amendment to the Retainer Agreement ("2005 Amendment"). The 2005 Amendment amended § 4(b) of the initial Retainer Agreement, which had previously provided that the "fees listed in Paragraph 2 of this Agreement *do not* include fees for representation in appellate proceedings, or for representing Client as a defendant or cross-defendant in any action related to the above cases . . . ." Administrator's Opp'n. Ex. 1, 3. The 2005 Amendment replaced that paragraph and specifically stated that the "fees listed in Paragraph 2" include representation "in any appellate proceedings and in any action or lawsuit wherein Client is a Party thereto in whatever capacity." Administrator's Opp'n. Ex. 4, 2.

On May 12, 2009, this Court entered a judgment in favor of the Administrator in the Quiet Title Action, awarding the heirs to the Estate of Rogolifoi ("Heirs") fee simple ownership and titles to Lot 616 and Lot 630, collectively containing some 33,927 square meters, more or less. *The Board of Marianas Public Lands Authority v. The Heirs of Rita Rogolifoi*, Civil Action No. 05-0197A (NMI Super. Ct. May 12, 2009) Judgment 2. Also, the Heirs were awarded a total of $2,690,020.07, which represented "just compensation" for certain government takings and rental payments collected by the Department of Public Lands ("DPL"), plus nine percent post-Judgment interest. The total Judgment award plus post-Judgment interest came out to a grand total of $2,844,566.64. *Id.* 3-4. Pursuant to the Retainer Agreement and negotiations with the Administrator, Claimant sought thirty percent of the grand total recovery for a total sum of $853,369.99 in attorney's fees. *Id.*

On December 20, 2010, Claimant and the then-Administrator Seman entered into another amendment to the Retainer Agreement ("2010 Amendment"). Claimant's Attach. A, Ex. E. The 2010 Amendment amended § 3(a) of the Retainer Agreement as follows:

> 3. Charges to Client for Quiet Title:
> (a) Attorney's Fees: The Client shall pay to the Attorney and/or to his Estate the total sum of $853,369.99, said sum representing thirty percent (30%) of the total monetary amount of $2,844,566.64 as 'Recovery' pursuant to the Judgment entered on May 12th, 2009 by the Honorable Robert C. Naraja, Presiding Judge, in BMPLA v. Heris of Rita Rogolifoi, Dec, et al., Civil Action No. 05-0197A.
>
> As used herein, the term 'Recovery' shall mean only the total sum of $2,122,476.70 as 'just compensation' to the Rogolifois, the sum of $567,543.37 as rental payments due to the Rogolifois, and the sum of $154,546.57 as post-judgment interest for the same from May 13th, 2009 to December 31st, 2009, for a grand total of $2,844,566.64, that the Attorney recovered and obtained for the Client pursuant to and as part of the Judgment above-mentioned. It shall not include the real properties, i.e., Lot Nos. 616, 630, and E.A. No. 114, the fee simple titles of which were quieted on to the Rogolifois pursuant to said Judgment as well. *Id.*

Claimant's Attach. A, Ex. E.

On March 12, 2012, Presiding Judge Naraja entered an order after a January 4, 2011 hearing related to Claimant's fees. The Order stated that "[i]f the Heirs approve the Contingency Fee then so will the Court. Otherwise, the Court will conduct a further analysis to determine whether the Retainer Agreement is valid and whether the Contingency Fee is reasonable." Order (Mar. 12, 2012) 4. This Court found that $71,006.25 was a reasonable fee based upon various factors. Order (Mar. 12, 2012) 4. The Order concluded that Claimant's Petition was granted in part by "awarding Counsel attorney fees in the amount of $71,006.25." Order (Mar. 12, 2012) 5. The Court, however, stayed "its order on the Retainer Agreement balance of $782,363.74, pending approval of the Heirs." Order (Mar. 12, 2012) 5.[2]

Based upon this Court's March 12, 2012 Order, the Estate paid Claimant in the amount of $71,006.25. Administrator's Opp'n. Administrator Decl.

[2] The Probate Calendar was transferred to this Court from Presiding Judge Naraja in 2013.

Claimant now brings his Petition for Instructions requesting that the Court address the matters regarding the remaining balance of his attorney's fees claim in the amount of $782,363.74.

III. THE HEIRS HAVE NOT APPROVED THE CONTINGENCY FEE AGREEMENT

The Heirs have not approved the contingent fee agreement entered between Claimant and then-Administrator Seman. Administrator's Opp'n. Exs. 11, 12. Therefore, the Court will find whether the contingent fee agreement is valid, whether the requested award is reasonable, and, if not reasonable, a reasonable fee for Claimant's legal services.

IV. THE LEGAL STANDARD ON THE VALIDITY OF SUBSEQUENTLY ENTERED CONTRACTS BETWEEN AN ATTORNEY AND HIS OR HER CLIENT

For a contract for compensation entered into in the establishment of the attorney-client relationship, the attorney does not have the burden to show that it was just, fair, and reasonable. *Setzer v. Robinson*, 18 Cal. Rptr. 524, 526 ("The presumption of 'insufficient consideration' and 'undue influence' . . . is not applicable to a contract by which the relation of attorney and client is originally created and the attorney's compensation is fixed.").

However, a contract made between a client and an attorney during the continuance of a fiduciary relationship is presumptively invalid. *Moore v. Rochester Weaver Mining Co.*, 42 Nev. 164, 176 (1918). The attorney bears the burden of showing that the transaction was fair, that the compensation provided did not exceed a fair and reasonable remuneration for the services rendered, that it was not exorbitant, and that it was entered into by the client freely and with a full understanding as to his or her rights, and after a fair and full disclosure of the facts upon which it was predicated. *Morton v. Forsee*, 249 Mo. 409, 436 (1913), *Shirk v. Neible*, 156 Ind. 66, 71 (1901), *Boyle v. Waters*, 206 Mich. 515, 521 (1919), *State v. MacIntyres*, 238 Wis. 406, 416 (1941).

Once the attorney establishes facts sufficient to overcome his or her initial burden, the burden shifts to the plaintiff-client for establishing the defenses of unfairness, undue influence, unreasonableness, or mistake in the contract. *Morton*, 249 Mo. at 426-27.

V. FACTUAL FINDINGS TO THE VALIDITY OF THE AMENDMENTS TO THE RETAINER AGREEMENT

The following paragraphs explain the reasoning behind the Court's finding that the amendments to the Retainer Agreement were not valid, and by logical extension, the contingent fee agreement was not valid.

a. Claimant failed to overcome the presumption that the subsequently-entered contracts between Claimant and Administrator were invalid.

Claimant twice amended the Retainer Agreement in this matter. Therefore, the issue is whether Claimant made a sufficient showing of facts to overcome the presumption that he and the then-Administrator Seman entered into invalid contracts. Here, the Court cannot find in favor of Claimant.

Claimant characterizes the 2010 Amendment to the Retainer Agreement as a reflection of his willingness to limit his contingent fees "to the amounts awarded as 'just compensation' and 'back rentals'. . . as well as post-judgment amounts capped as of December 31st, 2009." Claimant's Attach. A ¶ 8.

The 2010 Amendment also affirms the contingent fee agreement at thirty percent the amount of recovery, and requires the Estate to pay $853,369.99 to Claimant. While the Court understands that Claimant's modifications to the initial contract represent an effort to reduce the burden to the Estate, the fact that the final invoice amount is $853,369.99 gives the Court pause to question whether the 2010 Amendment–and by logical extension, the original contingent fee agreement–were, in fact, valid attorney-client contracts.

Claimant provided the Court with explanations as to the terms of the Retainer Agreement, and as to the terms of the Amendments, but little information as to how those contracts came to be. Therefore, the Court cannot determine whether the Administrator agreed to the two Retainer Agreements amendments "freely and with a full understanding as to his or her rights, and after a fair and full disclosure of the facts."

Thus, the 2010 Amendment to the Retainer Agreement raises a clearly legitimate question whether the contingent fee was consistent with the client's best interest – and the interests of the heirs to the Estate, whom the Administrator owes a fiduciary duty. ABA Model Rules of Professional Conduct, Rule 1.5

Comment ¶ [5] provides: "When there is doubt about whether a contingent fee is consistent with the client's best interests, the lawyer should offer the client alternative bases for the fee and explain their implications."

As Claimant drafted the language to the 2010 Amendment, he should have known what his fees would have been if they were based on his hourly rate. This Court found that amount to be $71,006.25, calculated at Claimant's hourly rate of $175.00 for the 405.75 hours that Claimant spent on the Quiet Title Action. Order (Mar. 12, 2012) 4. Thus, the amount of money the Estate agreed to pay Claimant was more than 12 times the amount of money the Estate would have paid Claimant under his hourly billing rate.

Despite this clear discrepancy, Claimant makes no mention in his declaration whether he communicated to the Administrator of alternative bases for the fee. Neither does the Administrator, where he states in his 2010 Declaration:

> 8. I firmly believe that the payment of Counsel's contingency fee in the DPL case [as reflected in the 2010 Amendment] is not only fair but a reasonable one given that, with his help and assistance, my family and I have finally resolved an issue that has long hunted us with respect to our ownership claims to T.D. 667, a claim that has been in place since the early 1950's. And, as a result of Counsel's work and efforts, my family and I have greatly benefitted from the same in that we stand to receive and will continue to receive monetary benefits here on end.

Claimant's Attach. B ¶ 8. Therefore, the Court cannot say for certain whether Claimant gave the Administrator a choice to consider alternative fee arrangements in light of the potential for a substantial pay out from the Estate funds. Accordingly, Claimant also failed to show that the $853,369.99 price tag for his legal services was not exorbitant, and that it did not exceed a fair and reasonable remuneration for the services rendered.

b. The Retainer Agreement does not comply with ABA Model Rules of Professional Conduct Rule 1.5(c) because it does not state whether the contingent fee will be calculated before or after the deduction of legal expenses.

The Court also finds that the contingent fee agreement does not comply with ABA Model Rules of Professional Conduct Rule 1.5(c), which states in relevant part: "[a] contingent fee agreement shall be in

a writing signed by the client and shall state the method by which the fee is to be determined . . . litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party." Model Rules of Prof'l Conduct r. 1.5(c) (1983).

The relevant portions of the Retainer Agreement states:

> 3. Charges to Client for Quiet Title Action Against Government.
> (a) Attorney's Fees. In any non-probate matter or action except one in which Attorneys fees are regulated by law, Client shall pay to Attorney for his services the following, to wit:
> (i) Twenty Percent (20%) if recovery is obtained before any Judgment is obtained;
> (ii) Thirty Percent (30%) if recovery is obtained after any Judgment is obtained; and
> (iii) Forty Percent (40%) if recovery is obtained after any appeal (or any other form of appellate proceeding) is filed by any party.
> As used herein, the term "recovery" shall mean the total of any money recovered and/or any real property (including any improvements thereon) obtained as recovery by the Attorney for the Client. In the event that the recovery obtained by the Attorney is in whole or in part in the form of real property (including any improvements thereon), then the Clients agree to compensate the Attorney according to the percentage above mentioned [sic] in the form of real property, in lieu of monetary compensation, for purposes of this Agreement. In this regard, the Attorney shall have the choice of the location of the real property to be given by the Clients as compensation to the Attorney pursuant to this Agreement.

Claimant's Attach. A 2-3. In the relevant portions of the Retainer Agreement, Claimant does not disclose the deduction of litigation expenses, and Claimant does not disclose whether those expenses are deducted before or after the contingent fee calculation. Neither the 2005 Amendment nor the 2010 Amendment corrects this deficiency. Therefore, the Court finds that Claimant failed to show that the contingent fee agreement was fair to the Administrator.

Claimant carries a heavy burden to show that the amendments to the Retainer Agreement overcome the presumption of invalidity. Here, he did not meet this burden. Therefore, the Court finds the contingent fee agreement to be invalid.

//

//

VI. THE LEGAL STANDARD ON THE REASONABLENESS OF THE CONTINGENT FEE

"Contracts for contingent fees, generally having a greater potential for overreaching of clients than a fixed fee contract, are closely scrutinized by the courts where there is a question as to their reasonableness. The close scrutiny arises from the duty of the courts to guard against the collection of a clearly excessive fee, thereby . . . maintaining the integrity of the legal profession" *Committee on Legal Ethics of West Virginia State Bar v. Tatterson*, 177 W. Va. 356, 363 (App. 1986) *citing In re Teichner*, 104 Ill. 2d 150, 160 (1984), *cert. denied*, 470 U.S. 1053 (1985). The attorney has the burden to show that the fee contract is reasonable. *Bizar & Martin v. U.S. Ice Cream Corp*., 644 N.Y.S.2d 753, 754 (App. 1996).

The Court applies the relevant factors listed under Rule 1.5 of the Model Rules of Professional Conduct in order to determine the reasonableness of the requested attorneys fees. *In re Estate of Malite*, 2010 MP 20 ¶40. Rule 1.5(a) provides:

> [a] lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment of the lawyer;
> (3) the fee customarily charged in the locality for similar legal services;
> (4) the amount involved and the results obtained;
> (5) the time limitations imposed by the client or by the circumstances;
> (6) the nature and length of the professional relationship with the client;
> (7) the experience, reputations, and ability of the lawyer or lawyers performing the services;
> (8) whether the fee is fixed or contingent.

Model Rules of Prof'l Conduct r. 1.5(a). Additionally, the Commonwealth Supreme Court has also suggested that certain billing practices are indicative of unreasonable attorney fees. Examples of unreasonable attorney fees include: (1) Block Billing; (2) Inter-Office Conferencing; (3) Vague Entries; and (4) Excessive Research. *Ferreira v. Borja*, 1999 MP 23 ¶ 14.

At the same time, the Commonwealth Supreme Court recognizes that attorneys are "less inclined" to keep time records when operating under a contingent fee agreement. *In re Malite*, 2010 MP 20 ¶ 44 n.30. When attorneys fail to keep contemporaneous time records, a court may significantly decrease an attorney's fees. *Id.* For example, the reduction in fees could range from 30% to 50%. *Id.*, *citing Monaghan v. SZS 33 Assocs.*, 154 F.R.D. 78, 84 (S.D.N.Y. 2004) (reducing fees by thirty-percent where attorneys fails to keep time records); *Davignon v. Clemmey*, 176 F. Supp. 2d 77, 97 (D. Mass. 2001) ("Cohen did not keep contemporaneous billing records 'due to the fact that this matter was taken on a contingent fee basis.' Nevertheless, Cohen has produced a seventeen-page bill for 337.63 hours of work. That will not do. Because Cohen failed to keep contemporaneous billing records, the Court reduces his time by approximately fifty percent to 175.00 hours.").

VII. FACTUAL FINDINGS TO THE REASONABLENESS OF THE CONTINGENT FEE

The following paragraphs show the Court's consideration of the ABA Model Rules of Professional Conduct's Rule 1.5 factors, and the reasoning behind the Court's finding that Claimant's reasonable fee for his services is limited to $170,263.01.

(1) The Time and Labor Required, the Novelty and Difficulty of the Questions Involved, and the Skill Requisite to Perform the Legal Service Properly.

Rule 1.5(a)(1) assesses "the time and labor required, the novelty and difficulty of the questions involved, and the skills requisite to perform the legal service properly." Model Rules of Prof'l Conduct r. 1.5(a)(1). This Court found that Claimant spent a total 405.75 hours on the Quiet Title Action, including the stipulated dismissal of the appeal and the amicus brief filed in response to the filing of a certified question in Supreme Court Original Action No. 2009-SCC-0041-CQU. Order (Mar. 12, 2012) 4. In regards to the stipulated dismissal of an appeal, it appears that Claimant spent 7.5 hours. Administrator's Opp'n. Ex. 13. In regards to the Amicus Brief filed in response to the filing of a "Certified Question," Claimant spent 23 hours. Administrator's Opp'n. Ex. 14.

However, Claimant did not provide the Court with information on the novelty or difficulty of the questions involved. Claimant's billing statement contain block billings[3] and vague entries that make it difficult for the Court to place a value on the time and effort Claimant may have expended in the case. However, upon review of the total hours Claimant spent on the appellate work, the Court finds that the questions were neither novel nor difficult.

(2) The Likelihood, if Apparent to the Client, that the Acceptance of the Particular Employment will Preclude other Employment of the Lawyer.

Rule 1.5(a)(2) assesses "the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment of the lawyer." Model Rules of Prof'l Conduct r. 1.5(a)(2). Claimant did not provide information that would allow the Court to determine whether it would have been apparent to then-Administrator Seman that Claimant's acceptance of the Quiet Title Action would have precluded other employment. Therefore, the Court finds that this factor does not favor Claimant.

(3) The Fee Customarily Charged in the Locality for Similar Legal Services.

Rule 1.5(a)(3) assesses "the fee customarily charged in the locality for similar legal services." Model Rules of Prof'l Conduct r. 1.5(a)(3). Claimant did not provide information for the fee customarily charged in the locality for similar legal services. For the limited purpose of considering this factor, the Court relies on its earlier finding that Claimant would have received $71,006.25 based on his hourly billing rate (Order (Mar. 12, 2012) 4), as a reasonable estimate of the fee customarily charged in the Commonwealth for similar legal services.

(4) The Amount Involved and the Results Obtained.

Rule 1.5(a)(4) assesses "the amount involved and the results obtained." Model Rules of Prof'l

---

[3] For example:

Nov-14-06 Prepared all the Exhibits and File re: Trial; Went to Court re: Trial; Prepared Subpoena for Margaret Keene of DPL re: Rental Payments; Went to DPL to Serve Subpoena on Mr. Atalig; Legal Research re: Property Value and Hearsay re: Title; Teleconference with Jack Songson and Jesus Takai re: Map and Survey; Meeting with Mike Sablan re: case;

Administrator's Ex. 13 at 9.

Conduct r. 1.5(a)(4). Because of Claimant's skills and efforts, the total Judgment award plus post-Judgment interest granted to the Estate came out to a grand total of $2,844,566.64. *The Board of Marianas Public Lands Authority v. The Heirs of Rita Rogolifoi*, Civil Action No. 05-0197A (NMI Super. Ct. May 12, 2009). Claimant successfully stipulated to dismissal of a filed appeal, ensuring that the Estate enjoys its award. Claimant's Mem. 4 n.4.

(5) The Time Limitations Imposed by the Client or by the Circumstances.

Rule 1.5(a)(5) assesses "the time limitations imposed by the client or by the circumstances." Model Rules of Prof'l Conduct r. 1.5(a)(5). Claimant and then-Administrator Seman knew from the very beginning of the attorney-client relationship that the Estate would file a lawsuit related to this matter. Claimant's Attach. A (2005 Amendment). Therefore, it does not appear that any time limitations or any particular circumstances justifies a higher-than normal recovery.

(6) The Nature and Length of the Professional Relationship with the Client.

Rule 1.5(a)(6) assesses "the nature and length of the professional relationship with the client . . . ." Model Rules of Prof'l Conduct r. 1.5(a)(6)." Claimant's professional relationship with then-Administrator Seman started on November 9, 2004. Claimant's Mem. 1. This relationship ended on January 16, 2011 when this Court granted Claimant's motion to withdraw as counsel. Order (Mar. 9, 2011) 4. This Court appointed the Mr. White as Administrator of the Estate on June 6, 2013. Order (June 6, 2013).

Claimant did not show the existence of a prior professional relationship between Claimant and then-Administrator Seman. Therefore, no prior professional relationship justifies Claimant's requested fee of $782,363.74[4], which is significantly more than the Estate would have paid Claimant under his hourly billing rate scheme.

//

//

[4] The $782,363.74 figure is Claimant's total contingent fee of $853,369.99, less $71,006.25 that the Estate paid to Claimant.

(7) The Experience, Reputations, and Ability of the Lawyer or Lawyers Performing the Services.

Rule 1.5(a)(7) assesses "the experience, reputations, and ability of the lawyer or lawyers performing the services." Model Rules of Prof'l Conduct r. 1.5(a)(7). While Claimant provides little information on his experience, reputations, and ability as a lawyer, the Court takes judicial notice of Claimant's vast and long-standing experience and competency as a practicing Commonwealth attorney. The Court gives credit to Claimant for achieving in a jury trial the grand total award of $2,844,566.64 for the Estate. In addition, Claimant negotiated a stipulated dismissal of an Appeal. Claimant's Mem. 4.

(8) Whether the Fee is Fixed or Contingent.

Rule 1.5(a)(8) assesses "whether the fee is fixed or contingent." Here, the disputed fee is one for a contingent fee agreement. Thus, the Court finds that Claimant is entitled to a reward that is reasonable in light of the inherent risk to an attorney when he or she enters into a contingent fee agreement. The Court must also ensure that Claimant's award, no matter the risk involved, remains reasonable to protect the integrity of the legal profession.

The essential problem in evaluating this matter is the paucity of facts, making it difficult to assess Claimant's award under the Model Rules of Professional Conduct factors–a burden firmly belonging to Claimant. Accordingly, the Court cannot justify Claimant's requested recovery of $782,363.74[5]. Other factors, such as Claimant's vague time entries and lack of contemporaneous billing statements warrant a significant deduction from the $782,363.74 figure.

Therefore, on balance, the Court finds that Claimant should be entitled to an additional award of $99,256.76 for a grand total award of $170,263.01[6].

---

[5] The $782,363.74 figure is Claimant's total contingent fee of $853,369.99, less $71,006.25 that the Estate paid to Claimant.

[6] This amount takes into consideration Claimant's request in footnote 10 of his Memorandum. Claimant's Mem. 10 n.10 (". . . Claimant proposes that he paid an additional sum of $99,256.76. This sum, when added to the sum of $71,006.25 already received by Claimant, totals the sum of $170,263.01 or 30% of $567,543.37 in back rental already received as herein

CONCLUSION

Based on the foregoing:

The Court finds that the Heirs **HAVE NOT APPROVED** the contingent fee agreement between Claimant and the Administrator;

The Court finds that the Retainer Agreement, as twice amended, **DOES NOT CONTAIN** a valid contingent fee agreement;

The Court finds that Claimant's requested recovery of $782,363.74 was **NOT REASONABLE** under the relevant factors listed in the Model Rules of Professional Conduct; and

The Court finds that **$170,263.01** is a reasonable fee and, accordingly, orders the Estate to pay an additional **$99,256.76** to Claimant for his legal services, which is the Retainer Agreement fee balance after deducting the $71,006.25 previously paid to Claimant.

IT IS FURTHER ORDERED that prior to said payment administrator shall submit, on or before December 29, 2014, an accounting of funds available for distribution and pending obligations.

SO ORDERED this 17th day of December, 2014.

/ s /

David A. Wiseman, Associate Judge

---

mentioned.").