Filed in District Court
State of Minnesota
9/24/2018 3:52 PM

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF CARVER | FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In Re:

Estate of Prince Rogers Nelson,

Decedent.

Case Type: Special Administration
Court File No: 10-PR-16-46
Judge: Kevin W. Eide

MEMORANDUM OF LAW IN OPPOSITION TO THE SECOND SPECIAL ADMINISTRATOR'S MOTION FOR REFUND OF FEES

NorthStar Enterprises Worldwide, Inc. (individually, "NorthStar Enterprises") and L. Londell McMillan (individually, "McMillan") (collectively, "NorthStar"), submit this Memorandum of Law in opposition to the motion noticed on August 2, 2018 (the "Motion") by the Second Special Administrator (the "SSA") for the Estate of Prince Rogers Nelson (the "Estate") seeking the refund of fees and commissions earned by NorthStar,[1] Charles Koppelman (individually, "Koppelman"), and CAK Entertainment, Inc. (individually, "CAK Entertainment") (collectively "CAK,") in their role as Entertainment Advisors to the Estate.

SUMMARY

The Motion purports to seek recovery of "excessive compensation" under Minnesota's Uniform Probate Code (the "Minnesota UPC") in the form of certain commissions and fees earned by NorthStar and CAK (collectively, the "Advisors") in connection with two significant

---

[1] Reference is made throughout this Memorandum of Law to an "Advisor Agreement" where the parties to the contract are NorthStar Enterprises Worldwide, Inc., CAK Entertainment, Inc., and the Estate, not Mr. McMillan or Mr. Koppelman. For purposes of this Opposition, reference is made to the collective "NorthStar" without waiver of the corporate formalities and protections provided by law with respect to any fees or commissions paid to NorthStar Enterprises as opposed to Mr. McMillan personally.

Filed in District Court
State of Minnesota
9/24/2018 3:52 PM

contracts that were negotiated by NorthStar Enterprises and CAK Entertainment purportedly on behalf of the Estate (the "Commissions"). Although the SSA cites Section 524.3-721 of the Minnesota UPC as his basis for bringing the Motion, the Motion must be denied summarily on procedural, substantive, and equitable grounds.

First, the Motion is procedurally improper because the proposed use of the statute and its application in this context is unprecedented, raises significant due process concerns, and is both premature and in violation of the [redacted]. Notwithstanding those fatal deficiencies, and despite the glaring distinctions between the compensation at issue here and the type typically addressed by Minnesota UPC Section 524.3-721, substantively the Commissions sought by the SSA are, in fact, reasonable and not excessive when analyzed under the factors specified by the statute, the particularly unique set of facts and circumstances in this Estate, and in light of the Estate's own decision-making and contribution to the losses it now attempts to recover. Finally, as an equitable matter, the Estate cannot be allowed to benefit from, nor should the Advisors be penalized for, the business dealings and systemic, ongoing bad faith actions of the Estate's Personal Representatives in their dealings with the Advisors (or lack thereof) and related to the very matters for which the SSA improperly seeks a refund. For these reasons, as argued in further detail herein, the SSA's Motion should be denied.

FACTUAL BACKGROUND

I. APPOINTMENT OF BREMER AND THE ADVISORS

Following the sudden and untimely death on April 21, 2016, of world-renowned music icon, Prince Rogers Nelson ("Prince"), Ms. Tyka Nelson, one of Prince's siblings, selected Bremer Trust N.A. to serve as Special Administrator to the Prince Estate and brought that

request by petition before the Minnesota District Court for Carver County. (LLM Decl.[2] Ex. A). On April 27, 2016, this Court authorized Bremer Trust, N.A. to serve as Special Administrator of the Prince Estate for a period through November 2, 2016. This appointment was later extended through January 31, 2017. (LLM Decl. Ex. A).

Bremer Trust, N.A. ("Bremer") is a small yet respected organization affiliated with Bremer Bank, N.A., the institution with which Prince had a banking relationship prior to his death. Although Bremer was not experienced in the business of music and entertainment, it had extensive estate administration experience and expertise. Upon its appointment as Special Administrator to the Estate, Bremer hired Stinson Leonard Street LLP ("Stinson"), a respected law firm with estate and entertainment practice areas. Bremer delegated to Stinson substantial business and legal duties regarding the Estate including, without limitation, the process of vetting experienced entertainment advisors to assist the Estate to generate income, which reportedly was desperately needed at the time due to a number of imminent legal and business concerns and tax obligations of the Estate. (LLM Decl. Ex. B at ¶¶ 2-7).

Among the candidates for consideration were NorthStar Enterprises, led by its Chairman Mr. McMillan, a long-time business and legal advisor to Prince with a successful track record working with Prince, his business, and other well-known music superstars and celebrities. (LLM Decl. Ex. B at ¶8(a)). Mr. McMillan introduced and encouraged Bremer to meet with Mr. Koppelman and his company, CAK Entertainment, because McMillan believed Koppelman's experience in music, publishing, and finance would complement his own expertise and assist

[2] Reference herein to "LLM Decl." refers to the Declaration of L. Londell McMillan, dated September 24, 2018, and the Exhibits attached thereto, filed simultaneously and in conjunction with this Memorandum of Law in Opposition to the Second Special Administrator's Motion for Refund of Fees.

Filed in District Court
State of Minnesota
9/24/2018 3:52 PM

McMillan to effectively and expeditiously serve and advise the Estate. (LLM Decl. at ¶ 3; LLM Decl. Ex. B at ¶¶ 8(a)).

On June 16, 2016, after a national search of qualified candidates and a competitive selection process, Bremer retained both NorthStar (for the services of McMillan) and CAK Entertainment (for the services of Koppelman) to serve as the branding, music, and entertainment advisors to the Estate (the "Advisors) by entering into an "Advisor Agreement" between Bremer, NorthStar Enterprises, and CAK Entertainment (the "Advisor Agreement") (LLM Decl. Ex C). The Advisor Agreement was carefully negotiated by the Advisors and Stinson and executed by Bremer on behalf of the Estate under the authority previously granted to it by this Court to "enter into employment or other contractual relationships with the identified entertainment industry experts on terms and conditions which the Special Administrator determines to be *reasonable and beneficial under all of the circumstances.*" (LLM Decl. Ex. D at p.5, ¶ 2) (emphasis added).

II. THE ADVISOR AGREEMENT

The Advisor Agreement contains a number of heavily negotiated terms and conditions [redacted]. Among the material provisions agreed upon is the [redacted]

[redacted]

(LLM Decl. Ex. C at p.2 § 5)(emphasis added). Section 5 of the Advisor Agreement continues [redacted].

Filed in District Court
State of Minnesota
9/24/2018 3:52 PM

Nowhere in that section, or in any other, does the Advisor Agreement [redacted].

In exchange for these counseling and advisory Services, the Advisors were to be paid on a commission-basis only. Specifically, the Advisors were to be [redacted]. (LLM Decl. Ex. C at p.3, § 6). In essence, all compensation earned by the Advisors was based solely on: (1) the Estate's decisions whether or not to enter into the agreements or pursue the business opportunities negotiated and presented to them by the Advisors; and (2) whether those deals generated income for the Estate. [redacted].

Accordingly, under the Advisor Agreement, the Advisors were [redacted]

[redacted]

(LLM Decl. Ex. C at p.4, § 6(d)(ii)).

Filed in District Court
State of Minnesota
9/24/2018 3:52 PM

Notably, there is no provision anywhere in the Advisor Agreement requiring the Advisors to return or refund commissions earned should there be a subsequent substitution, replacement, or modification to any income-generating contract or deal procured by the Advisors. In fact, the Advisor Agreement [redacted]

[redacted]

(LLM Decl. Ex. C at p.3, § 6(a)) (emphasis added). The Advisor Agreement also requires that [redacted]

[redacted]

[3] [redacted]

Filed in District Court
State of Minnesota
9/24/2018 3:52 PM

III. THE JOBU PRESENTS DEAL AND TRIBUTE CONCERT

Prior to the Advisors' appointment, and early in Bremer's engagement as Special Administrator, there were numerous discussions within the music industry about the possibility of producing a live Prince tribute concert, as similar tribute concerts were being considered internationally. When the Heirs approached Bremer about their desire to host a tribute concert, Bremer's counsel, Stinson attorney Laura Halferty, reportedly advised the Heirs that [redacted] (LLM Decl. Ex. E at p.2, ¶ 5). The Heirs and their advisors were presented with and forwarded to Bremer two production proposals themselves, although they eventually reached an impasse as to which proposal to pursue. (LLM Decl. Ex. E at p.2, ¶ 6). Nonetheless, presumably to be helpful, Bremer and Stinson offered to ask their newly appointed Advisors to provide opinions on the two proposals, which they forwarded to the Advisors. (LLM Decl. Ex. E at p.2, ¶ 7).

Unbeknownst to McMillan, Koppelman reportedly forwarded these proposals to Vaughn Millette who presented himself as the owner of Jobu Presents LLC ("Jobu"), a production company with which Koppelman had shared office space. (LLM Decl. at ¶ 7). Jobu, a Delaware LLC based in New York, was formed by Vaughn Millette and represents to the public on its website that it is a "full service live entertainment promotions company revolutionizing the current paradigm." Despite Koppelman's pre-existing relationship with Jobu, McMillan expressed his reservations about Millette and Jobu's proposal early on and throughout the Tribute Concert negotiations. (LLM Decl. at ¶ 7). McMillan raised concerns about Jobu's lack of experience as a concert promoter. He instead expressed his preference for a proposal submitted by Live Nation Entertainment, Inc. ("Live Nation") with whom McMillan was in communication and had prior experience. (LLM Decl. at ¶ 7). Ultimately, both proposals were

submitted to the Heirs. After receiving the offers, the Heirs' counsel responded that Bremer and the Advisors should provide their recommendations. Nonetheless, despite McMillan's advice and preference for Live Nation's proposal over Jobu's, [redacted]

After the decision was made by Bremer and Stinson to enter an agreement with Jobu over Live Nation, on July 7, 2017, Jobu entered into a short form letter of understanding to produce the Prince Tribute with the Heirs, [redacted]. (LLM Decl. Ex. F). Jobu's initial payment was not timely, and McMillan actively pursued these funds for the Estate. Mr. McMillan had no knowledge of Mr. Koppelman's prior relationship or dealings with Millette or Jobu other than the fact Millette rented office space from CAK Entertainment. (LLM Decl. at ¶ 7). In particular, McMillan was completely unaware that [redacted] (LLM Decl. at ¶ 7). Eventually it became apparent that Jobu lacked sufficient resources, failed to secure talent for the Tribute Concert, started making excuses, and was unable to deliver on the agreement with the Estate. As a result, McMillan [redacted]

[redacted]

Stinson rejected that advice, and two months later [redacted] (LLM Decl. Ex. G). This decision was made by Stinson and without McMillan's advice. (LLM Decl. at ¶8).

Bremer, on behalf of the Estate, [redacted] It did so without demanding any release of claims by Jobu. In an effort to honor the Heirs' wishes, and despite the Estate's withdrawal, McMillan proceeded personally to organize, fund, and execute on his own the Prince Tribute Concert that ultimately took place in Minnesota on October 13, 2016 and included artists such as Stevie Wonder, Chaka Khan, Morris Day, and Prince's band New Power Generation, all booked by McMillan. (LLM Decl. at ¶ 8). All of this was done without the Estate's involvement (SSA Memo. at p.8), and all profits from the Tribute Concert were paid directly to the Heirs, not to the Estate. (LLM Decl. at ¶ 8).

Notwithstanding the foregoing, Jobu commenced an action in Minnesota District Court on April 21, 2017 against Bremer, Koppelman, CAK Entertainment, McMillan, and NorthStar (the "Jobu Action"). Jobu's complaint was subsequently amended on November 17, 2017 following the dismissal of Bremer from the Action on October 4, 2017, and the litigation continues presently against the remaining parties. (LLM Decl. Ex. H).

IV. THE UMG DEAL

As part of their [redacted] Because of McMillan's and Koppelman's connections, the Estate was able to

immediately contact and request valuable proposals from some of the largest recording companies in the music industry. The first formal meeting scheduled by the Advisors to discuss Prince's sound recording rights was with Warner Brothers Records ("WBR") with whom Prince had a long history and [redacted] Prior to that meeting, however, [redacted]

After an extensive and comprehensive series of meetings, phone calls, email correspondence, evaluation of proposals, closing of other major deals related to the Prince assets [redacted] and strategic planning sessions, [redacted] McMillan advised Bremer and its counsel, Stinson, [redacted] (LLM Decl. at ¶ 11). Stinson, on behalf of Bremer and the Estate, however, rejected McMillan's advice and instead elected to offer to [redacted] (LLM Decl. Ex. J). Those summaries concluded that [redacted] (LLM Decl. Ex. J).

Filed in District Court
State of Minnesota
9/24/2018 3:52 PM

Accordingly, the Estate entered into negotiations for a licensing agreement with UMG whereby the Estate would grant to UMG [redacted] (LLM Decl. Ex. K at § 2.1.1). At McMillan's suggestion, the UMG proposal also included [redacted] Thus, the parties recognized that there might be some ambiguity in their contract, and [redacted] (LLM Decl. Ex. K at § 1.8). The agreement was intentionally designed this way to [redacted], and if such a conflict should still arise, [redacted]

The legal terms and conditions of the [redacted], were handled by Stinson, the Estate's entertainment counsel, Meister, Seelig, & Fein LLP, and lawyers for the Heirs pursuant to this Court's order. (LLM Decl. Ex. J). When all of the parties were satisfied with the proposed terms, on or about January 31, 2017, the Estate and UMG [redacted] (LLM Decl. Ex. K).

Filed in District Court
State of Minnesota
9/24/2018 3:52 PM

V. COMERICA'S RESCISSION OF THE UMG DEAL

Throughout Bremer's tenure as Special Administrator, the hiring of Stinson, and the engagement of the Advisors, there were constant disputes by and among counsel for Bremer and the lawyers for the individual Heirs, including aggressive challenges to the Advisors and interference with their attempts to provide Services under the Advisor Agreement. Bremer quickly became disturbed with the antics and attacks by the lawyers of certain Heirs towards their staff, Advisors, and Stinson. Eventually, in October and November of 2016, following the Prince Tribute Concert and numerous complaints by the Heirs and their attorneys, Bremer and Stinson notified the Advisors that Bremer would soon resign from the administration of the Prince Estate. (LLM Decl. Ex. L)

The Heirs were also seeking to find a replacement for Bremer and began a nationwide search for a new Personal Representative. Following a vetting process among the Heirs and their counsel, Michigan-based Comerica Bank & Trust, N.A. ("Comerica") was appointed as Personal Representative of the Estate. (LLM Decl. Ex. M). Immediately upon Comerica's appointment in early February 2017, and prompted by a promotional press release by UMG, [redacted] (LLM Decl. Ex. N). Although McMillan again recommended, this time to Comerica, [redacted] (LLM Decl. at ¶ 16; LLM Decl. Ex. O)

Also shortly following Comerica's appointment, Comerica took an adverse position towards certain Heirs (Sharon, Norrine, and John Nelson, the "SNJ Heirs") and McMillan, as

Filed in District Court
State of Minnesota
9/24/2018 3:52 PM

well as alternative and conflicting views towards the business decisions and deals approved by its predecessor Bremer. (LLM Decl. at ¶ 17). While Comerica met with Bremer early in its representation to discuss Estate matters (including the UMG and Jobu Deals), Comerica failed to meet with either McMillan or Koppelman. (LLM Decl. at ¶ 17). In particular, Comerica failed to seek meaningful input and advice required to evaluate the claims made by both WBR and UMG. Despite multiple requests by McMillan to provide his input, it was months later before Comerica and its counsel would meet with McMillan on April 12, 2017. (LLM Decl. at ¶ 17). Although McMillan pleaded with Comerica to seek the Court's permission [redacted], counsel for Comerica failed to take McMillan's advice and treated him as an adverse party rather than an expert advisor who had been instrumental in the business aspects of the UMG Deal. (LLM Decl. Ex. P). Instead, despite this Court's finding that there was no basis for any allegations of fraud against those involved in the UMG negotiations—including the Advisors—Comerica entered into a private rescission agreement (unbeknownst to the Heirs) and filed a motion seeking the Court's approval of its decision to rescind the UMG Deal and the [redacted] (LLM Decl. Ex. Q). As this Court is aware, McMillan objected to Comerica's rescission request and, along with the SNJ Heirs and Bremer, incurred costs and expenses in defense of the UMG Agreement. (LLM Decl. Ex. Q).

VI. THE SSA'S REPORTS

Pursuant to Minnesota Statute Section 524.3-617 and the Court's Letters of Special Administration dated August 18, 2017, the SSA and his firm, Larson King LLP, were appointed to conduct two "independent" investigations of the facts, circumstances and events related to the termination of the Jobu Deal and the rescission of the UMG Deal. (LLM Decl. at Ex. R). On December 15, 2017 and May 15, 2018, the SSA filed with this Court his conclusions from those

investigations in the form of two heavily redacted reports (the "UMG Report" and the "Jobu Report," respectively). The UMG and Jobu Reports contain [redacted]

The claims recommended in the UMG and Jobu Reports, as well as the claims in the separate Jobu Action, are scheduled, [redacted], to be mediated by all parties involved on October 16 and 17, 2018.

ARGUMENT

I. THE MOTION FOR REFUND IS IMPROPER.

The Motion seeks a refund from NorthStar of [redacted] because the SSA, through his individual and unilateral investigations of the Jobu and UMG Deals, has concluded that [redacted] "unreasonable, inequitable, and unfair." (SSA Memo.[5] at 12). The Minnesota statute under which under which the SSA bases his authority to make this conclusion and to seek this refund, however, was not intended to be—nor has it ever been—applied to a recovery of this type and magnitude. Additionally, a finding that the Advisors are liable to the Estate for [redacted] requires findings of fact and legal interpretation by the Court of the Advisor Agreement, raising significant due process concerns in the absence of a formally pleaded action, an opportunity for discovery, and trial on the merits with the opportunity to present and cross-examine witnesses and present exhibits. Further, even a formal action at this stage, like the Motion itself, would be premature and constitute [redacted]

[5] References herein to "SSA Memo." refer to the Memorandum of Law in Support of the Second Special Administrator's Motion for Refund of Fees filed on September 4, 2018.

Filed in District Court
State of Minnesota
9/24/2018 3:52 PM

[redacted] Both the Motion and its purported justification under Minnesota UPC Section 524.3-721, therefore, are improper and should be denied.

A. The Motion's application of Section 524.3-721 to the recovery of the Commissions is unprecedented and not within the intent of the statute.

With respect to remedies available for challenging or recovering fees paid to employees of an estate, Minnesota UPC Section 524.3-721, provides:

> After notice to all interested persons or on petition of an interested person or on appropriate motion if administration is supervised, the propriety of employment of any person by a personal representative including any attorney, auditor, investment advisor or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for personal representative services, may be reviewed by the court. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

(Minn. Stat. Ann. § 524.3-721).

Minnesota case law, however, is notably devoid of any cases in which this provision is invoked by an estate representative to recover [redacted] sought by the Motion. Of only four Minnesota cases specifically citing Section 524.3-721 (all unreported), not one addresses the reasonableness [redacted] to a specially appointed expert advisor for services performed in satisfaction of a contract—particularly a contract dealing with unique services in a unique industry—the scope and fees for which were approved in advance by both the court and the estate. *See In re Estate of Reiman*, 2012 WL 5754 (Minn. Ct. App. Jan. 3, 2012); *In re Estate of Meiners,* 2008 WL 2340695 (Minn. Ct. App. June 10, 2008); *In re Estate of Gosnell*, 2006 WL 2348079 (Minn. Ct. App. Aug. 15, 2006); *In re Moravetz*, 2001 WL 569118 (Minn. Ct. App. May 29, 2001).

Filed in District Court
State of Minnesota
9/24/2018 3:52 PM

In fact, there are no cases even outside of Minnesota that have used the same provision (Uniform Probate Code § 3-721) to challenge fees paid to an estate agent or employee outside of the "attorney, auditor, [or] investment advisor" categories specified by the statute. In such cases, the Court is asked to analyze only the reasonableness of fees paid to the attorneys, accountants, or personal representatives of an estate vis-à-vis the time spent and tasks performed by those attorneys in the regular day-to-day administration and litigation of estate matters. These cases do not question, as the Motion does, whether the attorneys performed their duties sufficiently or "added value" to the estate by the results they achieved under specific contractual assignments. They also do not address unusually complex or unique services performed by the Advisors or fees [redacted] sought by this Motion. Such questions were not intended and certainly are not appropriate for consideration by the Court on such an administrative motion and therefore should not be applied to the Commissions earned by the Advisors.

B. The Motion raises significant Due Process concerns.

Procedural due process principles require notice and an opportunity to be heard before a party can be deprived of rights or possessions. *Malmin v Minnesota Mut. Fire & Cas. Co.*, 552 N.W.2d 723, 728 (Minn. 1996) (citing *Fuentes v. Shevin*, 407 U.S. 67, 80, 92 S.Ct. 1983, 1994, 32 L.Ed.2d 556 (1972)). Additionally, the Minnesota Constitution provides that "[t]he right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy," Minn. Const. art. I, § 4; *see also* Minn. R. Civ. P. 38.01 (stating that issues of fact shall be tried by a jury in actions for the recovery of money). "If not expressed affirmatively, the intent to waive a jury trial must appear by necessary inference from unequivocal acts or conduct." *Aufderhar v. Data Dispatch, Inc.*, 452 N.W.2d 648, 653 (Minn.1990).

Filed in District Court
State of Minnesota
9/24/2018 3:52 PM

The SSA argues in the Motion that, [redacted] (SSA Memo. at 12-13). The SSA further argues in this instance that [redacted] and therefore the Court should order [redacted] Section 524.3-721. (SSA Memo. at 13). Contrary to the SSA's argument, however, the Advisor Agreement specifically contemplates [redacted]d on contract that is rescinded or amended by the Estate subsequent to the Advisors' Term under the Advisor Agreement.

The language in [redacted] that are modified or replaced subsequent to the Advisors' Term under the Advisor Agreement. [redacted] In that instance, however, the Advisor Agreement [redacted] (LLM Decl. Ex. C, at § 6(a)).

Clearly the Advisor Agreement contemplated t[redacted], and yet it made no provision f[redacted] Given these two conflicting interpretations, a determination of [redacted](SSA Memo. at

Filed in District Court
State of Minnesota
9/24/2018 3:52 PM

13), necessitates the Court's interpretation of the Advisor Agreement as well as a finding of fact as to whether there was any wrongdoing or breach on the part of the Advisors, an issue that is presently being litigated in other forums.

A more appropriate procedure for the determination of contractual rights would be through formal action for breach of contract, unjust enrichment, declaratory judgment, or some other similar cause of action. In a proper lawsuit, NorthStar would have an opportunity to answer specific allegations, to file counter and cross-claims, to seek discovery from all parties and related non-parties, and to present its own arguments concerning its rights under the Advisor Agreement. By contrast, asking the Court instead to interpret the Advisor Agreement on a motion rather than through a formal cause of action eliminates the SSA's pleading obligations and deprives the respondents of the opportunity to mount an appropriate defense, bring counterclaims, or to seek discovery. To make such a determination concerning [redacted] here raises serious due process concerns and is not a proper implementation of the motion practice authorized by Section 524.3-721.

C. The Motion is premature and constitutes a breach of the Advisor Agreement.

The SSA's Motion is improper as a contractual matter as well. Under the Advisor Agreement, [redacted] (LLM Decl. Ex. C at 6, § 15(f)). "Determining whether a party has agreed to arbitrate [or mediate][6] a particular dispute is a matter of contract interpretation. When considering a motion to compel arbitration or mediation, the court's inquiry is limited to (1) whether a valid arbitration agreement exists, and (2) whether the dispute falls within the scope of

[6] Although the language quoted by the Court in *Writing Assistance, Inc. v Axiom Sols. LLP* refers to "arbitration," the court applies the same rationale to a dispute concerning a mediation agreement.

the arbitration agreement. When evaluating whether parties agreed to arbitrate a particular dispute, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration. Generally, the law favors arbitration because it is recognized as a speedy, informal, and relatively inexpensive procedure for resolving controversies." *Writing Assistance, Inc. v Axiom Sols., LLP*, 2012 WL 2368896, at *3 (Minn. Ct. App. June 25, 2012) (quoting *Johnson v. Piper Jaffray, Inc.*, 530 N.W.2d 790, 795 (1995) and *Amdahl v. Green Giant Co.*, 497 N.W.2d 319, 322 (Minn. Ct. App. 1993)).

Although the SSA has argued that "[t]he Motion is not brought to address a dispute under the Advisor Agreement"[7] the question central to this Motion, and indeed as evidenced by the SSA's extensive citation and reference to the Advisor Agreement in his Memorandum, is whether the Advisors have the [redacted] Therefore, any dispute concerning [redacted] is by definition a "dispute[] pursuant to this Agreement," under [redacted] prior to any formal legal action, including this Motion.

In fact, mediation on this very issue is rightfully scheduled for October 16, 2018 (mediation of potential claims in connection with the UMG Deal), and October 17, 2018 (mediation of potential claims in connection with the Jobu Deal), during which the [redacted] potentially could be resolved through good faith negotiations. The SSA's attempt to circumvent the Estate's contractual obligations by way of this Motion, therefore, not

[7] This argument does not appear in the SSA's supporting Memorandum. However, on September 19, 2018, the SSA filed a letter with this Court regarding the scheduling of a separate pending motion which he used as an opportunity to, inappropriately, raise additional substantive arguments regarding this Motion.

only constitutes a material breach of the [redacted], but also improperly and prematurely seeks relief that the Estate could potentially receive from (1) the October 16 and October 17 mediations, (2) [redacted], or (3) the SSA's intervention in the separate Jobu Action.

For example, the SSA is seeking return of the [redacted] the Advisors because Bremer agreed to terminate the contract and [redacted] Yet the SSA's Report recommends that the Estate bring claims against Jobu, which the SSA concludes was a breaching party. If the SSA is correct, then it will [redacted] and therefore there is no reason why the Advisors should need to [redacted] In fact, if the SSA is correct, Jobu will be liable for [redacted] and the Advisors will be entitled to [redacted] Additionally, when the Jobu Deal was terminated, the Estate [redacted] Therefore, it has no basis now to seek the additional [redacted] It is up to Jobu whether to pursue those additional fees, and indeed Jobu is already doing so in the concurrent Jobu Action.

II. [redacted] TO NORTHSTAR ENTERTAINMENT WERE REASONABLE.

Notwithstanding NorthStar's arguments in Point I that the Motion is improper [redacted] to NorthStar Entertainment for the Jobu[8] and UMG Deals were, in fact,

[8] Although NorthStar is required for the sake of this Motion to argue in the alternative the "reasonableness" of [redacted], NorthStar maintains here and in the Jobu Action that t[redacted] Tribute Concert was [redacted] Estate and, therefore, is not subject to a claim of [redacted] the SSA. Mr. McMillan's work as a promoter and producer of the October 13 Tribute Concert was acknowledged by the Estate and its counsel as [redacted] that

reasonable and therefore not "excessive" when analyzed under the factors specified by the Minnesota UPC, the complex and unique set of circumstances in this novel Estate, and in light of the Estate's own contribution to the losses it seeks to recover.

As conceded in the SSA's Memorandum of Law, Minnesota UPC Section 534.3-721 "does not supply an analysis for determining when compensation is 'excessive' . . ." (SSA Memo. at 13). Instead, the SSA offers the standards used to review personal representatives' fees and attorneys' fees under Sections 524.3-719(b) and 525.515(a) of the Minnesota UPC. Under Sections 524.3-719(b), in order to determine "reasonable compensation" for a *personal representative*, a court considers three factors:

> (1) the time and labor required
> (2) the complexity and novelty of problems involved; and
> (3) the extent of the responsibilities assumed and the results obtained.

Minn. Stat. Ann. § 524.3-719(b).

Additionally, although also not directly applicable, the factors to considering whether an *attorney's* fees are "just and reasonable," a court considers:

> (1) the time and labor required;
> (2) the experience and knowledge of the attorney;
> (3) the complexity and novelty of problems involved;
> (4) the extent of the responsibilities assumed and the results obtained; and
> (5) the sufficiency of assets properly available to pay for services.

Minn. Stat. Ann. § 525.515(b).

> [T]he Tribute, in its current form, is not an entertainment deal [redacted] The Special Administrator is not a party to any of these contracts, nor is Mr. McMillan the Special Administrator's agent for purposes of this event given his co-promoter status."

(LLM Decl. Ex. E at ¶ ¶ 18-19).

A. [redacted] were carefully contracted for and earned.

The SSA conveniently omits from the analysis of these factors, however, one important condition to their applicability: the absence of an agreement. *See In re Estate of Gosnell*, 2006 WL 2348079, at *2-3 (Minn. Ct. App. Aug. 15, 2006) ("*Absent an agreement* with the testator, the following factors are used to evaluate attorney fees: (1) The time and labor required; (2) The experience and knowledge of the attorney; (3) The complexity and novelty of problems involved; (4) The extent of the responsibilities assumed and the results obtained; and (5) The sufficiency of assets properly available to pay for the services. *Absent an agreement*, the personal representative's fees are reviewed on the basis of factors (1), (3), and (4).") (emphasis added) (internal citations omitted).

Unlike the fee challenges cited by the SSA, [redacted], and each party was represented in the negotiations by legal counsel. In fact, Comerica's current entertainment legal counsel was previously counsel to CAK when the parties entered into the Advisor Agreement. Under the Advisor Agreement, [redacted] (LLM Decl. Ex C at p.2, § 5). The Advisor Agreement, including the [redacted] was deemed reasonable and approved by this Court, eliminating the need for a traditional "reasonableness" analysis.

However, for the avoidance of doubt, under [redacted]

[redacted] (LLM Decl. Ex. C at p.4, § 6(d)(ii)). Because their actions resulted in valid deals for the Estate, there is no question as to whether NorthStar performed its duties under the Advisor Agreement. Even if the Jobu agreement was terminated and the UMG agreement was rescinded—decisions of the Special Advisor and Personal Representative, respectively—NorthStar did what it contracted to do, earned the [redacted], and as a result is entitled to the [redacted] *See, e.g. Nelson v. Rosenblum Co.*, 289 Minn. 32, 33-34, 182 N.W.2d 666, 667 (1970) (holding that broker's commission was fully earned when he performed under the agreement, and he was entitled to it even when agreement was subsequently undone); *Century 21-Birdsell Realty, Inc. v. Hiebel*, 379 N.W.2d 201, 205 (Minn. App. 1985 (holding that a seller's change of mind and subsequent rescission of the purchase agreement is not a defense to the agent's demand for the commission, where there is no evidence that the agent would not have performed his obligations under the agreement); *accord Bychowski v. ERA Tempo Realty, Inc.*, 274 Ill.App.3d 1093, 1094 (Ill. App. Ct. 1995) (noting that a majority of jurisdictions hold that a party is entitled to an earned commission, even though the contract is subsequently rescinded). The Estate's decisions thereafter do not invalidate [redacted]

B. The relationships, nature, and complexity of the Advisors' services were unique.

Another important distinction arises when analyzing a court's application of these factors to attorneys' and personal representatives' fees as opposed [redacted] Because estate employees such as attorneys, accountants, and financial advisors are directly and routinely involved in the regular day-to-day administration of the estate, factors such as "the complexity and novelty of the problems involved," "the sufficiency of assets

Filed in District Court
State of Minnesota
9/24/2018 3:52 PM

properly available," and "the extent of the responsibilities assumed and the results obtained," are necessarily tied to the size and complexity of the estate and are evaluated in the context of the work typically required for similar estates. *See*, e.g., *In re Baumgartner's Estate*, 144 N.W.2d 574, 575 (1966) ("Evidence here as to legal services furnished by various attorneys in probate of estate in which assets exceeded $132,000, which services involved numerous hearings and appeals with respect to jurisdiction of probate court, appointment of proper administrator, and other matters, [is] held sufficient to sustain findings of probate court and district court as to reasonable value of such services.").

The Advisors, by contrast, were retained and engaged—again, *by an approved contract*—to perform the [redacted] Indeed, this Court acknowledged that "[t]his Estate presents unique challenges and opportunities" and "the Special Administrator needs the advice of industry experts to make these decisions in a prudent manner," as justification for approving the selection of CAK and NorthStar as Advisors or imply that the Advisors would make any decisions on behalf of the Estate. (LLM Decl. at Ex. D at 1, 4). Furthermore, the entertainment industry is largely based on relationships, and NorthStar's and McMillan's connections were needed to bring valuable opportunities to the estate.

The "Services" to be performed by the Advisors under the Advisor Agreement [redacted] (LLM Decl. Ex. C

at 2, § 5(a)-(j)). Again, these services necessarily involved the relationships and goodwill of the Advisors and their unique abilities to render business advice on the complex assets of the Estate. Therefore, notwithstanding that a typical reasonableness analysis in this case is unnecessary, such factors as the number of hearings, jurisdictional appeals, or complexity of the administrator's appointment are irrelevant and inapplicable to the Court's evaluation of the unique services performed by the Advisors.

C. The expertise, time, and level of work performed were substantial.

Notwithstanding [redacted] and therefore require no "reasonableness" analysis, and although the Minnesota statute and citing case law nowhere suggests that the same factors are to be applied to a specially retained "Entertainment Advisor" as to attorneys or estate representatives, the statutory "reasonableness" analysis as applied to NorthStar would invariably result in the conclusion that [redacted] and are not subject to refund under Section 534.3-721.

With regard to the Jobu Deal, Mr. McMillan was thrust into the decision whether to help the Heirs or let the Tribute Concert fail, and he chose to put all of his efforts into Prince Tribute concert that eventually took place on October 13th, 2016. Even without the incentive [redacted] McMillan was able to use his personal and professional relationships—within a very short period of time—to coordinate, finance, schedule, organize, and promote the concert and secure an impressive lineup of performers that ultimately produced [redacted]

Similarly, with regard to the sound recording proposals secured for the UMG Deal, because of the Advisors' unique and valuable relationships, the Estate was able to contact and request proposals from some of the largest recording companies in the music industry.

Throughout the negotiation process, the Advisors engaged in an endless series of meetings, phone calls, email correspondence, evaluations of proposals, legal research, and strategic planning sessions. The legal issues that arose required careful analysis, consultation with attorneys, and complex court proceedings in order to finalize the UMG Deal. Ultimately, the Estate contracted for [redacted], a figure highly unusual when compared to more typical estates. Even so, upon that payment, the Advisors e[redacted]

D. The "results obtained" by NorthStar's services contributed significant value to the Estate.

The SSA Report makes much of its argument, however, that despite the agreement, expert contributions, relationships, and excessive time and effort expended by the Advisors in performance of their duties under the Advisor Agreement, [redacted] (SSA Memo. at 15). The Advisor Agreement, however, defines [redacted] (LLM Decl. Ex C at 4-5, § 6(c)) and requires that [redacted] (LLM Decl. Ex C at 4, § 6(a)). Read together with the [redacted] (see Point I, *supra*), and the language in Section 6(d) specifying when [redacted]

[redacted] any future action or modifications were to have no effect [redacted]

Throughout its performance of these services, NorthStar's efforts on numerous other deals and projects—some for which it was never compensated—and the resulting significant value of those efforts have been widely and regularly acknowledged by the Estate including, without limitation, the extraordinary amount of value, analysis, negotiations, and consultation on the Paisley Park Museum conversion. (LLM Decl. Ex. S: Mazorol Aff. at ¶¶ 5-6; McMillan Aff. at ¶¶ 5-9). Indeed, even the Court's own "observations of the services performed or proof of their value" (*In re Fuller*, 1999 WL 508441) have been recorded by this Court and memorialized as part of these proceedings. (LLM Decl. Ex. M at ¶ 4(iv)).

E. Any loss of value resulted from the Estate's independent actions.

Finally, it is crucial to analyze the role that the Estate and its personal representatives played in the [redacted] Throughout its engagement under the Advisor Agreement, NorthStar acted [redacted], not as the ultimate decision maker. The Advisors also were not the legal counsel for the deal. Although NorthStar brokered the deals, presented them to the Estate, and performed the legwork on the negotiations, it had no authority to bind the Estate to those deals. Further, it had no power to coerce the Estate and their lawyers to take its advice, and there were certain important instances in which the Estate failed to do so, particularly on crucial decisions in the UMG and Jobu negotiations. Ultimately, it was up to the Estate and its counsel to evaluate the best interests of the Estate, determine whether the Estate could legally meet its obligations under the proposed contracts, and decide whether to execute the deals on the Estate's behalf. Where NorthStar fully performed its [redacted] it is not reasonable that the Estate should

then be allowed to recover subsequent losses from NorthStar that resulted from the Estate's own independent actions (particularly when those actions were inconsistent with NorthStar's advice).

With respect to the UMG Deal, Bremer's counsel and the additional entertainment lawyers it hired specifically for the deal, along with the Heirs' counsel, were [redacted] (LLM Decl. Ex. J). As a further precaution, NorthStar [redacted] (*See,* Section 1.8 of the UMG agreement) (LLM Decl. at ¶ 12; LLM Decl. Ex. K at § 1.8). This provision was [redacted] Again, all of this was reviewed by and approved by the Estate's representative and counsel as well as the individual Heirs' counsel (who were paid for their services). If Bremer or Stinson had been opposed to the UMG Deal or uncomfortable with [redacted], it could have rejected the deal or asked the Advisors to seek a proposal for a better one. Instead, the Estate chose to assume [redacted]

After Bremer was removed and replaced by Comerica, rather than step into the shoes of the former representative to continue the administration of the Estate, Comerica unilaterally, and with no meaningful consultation or involvement with the Advisors, changed course, rescinded

the UMG Deal, and sought its own substitute deals (for which Comerica, its attorneys, and its own advisors [redacted]. Comerica's unsuccessful attempts to negotiate with UMG and enforce the Estate's [redacted] Comerica's counsel had inadequate legal and business experience in the entertainment realm [redacted] Comerica failed to timely and satisfactorily reply to UMG. Moreover, Comerica allowed [redacted] (LLM Decl. Ex. T). Even then, rather than enforcing [redacted] or negotiating a resolution, Comerica could not muster an opposition to UMG and chose to rescind [redacted] To make matters worse, rather than [redacted], Comerica voluntarily incurred [redacted]

To mitigate the Estate's losses, both Bremer and Comerica had opportunities and were encouraged by NorthStar [redacted] This would have allowed the parties to sufficiently evaluate their respective contractual rights and perhaps avoid even [redacted] Alternatively, Comerica could have at least attempted to enforce the UMG Deal by [redacted]

[redacted] Finally, given that there has been no finding of fact indicating any breach or wrongdoing by the Advisors, upon [redacted] thereby eliminating the need for the current Motion and the excessive work, time, and fees that have resulted.

Similarly to Comerica's rescission of the UMG Deal, the execution of the Jobu Deal (contrary to NorthStar's advice) and its subsequent termination were independent business decisions made by the Estate's fiduciary decision makers, not the Advisors. Under the Minnesota UPC, "a personal representative must act in the best interests of the estate . . . [a]nd a personal representative's duty to conduct an estate in the estate's best interest, is, essentially, a duty to conduct the estate in the best interests of those who are to benefit from it." *Kuntz v Jensen & Gordon*, 2005 WL 949119, at *3 (Minn. Ct. App. Apr. 26, 2005) (citing Minn. Stat. § 524.3-703(a)). To that end, a personal representative has the authority to enter into, rescind, or terminate contracts that it determines accomplish that goal. (See Minn. Stat. Ann. § 524.3-715).

What it cannot do, however, is impair the rights of the Advisors who have otherwise performed their obligations substantially and satisfactorily under separate agreement with the Estate. Furthermore, the Jobu and UMG Deals are not the only contracts that were negotiated by the Advisors. In fact, there are numerous agreements negotiated by NorthStar [redacted] To grant [redacted] by virtue of the fact that the new Personal Representative changed its mind about the Estate's business strategy or litigation risks, in theory, subjects the Advisors to risk of loss for the termination or rescission of any number of otherwise valid business deals. This result is clearly unjust.

III. BAD FAITH BY THE ESTATE'S PERSONAL REPRESENTATIVE AND THE BIAS OF THE SSA'S REPORTS.

"Under the doctrine of unclean hands: he who seeks equity must do equity, and he who comes into equity must come with clean hands. A party may be denied relief where his conduct has been unconscionable by reason of a bad motive, or where the result induced by his conduct will be unconscionable either in the benefit to himself or the injury to others." *Peterson v Holiday Recreational Indus., Inc.*, 726 N.W.2d 499, 505 (Minn. Ct. App. 2007) (holding that doctrine of unclean hands was applicable where respondent's adverse equity grew out of a transaction that was part of the history of the overall case).

Repeatedly and consistently throughout the administration of these Estate proceedings, NorthStar has been unfairly attacked and hindered in its efforts to advise and protect the interests of the Heirs and to take action to generate substantial value to the Estate. Comerica created an adverse relationship with NorthStar early on, ignored the advice and meeting requests of the Advisors, failed to adhere to its predecessor's good faith decisions made in the best interest of the Estate, and failed to take into account the preferences of the Heirs. Instead, it has relied solely on the advice of its own counsel and carved its own new course, one that conveniently has resulted in substantial fees to Comerica, its attorneys, its advisors, and the SSA. Oddly, none of these parties have been requested by this Motion to [redacted] None of the lawyers who worked on the UMG Deal have been requested by the SSA's Motion [redacted] The dubious allegations against the Advisors demonstrate a clear bias. False allegations, both small and large, have been initiated against McMillan through rumors, frivolous court filings, leaks to the media, and strategic positioning by parties seeking to exert control over the Estate, all the while imposing time, effort, and costs on the Advisors by attempting to accomplish the same result in multiple ways. Such

Filed in District Court
State of Minnesota
9/24/2018 3:52 PM

conduct should not be permitted to continue and certainly should not justify recovery from the Advisors of lawfully earned Commissions that are already and presently being challenged through otherwise proper means.

CONCLUSION

For the foregoing reasons, respondents McMillan and NorthStar Enterprises respectfully request that the SSA's Motion for refund of the Commissions be denied in its entirety and that the SSA and the Estate be precluded from seeking the same recovery in any other proceeding.

BASSFORD REMELE
A Professional Association

Dated: September 24, 2018

By: /s/ Alan I. Silver
Alan I. Silver (MN #101023)
100 South 5th Street, Suite 1500
Minneapolis, Minnesota 55402-1254
Telephone: (612) 333-3000
Facsimile: (612) 333-8829
Email: asilver@bassford.com

AND

L. Londell McMillan
The NorthStar Group
240 W. 35th, Suite 405
New York, NY 10001
Telephone: (646) 559-8314
Facsimile: (646) 559-8318
Email: llm@thenorthstargroup.biz

Attorneys for NorthStar Enterprises Worldwide, Inc. and L. Londell McMillan

4811-6101-8740 v.2