SO ORDERED,

Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: June 7, 2017

The Order of the Court is set forth below. The docket reflects the date entered.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:

COMMUNITY HOME FINANCIAL SERVICES, INC. — **CASE NO. 12-01703-NPO**

DEBTOR. — **CHAPTER 11**

ORDER APPROVING APPLICATION OF KRISTINA M. JOHNSON, TRUSTEE, TO EMPLOY HORNE LLP

There came before the Court for hearing on May 17, 2017 (the "Hearing"), the Application of Kristina M. Johnson, Trustee, to Employ Horne LLP as Forensic Accountants *Nunc Pro Tunc* to March 27, 2017, and Disclosure of Compensation with Supporting Affidavit (the "Application") (Bankr. Dkt. 1775), filed by Kristina M. Johnson, the chapter 11 trustee (the "Trustee") of the estate of Community Home Financial Services, Inc. ("CHFS"), and the Edwards Family Partnership, LP and Beher Holdings Trust's Objection to Application of Kristina M. Johnson, Trustee, to Employ Horne LLP as Forensic Accountants *Nunc Pro Tunc* to March 27, 2017, and Disclosure of Compensation with Supporting Affidavit (Dkt. #1775) (the "Objection") (Bankr. Dkt. 1796), filed by Edwards Family Partnership, LP ("EFP") and Beher Holdings Trust ("Beher"

or together with EFP, the "Edwards Entities") in the above-referenced bankruptcy case (the "Bankruptcy Case"). At the Hearing, Jeffrey Ryan Barber represented the Trustee, and Stephanie M. Rippee represented the Edwards Entities.

Jurisdiction

The Court has jurisdiction over the parties to and the subject matter of the Bankruptcy Case pursuant to 28 U.S.C. § 1334. These are core proceedings pursuant to 28 U.S.C. § 157(b)(2)(A), (B), and (O). Notice of the Application was proper under the circumstances.

Facts

1. CHFS is primarily in the business of purchasing and servicing second-tier and third-tier mortgage loans, referred to as "Home Improvement Loans." To fund the purchase of these Home Improvement Loans, CHFS borrowed approximately $18 million from the Edwards Entities.[1] (Bankr. Dkt. 167 at 10). In general, the parties' loan agreement required CHFS to repay the Edwards Entities using collections from the Home Improvement Loans. (Obj. ¶ 3). Separate from the Home Improvement Loans, CHFS and the Edwards Entities also entered into a series of seven (7) mortgage portfolio joint ventures where the Edwards Entities provided approximately $9 million to purchase portfolios of subprime loans, which CHFS serviced for a fee (the "Joint Venture Loans") (Dkt. 167 at 6).[2]

2. On May 23, 2012, CHFS filed a voluntary petition for relief (the "Petition") (Bankr. Dkt. 1) under chapter 11 of the Bankruptcy Code.

[1] The loan initially involved another entity, the Rainbow Group. A detailed history of the loan is unnecessary for the present issue.

[2] The parties dispute the nature of the joint ventures, but at some point, CHFS apparently was entitled to recover twenty-five percent (25%) of the collections on the Joint Venture Loans.

3. On December 20, 2013, then counsel for CHFS filed the Disclosure of Transfer of Funds and Other Matters (the "Disclosure") (Bankr. Dkt. 426), notifying the prior bankruptcy judge[3] that CHFS had moved its principal place of business from Jackson, Mississippi, to Panama, had transferred funds from the debtor-in-possession ("DIP") operating accounts to accounts at banks located in Panama, and had set up business offices in Panama and Costa Rica. In response to the Disclosure, the U.S. Trustee filed the United States Trustee's Emergency Motion for Order for the Appointment of a Chapter 11 Trustee (Bankr. Dkt. 427). On December 23, 2013, an Order Granting United States Trustee's Emergency Motion for Order for the Appointment of a Chapter 11 Trustee (Bankr. Dkt. 429) was entered directing the appointment of a trustee in this case. The prior bankruptcy judge approved the U.S. Trustee's appointment of the Trustee in an order dated January 21, 2014. (Bankr. Dkt. 473).

4. When the Trustee was appointed, CHFS was essentially no longer an on-going business in the United States because months before, William David Dickson ("Dickson"), the former chief executive officer of CHFS, had transferred approximately $9 million from the DIP operating accounts to accounts in banks in Panama and had taken most of CHFS's loan records with him to Costa Rica. (Dkt. 1787 at 6).

5. With the prior bankruptcy judge's approval, the Trustee hired a professional mortgage servicing company, Vantium Capital, Inc., now known as ClearSpring Loan Services, Inc. ("ClearSpring") to service most of the Home Improvement Loans. (Bankr. Dkt. 702).

[3] An order was entered on February 1, 2017, reassigning the Bankruptcy Case from Judge Edward Ellington to Chief Judge Neil P. Olack (Dkt. 1609).

6. With limited cooperation from Dickson following his detention in Panama, his deportation to the United States, and his arrest for bank fraud, the Trustee recovered approximately $5.8 million of the funds transferred by Dickson from the DIP operating accounts. *See United States v. Dickson*, Case No. 3:14-cr-00078-TSL-FKB (S.D. Miss).

7. On April 13, 2017, the Trustee filed the Application, seeking permission to employ Horne LLP ("Horne") *nunc pro tunc* as forensic accountants. If approved as forensic accountants, Horne would render specialized accounting services "including, but not limited to, undertaking a forensic investigation to trace the funds to the extent possible that left the estate and the funds that have been returned to the Trustee." (App. ¶ 6). In addition, Horne would "help categorize the funds the Trustee has collected into [joint venture] loans, home improvement loans or unencumbered assets of the estate." (*Id.*).

8. In the Application, the Trustee explained that she selected Horne, in part, because "it has considerable experience in complex Chapter 11 proceedings . . . [and she] believes that Horne is well qualified to serve as her accountant in this case." (App. ¶ 7).

9. Attached to the Application is the Declaration of Jeffrey N. Aucoin (the "Aucoin Affidavit") (Bankr. Dkt. 1775, Ex. A) and the engagement letter (the "Engagement Letter") (Bankr. Dkt. 1775, Ex. B) entered into by the Trustee and Horne.

10. In the Aucoin Affidavit, Jeffrey N. Aucoin ("Aucoin") stated that he is a certified public accountant licensed in the State of Louisiana and is currently a member and partner of Horne. Aucoin further testified that Horne has agreed to provide the accounting services described in the Application and that to the best of his knowledge, information and belief, neither he nor Horne has any "connections with [CHFS], its creditors, any other party interest or their respective attorneys and accountants, or with the office of the United States Trustee, or any person employed

in the office of the United States Trustee: (i) which are prohibited; or (ii) which would interfere or hinder the performance of Horne's duties herein." (Aucoin Aff. ¶ 8). He disclosed that Horne has connections with two attorneys who have made appearances in the Bankruptcy Case and/or in related adversary proceedings. Horne has provided tax services to Derek Henderson, prior counsel for CHFS. In addition, Aucoin disclosed that Luke Dove ("Dove") has provided and continues to provide legal services to Horne. (Aucoin Aff. ¶ 7). Dove represented William David Dickson ("Dickson"), former chief executive officer of CHFS, in criminal proceedings that led to Dickson's conviction for bankruptcy fraud. He also represented Dickson in the Bankruptcy Case and currently represents him and other entities and individuals in a related adversary proceeding (Adv. Proc. 14-00030-NPO).

11. According to the Engagement Letter, Horne proposes to staff this matter with Aucoin at the hourly billing rate of $445.00 and another partner, Robert Alexander, at the hourly billing rate of $480.00. (Eng. Letter at 5). Other hourly billing rates are shown in the following chart:

Director	$390.00	Senior Associate	$260.00
Senior Manager	$380.00	Associate	$220.00
Manager	$350.00	Litigation Support Specialist	$160.00
Supervisor	$290.00		

(*Id*.).

12. The Trustee asks the Court to authorize her to employ Horne effective *nunc pro tunc* March 27, 2017, the date on which she and Horne agreed on the terms of the retention. (App. ¶ 11).

13. In the Objection and at the Hearing, the Edwards Entities argued that Horne's employment is not in the best interest of the estate because: (1) tracing and categorizing funds is unnecessary; (2) any forensic accounting services can be provided by Stephen Smith & Company

P.C. ("Smith"); (3) alternative, less expensive means are available for determining the origin of the funds; and (4) Horne's hourly billing rates are too high.

14. At the Hearing, the Trustee and Aucoin testified in support of the Application. The Edwards Entities presented no documentary evidence or testimony in support of the Objection at the Hearing, other than the cross-examination of the Trustee.

Discussion

Section 327(a) of the Bankruptcy Code provides for the employment of professionals by a trustee or debtor in possession. It provides that a trustee "may employ one or more . . . accountants . . . that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title." 11 U.S.C. § 327(a). Generally, a trustee is given broad business discretion to select her own professionals. *In re Contractor Tech., Ltd*., No. Civ. A. H-05-3212, 2006 WL 1492250, at *5 (S.D. Tex. May 30, 2006).

A. § 327(a)[4]

Aucoin testified that he is a partner at Horne in Baton Rouge, Louisiana. Horne is a regional accounting and consulting firm with fifteen offices located through the southeastern United States. Aucoin joined Horne in 2010. He earned his Bachelor of Science and Master of Science degrees in accounting from Louisiana State University. He is a certified public accountant (CPA), certified internal auditor (CIA), certified fraud examiner (CFE), and certified financial forensic (CFF). He has experience providing forensic accountant services in bankruptcy matters. For example, he was employed as a forensic accountant in Enron's bankruptcy case.

[4] Hereinafter, all code sections refer to the Bankruptcy Code found at title 11 of the U.S. Code unless indicated otherwise.

The Edwards Entities do not question the qualifications of Horne or Aucoin. The Edwards Entities also do not dispute that Horne and Aucoin are "disinterested persons" as defined in § 101(14) and that they do not hold or represent an interest adverse to the estate. Accordingly, the Court finds that the testimony of Aucoin and the Trustee at the Hearing establish that Horne and Aucoin are qualified to perform the services, are disinterested persons, and do not hold or represent an interest adverse to the estate. The remaining issue under § 327(a) is whether the employment of Horne is in the best interest of the estate.

1. Are forensic accounting services reasonably necessary?

In the Objection, the Edwards Entities assert that tracing and categorizing funds "that left the estate and the funds that have been returned to the Trustee" is not reasonably necessary to the administration of the estate and "will further deplete the estate." (Obj. ¶ 1, 6). The Edwards Entities allege that the work the Trustee proposes to retain a forensic accountant to perform involves primarily three types of funds: (1) money stolen from the estate by Dickson (the "Stolen Dollars"); (2) money recovered by the Trustee after Dickson's theft (the "Recovered Dollars"); and (3) money collected by the Trustee or ClearSpring on the Home Improvement Loans after Dickson's theft (the "Collected Dollars"). (Obj. ¶ 6). The Edwards Entities insist that tracing and categorizing the Stolen Dollars, Recovered Dollars, and Collected Dollars into "buckets" for Joint Venture Loans, Home Improvement Loans, and unencumbered assets[5] is unnecessary to the administration of the estate.

Categorizing the Recovered Dollars as Home Improvement Loans or Joint Venture Loans is unnecessary or at least premature, according to the Edwards Entities, because related adversary proceedings 12-00091-NPO and 13-00104-NPO are set for trial on August 21-25, 2017. In these

[5] The Edwards Entities deny that there is a fourth bucket for "unencumbered assets."

adversary proceedings, the Trustee seeks, *inter alia*, a declaration that The Edwards Entities' claims to the Home Improvement Loans are either unenforceable or unsecured and that the Edwards Entities breached the joint venture agreements by failing to pay CHFS its share of the net profits. The Edwards Entities maintain that if it prevails in these adversary proceedings, the estate will have paid a forensic accountant needlessly to differentiate the Recovered Dollars between Home Improvement Loans and the Joint Venture Loans.

Tracing the Stolen Dollars is unnecessary, according to the Edwards Entities, because the original source and amount of these funds is already known. After the Petition was filed but before Dickson stole the funds, the prior bankruptcy judge ordered that all payments on loans be deposited into one of four DIP accounts. (Bankr. Dkt. 60, 231). The Edwards Entities allege that bank records from these DIP accounts show the balances "immediately before Dickson took the money as well as Dickson's transfer of the funds from the DIP accounts at Wells Fargo to accounts at HSBC USA Bank accounts [*sic*] owned by the W.W. Warren Foundation (an entity controlled by [Dickson]) and then ultimately to W.W. Warren Foundation accounts in Panama." (Obj. ¶ 15). Attached as Exhibit B to the Objection is a chart (the "Bank Chart") which, according to the Edwards Entities, shows these transfers.

According to the Edwards Entities, categorizing Collected Dollars is unnecessary because it would be duplicative of the services already provided by ClearSpring. Each loan serviced by ClearSpring has a number that indicates whether the payment belongs to the bucket of Home Improvement Loans or Joint Venture Loans and, if it belongs to the bucket of Joint Venture Loans, whether it belongs to the bucket for Joint Venture Loans funded by either Beher or EFP. Attached as Exhibit A to the Objection is a report that the Edwards Entities allege in the Objection was compiled from information maintained by ClearSpring (the "ClearSpring Report"). The Edwards

Entities insist that the ClearSpring Report shows the portion of the collections that belongs to the buckets for Home Improvement Loans, Beher Joint Venture Loans, and EFP Joint Venture Loans.

In Adv. Proc. 12-00091-NPO, initiated by CHFS and Dickson against the Edwards Entities, but now litigated against the Edwards Entities by the Trustee, the issues set for trial on August 21-25, 2017, include whether Edwards' claims are valid and if so, whether its claims are secured or unsecured. MISS. CODE ANN. § 75-9-313. To the extent its claims are secured, the Edwards Entities' rights to the Recovered Dollars could hinge upon whether it can identify the proceeds. MISS. CODE ANN. § 75-9-315. In short, to which bucket do the funds voluntarily returned to the Trustee or intercepted by the Trustee belong?

The Edwards Entities would like the Trustee to try the issues in Adv. Proc. 12-00091-NPO without the assistance of a forensic accountant. The Edwards Entities reason that even if its claims were unsecured, it would still be entitled to almost all of the estate funds. According to the Edwards Entities, CHFS had no capital other than the money it loaned to and/or invested in CHFS, and the Edwards Entities are just fine with leaving all the funds in one bucket.

The work performed by a forensic accountant may indeed show that the Edwards Entities are entitled to all of the Recovered Funds, but the Trustee cannot reach that conclusion based on the Edwards Entities' say-so. The Trustee has statutory duties under § 1106 and § 704 that cannot be ignored. Section 1106 provides, in pertinent part:

> (a) A trustee shall—
>
> (1) perform the duties of the trustee, as specified in paragraphs (2), (5), (7), (8), (9), (10), (11), and (12) of section 704(a);
>
> * * *
>
> (3) except to the extent that the court orders otherwise, investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan;

* * *

(6) as soon as practicable file a plan under section 1121 of this title. . . .

11 U.S.C. § 1106(a). Section 704 provides, in pertinent part:

(a) The trustee shall—

(2) be accountable for all property received;

(5) if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper . . . .

11 U.S.C. § 704(a). In the absence of the Edwards Entities' consent, the Trustee cannot file a confirmable plan without determining: (1) the amount of the debt owed to the Edwards Entities; (2) the validity of the debt; (3) whether the debt is secured or unsecured; and (4) the extent to which the debt is secured. 11 U.S.C. §§ 1122-1123.

There are at least two other adversary proceedings in which the services of a forensic accountant may also be relevant. In Adv. Proc. 13-00104-NPO, initiated by CHFS and Dickson against the Edwards Entities and other parties, but now pursued against the Edwards Entities and other parties by the Trustee, the Trustee seeks, *inter alia*, a declaratory judgment regarding the rights and obligations of the parties as to the joint ventures. (Adv. Proc. 13-00104-NPO, Adv. Dkt. 61). Aucoin testified that the Joint Venture Loans are governed by separate joint venture agreements, only some of which are documented in writing. *See* MISS. CODE ANN. § 79-13-101 *et seq*. Determining the rights of the parties will require that collections on the Joint Venture Loans be separated into those Joint Venture Loans funded by Beher and EFP and, furthermore, into buckets for each joint venture. Apparently, in some or all of the joint ventures, CHFS may be entitled to a percentage share of the profits. Aucoin testified at the Hearing that he found inaccuracies in calculations prepared by Martha Borg, the daughter of the equity owner of the

Edwards Entities, Dr. Charles C. Edwards ("Dr. Edwards") that may be relevant to whether any of those profit-sharing provisions apply." (Hr'g 11:38:39-11:38:52).[6]

The second adversary proceeding that may be relevant is Adv. Proc. 14-00030-NPO, which the Trustee initiated against Dickson, certain related companies, and insiders. In that adversary proceeding, the Trustee seeks, *inter alia*, to recover certain prepetition and postpetition transfers. If the Trustee succeeds, to which bucket will those funds belong?

the Edwards Entities' argument that the Bank Chart is a sufficient substitute for the services of a forensic accountant oversimplifies the tracing issue. The Bank Chart does not show activity in the Panamanian bank accounts where the Stolen Dollars were deposited. What other money was deposited into those foreign accounts? What money did Dickson withdraw from those foreign accounts? The Trustee alleges that there were "[m]ultiple transfers between and among accounts in the United States and foreign countries, purchases of assets in foreign countries, and other laundering of money." (Adv. Proc. 12-00091-NPO, Adv. Dkt. 237). A summary of the amounts withdrawn from each of the DIP accounts falls short of tracing the Recovered Money.

More importantly, the Bank Chart was not introduced into evidence at the Hearing. On its face, the Bank Chart consists of a single page of excerpts from the bank statements of the DIP accounts followed by three boxes entitled "Totals," "% of Funds," and "Total EFP/BHT Cash Stolen from Bankruptcy Escrow Accounts." The identity of the person who prepared or oversaw the preparation of the Bank Chart is unknown, and no documents showing the source of the figures were made available to the Court so that the accuracy of the calculations could be tested. Therefore, the Court gives no weight to the Bank Chart, because it was not introduced into

[6] Because the Hearing was not transcribed, this reference is to the timestamp of the audio recording.

evidence at the Hearing and because it otherwise does not comply with FED. R. EVID. 1006 regarding the admissibility of summary evidence. *See United States v. Smyth*, 556 F.2d 1179, 1183 (5th Cir. 1977).

The Court likewise gives no weight to the ClearSpring Report because it too was not introduced into evidence at the Hearing and does not comply with FED. R. EVID. 1006. No documents showing the source of the figures were made available to the Court. Even if the Court were to consider the ClearSpring Report, its information allegedly came from data stored on CHFS's computer servers, the reliability of which has not been established. ClearSpring's reports are reflected in the monthly operating reports ("MORs") filed by the Trustee in which the following disclaimer appears:

> [ClearSpring] uploaded to its system the loan portfolio data found on [CHFS's] servers. [ClearSpring's] report to the Trustee reflected in this [MOR] reflects a larger amount of receivable than that previously reported by [CHFS]. The Trustee is investigating the discrepancy and reserves the right to amend this [MOR] accordingly.

(Dkt. 1805 at 20). Having considered the Edwards Entities arguments, the Court finds that the Trustee has met her burden of showing that forensic accounting services are reasonably necessary to the administration of the estate.

2. Should Smith, not Horne, perform the forensic accounting services?

The Edwards Entities next oppose the Application on the ground that the Trustee has already retained Smith, with the approval of the prior bankruptcy judge (Bankr. Dkt. 661), to provide accounting services at an hourly billing rate that is significantly less than the rates charged by Horne. (Obj. ¶ 8). According to the Edwards Entities, Smith can perform the services for which the Trustee seeks to hire Horne, and the employment of a second, more expensive accounting firm, will cause the estate to incur more expenses. (Obj. ¶ 9).

The Trustee testified that she asked Horne, not Smith, to perform the forensic accounting services for the estate because Smith was unavailable. His workload prevented him from performing any additional services for the estate. Another bankruptcy judge in this judicial district had recently appointed Smith the examiner in a chapter 11 bankruptcy case. The Edwards Entities' failure to consider whether Smith would be available to perform the work shows the extent to which its arguments are based on speculation rather than fact.

Aucoin testified that he was generally familiar with the accounting services being provided by Smith and assured the Court that Horne will not duplicate that work. Given this testimony, the Court finds that the Trustee has established that Horne's employment, in addition to Smith's, is in the best interest of the estate. *See* 11 U.S.C. § 330(a)(4)(A)(i) (not allowing compensation for unnecessary duplication of services).

3. Are there less expensive means to trace the funds?

The third reason why the Edwards Entities oppose the Application is its belief that there are more economical ways to determine the origin of the Recovered Dollars, such as: (a) asking Dickson about the source of the Recovered Dollars and (b) designating 65% of the Stolen Dollars as Home Improvement Loans and 35% as Joint Venture Loans. (Obj. at 21-22).

As to the Edwards Entities' assertion that the Trustee could simply ask Dickson to trace the funds rather than retain a forensic accountant to do so, the Court notes that Dickson is a felon who pled guilty to bankruptcy fraud. His statements, therefore, about the existence and location of assets of the estate would be untrustworthy. Regardless, the Trustee testified that Dickson has now refused to cooperate in repatriating assets of the estate.

As a second alternative, the Edwards Entities suggest that the Trustee forego hiring a forensic accountant and simply allocate 65% of the Stolen Dollars to Home Improvement Loans

and 35% to Joint Venture Loans. The purported basis for applying these percentages is the Bank Chart. For the reasons previously stated, the Court gives the Bank Chart no weight. Regardless, even if the Bank Chart supported the Edwards Entities' percentages as to the amounts withdrawn from the DIP accounts, it does not necessarily follow that the same percentages should apply to the Recovered Money. Apparently recognizing the problems with its approach, the Edwards Entities resort to the adage, "[p]erfect should not be the enemy of [the] good." (Obj. at 6). The Edwards Entities cannot circumvent the Bankruptcy Code by relying on a misplaced adage. Hearings on all contested matters in the Bankruptcy Case, including confirmation of a plan, have been set to take place before the end of this year, and trials in all adversary proceedings except one have been set to take place before the end of this year. The goal of the Court is not to attain perfection but to resolve the parties' numerous disputes in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Federal Rules of Evidence in an efficient and timely manner.

Moreover, the box entitled "% of Funds," which appears near the bottom of the Bank Chart, actually contradicts the Edwards Entities' allegation in the Objection that "the Wells Fargo records indicate that 65% of the Stolen Dollars were CHFS Loan Dollars." (Obj. ¶ 22). According to that box, 65% of the Stolen Dollars were Joint Venture Loans:

% of Funds	
EFP/BHT Portfolios	65%
Home Imp. Loans	35%

(Dkt. 1796-2). For all of the foregoing reasons, the Court finds no merit in the Edwards Entities' argument that the Trustee should forego hiring a forensic accountant in favor of purportedly less expensive means for tracing the funds proposed by the Edwards Entities.

4. Are Horne's hourly billing rates too high?

Counsel for the Edwards Entities questioned the hourly billing rates of Horne at the Hearing. The Edwards Entities presented no testimony or other documentary evidence regarding hourly billing rates of other forensic accountants for comparison purposes. Regardless, the Edwards Entities' discussion about hourly billing rates is premature at this stage where the only matter before the Court is whether the Trustee's employment of Horne is proper. The Court's approval of the Trustee's employment of Horne under § 327(a) will not establish that Horne will be compensated from estate funds at the hourly billing rates proposed in the Engagement Letter. The Court will reserve examination of whether the fees generated by Horne are reasonable when it reviews Horne's interim and final fee applications under the provisions of § 330(a)(3)-(4).

For the aforementioned reasons, the Court finds that the Objection lacks merit and should be overruled. The Court further finds that the retention of Horne is in the best interest of the estate, and, therefore, the Application should be approved.

B. Evidence

The Court is concerned that a pattern has developed in the Bankruptcy Case where the Edwards Entities file a response in opposition to a motion or application filed by the Trustee but at the hearing, presents no witnesses and no admissible documentary evidence to support the factual allegations. *See Smith v. GTE North Inc. (In re Smith),* 170 B.R. 111 (Bankr. N.D. Ohio 1994); FED. R. EVID. 1101(b) ("These rules apply in civil cases and proceedings, including bankruptcy . . . ."); FED. R. BANKR. P. 9017 ("The Federal Rules of Evidence . . . apply in cases under the Code."). Here, for example, the Edwards Entities attached the ClearSpring Report and Bank Chart as exhibits to the Objection but provided no proper foundation for their admission into evidence at the Hearing. Other past examples of the Edwards Entities' reliance on summary

evidence are the color-coded fee statements discussed in the Amended Memorandum Opinion and Order on Applications for Compensation for the Period of January 2, 2014, Through February 29, 2016, and Reimbursement of Expenses by the Law Firm of Jones Walker LLP as Counsel to Kristina M. Johnson, Trustee of the Estate of Community Home Financial Services, Inc. (the "Jones Walker Fee Order") (Bankr. Dkt. 1787 at 30) issued on May 3, 2017. For summary evidence to be admissible under Rule 1006 of the Federal Rules of Evidence, there must be, like all other evidence, a proper foundation.

> To be admissible, a chart must summarize documents so voluminous as to make comprehension difficult and . . . inconvenient, although not necessarily literally impossible; the documents themselves must be admissible, although the offering party need not actually enter them; the party introducing the chart must make the underlying documents reasonably available for inspection and copying; and the chart must be accurate and nonprejudicial. In addition, part of the foundation for a chart, the witness who prepared the chart should introduce it.

United States v. Hemphill, 514 F.3d 1350, 1358 (D.C. Cir. 2008) (quotations & citations omitted).

In the absence of any admissible documentary evidence, the Edwards Entities' opposition to the Trustee's pleadings are usually based solely on the expectation that its counsel will garner sufficient facts on cross-examination of the Trustee and/or her witnesses to support its position. The advantage to this approach is that it minimizes the Edwards Entities' own attorneys' fees and expenses and relieves Dr. Edwards of the inconvenience and expense of attending a hearing. The Edwards Entities may believe that no admissible evidence is necessary when the Trustee bears the ultimate burden of persuasion on a matter. The Trustee's burden of proof, however, does not relieve the Edwards Entities from the burden of producing admissible evidence that supports the factual allegations in its opposition to the relief requested by the Trustee. By admissible evidence, the Court does not mean the unsworn statements of counsel for the Edwards Entities or documents prepared or altered by counsel for the Edwards Entities.

In almost every response or other pleading, the Edwards Entities complain that the administrative expenses incurred in this Bankruptcy Case are high, that the value of the assets of the estate are declining, and/or that the Edwards Entities are the largest creditor of the estate.[7] Ironically, every response that the Edwards Entities file in the Bankruptcy Case in opposition, regardless of the merit, increases the professional fees and expenses of the Trustee. The Court recognizes that the Edwards Entities have raised valid objections, for example, in the Edwards Family Partnership, LP and Beher Holdings Trust's Objection to Motion for Allowance of Administrative Expenses and Fees Pursuant to 11 U.S.C. § 503(b)(4) (Dkt. #1577) (Bankr. Dkt. 1599) and the Edwards Family Partnership, LP and Beher Holdings Trust's Objection to Debtor's Second Application for Fees, Costs, and Expenses of Robert A. Cunningham, CPA (Doc # 461) (Bankr. Dkt. 497), which the Court sustained (Dkt. 1784, Dkt. 1786). On balance, however, the litigation in the Bankruptcy Case has been far too contentious by all counsel.

[7] Since the Bankruptcy Case was reassigned to this Bankruptcy Judge on February 1, 2017 (Bankr. Dkt. 1609), The Edwards Entities have filed in the Bankruptcy Case a response, objection, and reply containing one or more of these complaints. *See* Edwards Family Partnership, LP and Beher Holdings Trust's Response to Trustee's Request for Expedited Hearing on Trustee's Applications to Employ Arias, Fábrega & Fábrega as Special Counsel and Horne LLP as Forensic Accountants (Dkt. #1806) (Bankr. Dkt. 1808 at 2) ("The Edwards Entities object[,] not specifically to the retention of Panamanian counsel but to the retention of what appears to be an extremely expensive firm in an estate where they hold 99% of the creditor claims and administrative expenses are already extremely high."); Edwards Family Partnership, LP and Beher Holdings Trust's Objection to Application of Kristina J. Johnson, Trustee, to Employ Horne LLP as Forensic Accountants *Nunc Pro Tunc* to March 27, 2017, and Disclosure of Compensation with Supporting Affidavit (Dkt. #1775) (Bankr. Dkt. 1796 at 6) ("In a situation where administrative expenses are high and the claims of one creditor constitute more than 99% of all claims, such alternative methods of tracing funds should be considered."); Edwards Family Partnership, LP and Beher Holdings Trust's Reply to Post-Trial Memorandum in Support of Jones Walker LLP's Third Fee Application and in Opposition to Objection to Same (Dkt. #1588) (Bankr. Dkt. 1621 at 1) ("The total fees charged by Jones Walker are now approaching $3,000,000.00. The Edwards Entities have legitimate concerns over the extent of such fees in that it is the primary creditor in what is really a two-party dispute. . . . Every dollar spent on administrative expenses is a dollar that cannot be replaced.").

The argument alone that every dollar spent in administrative expenses is a dollar out of the Edwards Entities' pocket is not, by itself, a reasonable basis for opposing the Trustee's applications and motions. There are consequences to the commencement of the Bankruptcy Case, Dickson's theft of funds from the DIP operating accounts, and the appointment of a chapter 11 trustee. Furthermore, it was the Dr. Edwards's decision to do business with Dickson.

C. Interim Compensation Procedures

For interim fee applications filed by Horne, the Court adopts the same interim compensation procedures that the Court set forth in the Jones Walker Fee Order. Horne shall file and serve interim fee applications within sixty (60) days after the end of each four (4)-month interval. For example, Horne shall file its first interim fee application for the period from March 27, 2017, through July 31, 2017, by September 29, 2017.

Parties will have twenty-one (21) days after service of an interim fee application to file an objection. In any objection, the party must specify the precise amount of interim fees and expenses to which it objects and the precise amount of interim fees and expenses to which it does not object. Upon expiration of the objection deadline, the Trustee is authorized to pay Horne eighty percent (80%) of the fees and one hundred percent (100%) of the expenses that are not subject to any objection. Any exhibits that either party proposes to introduce into evidence at any fee hearing, including any summaries or color-coded fee statements, must be exchanged at least two (2) weeks before the date of the fee hearing. All fees and expenses paid to Horne under these compensation procedures are subject to approval of the Court after a hearing is held and an order issued on any interim fee application. These compensation procedures will not authorize payment of such expenses to the extent that such authorization does not exist under the Bankruptcy Code, the Bankruptcy Rules, the Local Rules or other applicable law.

IT IS, THEREFORE, ORDERED that the Application employing Horne as forensic accountants for the Trustee is hereby approved.

IT IS FURTHER ORDERED that the following interim compensation procedures shall apply to all future applications filed by Horne:

1. Horne shall file its first interim fee application for the period from March 27, 2017, through July 31, 2017, by September 29, 2017. Thereafter, Horne shall file and serve interim fee applications within sixty (60) days after the end of each four (4)-month interval.

2. Parties will have twenty-one (21) days after service of an interim fee application to file an objection. In any objection, the party must specify the precise amount of interim fees and expenses to which it objects and the precise amount of interim fees and expenses to which it does not object.

3. Upon expiration of the objection deadline, the Trustee is authorized to pay Horne eighty percent (80%) of the fees and one hundred percent (100%) of the expenses that are not subject to any objection.

4. Any exhibits that either party proposes to introduce into evidence at any fee hearing, including any summaries or color-coded fee statements, must be exchanged at least two (2) weeks before the date of the fee hearing.

5. All fees and expenses paid to Horne under these compensation procedures are subject to approval by the Court after a hearing is held and an order issued on any interim fee application.

##END OF ORDER##