

JAN 23 2004

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

JOHN E. GORGE, CLERK
BY: *[Signature]*
DEPUTY CLERK

SECURITIES AND EXCHANGE)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
TERRY L. DOWDELL, *et al.*)
)
Defendants.)
_____)

CASE NO. 3:01CV00116

James H. Michael, Jr.
Senior U.S. Judge

**OBJECTION OF RECEIVER TO
DOWDELL'S NINTH MOTION FOR RELEASE OF FUNDS
FOR PAYMENT OF REASONABLE ATTORNEY FEES**

Roy M. Terry, Jr. and the law firm of DuretteBradshaw PLC (collectively "Receiver"), hereby files its objection to Terry L. Dowdell's Ninth Motion for Release of Funds for Payment of Reasonable Attorney Fees (the "Motion"), and in support thereof, respectfully represents to the Court as follows:

ARGUMENT

**No Attorney Fees Should Be Paid After October 31, 2002
And The Fees Application Should Be Closely Scrutinized**

1. Not to put too fine a point on it, but the criminal representation of Mr. Dowdell has turned out to be a pluperfect disaster.

2. The Receiver has never approved of payment of Mr. Dowdell's attorneys from funds belonging to the defrauded Vavasseau Investors. However, some months ago, the Receiver decided that the public's interest would be best served by paying Mr. Dowdell's lawyers so that Dowdell's criminal sentencing and incarceration would not be delayed, as it most certainly would be if the Federal Public Defender were required to take over the case. Specifically, the Receiver agreed with counsel to pay Dowdell's criminal attorneys fees through October 28th. The unstated assumption of the Receiver upon which this agreement was based was that, at the conclusion of the sentencing hearing, Mr. Dowdell would go to jail.

3. Now, we have the worst of both worlds from the Receiver's perspective: the Receiver is morally obligated to pay substantial attorneys' fees to Mr. Dowdell's lawyers and Mr. Dowdell has been released from his plea agreement because counsel's performance fell below the "objective standard of reasonableness" mandated by *United States v. DeFreitas*, 865 F.2d 80, 82 (4th Cir. 1989).

4. The Receiver does not question the zeal of counsel for Mr. Dowdell, nor think that any lawyer may be a guarantor of a favorable result, but does question whether much of anything useful has been accomplished for the \$46,129.54 in fees and expenses requested in the Motion. Expenditures prior to the May 30, 2003 sentencing hearing did not result in the consummation of Mr. Dowdell's plea bargain. Expenditures since the sentencing hearing on May 30, 2003 have been focused on a Motion for Reconsideration

of the Court's July 22, 2003 opinion which rejected every one of the defendant's Objections to the Presentence Report and Motion for Downward Departure. Now, there is no plea bargain and trial is scheduled for February, 2003.

5. The Receiver had hoped that this matter would be speedily concluded so that Mr. Dowdell could be incarcerated without costing the Vavasseau Investors a lot of money. It has not worked out that way. The Court should carefully consider whether the results obtained merit the fees requested.

WHEREFORE, the Receiver prays that the Court limit the relief requested in the Motion and award to the Receiver such other and further relief as may be just and proper.

Respectfully submitted, this the 22nd day of January, 2003.

Roy M. Terry, Jr. and DuretteBradshaw, PLC
Receiver
By Counsel



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