

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IN RE VISA CHECK/MASTERMONEY
ANTITRUST LITIGATION

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ORDER
CV-96-5238 (JG)

JOHN GLEESON, United States District Judge:

On February 17, 2004, I referred the dispute between counsel for the objectors (who have requested attorneys' fees) and Constantine & Partners (who opposed those requests) to the Special Master for a report and recommendation. On April 2, 2004, the Special Master issued a report recommending that I deny the fee petition submitted by John F. Duane, and others, who represent 710 Corp. and Leonardo's Pizza by the Slice, Inc., and that I deny the representative fee requested by Kearney Dee Hutsler for Duke Products, Inc. and Southern Network Services, Inc. She further recommended that I award fees (although not the full amounts requested) to the other attorneys who requested them, as stated more fully in the report on pages 39-40.¹

In brief, the Special Master acknowledged that my diminution of Lead Counsel's fees would have issued with or without briefing to the contrary. Nevertheless, she recommended that I grant attorneys' fees because the objectors contributed non-frivolous arguments to the settlement debate and thereby sharpened the debate as to attorneys' fees for Lead Counsel. (See R&R at 8-9.) She calculated attorneys' fees by the lodestar method, i.e., according to the number of hours reasonably billed multiplied by the hourly rate. (Id. at 9-10.)

The parties had ten days, following service, to file objections to the Special

¹ Included in this group of attorneys who the Special Master believed were deserving of fees was Hutsler, although he was found not to merit a representative fee.

Master's report with the Court. Objections were filed by: (1) Lawrence Schonbrun (counsel for objector Roman Buholzer d/b/a/ The Continental Garden Restaurant), on April 16, 2004; (2) John J. Pentz (counsel for objectors Round House, Inc., Ron Fred, Inc., Bailey's, and Ron Jen, Inc.), jointly with J. Scott Kessinger (counsel for objector Kickers Corner of the Americas, Inc.), on April 15, 2004; (3) Kearney Dee Hutsler (counsel for objectors Duke Products, Inc., and Southern Network Services, Inc.), Charles M. Thompson (counsel for objector Village Fabrics and Furnishings, Inc.) and R. Stephen Griffis (counsel for objectors Sound Deals, Inc., and Digital Playroom, Inc.), together on April 15, 2004; and (4) Steven Helfand and John W. Davis (counsel for Rent Tech, Inc., and Rental Solutions, Inc.), dated April 19, 2004. Lead Counsel did not file an objection.

John J. Pentz and J. Scott Kessinger assert that the percentage-of-the-fund-method for calculating attorneys' fees should have been utilized by the Special Master because it is the preferred method in this Circuit. This argument does not detract from the fact, however, that the lodestar method is perfectly acceptable and can be used at the court's discretion. (See R&R at 9-10 (citing cases)). I agree with the Special Master that to blindly award objectors' counsel a percentage of the difference in the fee requested by Lead Counsel and the fee I awarded, would be to bestow a windfall upon objectors' counsel because their efforts, while helpful, did not produce the savings to the Class. For similar reasons, I agree that the use of a multiplier is also inappropriate. Pentz's and Kessinger's arguments to the contrary do not persuade me otherwise. For instance, even they admit that "their clients' objections were not overly complex." (Pentz and Kessinger Obj. at 3.)

After reviewing the Special Master's report and the objections, I hereby adopt the report in its entirety. Although it is true that the objectors' briefings did not drive my decision to

reduce Lead Counsel's request for fees, their arguments did sharpen the debate by introducing contrary case law, and by requiring Lead Counsel to more fully brief the issue in reply papers. In short, the objectors' contribution was to make the proceedings more adversarial. However, I fully agree with the Special Master's reduction of the requested fees, and her denial of a lodestar multiplier. The objectors' contributions were minimal in the overall resolution of the issue, and the total number of hours they spent on litigating the fees issue was excessive.

Accordingly, Lead Counsel is hereby directed to remit a separate check for each fee award, as listed on pages 39-40 in the report and recommendation, to the individual attorneys as named in the report that I have adopted. Lead Counsel shall provide confirmation of such payment to the Court.

So Ordered.

JOHN GLEESON, U.S.D.J.

Dated: April 27, 2004
Brooklyn, New York