

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN HAYMOND : CIVIL ACTION
HAYMOND NAPOLI DIAMOND, P.C. :
 :
v. :
 :
MARVIN LUNDY :
 :
v. :
 :
JOHN HAYMOND, :
ROBERT HOCHBERG, :
HAYMOND NAPOLI DIAMOND, P.C. : No. 99-5048

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J.

August 23, 2002

The Philadelphia law firm of Haymond & Lundy, LLP ("H&L") was formed on October 13, 1997. There were three founding partners: John Haymond ("Haymond"), Marvin Lundy ("Lundy") and Robert Hochberg ("Hochberg"). On October 8, 1999, Lundy dissolved the partnership, and this action was filed thereafter. On August 31, 2001, judgment was entered on Haymond's claims for breach of the partnership agreement, after a jury verdict against Lundy.

The judgment required both Haymond and Lundy to contribute certain assets to the partnership. See Judgment, August 31, 2001, ¶ 3A, B, and C. It also created a schedule distributing H&L's assets. See Judgment, August 31, 2001, ¶ D-H. The

judgment's scheduled distribution (the "schedule") is stated in a footnote.¹

¹ 3. The Receiver shall proceed with the dissolution of Haymond & Lundy, LLP as follows:

A. Lundy shall cause to be contributed to Haymond & Lundy, LLP \$882,959.28, representing 50% of the fees present in the ML&L arbitration escrow account on the date of Haymond & Lundy, LLP's dissolution.

B. Haymond shall contribute to Haymond & Lundy, LLP \$17,246.00 for services rendered by David Easterly for the benefit of his new firm, Haymond Napoli Diamond, P.C., while Easterly's salary was paid in full by Haymond & Lundy, LLP.

C. The furniture and fixtures Marvin Lundy contributed to Haymond & Lundy, LLP shall be returned to Lundy.

D. Net fees received from any H&L case open at the time of dissolution shall be divided between the parties as follows: Lundy shall receive 60% of the net fees and Haymond shall receive 40%.

(i) The sole exception to this rule shall be the case of Marlo Jones. The fees from Jones' case shall be retained entirely by Lundy or his new firm.

(ii) Net fees accumulated during the pendency of this action and held in escrow by the parties in accordance with this court's orders may be distributed as soon as the amounts held in escrow are verified correct by the Receiver.

(iii) Additional net fees received from H&L cases by the parties shall be placed in escrow pending an approval of the amount and distribution by the Receiver.

E. Net fees received by Lundy, or his new firm, from ML&L cases settled or litigated to verdict shall remain the property of Lundy or his new firm.

F. Net fees received by Haymond, or his new firm, from ML&L cases settled or litigated to verdict shall be placed in escrow. These fees shall be distributed 80% to Haymond, or his new law firm, and 20% to Lundy, or his new law firm, with one exception. The fees from the case of Ron Hammock shall be retained entirely by Haymond, or his new firm. All such distributions shall be approved by the Receiver.

G. All assets of Haymond & Lundy not otherwise provided for shall be liquidated, and the proceeds shall be made part of the capital of Haymond & Lundy for distribution.

H. The capital of Haymond & Lundy shall be disbursed in the

Because the parties were excessively adversarial, this judgment could not be effected without a Receiver to collect H&L's assets and recommend their distribution; the court appointed Martin Heller, Esq. ("Heller" or the "Receiver").

This opinion will: (1) adopt in part the Receiver's proposed distribution; and (2) enter a final judgment.

I. Procedural and Factual History

This action's factual and procedural history may be found in the nine opinions issued to date. See Haymond v. Lundy, 2000 WL 804432, 2000 U.S. Dist. LEXIS 8585 (E.D. Pa. June 22, 2000) (denying in part Haymond and Lundy's cross motions to dismiss); Haymond v. Lundy, 2000 WL 1824174, 2000 U.S. Dist. LEXIS 17879 (E.D. Pa. Dec. 12, 2000) (dismissing in part Lundy's claims against Hochberg for the unauthorized practice of law); Haymond v. Lundy, 2001 WL 15956, 2001 U.S. Dist. LEXIS 54 (E.D. Pa. Jan.

following manner and order:

(i) Debts owed by the partnership to third parties shall be paid, including the bank debt and the loan made to the partnership by Hochberg;

(ii) \$500,000 shall be set aside for the payment third party debts the partnership continues to accrue;

(iii) The loans made to the partnership by Haymond and Lundy shall be repaid. If there are insufficient funds to repay these loans in full, the remaining funds shall be paid in proportion to the total amount owed each partner;

(iv) Any remaining partnership capital shall be to the partners in accordance with their percentage interests in the partnership: 50% to Haymond and 50% to Lundy.

5, 2001) (granting and denying in part cross motions for summary judgment); Haymond v. Lundy, 2001 WL 74630, 2001 U.S. Dist. LEXIS 630 (E.D. Pa. Jan. 29, 2001) (granting counter-claim defendants' motion for summary judgment against Lundy on civil conspiracy counterclaim); Haymond v. Lundy, 177 F. Supp. 2d 371 (E.D. Pa. 2001) (following jury verdict for Haymond, entering judgment, appointing Receiver, and creating a schedule for distribution of partnership assets); Haymond v. Lundy, 174 F. Supp. 2d 269 (E.D. Pa. 2001) (following bench trial, entering judgment for Lundy on Lundy's claim that Hochberg engaged in the unauthorized practice of law); Haymond v. Lundy, 205 F. Supp. 2d 390 (E.D. Pa. 2002) (denying cross motions for post-trial relief, denying motion to intervene); Haymond v. Lundy, 205 F. Supp. 2d 403 (E.D. Pa. 2002) (granting Lundy's petition for attorney's fees).²

At the Receiver's request, the Court appointed Jerome Kellner ("Kellner"), an accountant, to help effectuate its judgment. See Order, September 13, 2001 (#307). Kellner and the Receiver together worked in the fall of 2001 to account for H&L's assets. On December 21, 2001, Kellner submitted a preliminary report. See Exhibit A. On January 31, 2002, Kellner submitted a second report accounting for the partnership's assets and proposing a distribution under the original schedule. See

²Two additional opinions have been issued today.

Exhibit B. The Court treats these reports as if they had been submitted by the Receiver.

Both Haymond³ and Lundy filed objections. Hochberg also filed objections, but those objections were dismissed without prejudice: his objections, if sustained, would not have changed the amount he is due under the judgment. See Order, Feb. 22, 2002 (#397).⁴ On February 22, 2002, the court held hearings on these objections, and took some of them under advisement. See Tr. Feb. 22, 2002. On February 28, 2002, the Receiver submitted an revised proposed distribution. See Exhibit C.

The Receiver's January 31, 2002, and February 28, 2002, reports will be read together. The January 31, 2002, report states the assumptions and procedures justifying the Receiver's proposed distribution. The February 28, 2002, report provides more recent financial consequences of those assumptions. The

³Haymond files objections jointly with Haymond Napoli Diamond, P.C. (a Connecticut Corporation now known as the Haymond Law Firm, P.C.). No reason was given why the Haymond Law Firm has standing to object to the Receiver's report. The court does not address the issue of the Haymond Law Firm's standing sua sponte; no prejudice accrues to any party by allowing the Haymond Law Firm to join in Haymond's objections.

⁴See also Tr, Feb. 22, 2002, at 10-12. Haymond Napoli and Diamond, P.C., PA ("HND-PA"), the Pennsylvania law firm founded by Haymond post-dissolution, also filed objections; those objections, with the consent of counsel for HND-PA, were not considered. Id. The Court stated that "If I grant [Lundy's] motion to effect the jurisdiction ... I will grant a new hearing and let [both HND-PA and Hochberg] participate." Id. at 11. For the reasons given in the opinion concerning jurisdiction filed this day, no further hearing will be necessary.

court will only act on assets and liabilities of H&L accruing on or before January 31, 2002.

II. Final Judgment/Distribution

A. Proposed Distribution

The receiver concludes that H&L had \$5,206,778 in assets. See Exhibit C, Schedule 1. Those assets come in several forms: \$1,731,049 in cash; \$1,585,081 in accounts receivable but not collected from Marvin Lundy; \$1,532,948 in accounts receivable but not collected from HND-PA; \$302,577 in costs advanced; \$47,113 in fixed assets; and \$8,010 in security deposits.

The Receiver calculated the partnership's liabilities by first putting aside \$525,000 in reserve for debts due third parties. See Judgment, 3H(ii) (providing for a reserve of \$500,00 to pay for third party debts as they accrued).⁵

Second, the Receiver calculated the amounts due Hochberg, Lundy, and Haymond, under the judgment (the fees they were due minus the amount they owed the partnership). See Schedules 2 and 3 of Exhibit C. The distribution allocated \$2,623,799 of partnership assets to Lundy (\$983,595⁶ in cash), \$1,605,402 (in cash) to Haymond, and \$50,000 in cash to Hochberg. This

⁵ The Receiver has subsequently stated that because of various events postdating the judgment, the \$500,000 reserve was no longer sufficient.

⁶Schedule 4 of the report recommends that Lundy receive \$997,095 in cash, but the report's first page recommends that \$13,500 be deducted from this amount because of increases in his unpaid accounts receivable.

recommendation assumed that the amounts receivable from Haymond Napoli and Diamond, P.C., PA ("HND-PA"), \$1,532,948, would be paid. To date, HND-PA has not paid the receivables in question.

Haymond filed supplemental objections, to which this memorandum is responsive.

B. Objections and Rulings

1. Standard of Review

The judgment provided that the Receiver's reports were "subject to the review and supervision of the Court and may be revised, expanded or modified with notice to the parties." Judgment, August 31, 2001, ¶2G. Neither party has suggested a standard of review for the Receiver's report and recommendation. Because of the intensive nature of the Receiver's fact finding, and his uniquely suited ability to resolve factual questions, the Court will review his findings of fact for clear error. See L. R. Civ. Pro. 72.1, comment 12(c) (noting that review depends on the nature of the tasks assigned to the special master). Any conclusions of law will be reviewed de novo.

2. Objections

a. Haymond's Objections⁷

(1) General Objection

⁷Haymond lists 20 specific objections and one section full of "general" ones; the court has reorganized these objections in a more cognizable manner. To the extent an objection is not specifically mentioned, it has been considered but overruled.

Haymond, objecting in general terms to the Receiver's report, concludes that the proposed distribution is merely a "compilation," and does not account for the assets of H&L. Haymond's view of a proper investigation includes such tasks as "review either all or a random selection of the H&L and ML&L [Manchel, Levin and Lundy] cases and track any funds associated with those cases," "set forth what amounts plaintiffs and defendant ultimately will receive and why," and "provide all supporting documents for the conclusions of the report with an explanation of the procedures employed...."

Haymond's counsel admitted that documentation supporting the Receiver's report was available for review prior to the deadline for filing objections. Kellner has since met with Haymond's counsel and explained the report to him in detail. To the extent Haymond's objections reflect his counsel's unfamiliarity with the procedural history of this case, they are now overruled.⁸ To the extent these objections, if accepted, would modify the Receiver's duties from those allowed by the court in its initial appointment order and later orders defining the scope of his inquiry, see Order, November 21, 2001 (#335), the objections are untimely. They would also create a set of duties for the Receiver that

⁸Haymond's present counsel replaced Judah Labovitz, his counsel from the inception of this action, on February 1, 2002. This new counsel's preparation was outstanding in the circumstances.

would vastly complicate his role and the length of his engagement. The kind of audit Haymond envisions might be disfavored under Pennsylvania law. See Tate v. Philadelphia Transp. Co., 190 A.2d 316, 321 (1963) (receiver's role should be limited).

Haymond's general objection is overruled.

(2) The Report's treatment of HND-PA and Haymond as one entity.

Haymond objects that the "term 'Haymond Napoli Diamond, P.C.' is not specifically defined by Mr. Kellner." He believes that this lack of definition might confuse sums converted by HND-PA with those of Haymond, or the Haymond Law Firm.

The court ruled that for the purposes of distribution, HND-PA and Haymond would be treated as one entity. See Tr. Feb. 22, 2002, at 41-44. HND-PA's accounts receivable are attributable as accounts receivable of Haymond because Haymond agreed to transfer those accounts to HND-PA. See Mem. Op on Lundy's Motion on Order to Effectuate Jurisdiction, August 23, 2002.

Haymond's objection is overruled.

(3) The Greer Case

The Receiver concluded that a contingent fee received after a plaintiff's verdict in Greer v. City of Philadelphia et al., No. 940701134 (Comm. Pleas. Court., filed July 12, 1994) was not

a partnership asset. See Receiver's letter of March 18, 2001, attached as Exhibit D. According to the Receiver, a jury awarded \$2,500,000 to clients of H&L during the partnership's existence. The defendants filed post-trial motions, and later appealed. The appeal process did not terminate until November 17, 2000, after the dissolution of the partnership, when the client was represented by Lundy alone. Therefore, the Receiver concluded that the money was not a partnership asset. See Judgment, ¶3(E).

The Receiver distinguished the Greer action from "CAT Fund" matters. The Medical Professional Liability Catastrophe Loss Fund (the "CAT Fund") is a fund periodically distributing proceeds from a pool created to compensate victims of medical malpractice; the Receiver concluded that these assets are "fixed" on the date the settlement release is signed, because payment would occur on a certain date, and in a certain amount. The court earlier ordered that CAT Fund settlement proceeds were partnership assets. See Order, December 28, 2001 (#354); Tr. December 28, 2001.

Haymond, objecting to the Receiver's conclusions, states that Lundy and his associates deliberately failed to collect on the jury award. The evidence of record, as set forth in the Receiver's report, is to the contrary. Fees from the Greer action were not fixed prior to H&L's dissolution; Lundy

took all proper measures to collect, but these were unavailing. This distinguishes CAT Fund settlements: the Greer fee was not a fixed asset until after the partnership was dissolved. Under the judgment, it belongs exclusively to Lundy.

Haymond's objection is overruled.

(4) The Fitzpatrick referral fee

Haymond objects to the Receiver's proposed treatment of a \$150,000 "partnership expense," paid in the form of a referral fee to F. Emmett Fitzpatrick, Esq. ("Fitzpatrick").

On February 3, 1997, John Kelly ("Kelly") was hurt in an accident at the Bellevue Hotel, and retained Fitzpatrick's firm to represent him in a subsequent personal injury action. Fitzpatrick did what was necessary to file a complaint. On May 29, 1998, Kelly told Fitzpatrick that he wanted to retain Lundy, through H&L, instead of Fitzpatrick. This decision was "final and [Kelly did not] wish to be contacted by [Fitzpatrick]."

Lundy promised Fitzpatrick reimbursement for his costs and he also offered to pay a customary referral fee to retain Fitzpatrick's good will if Lundy were successful: this unsolicited action was allegedly the customary practice of members of the Philadelphia personal injury bar. Lundy, writing to Fitzpatrick on June 5, 1998, memorialized this agreement. Lundy first reimbursed Fitzpatrick's costs, and then stated:

"This matter will of course be handled on a referral basis and I would appreciate your participation in the case."

In December, 2000, the Kelly case settled for \$2,468,750: the attorney's fees portion of the settlement was \$996,500. One third of this sum, the "referral fee" claimed by Fitzpatrick, was \$332,166.66. Lundy, after negotiating with Fitzpatrick, agreed to pay him \$150,000.

On June 29, 2001, Lundy wrote the Receiver asking for approval of this settlement. Heller first granted approval on the condition that no objections were heard, and then, at Haymond's objection, reconsidered and took the matter under advisement.

After resolving questions about the ethics of the referral fee, Heller concluded that the referral fee was a partnership expense. On November 19, 2001, the court ruled that Fitzpatrick was owed \$150,000 because of Lundy's apparent authority to contract with him, but the relative responsibility of each partner for this expense remained an open question.

Lundy's ability to create partnership expenses was limited by the partnership agreement. The Partnership Agreement, at § 5.01, states that partners may bind the partnership without approval of a majority of the partners only in a limited number of circumstances; if a partner "purchases or disposes of any

material asset," he must get the permission of a majority of the partners if the asset's value exceeds \$10,000. Partnership Agreement, § 5.01(iv).

Lundy argues that § 5.01(iv) does not apply because: (1) it was not the custom of the partnership to treat referral fees as material assets; and (2) the court and the Receiver, not Lundy, bound the partnership to pay Fitzpatrick. The Receiver agrees with Lundy's position.

There is no other evidence of record establishing the partnership's customary practice respecting referral fees. In the absence of such evidence, it is inappropriate to disregard the plain language of the governing contract regarding attorney's fees from settlements, material assets of the firm, by holding that the referral fee portion of a settlement is an exception to § 5.01(iv).

Second, just because Fitzpatrick was not paid until the court ordered the Receiver to pay him, it does not follow that § 5.01(iv) does not apply. The issue is whether Lundy's oral (and later written) commitment to pay a standard referral fee exceeded his authority to bind H&L under the Partnership Agreement. It did. Later, Lundy mitigated this error by settling with Fitzpatrick to pay a lesser sum. This agreement was an accord and satisfaction of the underlying contractual

obligation, not a new agreement (a novation). The court's approval of the accord and satisfaction was expressly made subject to a later court allocation of the amount each partner owed.

Lundy's agreement to pay the referral fee to Fitzpatrick was a decision by a partner of H&L and bound the partnership to pay Fitzpatrick 1/3 of fees received when the Kelly matter settled. It disposed of a material asset of the partnership (the undivided right to a contingent fee in the Kelly matter) exceeding \$10,000. Absent persuasive evidence that undivided rights to contingent fees are not "assets," Lundy exceeded his authority under §5.01(iv) by not obtaining his partners' consent before making this agreement. Therefore, only \$10,000 of the \$150,000 referral fee should be attributable to the partnership.

Haymond's objection is sustained in part and overruled in part. The Receiver's conclusion that the Fitzpatrick referral fee is an expense of the partnership equally attributable to the partners was in error. Only \$10,000 of the referral fee was a proper partnership expense; \$140,000 exceeded Lundy's authority and must be paid by him alone. Lundy will be charged \$145,000 for his share of the Fitzpatrick fee, and Haymond will be charged

\$5,000. Lundy's cash distribution must be reduced by \$70,000, and Haymond's increased by the same amount.⁹

(5) The Lundy loan

Haymond objects to a payment by H&L to Lundy of \$672,000. Through the course of this action, this amount has been known as the "Lundy Loan." As the judgment held:

In addition, the Partnership Agreement acknowledges that "Lundy has incurred expenses in connection with the Lundy Cases" which shall be deemed a loan to the partnership. See Partnership Agreement, §3.06(b). Between July 29, 1997, the date Lundy's former firm, ML&L, dissolved, and the formation of H&L in October, 1997, Lundy expended money to continue litigating the cases he received from ML&L post-dissolution (the "Lundy Case Expenses" in the Partnership Agreement). For the first two years of the partnership, when Haymond & Lundy collected fees from any of the cases for which Lundy personally incurred costs, Lundy was not reimbursed; the amount was deemed loaned to the partnership. See id. The partnership was to repay these loans in installments beginning the twenty-fifth month of the partnership, see id., but the partnership was dissolved before the twenty-fifth month and Lundy was never repaid. The Lundy loan must be repaid with the cash loans made by the partners. See Judgment at 18-19 (footnote permitting Haymond to object to the precise amount of the Loan omitted).

Haymond, objecting to the Receiver's report, argues that the court's reading of the Partnership Agreement § 3.06(b) is erroneous. See Tr. Feb. 22, 2002, 49-54. Paying both ML&L and

⁹The Receiver's recommendation allocated the expense equally: both partner's were charged \$75,000. Under a proper analysis, Haymond should be charged \$5,000: he will receive \$70,000 extra under the distribution. Lundy should be charged \$145,000 in total: he will receive \$70,000 less under the distribution.

Lundy (as required by the judgment), "defies logic merely in trying to describe it." See Haymond's Supplemental Objections, at 2. The court disagrees; but even if so, Haymond's argument is best characterized as an attack on the judgment. The time for filing post-judgment motions has long passed; Haymond's objection is untimely.

Haymond also objects to the amount of the Lundy Loan. The Court adopts the factual finding by the Receiver that \$672,095 was the amount of the Lundy Loan at distribution, as Easterly testified.

(6) The Arbitration Escrow Account

Haymond objects to the Receiver's "assumption" that the receivable related to the arbitration escrow account is \$882,959. The court ordered Lundy to transfer that sum to the partnership. Haymond argues that Lundy withheld money from the escrow account, and he has not proven that \$882,959 is the total he should receive.

This objection fundamentally misconstrues what the amount of \$882,959 represents. As the court has previously explained:

At trial, Haymond argued Lundy rejected an offer to divide the disputed ML&L funds equally so that the distribution of the ML&L fees would not be determined or received until after Lundy dissolved H&L, and he, not the partnership, would receive the fees. Judgment, at 19. It was not until November, 1999, after the partnership's dissolution, that Lundy was awarded 55% of the ML&L funds, or \$971,255.20 of

the \$1,765,918.55 in the account on the date of dissolution. The jury agreed that Lundy's actions breached the partnership agreement. Id. at 21. To remedy Lundy's breach, the Court ordered him to pay to the partnership what it would have received had he accepted the settlement offer before the dissolution of the partnership: \$882,959.28, representing fifty percent of the ML&L funds. Id. at 23. The Court declined to inquire into funds Manchel and Lundy allegedly had withheld from the arbitration account. Id. at 23, n. 13.

See Haymond v. Lundy, 205 F. Supp. 2d 390, 401 (E.D. Pa. 2002). The Receiver relied on the original judgment, and on the post-trial opinion, when he decided not to investigate if Lundy allegedly withheld money from the arbitration account. This was not an error; Haymond's objection is overruled.

(7) Other Objections

Haymond raises specific objections to 10 different items in Schedules 1-5 of the report. Most of these objections were resolved at the hearing, when Kellner explained his report to Haymond's counsel. Others are trivial and require no further explanation.

Haymond, objecting to paying Hochberg his \$50,000 loan as ¶13H(i) of the judgment requires, argues that because Hochberg is complicit in HND-PA's continuing failure to remit accounts receivable due H&L, H&L should refuse to pay Hochberg what he is owed under the Partnership Agreement and the judgment.

Hochberg responds that such non-payment would amount to a pre-judgment attachment on a claim by H&L against himself and HND-PA.

Although Haymond's approach has equitable appeal, it lacks a legal foundation.

Haymond's "specific" objections are overruled.

b. Lundy's Objections¹⁰

(1) "Objection Based Upon the Absence of
Crediting for Net Fee Revenues"

By agreement of the parties, expenses post-dissolution were to be evenly divided. Lundy, objecting to this equal division in the Receiver's report, states that it denies him credit for his disproportionate success in obtaining revenue for the firm after dissolution. He states that he has collected 2/3 of the fees received after dissolution, but been responsible for half of the expenses: he would like credit for the extra fees he brought to the partnership.

Although the Court agrees with the Receiver that "there is some logic" to Lundy's position, the partnership agreement does not support it, and the parties have explicitly agreed that expenses would be evenly shared. It is not the court's role to

¹⁰Like Haymond, Lundy objects to multiple items in the report. Many of these objections were dealt with in open court, and need not be revisited here. To the extent an objection has not been discussed, it has been considered but is overruled or is moot.

impose an equitable division of the partnership's assets, but to effectuate the jury's verdict and enforce the agreements the partners have made.

Lundy's objection is overruled.

(2) Future CAT Fund payments

Lundy argues that the court must issue an order to the CAT-Fund that payments originating from H&L cases, but now due clients of HND-PA, should be paid directly to the partnership. He states that the court has previously followed this practice. See Order, December 28, 2001 (#354).

The court will not order the CAT-Fund, a non-party to this litigation, to remit funds to the partnership in the future. The former partners may pursue funds due them from outside parties in separate litigation, if they feel it necessary. The court declines to act on a contingent future event.

C. Adjudicated Distribution

This adjudicated distribution effectuates the court's judgment of August 31, 2001.

Accounts receivable held by HND-PA have not, and will not, be paid. See Mem. Op. on Lundy's Motion for Order to Effectuate Jurisdiction, August 23, 2002. The court attributes these accounts receivable to Haymond. Id. Haymond's distribution will be reduced by \$1,532,948.

The court adopts the Receiver's findings of fact that the partnership had assets of \$5,206,778 as of January 31, 2001. The Receiver shall pay the third party debts, security deposits, and receivables of the partnership as Schedule 4 of Exhibit C recommends. He shall then distribute the following amounts to the former partners, in satisfaction of their claims, and distribute the partnership's assets as follows:

- Lundy: \$913,595
- Haymond: \$142,455
- Hochberg: \$50,000

After paying these amounts, the Receiver shall notify the court. The court will then discharge him (and thereby discharge Kellner). Any debts or assets of H&L accruing after January 31, 2002, shall be the responsibility of the former partners to allocate. Supervision over H&L will be terminated.

III. Conclusion

Haymond's objections are overruled, except that his objection to the Receiver's treatment of the Fitzpatrick referral fees is sustained in part. Lundy's objections are overruled. Hochberg's objections are denied as moot.

The Receiver shall dissolve the partnership as he recommends in his report, except for the modifications in this memorandum. Thereafter, the Receiver will be discharged with the thanks of

the court, and supervision over the dissolved partnership ended. This opinion constitutes the final judgment on the matters giving rise to this action.

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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FINAL JUDGMENT

AND NOW, this 23rd day of August, 2002, the judgment of August 31, 2001, is effectuated as follows:

1. The Receiver's Reports and Recommendation of January 31, 2002, and February 28, 2002 (Exhibits B and C), is **ADOPTED IN PART AND REJECTED IN PART:**

A. John Haymond's Objections (#383) are **SUSTAINED IN PART AND OVERRULED IN PART;**

B. Marvin Lundy's Objections (#384) are **OVERRULED;**

C. The Receiver's accounting of the assets of the partnership as of January 31, 2002 is **APPROVED**. His recommended distribution is adopted, except for: (1) the Fitzpatrick fee matter; and (2) his assumption that HND-PA would remit the accounts receivable it owes the partnership. Attorney's fees of \$1,532,948 collected by HND-PA will be attributed to John Haymond because he enabled HND-PA to retain and control these sums.

2. The Receiver shall pay the debts and then distribute the assets of the partnership as recommended in Schedule 4 of Exhibit C, but shall pay the parties to this litigation as follows:

- A. Marvin Lundy: \$913,595
- B. John Haymond: \$142,454
- C. Robert Hochberg: \$50,000

3. After dissolving the partnership's assets, the Receiver shall notify the court and the parties.

4. This judgment constitutes a final accounting of the partnership's assets as of January 31, 2002, and a final judgment in this action.

Norma L. Shapiro, S.J.