

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

RECEIVED BY O.I.L.J.
2020 FEB 10 AM 10

In re:

FREEDOM PERFORMANCE LLC,

Case No.: 8:19-bk-05338-RCT

Debtor.

Chapter 7

**FINAL APPLICATION FOR ALLOWANCE AND PAYMENT
OF COMPENSATION AND REIMBURSEMENT OF EXPENSES TO
LISA M. CASTELLANO AND THE LAW FIRM OF
GENOVESE JOBLove & BATTISTA, P.A.
AS GENERAL COUNSEL TO THE CHAPTER 7 TRUSTEE¹**

**NOTICE OF OPPORTUNITY TO OBJECT
AND REQUEST FOR HEARING**

Pursuant to Local Rule 2002-4, the Court will consider the relief requested in this paper without further notice or hearing unless a party in interest files a response within 21 days from the date set forth on the attached proof of service, plus an additional three days for service if any party was served by U.S. Mail.

If you object to the relief requested in this paper, you must file a response with the Clerk of the Court, Sam M. Gibbons United States Courthouse, 801 North Florida Avenue, Suite 555, Tampa, Florida 33602, and serve a copy on the movant's attorney, Michael A. Friedman, Esq., Genovese Joblove & Battista, P.A., 100 North Tampa Street, Suite 2600, Tampa, Florida 33602, and any other appropriate persons within the time allowed. If you file and serve a response within the time permitted, the Court will either schedule and notify you of a hearing, or consider the response and grant or deny the relief requested without a hearing.

If you do not file a response within the time permitted, the Court will consider that you do not oppose the relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

1. Name of applicant: Genovese Joblove & Battista, P.A.
2. Role of applicant: General Counsel to the Chapter 7 Trustee

¹ This application is identical to the First Interim Application for Allowance and Payment of Compensation and Reimbursement of Expenses to Lisa M. Castellano and the Law Firm of Genovese Joblove & Battista, P.A. as General Counsel to the Chapter 7 Trustee (Doc. 22), and is only being filed to evidence the finality of the application. Genovese Joblove & Battista, P.A. is not seeking an award of any additional compensation.

- 3. Name of certifying professional: Michael A. Friedman, Esq.
- 4. Date case filed: June 4, 2019
- 5. Date of application for employment: June 7, 2019 (Doc. 4)
- 6. Date of order approving employment: June 10, 2019 (Doc. 6)
- 7. If Debtor's counsel, date of Disclosure of Compensation form: *N/A*
- 8. Date of this application: January 30, 2020
- 9. Dates of services covered: October 1, 2019 through November 14, 2019
- 10. If case is chapter 7, amount trustee has on hand:\$12,799.45²

Fees:

- 11. Total fee requested for this period (from Exhibit 1)\$0.00
- 12. Balance remaining in fee retainer account, not yet awarded\$0.00
- 13. Fees paid or advanced for this period, by other sources.....\$0.00
- 14. **Net amount of fee requested for this period..... \$0.00**

Expenses:

- 15. Total expense reimbursement requested for this period.....\$0.00
- 16. Balance remaining in expense retainer account, not yet received.....\$0.00
- 17. Expenses paid or advanced for this period, by other sources.....\$0.00
- 18. **Net amount of expense reimbursements requested for this period.....\$0.00**
- 19. Gross award requested for this period (#11 + #15).....\$0.00
- 20. **Net award requested for this period (#14 + #18).....\$0.00**
- 21. **If Final Fee Application, amounts of net awards requested in interim applications but not previously awarded (total from History of Fees and Expenses, following pages):.....\$14,559.62**
- 22. **Interim fee and expense award requested (#20 + #21).....\$14,559.62**

² See Doc. 27.

History of Fees and Expenses

1. Dates, sources, and amounts of retainers received:

Dates	Sources	Amounts	For fees or costs?
N/A			

2. Dates, sources, and amounts of third party payments received:

Dates	Sources	Amounts	For fees or costs?
N/A			

3. Prior fee and expense awards:

Dates	Sources	Amounts	For fees of costs?
None			

Certification

1. I have read the Applicant's application for compensation and reimbursement of expenses (the "**Application**").

2. To the best of my knowledge, information and belief formed after reasonable inquiry, the fees and disbursements comply with the U.S. Trustee's Guidelines for reviewing application for compensation and reimbursement of expenses filed by case trustees and professional under Section 330 of Title 11 of the United States Code (the "**Guidelines**"), except as specifically noted in this Certification and described in the Application.

3. Except to the extent that fees or disbursements are prohibited or restricted by the Guidelines, the fees and disbursements sought are billed at rates and in accordance with practices customarily employed by the Applicant and generally accepted by the Applicant's clients.

4. In providing a reimbursable service or disbursement (other than time charged for paraprofessionals and professionals), the Applicant does not make a profit on that service or disbursement (except to the extent that any such profit is included within the permitted allowable amounts set forth in the Guidelines for photocopies and facsimile transmission).

5. In charging for a particular service or disbursement, the Applicant does not include in the amount for which reimbursement is sought the amortization of the cost of any investment, equipment, or capital outlay (except to the extent that any such amortization is included within the permitted allowable amounts set forth herein for photocopies and facsimile transmission).

6. In seeking reimbursement for a service which the Applicant justifiably purchased or contracted for from a third party, the Applicant is requesting reimbursement only for the amount billed to the Applicant by the third-party vendor and paid by the Applicant to such vendor.

7. A complete copy of the Application (including all relevant exhibits) will be

furnished to the Debtor, the U.S. Trustee, and their respective counsel, at the time it is filed with the Court.

8. To my knowledge, there are no variances with the provisions of the Guidelines.

I HEREBY CERTIFY that the foregoing is true and correct.

Dated: January 30, 2020.

Respectfully submitted,

GENOVESE JOBLOVE & BATTISTA, P.A.
General Counsel to the Chapter 7 Trustee
100 N. Tampa Street, Suite 2600
Tampa, Florida 33602
Telephone: (813) 439.3100
Telecopier: (813) 439.3153

By: /s/ Michael A. Friedman
Michael A. Friedman, Esq.
Florida Bar No. 71828
E-Mail: mfriedman@gjb-law.com

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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Lisa M. Castellano and Genovese Joblove & Battista, P.A. (collectively "GJB" or the "Applicant"), counsel to STEPHEN L. MEININGER (the "Trustee"), Chapter 7 Trustee of the bankruptcy estate of FREEDOM PERFORMANCE LLC (the "Debtor"), applies for the final allowance and payment of compensation for professional services rendered and reimbursement of expenses pursuant to Sections 328, 330, 331 and 503(b) of Title 11 of the United States Code (the

“**Bankruptcy Code**”), Rule 2016 of the Federal Rules of Bankruptcy Procedure (“**Bankruptcy Rule(s)**”) and the United States Department of Justice, Executive Office for United States Trustee’s Guidelines for Reviewing Applications For Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 (the “**Guidelines**”).

EXHIBITS TO APPLICATION

1. GJB performed no additional services to the Trustee for which it seeks allowance and payment of compensation and reimbursement of expenses. Accordingly, there are no exhibits to this Application. GJB only seeks approval of the interim fees and costs approved in the First Fee Order on a final basis.

2. Applicant seeks a final order approving the Court’s interim award and payment of fees and reimbursable costs of **\$14,559.62**.³ Applicant submits that the requested fee is reasonable under *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), made applicable to bankruptcy proceedings by *In re First Colonial Corp. of America*, 554 F.2d 1291 (5th Cir. 1977).

I. Retention of Applicant, Disclosure of Compensation and Requested Award

3. On June 10, 2019, the Court entered the Order Approving Application for Entry of an Order Authorizing the Employment of Lisa Castellano and the Law Firm of Genovese Joblove & Battista, P.A. as Counsel to Chapter 7 Trustee, Stephen L. Meininger (Doc. 6 - the “**Employment Order**”).

4. On October 22, 2019, GJB filed its First Interim Fee Application (Doc. 22) seeking an award of fees in the amount of \$14,326.50 and reimbursement of costs in the amount of \$233.12 for the period of June 5, 2019 through September 30, 2019 (the “**First Fee Application**”). On January 24, 2019, this Court entered an Order approving the First Fee Application on an interim

³ See Doc. 6.

basis and awarded GJB fees in the amount of \$14,326.50 and costs in the amount of \$233.12 (Doc. 29 - the “**First Fee Order**”). The First Fee Order was an interim order subject to final approval by this Court.

5. This is Applicant’s final fee application in this case. Applicant does not seek an award of additional fees or costs but seeks approval on a final basis of the interim fees and costs approved in the First Fee Order.

II. Case Background

6. On June 4, 2019 (the “**Petition Date**”), the Debtor filed a voluntary Chapter 7 petition. According to the Debtor’s Petition and Schedules, the Debtor the estimated value of the Debtor had assets worth \$184,275.82 and estimated liabilities of \$252,661.68 on the Petition Date.

7. The Debtor was an automotive shop specializing in the sale and installation of performance vehicle parts. According to the Debtor’s records, on the Petition Date, the Debtor maintained product inventory amounting to \$87,894.00. Upon being appointed the Trustee became responsible, *inter alia*, for protecting the estate’s interest in the valuable inventory supply.

8. On June 10, 2019, the Court entered the Employment Order approving employment of GJB as counsel to the Trustee.

9. The Debtor’s meeting of creditors was held and concluded on July 11, 2019.

10. On November 20, 2019, the Court entered the Order Granting First Interim Application for Allowance and Payment of Compensation and Reimbursement of Expenses to Lisa M. Castellano and the Law Firm of Genovese Joblove & Battista, P.A. as General Counsel to the Chapter 7 Trustee (Doc. 29).

11. On November 14, 2019, the Trustee filed his Notice of Trustee’s Final Report and Applications for Compensation and Deadline to Object (Doc. 27).

III. Services Rendered During the Application Period

12. Because Applicant only seeks approval of the interim fees and costs approved in the First Fee Order on a final basis, there were no additional services rendered during the Application Period.

IV. Evaluation of Services Rendered: First Colonial Considerations

This application presents the nature and extent of the professional services rendered by the Applicant in connection with its services as general counsel for the Trustee. The recitals set forth in the daily diaries attached hereto constitute only a summary of the time spent.

American Benefit Life Ins. Co. v. Baddock (In re First Colonial Corp.), 544 F.2d 1291 (5th Cir.), cert. denied, 431 U.S. 904 (1977), enumerates twelve factors a bankruptcy court should evaluate in awarding fees. *First Colonial* remains applicable in the Eleventh Circuit to the determination of reasonableness of fees to be awarded under the Bankruptcy Code. *Grant v. George Schuman Tire & Battery Company*, 908 F.2d 874 (11th Cir. 1990); 2 COLLIER ON BANKRUPTCY ¶ 330.05[2][a] at 330-33 through 330-37 (L. King 15th ed. 1991); see also *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981). The twelve factors are:

- i) The time and labor required;
- ii) The novelty and difficulty of the questions presented;
- iii) The skill required to perform the legal services properly;
- iv) The preclusion from other employment due to acceptance of the case;
- v) The customary fee for similar work in the community;
- vi) Whether the fee is fixed or contingent;
- vii) The time limitations imposed by the client or circumstances;
- viii) The amount involved and results obtained;

- ix) The experience, reputation and ability of the attorneys;
- x) The undesirability of the case;
- xi) The nature and length of the professional relationship with the client; and
- xii) Awards in similar cases.

First Colonial, 544 F.2d at 1298-99.

Based upon the standards set forth in Sections 330 and 331 of the Bankruptcy Code, as well as in *First Colonial*, Applicant submits that the fair and reasonable value of its services rendered during this case is the amount previously approved and paid under the First Fee Order as interim compensation for the reasons set forth in the First Fee Application, which are incorporated herein.

V. CONCLUSION

The Applicant believes that it has performed valuable services for the Trustee in this case. For this reason and all of the reasons set forth herein and in the First Fee Application, Applicant requests approval on a final basis of the fees and costs approved and paid under in the First Fee Application and First Fee Order.

WHEREFORE, Applicant respectfully requests the Court to enter an Order, on a final basis, approving the Application (i) awarding the fees and costs sought in the First Fee Application on a final basis, and (ii) awarding such other and further relief as the Court deems just and appropriate.

[Remainder of Page Intentionally Left Blank]

DATED this 30th day of January 2020.

GENOVESE JOBLOVE & BATTISTA, P.A.
General Counsel to the Chapter 7 Trustee
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Tampa, Florida 33602
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of January 2020, a true and correct copy of the foregoing document has been furnished via electronic mail by virtue of the Court's CM/ECF system to all parties registered to receive notices of electronic filing in this case; and via First Class U.S. Mail to all parties identified on the attached Mailing Matrix who are not registered users of the Court's CM/ECF System.

By: /s/ Michael A. Friedman
Michael A. Friedman, Esq.

