

IN THE IOWA DISTRICT COURT FOR LINN COUNTY

LORIANN BUSSE, et. al.,	)	
	)	Case No. LACV 083022
Plaintiffs,	)	
	)	RULING AND ORDER
vs.	)	ON DEFENDANT'S BUSSE
	)	FINANCIAL ADVISORS,
JEFFREY BUSSE, et al.,	)	LLC, BUSSE FAMILY
	)	LIMITED PARTNERSHIP AND
Defendants.	)	AB BI NOTE LIMITED
	)	PARTNERSHIP'S
	)	APPLICATION FOR
	)	ATTORNEY'S FEES

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On this 23<sup>rd</sup> day of October, 2017, Defendant's Busse Financial Advisors, LLC (BFA), Busse Family Limited Partnership (BFLP) and AB BI Note Limited Partnership's (ABBI) (Collectively referred to as "Entity Defendants") Application for Attorney's Fees comes before the Court for consideration. The Court has reviewed the Application, Plaintiffs' Resistance and the Reply and issues the following Ruling and Order.

Over the course of representing the Entity Defendants for over a year and a half, Shuttleworth & Ingersoll (S&I) billed a total of 476 hours for a total of \$124,008.50 through the end of trial. Of that, \$14,193.95 was allocated to the representation of the Foundation, recovery of which is not being sought as a part of the Fee Application. S&I charged hourly rates between \$250 and \$270 per hour (\$135 per hour for paralegal work), consistent with local rates and conservative compared to the rates charged by the other counsel in this case. The Entity

Defendants allocate fees among the Entity Defendants (including the Foundation for which they do not seek to recover fees) according to the methodology set forth in Section IV of their Fee Application which the Court has reviewed and finds to be reasonable and in accord with the Court's own view of the relative work involved in representing the various entities.

The fees allocated to BFLP and to BFA involved Plaintiffs' disputes as limited partners of BFLP either with BFA as the General Partner of BFLP or directly with BFLP. These fees are therefore recoverable against Plaintiffs under Article XIX.D. of the BFLP Partnership Agreement. BFA requests an award of \$43,846.65 against Plaintiffs LoriAnn Busse, Lisa Carpentier, Alexandra Renee Carpentier, Devan Michele Carpentier, Marie-Josée Carpentier as limited partners (and as direct beneficiaries of trusts that are limited partners) of BFLP. BFLP requests an award of \$43,708.35 against Plaintiffs LoriAnn Busse, Lisa Carpentier, Alexandra Renee Carpentier, Devan Michele Carpentier, Marie-Josée Carpentier as limited partners (and as direct beneficiaries of trusts that are limited partners) of BFLP.

The fees allocated to AB BI involved Plaintiffs' disputes as limited partners of AB BI directly with AB BI or with BFA as the general partner of AB BI. These fees are therefore

recoverable against Plaintiffs under Article XIX.D. of the AB BI Partnership

Agreement. AB BI requests an award of \$22,077.55 against Plaintiffs LoriAnn Busse and Lisa Carpentier as the direct beneficiaries of their respective Dynasty Trusts, which are limited partners of AB BI.

Plaintiffs filed a Joint Resistance to both the Entity Defendants' and Jeffrey and Lavern Busse's Fee Application. The Court extensively addressed the law applicable to attorney fees claims and many of the arguments Plaintiffs set forth in objecting to the Entity Defendants' Application for Fees in the Court's Ruling and Order on Jeffrey Busse and Lavern Busse's Application for Attorney's Fees filed September 6, 2017. It would add little to restate those Findings here and those Findings are incorporated in their entirety.

Plaintiffs do not dispute that BFA, BFLP, and AB BI are entitled to recover attorney's fees pursuant to the contractual fee shifting provisions of the BFLP and AB BI Partnership Agreements. Both Partnership Agreements include a broad attorney fee provision, providing that the prevailing party is entitled to recover "reasonable attorney's fees and court costs incurred" "in the event a dispute arises between any Partner(s) and the Partnership or between Partners themselves ...." (Trial Ex. 1.d. at 39; Trial Ex. 1.e. at 40.) All of the requested fees stem

from a "dispute between" Plaintiffs as Partners - either directly with the Partnership (BFLP or AB BI) or with BFA as the General Partner. The Entity Defendants' entire fee application should be granted as "appropriate for handling the complete case" on behalf of BFA, BFLP, and AB BI. *GreatAmerica Leasing Corp. v. Cool Comfort Air Conditioning and Refrigeration, Inc.*, 691 N.W.2d 730, 733 (Iowa 2005).

Plaintiffs' Resistance to the Entity Defendants' Application for Fees sets forth two main arguments. First, Plaintiffs seek a 50 percent reduction in fees for the alleged "chilling effect" it would have on plaintiffs seeking recovery in cases in which the legal landscape was unsettled and there is little precedential guidance. The Court rejects that argument for the reasons set forth in its Ruling and Order dated September 6, 2017, and for the reasons set forth in the Entity Defendants' Reply Brief.

Second, Plaintiffs object that the Entity Defendants' Application for Fees:

- a) includes fees for phone calls, meetings and communications with counsel for Jeff and Lavern, which are included in their Fee Application, which unreasonably double or triple-dip;
- b) the Application includes fees for matters unrelated to the defense of the Entity Defendants. As an example, Plaintiffs assert that the Application includes fees for the entirety of the Entity Defendants' preparation for and giving up of their closing argument, even though they assert that a

significant portion of the Entity Defendants' closing arguments regarded the validity of Grantor Trusts swaps, a matter they assert was unrelated to questions of liability of the Entity Defendants;

- c) they assert the Application includes fees that are unreasonable and that they are duplicative, excessive or not containing sufficient supporting evidence.

However, Plaintiffs frankly admit that this second category of objections is rather "minimal" and Plaintiffs seek only a \$2,000 reduction in the Entity Defendants' fees for this reason. The Court has reviewed the second category of minimal objections and finds them all to be unsupported. It was apparent to the Court throughout the pre-trial and trial process that S&I focused their efforts only on the defense of the Entity Defendants and their efforts were not duplicative or unnecessary. Further, the Court finds there to be sufficient detail in the billing statements to support the claim for attorney's fees.

To generally summarize the work by the S&I attorneys, it was excellent. Motions and Briefs were clear, concise but yet thorough. It was obvious to the Court throughout the trial that the S&I attorneys were taking as much of a backseat role as proper representation of their client would allow. The Court shares the view of one of the jurors who told the undersigned after the verdict, "Ms. Oxley didn't say much but when she did,

you really wanted to listen because she made good points.” The amount of fees billed by S&I in comparison to the other parties in this case, certainly demonstrates that there was no double-dipping or work that was not necessarily performed. It is the Court’s view that the Entity Defendants got good value for the fees they paid.

The Court has already issued well in excess of 300 pages of Rulings in this case and this Ruling has already been delayed too long. In the interest of getting this Ruling issued without further delay, the Court adopts all of the reasoning and analysis set forth in the Entity Defendants’ Application for Attorney’s Fees and the Entity Defendants’ Reply. The Entity Defendants’ Application for Attorney’s Fees should be and is hereby granted in its entirety.

IT IS ORDERED, ADJUGED AND DECREED that Defendants Busse Financial Advisors, LLC, Busse Family Limited Partnership and AB BI Note Limited Partnership’s Application for Attorney’s Fees is granted and judgment is entered against Plaintiffs and in favor of the Entity Defendants for attorney’s fees and expenses as follows:

1. \$43,846.65 against Plaintiffs LoriAnn Busse, Lisa Carpentier, Alexandra Renee Carpentier, Devan Michele Carpentier, Marie-Josée Carpentier in favor of Busse Financial Advisors, LLC;

2. \$43,708.35 against Plaintiffs LoriAnn Busse, Lisa Carpentier, Alexandra Renee Carpentier, Devan Michele Carpentier, Marie-Josée Carpentier in favor of Busse Family Limited Partnership; and

3. \$22,077.55 against Plaintiffs LoriAnn Busse and Lisa Carpentier in favor of AB BI Note Limited Partnership.

IT IS FURTHER ORDERED that the Court retains jurisdiction to consider the Entity Defendants' Fee Request, if any, for attorney's fees and expenses incurred after February 9, 2017.

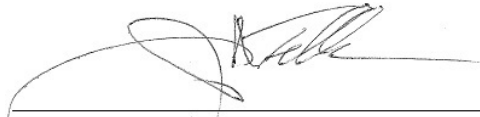


State of Iowa Courts

**Type:** OTHER ORDER

**Case Number** LACV083022  
**Case Title** (BC)LORIANN BUSSE & LISA CARPENTIER ET AL VS JEFFREY BUSSE

So Ordered



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John Telleen, District Court Judge,  
Seventh Judicial District of Iowa