

ROBB EVANS
Receiver of
Assets of James P. Lewis, Jr.,
Financial Advisory Consultants,
Income Fund Ltd. &
Growth Fund Ltd.

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Securities and Exchange Commission v. James P. Lewis, Jr., et al.
CASE No. CV 03-9354 ABC (VBKx)

**Order Requiring James J. Warner to Pay \$13,257.80 in Attorneys' Fees
and to Pay \$3,000 for Depreciation of Asset's Value**

Filed May 19, 2005

ORIGINAL

- Priority
- Send
- Cisd
- Enter
- JS-5/JS-6
- JS-2/JS-3

FILED
CLERK, U.S. DISTRICT COURT
MAY 19 2005
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY
BY *[Signature]*

ENTERED
CLERK, U.S. DISTRICT COURT
MAY 20 2005
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY
BY *[Signature]*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE)
COMMISSION,)
Plaintiff,)
v.)
JAMES P. LEWIS, JR.,)
individually and doing business)
as FINANCIAL ADVISORY)
CONSULTANTS, INCOME FUND, LTD.,)
AND GROWTH FUND LTD.,)
Defendant.)

CASE NO.: CV 03-9354 ABC (VBKx)

**ORDER REQUIRING JAMES J. WARNER
TO PAY \$13,257.80 IN ATTORNEYS'
FEES AND COSTS AND TO PAY \$3,000
FOR DEPRECIATION OF ASSET'S VALUE**

**THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).**

PROCEDURAL BACKGROUND

On April 25, 2005, the Court issued its Findings of Fact and Conclusions of Law Re: Order to Show Cause As to Why James J. Warner and Blakney Boggs Should Not Be Held In Contempt of Court. Therein, the Court found that James J. Warner willfully violated Court's January 22, 2004 Preliminary Injunction Order by refusing to turn over possession of Mr. Lewis's Mercedes Benz automobile ("the car"). The Court also found that the Receiver was entitled to attorneys' fees and costs;¹ however, the Court reserved awarding those fees and costs

¹ Additionally, the Court found that the Receiver was entitled to
(continued...)

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1 until the Receiver had submitted his final computation of attorneys'
2 fees and until Mr. Warner had an opportunity to respond.

3 On May 9, 2005, the Receiver filed a Second Supplemental
4 Declaration of Gary Owen Caris in Support of Order to Show Cause as to
5 Why James J. Warner and Blakney Boggs Should Not Be Held in Contempt
6 of Court ("Second Supplemental Declaration"). Therein, Mr. Caris,
7 counsel for the Receiver, identified the attorneys who worked on the
8 Order to Show Cause, their billing rates, and the amount in fees and
9 costs that the Receiver incurred both in prosecuting the Order to Show
10 Cause and in recovering the car. Additionally, Mr. Caris submitted
11 the attorneys' billing statements, which, according to Mr. Caris,
12 chronicled all of the work involved in prosecuting the Order to Show
13 Cause and in recovering the car. In total, the Receiver requested to
14 be reimbursed \$16,029.80 in fees and costs.

15 On May 17, 2005, Mr. Warner filed an Opposition to the Second
16 Supplemental Declaration. Thereafter, on May 18, 2005, the Receiver
17 filed a Reply to Mr. Warner's Opposition.

18 19 **DISCUSSION**

20 Although the Receiver is entitled to recover most of the
21 requested fees he incurred both in prosecuting the Order to Show Cause
22 and in recovering the car, he cannot recoup all of those fees. First,
23 the Receiver is not entitled to attorneys' fees incurred for work
24 performed exclusively in prosecuting the Order to Show Cause as to Ms.
25 Boggs. For example, the Receiver cannot recover the fees incurred for

26
27 ¹(...continued)
28 any depreciation in the car's value during the time that Mr. Warner
had possession of the car. In total, the car depreciated \$3,000
during that time.

1 analyzing Ms. Boggs's opposition or second opposition to the Order to
2 Show Cause. Likewise, the Receiver is not entitled to fees from Mr.
3 Warner for the numerous billing entries reflecting conversations and
4 correspondence with Ms. Boggs's attorney. Nor should Mr. Warner be
5 required to reimburse the Receiver for fees incurred due to Ms.
6 Boggs's efforts to continue the hearing date regarding the Order to
7 Show Cause. In total, the Court finds that 5.8 of the 48.4 hours
8 listed in the billing statements reflects work related exclusively to
9 Ms. Boggs.² As these fees were not incurred in prosecuting the Order
10 to Show Cause as to Mr. Warner, they are not recoverable as attorney's
11 fees.

12 Second, of the remaining 42.6 hours, the Receiver is not entitled
13 to be reimbursed for fees relating to his own request to continue the
14 original hearing date for the Order to Show Cause. This work, while
15 related to the Order to Show Cause, resulted from the Receiver's
16 inability to attend the hearing on the date set by the Court.
17 Presumably, Mr. Warner was willing to attend the hearing on the date
18 as originally scheduled. Thus, it would be inequitable to force Mr.
19 Warner to pay the costs involved with the Receiver's request to change
20 that date. In total, the Court finds that 2.2 of the 42.6 remaining
21 hours reflect work performed to facilitate the Receiver's request to
22 continue the hearing date.

23 In all other respects, however, the Receiver's request for
24 attorney's fees is reasonable. Indeed, a review of the billing
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26 ² Many of the billing entries refer to work performed in
27 prosecuting the Order to Show Cause as to both Mr. Warner and Ms.
28 Boggs. But as the submissions to the Court made clear, all such work
would have been performed regardless of whether or not Ms. Boggs was
an actual party in the contempt proceedings.

1 statements shows that the number of hours that the Receiver's
2 attorneys billed is well within the range of hours that a reasonably
3 competent attorney would require to bill to adequately prosecute the
4 Order to Show Cause. Moreover, the billing rates for Mr. Caris and
5 his partner, Lesley Hawes, were far from excessive. Both Mr. Caris
6 and Ms. Hawes worked at a discounted rate, and neither of their hourly
7 billing rates exceeded \$350.00 dollars an hour.³ These billing rates
8 are reasonable when compared to the hourly rates of attorneys with
9 similar experience in the Los Angeles legal community.

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11 **III. DISPOSITION**

12 The Court has carefully analyzed the fees and costs that the
13 Receiver allegedly incurred in prosecuting his Order to Show Cause
14 against Mr. Warner. In several instances, the Court has struck
15 billing entries that were not sufficiently related to prosecuting the
16 Order to Show Cause against Mr. Warner or to recovering the car.⁴
17 Having done so, the Court awards Defendant \$13,257.80 in attorney's
18 fees and costs. This number reflects the combined total of the
19 following: (1) 18 hours for Mr. Caris's work, at an hourly billing
20 rate of \$346.50; (2) 22.4 hours for Ms. Hawes's work, at an hourly
21 billing rate of \$310.50; and \$65.60 in costs incurred in prosecuting
22 the Order to Show Cause. The Court also awards the Receiver an
23 additional \$3,000, which reflects the depreciation of the car's value

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26 ³ Mr. Caris's hourly billing rate was \$346.50, and Ms. Hawes
27 hourly billing rate was \$310.50.

28 ⁴ In all such instances, the hours struck reflected work
performed exclusively by Mr. Caris.

SCANNED

1 from June 3, 2004 through February 28, 2005.⁵ Mr. Warner is hereby
2 ORDERED to pay the Receiver a total of \$16,257.80.

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DATED: May 19, 2005

Audrey B. Collins

AUDREY B. COLLINS
UNITED STATES DISTRICT JUDGE

⁵ Mr. Warner contends that the Court should offset this amount by the amount he spent in having the car repaired. This contention lacks merit. Despite having every opportunity to do so, Mr. Warner has never produced any evidence showing that he actually had the car repaired or how much money he spent in allegedly having the car repaired.