COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION

Wallace Ott Inter Vivos Trust
O.C. No. 1251 IV of 1963
Control Nos. 191663 & 197596

Sur Third Account of PNC Bank, N.A., James E. Shyrock, & John S. Prigge, Jr., Co-Trustees

The account was called for audit May 6, 2019 **Before: Herron, J.**
Counsel appeared as follows:
Vincent Carissimi, Esquire, for Accountant
Karl Prior, Esquire, for Objectors
Lisa Rhode, Esquire, for Attorney General as *parens patriae*

ADJUDICATION

Before the Court are objections to the third account of the Wallace Ott Inter Vivos Trust ("Trust"). For the reasons below, the Court finds PNC Bank, N.A. ("Accountant"), is entitled to compensation from Trust income of five percent pursuant to a fee agreement in the form of a letter from Tradesmens Land Title Bank and Trust Company ("Tradesmens") to Wallace Ott ("Settlor"). The Court declines to adjust the specified compensation from income. The letter's silence on compensation from Trust principal permits Accountant to seek a reasonable principal commission. The amount of this principal commission, however, is limited to $145,000.00—as opposed to the approximately $265,000.00 requested by Accountant—since Accountant believed this amount reasonable compensation for its services during the third accounting period. The Court also finds awarding Accountant a principal commission does not violate the Contract Clause of the Pennsylvania Constitution since the law authorizing principal commissions both predates the creation of the Trust and requires fee agreements to expressly proscribe principal commissions. Lastly, the Court finds Accountant's attorney's fees and costs associated with the defense of the third account are not properly incurred expenses of the Trust's administration and

are not reimbursable out of Trust funds. Thus, the objections are overruled in part and sustained in part, and the account is confirmed absolutely.

Background

On June 10, 1954, the Settlor executed a deed of trust for the benefit of his four grandchildren and their issue. The Settlor appointed himself co-trustee of the Trust to serve alongside Tradesmens. Despite its many provisions, the Trust instrument is conspicuously silent on trustee compensation.

The Settlor died on July 18, 1962, prompting Provident Tradesmens Bank and Trust Company ("Provident"), Tradesmens' successor in interest, to file a first account. Intended to discharge the Settlor's estate, this account covered the period of July 10, 1954, to April 4, 1963. There were no objections to the account, and it was confirmed on December 27, 1963. Pursuant to the terms of the Trust instrument, Richard W. Shyrock and John S. Prigge, Jr., assumed responsibilities as successor co-trustees alongside Provident.

On May 14, 2003, Richard died,[1] prompting Accountant, Provident's successor in interest, to file a second account on May 25, 2005. Intended to discharge Richard's estate, the account covered the period of September 10, 1971, to November 8, 2004.[2] Notably, Accountant sought an interim principal commission. There were no objections to the account, and it was confirmed by this Court on July 18, 2005. At the same time, the Court confirmed James E. Shyrock ("Jamie") as Richard's successor pursuant to a majority vote of the income beneficiaries as provided for in the Trust instrument.

[1] To minimize confusion, the Court will refer to some parties by their given names rather than their surnames. This does not mean the Court views the parties informally.

[2] The reason for the eight missing years—1963 to 1971—between the first and second accounts was a fire at the storage facility housing Accountant's records. The fire destroyed the records necessary to prepare an account for those years, so they were excluded from the second accounting period.

On May 15, 2017, John died. After John's death, a majority of the income beneficiaries appointed Robert W. Prigge, Jr., to replace John as co-trustee. Thus, the current trustees are Jamie, Robert, and Accountant.

Intended to discharge John's estate, Accountant filed this third account on April 3, 2019. The account covers the period of November 8, 2004, to May 15, 2017, and states the Trust has a fair market value of $2,615,100.27 and a combined balance of $1,250,716.36. During the third accounting period, Accountant collected fees from Trust income of $49,288.39, or roughly five percent of income.[3] Accountant's petition for adjudication seeks approval of the third account and release from liability as well as approval for attorney's fees and additional compensation in the amount of $265,517.18.

The account was placed on the May 2019 audit list, and notice of the audit was given to all parties in interest.

On May 3, 2019, Jamie and Robert (collectively, "Objectors"), filed objections to the account. The Court consolidates and rephrases the objections as follows:

1. The additional compensation claimed by Accountant is unreasonable and excessive; and

2. The request for a $7,500.00 reserve for attorney's fees as stated in the petition for adjudication and a $15,000.00 reserve for attorney's fees as stated in the account are improper as Accountant should use corporate funds, not Trust funds, to pay for its defense of the account.[4]

[3] This figure is taken from page 64 of the third account; however, page 4 of the rider to the petition for adjudication states the total fees paid to Accountant during the third accounting period was $46,864.27. Further down the page, Accountant states its fees from income total $48,864.27.

[4] Page 9 of the petition for adjudication requests a reserve of $20,770.93 for attorney's fees. Accountant states the purpose of the reserve is twofold. First, $13,270.93 of the reserve is for attorney's fees incurred through March 31, 2019—i.e., during the third accounting period and the preparation of the third account. Second, $7,500.00 of the reserve is for attorney's fees "to complete the matter, filing fees and expenses."

See Objections ¶¶ 1–5. On May 6, 2019, the Commonwealth of Pennsylvania, Office of Attorney General, joined these objections.[5]

A trial on the above objections commenced November 5, 2019. Since the Trust is silent on trustee compensation and no formal fee agreement was thought to exist, Accountant claimed reasonable compensation pursuant to Section 7768 of the Uniform Trust Act ("UTA"). 20 Pa. C.S. § 7768(a). Subsection (d) of Section 7768 creates a presumption of reasonableness for trustee compensation at levels that arise in a "competitive market." *Id.* § 7768(d). The presumption of reasonableness can be rebutted with "compelling evidence to the contrary." *Id.* The parties stipulated Accountant's standard rates arose in a "competitive market" as contemplated by subsection (d). PNC Ex. 4. The Court, therefore, placed the burden to proceed on Objectors to rebut the presumption of reasonableness.

On cross-examination, Objectors called Mikal Payne, the fiduciary advisor in charge of the Trust, who testified to his familiarity with the Trust instrument and the Trust's history. N.T. 11/05/2019, at 15. Objectors questioned Mr. Payne about Accountant's duties as trustee. When asked if the income distribution aspect of the Trust was a "matter of math, not discretion," Mr. Payne agreed. *Id.* at 25. Mr. Payne also testified there are no minor beneficiaries of the Trust, the Trust does not apply a "HEMS" standard to adult beneficiaries,[6] and the Trust holds no real estate interests, closely-held businesses, partnership interests, or loans or notes receivable. *Id.* at 25–27. Generally, the Trust's assets are allocated between bonds and common stocks as well as mutual funds. *Id.* at 28. As for management of the mutual funds, Accountant delegates that

[5] The Trust has two contingent charitable remainder beneficiaries; hence, the Attorney General's involvement pursuant to its *parens patriae* authority.

[6] A "HEMS" standard refers to a trustee's discretion to distribute trust funds for the health, education, maintenance, and support of trust beneficiaries. *E.g.*, Julieanne E. Steinbacher & Adrianne J. Stahl, *Key Tips on the Use of Trusts in Estate and Long-term Care Planning: Looking to the Future*, 82 PA. B. ASS'N Q. 59, 63 (2011).

responsibility to the respective fund's manager. *Id.* When asked whether he agreed the Trust has *not* required Accountant to perform any extraordinary services on behalf of the Trust, Mr. Payne said, "It's a bit subjective, but I suppose, yes." *Id.* at 39.

Mr. Payne's responsibilities also include reviewing Accountant's files related to the Trust. *Id.* at 17. These files encompass correspondence sent by Accountant and its predecessors in interest. *Id.* Nothing in Mr. Payne's review of Accountant's files for the Trust "stood out" as being a fee agreement, not even a 1954 letter from Tradesmens to the Settlor. *Id.* at 44–45. Mr. Payne could not recall whether he had reviewed Tradesmens' letter while preparing the third account but explained even if he had he would not have marked the letter as a fee agreement. *Id.* at 45. When asked whether any letter supersedes or voids Tradesmens' letter, Mr. Payne said, "I'm not aware of any letter that says that." *Id.* at 48.

Dated June 10, 1954, and addressed to the Settlor, the relevant language of the letter is the first paragraph which reads:

> This letter is to advise you that our fee for administering the trust which you established yesterday for the benefit of your grandchildren will be the same as that which we are currently charging in Mrs. Ott's Deed of Trust and in your personal Deed of Trust; *namely 5% of the income collected.*

Ex. O–2 (emphasis added). The letter is signed by Sidney B. Dexter, assistant vice president for Tradesmens, who also signed the Trust instrument on Tradesmens' behalf. *Id.*; Ex. O–1, at 9.

In keeping with Tradesmens' letter, a file memo dated October 8, 1962, reads:

> We are preparing to file an account due to the death of settlor, who was also the individual trustee. The trust, which is for the benefit of four grandchildren, continues. *There is no record of a commission agreement, and we have charged 5% on income.* W. T. Schramm recommended that no request be made at this time for principal compensation.

Ex. O–19 (emphasis added).

Objectors then questioned Mr. Payne about several documents produced by Accountant and its predecessors in interest, each referencing the trustee's compensation of five percent of income. N.T. 11/05/2019, at 55–60. In particular, a letter from Provident dated May 3, 1977, includes the following remark:

> *At the present, we are charging income at a rate of 5% of the income collected each quarter.* We have been charging this rate since 1962 and, therefore, we would like to request both your approvals and the approvals of Mrs. Koelle and Mr. Robert Prigge to increase this rate to 7% of the income collected.

Ex. O–6, at 1 (emphasis added). The beneficiaries never approved Provident's requested increase. N.T. 11/05/2019, at 60. Time and again the Trust was charged the customary five percent of income fee. *See, e.g.*, Ex. O–8 (account review committee minutes from 1999 stating the Trust would not be moved to trustee's new fee schedule). Accountant never moved the Trust to its standard fee schedule despite a "standing directive" to move all trusts from "legacy fee schedules." N.T. 11/05/2019, at 23.

More recently, on August 21, 2018, Mr. Payne sent Jamie an email about Accountant's preparation of the third account. In the email, Mr. Payne stated Accountant would seek court approval for a "one-time principal fee of $145,000.00 . . . as compensation for fiduciary services rendered during the accounting period." Ex. O–11, at 2. Mr. Payne described the $145,000.00 principal commission as a "gesture of good faith" since it was half of what Accountant would have charged in fees under its standard fee schedules. N.T. 11/05/2019, at 77. Mr. Payne also believed the sum was reasonable. *Id.* at 78.

Asked if anyone complained the costs of administering the Trust exceed Accountant's compensation of five percent of income, Mr. Payne said, "It has not been explicitly stated to me in that fashion, no." *Id.* at 83. By way of explanation, Mr. Payne stated how the nature of trust administration and trustee compensation have changed greatly in the years since the Trust was

established in 1954, and the Trust has not kept pace with those changes. *Id.* at 84. Yet Mr. Payne argued the timing of Accountant's lump-sum fee request actually benefited the Trust because "those assets stayed invested in the markets and there was growth on growth." *Id.* at 85.

On direct examination, Objectors then called Jamie who testified Accountant never approached him during the third accounting period about either its fee schedule or additional compensation. *Id.* at 94. Jamie only became aware of Accountant's desire for additional compensation via the August 2018 email. *Id.* Jamie described himself as "dumbfounded" when confronted with Accountant's request for additional compensation as he believed Accountant's compensation was limited to five percent of income. *Id.* at 95.

On cross-examination, Jamie stated the basis for believing a fee agreement was due to the fact Accountant, and its predecessors in interest, "always charged five percent, as far as I know, since 1954. To me, that is an agreement." *Id.* at 99. But Jamie never reviewed a copy of the Trust instrument until after the August 2018 email. *Id.* at 108. Jamie also never inquired during the third accounting period about the possibility of additional fees and was never told by Accountant it was waiving its right to additional compensation. *Id.* at 111. Despite claiming he would have removed Accountant as co-trustee and taken the Trust elsewhere had he known Accountant's plan to seek additional compensation, Jamie presented no facts suggesting the Trust would have received comparable services for a reduced fee with a different corporate fiduciary. *Id.* at 112–14, 118, 131. Then again, Jamie had no reason to explore other corporate fiduciaries before receiving the August 2018 email. *Id.* at 128.

Objectors rested after Jamie's testimony and moved for leave to amend their pleadings in light of Tradesmens' letter and arguments about impairment of contract due to retroactive

application of Section 7768 of the UTA. The Court concluded the day by granting Objectors leave to amend but ordered them to file a petition to amend in writing.

On November 13, 2019, Objectors filed their petition to amend objections. Objectors state they uncovered Tradesmens' letter from 1954 during the discovery phase of this case at around the same time Accountant produced a carbon copy of the letter. Pet. to Amend Objections ¶ 12. Objectors aver this letter is a fee agreement. *Id.* ¶ 14. Objectors also argue the alleged fee agreement was never modified by the parties, and the parties' course of dealing confirms the existence of the agreement. *Id.* ¶ 17. Objectors claim any attempt to "retroactively graft [Accountant's] fee schedule into an existing fee agreement would constitute impairment of contract in violation of the Pennsylvania Constitution." *Id.* ¶ 28.

On November 18, 2019, Accountant filed an answer to Objectors' petition in which Accountant emphatically denies the existence of a fee agreement. Answer to Pet. to Am. Objections ¶ 6. Accountant reasons Tradesmens' letter is not a contract because

> [t]he word "agreement" or any words to that effect are never used. There is no evidence of an offer and acceptance; no evidence of consideration by the [S]ettlor and no evidence of a meeting of the minds. To the contrary, the letter is, quite plainly, informational only. The letter clearly states that the bank is *advising* the [S]ettlor what it intends to charge, never seeking Settlor's agreement nor referencing one. Finally, the letter is most assuredly not signed by the [S]ettlor as required by 20 Pa. C.S.A. § 7768(b).

Id. ¶ 14. Alternatively, Accountant argues if Tradesmens' letter is a fee agreement the letter is

> an agreement that only addresses income commissions. That does not prohibit, under common law or statute, [Accountant] receiving reasonable principal commissions. . . . In addition, even if there was an agreement that specifically limited [Accountant's] commissions to 5% of income and explicitly excluded principal commissions, [Accountant] would still be entitled to an award of reasonable compensation as a 5% income only agreement is unreasonable and the duties of a trustee have unquestionably become substantially different from those contemplated at the inception of the [T]rust.

Id. ¶ 32.

On November 26, 2019, the Court granted Objectors' petition to amend, and Objectors filed their amended objections soon after. The Court consolidates and rephrases the amended objections as follows:

1. Accountant's request for reasonable compensation pursuant to Section 7768 of the UTA would unconstitutionally impair the parties' contract pursuant to the Contract Clause of the Pennsylvania Constitution as Trademens' letter is a valid fee agreement in accordance with *In re Estate of Breyer*, 379 A.2d 1305 (Pa. 1977), and predates the enactment of the UTA;

2. The presumption of reasonableness for trustee compensation arising in a competitive market provided by subsection (d) of Section 7768 does not mean that compensation is reasonable in all circumstances. Section 7768 does not require rote application of a trustee's fee schedule. Rather, Section 7768 lists multiple factors a court may consider when determining reasonable compensation, including what is reasonable "under the circumstances"; and

3. Accountant has either waived or is estopped from asserting its right to additional compensation above the five percent of income specified in Tradesmens' letter as it failed to identify, reserve, or reference its right to seek additional compensation in the future.

See Am. Objections ¶¶ 31–60. On December 11, 2019, the Commonwealth of Pennsylvania, Office of Attorney General, filed a joinder to the amended objections.

The Court continued the trial to February 11, 2020. At that time, Accountant called Mr. Payne to testify. On direct examination, Mr. Payne reiterated his primary duties as the fiduciary advisor of the Trust and the steps taken to familiarize himself with the Trust instrument and the Trust's administration. N.T. 02/11/2020, at 7–8. Mr. Payne's review of both the physical and electronic records did not unearth any documents specifically referencing a fee agreement with the Settlor. *Id.* at 8; *see also* Ex. O–19.

On cross examination, Objectors circled back to the August 2018 email. Mr. Payne reaffirmed his belief in the reasonableness of the $145,000.00 principal commission. N.T. 02/11/2020, at 24. Asked why he believed the amount reasonable, Mr. Payne said:

> Well, so there's several considerations that we were taking into account when making this decision. So the first thing is that, once we made the calculations of what the fees would have been and we believed that we were entitled to that amount, so certainly any number south of there we thought was reasonable for the beneficiaries as a compromise or some sort of discount that we thought [would] engender goodwill with the family. And from our perspective what we were trying to do is to try and avoid the time and hassle of litigating these things, and to get to that result more expeditiously we thought that it was reasonable as an offer.

Id. at 25. Before the August 2018 email, however, Accountant never informed Objectors it expected additional compensation for its services. *Id.* at 29.

Accountant then called Linda Manfredonia, a fiduciary consultant once employed by Accountant. On direct examination, Ms. Manfredonia recounted her decades of experience in the field of trust administration. *Id.* at 54–58. Ms. Manfredonia testified to her management of trusts dating "from practically the 1800s all the way through the 2000s." *Id.* at 59. As a result, she is well acquainted with the various forms fee agreements have taken over time. Fee agreements circa 1954 when the Trust was created generally "would have been either a letter that was countersigned by the parties in interest" or "a formal agreement that had the word agreement on it that the parties signed. The word 'agreement' would have been somewhere on the face of the document." *Id.* at 61–62. In Ms. Manfredonia's opinion, Tradesmens' letter lacks the telltale signs of a fee agreement, and it is more of an "introductory letter." *Id.* at 62.

As for the five percent of income fee mentioned in Tradesmens' letter, Ms. Manfredonia labeled it the era's "industry standard." *Id.* at 63. Further, a five percent of income fee was not considered total compensation as certain "triggering events"—e.g., the death of a trustee—might cause the surviving trustees to seek interim principal commissions. *Id.*

Ms. Manfredonia then testified at length to her familiarity with the changes in the law affecting the administration of trusts. *Id.* at 64. She detailed the shift in investment philosophy from income generation and principal preservation as well as the use of "legal lists" to the

prudent investor standard and modern portfolio theory. *Id.* at 65–67. These changes drastically increased trustees' overhead. *Id.* at 71. "To go from a list to a small universe of investments that you review and analyze and oversee to what's expected of a fiduciary today, the staff alone responsible to oversee those investments has just exploded in terms of volume." *Id.*

Ms. Manfredonia also testified to the increased regulatory oversight of trusts from government entities like the Office of the Comptroller of the Currency and the Federal Reserve. *Id.* at 73. These entities expect trustees to "have in place a very substantial due diligence process that is ongoing" for screening outside investments. *Id.* Moreover, "things like [the] Bank Secrecy Act, Patriot Act, Sarbanes-Oxley, Dodd-Frank, all of those rules and regulations as well as expectations of the regulators have really escalated to the point to require that we have an incredibly robust risk management oversight process of literally everything we do." *Id.* at 77. To that end, there are four "layers" of risk management: (1) a monitoring team reviews the work performed by the trust advisors; (2) an internal audit team audits the monitoring team; (3) an internal compliance team reviews the audit team; and (4) the risk managers oversee everyone. *Id.* at 78. These redundancies did not exist in the 1950s. *Id.*

Similarly, Ms. Manfredonia detailed the "enormous impact" of technology on trustee duties. *Id.* at 75.

> From capturing data and ensuring that it is accurately and timely reported, to ensuring that clients have access to information about their accounts that they never required historically. So we used to send a client a paper statement maybe once a quarter. Now, clients absolutely expect to have real time access to all information with regard to their particular accounts and relationship, which for high volume business is, you know, very complicated and complex.

Id. Also, the demand from clients to access information electronically has increased as quarterly and monthly statements have ballooned to the "size of phone books." *Id.* at 76.

Asked how these revolutions in trust administration affected fee schedules, Ms. Manfredonia said:

> So the income-only fee schedules existed when our primary accountability and responsibility was aligned with producing income for income beneficiaries. Over time, as it became more standard to ensure that we were managing assets appropriately in the environment for both principal and income beneficiaries, the schedules began to evolve and allocate expense, if you will, represented by the fees that we charged across the beneficiaries that we were working for.

Id. at 68. By that point it became "much more common" to charge fees against trust principal as the law no longer prioritized "one class of beneficiary over the other." *Id.* Fee schedules also changed to reflect the increased costs of trust administration. *Id.* at 79.

As for how changes in trust administration affected clients, Ms. Manfredonia said the new regulations may be "cumbersome" but they benefit clients because they "make sure that everything we do as a trustee is in that client's best interest and that we don't make mistakes. And if we do, we catch and correct them to the benefit of the client. And that there are no frauds perpetrated on any of our clients." *Id.*

On cross examination, Ms. Manfredonia conceded that in all the time she worked for Accountant she was never directly responsible for the day-to-day management of the Trust. *Id.* at 81–82. Having familiarized herself with the Trust for purposes of this litigation, Ms. Manfredonia agreed the Trust instrument is silent on trustee compensation. *Id.* at 83, 85. She also stated Accountant would "potentially" deviate from its fee schedules in order to attract new business or retain existing business. *Id.* at 105.

After a brief redirect and re-cross, Ms. Manfredonia was excused, Accountant rested, and the parties agreed to submit their closing arguments in writing.

Discussion

This Court has jurisdiction over *inter vivos* trusts as well as fiduciaries and their accounts. 20 Pa. C.S. § 711(3), (12). Moreover, in a non-jury proceeding like this, "the factfinder is free to believe all, part, or none of the evidence. Credibility determinations and consideration of conflicts in the evidence are within the purview of the trial court." *In re Estate of Mikeska*, 217 A.3d 329, 336 (Pa. Super. Ct. 2019) (cleaned up).[7]

This discussion will address the objection to Accountant's compensation before addressing the objection to Accountant's attorney's fees. Nested within the first objection are several sub-issues, and the Court addresses each in turn.

A. Accountant's compensation

As the name suggests, trusts are predicated on settlors having the utmost faith and confidence in their chosen trustee, that the trustee is willing and able to undertake the difficult task of properly managing the trust corpus for the beneficiaries. This usually means appointing someone—e.g., a relative—familiar with the beneficiaries' "full financial and personal circumstances." Deborah S. Gordon, *Trusting Trust*, U. KAN. L. REV. 497, 546 (2015); *see also* David B. Zoob, *Exceptions to the Liabilities of Trustees*, 83 U. PA. L. REV. 726, 733 (1935) (noting a complete absence of corporate fiduciaries in early trust history). At the same time, modern trust law "affirmatively requires the trustee to manage investments to achieve a favorable overall return, to understand a trust's (and its beneficiaries') purposes and risk tolerance, to diversify holdings, and to delegate investment responsibility if the trustee lacks the

[7] The parenthetical "cleaned up" denotes when an author quoting a court's decision "has removed extraneous, non-substantive material like brackets, quotation marks, ellipses, footnote reference numbers, and internal citations" as well as any other alteration "made solely to enhance readability." Jack Metzler, *Cleaning Up Quotations*, 18 J. APP. PRAC. & PROCESS 143, 154 (2017). The author represents that he has otherwise faithfully reproduced the quoted text. *Id.* For an example of the parenthetical's use in a published opinion, see *PPL Elec. Utils. Corp. v. City of Lancaster*, 214 A.3d 639, 648 (Pa. 2019).

requisite expertise." Gordon, *supra*, at 508; *see also Estate of Fridenberg v. Commonwealth*, 33 A.3d 581, 590 (Pa. 2011) (discussing the rise of modern portfolio theory and the prudent investor standard). For this reason, many settlors appoint a corporate fiduciary to serve as trustee, or co-trustee, as a lay trustee may not possess the necessary expertise, or the time needed to acquire competence is too lengthy or burdensome, or the risk involved is too steep. Also, an institution can provide continuous service without fear of an interruption in the trust's management. *In re Estate of Cahen*, 394 A.2d 958, 963 (Pa. 1978). Mindful of an individual trustee's mortality and wanting to avoid possible mismanagement at the hands of well-intentioned but inept loved ones, a settlor may opt for a corporate fiduciary that assures the settlor it will perform as advertised by charging a fee equal to its abilities and range of services.

Much to the chagrin of *laissez-faire* types, a trustee does not have a free hand in setting its compensation. After all, every dollar collected in fees is one less dollar for the beneficiaries. Nevertheless, it is a truth universally acknowledged, that a trustee, having ably administered a trust, must be in want of a fee. *In re Trust of Ischy*, 415 A.2d 37, 42 (Pa. 1980) ("[I]t is presumed that fiduciaries will receive reasonable compensation for their services.").

Mindful of this tension, the General Assembly divided trustee compensation into the specified and the unspecified, each governed by its own particular rules. If a trustee's compensation is specified in either the trust instrument or a separate fee agreement, a trustee is entitled to the agreed-upon compensation subject to possible adjustment by the court. 20 Pa. C.S. § 7768(b). If unspecified, a trustee is entitled to "reasonable" compensation as determined by the court based on several factors. *Id.* § 7768(a). Thus, the Court must determine, as an initial matter, whether Accountant's compensation is specified.

1. Tradesmens' letter and specified compensation from income

The Trust instrument is silent on trustee compensation, but Objectors claim Tradesmens' letter is a fee agreement specifying Accountant's compensation. Accountant argues Tradesmens' letter is not a fee agreement, or at least it is unlike any fee agreement with which it is familiar. Nonetheless, Supreme Court of Pennsylvania precedent *In re Estate of Card*, 9 A.2d 557 (Pa. 1939), and *In re Estate of Breyer*, 379 A.2d 1305 (Pa. 1977), would suggest otherwise.

In *Card*, the trustee, over a thirty-four-year period, retained two percent of the income of the trust as compensation. 9 A.2d at 558. When it filed its account, the trustee sought an additional one percent of all income it had received and distributed. *Id.* The beneficiaries of the trust objected to the trustee's request for additional compensation, but the trustee argued the settlor expressly authorized the payment of a larger commission from income. *Id.* at 559. In support of its argument, the trustee produced a letter written by the trustee to the settlor. It reads:

> From the following information you gave me this morning, I am of the opinion that 1% for services as Executor would be reasonable, and as to the Trustee, that so long as the securities were not changed a charge of 2% on the income of the Trusts would be reasonable. *Should it become necessary to convert the securities, then I think the compensation of the Trustee should be increased to 3% of the income, under the conditions you have named.*

Id. (emphasis added). Finding this letter authorized increased compensation, the auditing judge confirmed the trustee's account, and the beneficiaries appealed. *Id.* at 558.

On appeal, the Supreme Court of Pennsylvania reversed the auditing judge, holding the letter was not a fee agreement. *Id.* at 559. Since the conditions for an increased commission were not set out in the letter, the court found the terms of the purported agreement, as they related to additional compensation above the customary two percent of income, so indefinite as to render the agreement void for uncertainty. *Id.* In short, more explicit language was need as it was "essential to an understanding of the terms of the undertaking." *Id.*

While the *Card* court held the letter at issue was not a contract, the opinion implies the letter could have constituted a contract had the language been more precise. Nearly forty years after *Card*, the court held just that.

In *Breyer*, the trustee filed its account seeking an interim principal commission. 379 A.2d at 1307. The beneficiaries objected to the commission, claiming the trustee had entered into a fee agreement barring interim principal commissions. *Id.* The beneficiaries argued a letter sent by the trustee to the settlor limited the amount, source, and timing of the trustee's compensation. *Id.* The operative portion of the letter reads as follows: "This is to advise you in accepting these trusts that *our charge for commissions will be 2% on the income as received and 1% on the principal at the termination of the trusts.*" *Id.* (emphasis added). The auditing judge rejected the argument the letter was a fee agreement prohibiting interim principal commissions and instead found the letter indicated only an agreement to limit the amount of principal commissions to one percent. *Id.* at 1308.

On appeal, the Supreme Court of Pennsylvania reversed the auditing judge, holding the letter was a contract barring the payment of interim principal commissions.[8] *Id.* at 1309. The court found the letter had reduced to writing the parties' understanding and the terms were unambiguous. *Id.* Confined to the four corners of the contract, the letter precisely fixed the amount and timing of the trustee's compensation as well as how its compensation would be allocated between income and principal. *Id.* at 1310. Besides, assuming the agreement were ambiguous and extrinsic evidence was needed to understand the parties' agreement, that evidence would compel a similar conclusion. *Id.* Over the thirty-year life of the trust, the trustee

[8] The Supreme Court of Pennsylvania held the letter in *Breyer* was a contract based on undisputed testimony of one of the trustee's vice presidents that the letter was, in fact, a contract. *Id.* at 1309. Therefore, the issue before the court was one of contract *interpretation*, not contract *formation*. *See id.*

never sought interim principal commissions, had a standing policy not to charge principal commissions until the termination of a trust, and any ambiguity about the amount, timing, and allocation of commissions should be construed against the drafter of the letter—i.e., the trustee. *Id.* Therefore, the trustee was barred from collecting interim principal commissions. *Id.*

Here, the parties do not claim Tradesmens' letter is ambiguous or uncertain. No, Accountant denies the existence of any underlying agreement between the Settlor and Tradesmens. Accountant claims there is no evidence of offer, acceptance, a meeting of the minds, or consideration—the ingredients of a valid contract. Accountant also argues Tradesmens' letter never uses the word "agreement," that the letter was only "informational." This argument strikes deeper than the analyses in either *Card* or *Breyer*.

That Tradesmens' letter is not a contract because it does not use the magic word "agreement" is a non sequitur. The inclusion or omission of the word "agreement" is not the deciding factor in whether a contract exists. Only pedantry requires use of the word. "An agreement is a valid and binding contract if: the parties have manifested an intent to be bound by the agreement's terms; the terms are sufficiently definite; and there was consideration." *In re Estate of Hall*, 731 A.2d 617, 621 (Pa. Super. Ct. 1999).

Guided by *Card* and *Breyer*, the Court finds the terms of Tradesmens' letter are definite. The letter contains none of the vague conditional language discussed in *Card*, so the contract is not void for uncertainty. Instead, Tradesmens' letter, like the letter in *Breyer*, unequivocally states the amount, source, and timing of Tradesmens' compensation: "five percent of the income collected." The letter is clear and unambiguous as it relates to trustee compensation from income. Also, valuable consideration exchanged hands as Tradesmens received a five percent of income fee for promising the Settlor it would administer the Trust for the beneficiaries.

The remaining issue is whether the parties intended to be bound by Tradesmens' letter. "In ascertaining the intent of the parties to a contract, it is their outward and objective manifestations of assent, as opposed to their undisclosed and subjective intentions, that matter." *Ingrassia Constr. Co. v. Walsh*, 486 A.2d 478, 483 (Pa. Super. Ct. 1984); *see also* RESTATEMENT (FIRST) OF CONTRACTS § 71 cmt. a ("The mental assent of the parties is not requisite for the formation of a contract. If the words or other acts of one of the parties have but one reasonable meaning, his undisclosed intention is immaterial except when an unreasonable meaning which he attaches to his manifestation is known to the other party."). So long as there is mutual assent based on all objective signs, offer and acceptance "need not be identifiable and the moment of formation need not be pinpointed." *Ingrassia*, 486 A.2d at 483.

Here, the Court finds the Settlor and Tradesmens manifested an intent to be bound by the terms of Tradesmens' letter. Tradesmens drafted the letter the same day as the Trust's execution, the letter explicitly mentions Tradesmens' compensation, and the letter drew no protest from the Settlor. Under these facts, a reasonable person would assume the Settlor and Tradesmens discussed the matter of compensation and there was a meeting of the minds on that issue. The letter itself suffices to prove this, but the parties' later conduct lends added support. In the wake of the letter, the Settlor transferred the Trust corpus to Tradesmens, and Tradesmens proceeded to administer the Trust. For years, Tradesmens calculated its fee for services rendered exactly as prescribed by the letter. From June 1954 until his death in July 1962, the Settlor never objected to this fee nor sought Tradesmens' removal as trustee because it collected this fee. And why would the Settlor want to remove Tradesmens when it never strayed from the fee specified in the letter? Whatever the parties' hidden aims with respect to Tradesmens' letter, the record manifests the parties' intent to perform according to its terms.

Furthermore, Accountant claims Tradesmens' letter is not a fee agreement because it is not signed by the Settlor as required by subsection (b) of Section 7768 of the UTA. This is incorrect. Subsection (b) provides: "If a trust instrument or written fee agreement signed by the settlor *or anyone who is authorized by the trust instrument to do so* specifies a trustee's compensation, the trustee is entitled to the specified compensation." 20 Pa. C.S. § 7768(b) (emphasis added). Tradesmens' letter may not be signed by the Settlor, but it is signed by Mr. Dexter on Tradesmens' behalf. Like the trustee's letter in *Breyer*, when Mr. Dexter wrote and signed the letter to the Settlor memorializing the fee agreement, he acted as Tradesmens' representative—i.e., someone authorized by the trust instrument to specify trustee compensation.

Thus, the arrangement between the Settlor and Tradesmens was manifestly a deal, and Tradesmens' letter is not just "informational." The letter is a valid and binding contract fixing Accountant's compensation from income at the specified five percent.

2. Adjusting Accountant's specified compensation from income

Having determined Accountant's compensation is specified, the Court must decide whether to adjust the specified compensation. Subsection (b) of Section 7768 states a court "*may* allow reasonable compensation that is more or less than that specified." *Id.* (emphasis added). The three instances in which a court may adjust specified compensation are: (1) the trustee's duties are "substantially different" from those at the time the trust was created or the fee agreement entered into; (2) the specified compensation is unreasonable; and (3) the trustee has performed "extraordinary services" which are not provided for in the trust instrument or fee agreement. *Id.* § 7768(b)(1)–(3).

Accountant does not claim it performed extraordinary services requiring an adjustment of specified compensation. Instead, Accountant argues a five percent of income fee agreement is unreasonable and its duties are substantially different than those at the creation of the Trust.

It is written, "For to every one who has will more be given,"[9] but not so in the realm of specified trustee compensation. Where a valid agreement between settlor and trustee fixes the terms of the trustee's compensation, "courts must ordinarily enforce the terms of the agreement without making an independent determination of whether the terms are reasonable." *In re Trust of Duncan*, 391 A.2d 1051, 1055 (Pa. 1978). But Pennsylvania courts have recognized exceptions to the rule of strict compliance with trustee compensation provisions, *id.*, and those exceptions are now codified. 20 Pa. C.S. § 7768(b)(1)–(3). An appeal to these exceptions places the burden of proof on the party seeking deviation from the terms of the trust instrument or fee agreement. *Duncan*, 391 A.2d at 1055. Any deviation must be supported by clear and convincing evidence of the nature, extent, and value of the trustee's services to the trust. *Id.* That the terms "no longer appear, with the benefit of hindsight, to be reasonable for the services actually performed" will not support an adjustment of specified compensation. *Id.*

Here, the Court does not find a five percent of income fee agreement to be unreasonably low. For starters, Accountant intends to continue serving as the corporate fiduciary of the Trust.[10] This without more obviates Accountant's claim the specified compensation is too low. *See id.* (stating adjustment of specified compensation allowed "where the compensation fixed by the agreement is so low that the unwillingness of a competent trustee to continue or undertake to administer the trust would defeat or substantially impair its purposes"); *In re Estate of Smith*, 874

[9] *Matthew* 25:29 (Rev. Standard Version).

[10] The Court concludes this based on the fact the petition for adjudication asks the Court award the Trust principal to Accountant for continued administration.

A.2d 131, 137 (Pa. Super. Ct. 2005) ("[W]hen the question is whether the trustee compensation is so low as to thwart the purpose of the trust, . . . the proper inquiry is whether a competent trustee would service the trust at the designated rate of compensation."). If the five percent agreement were too low, why does Accountant persist in administering the Trust? Is Accountant a glutton for punishment, or does it just anticipate a court-approved increase of its compensation? One might expect an unreasonably low fee to produce unwillingness on Accountant's part to continue as the corporate fiduciary, but Accountant displays no unwillingness and has not expressed any intention of resigning its office.

Also, Accountant failed to meet its burden under *Duncan* by not presenting clear and convincing evidence a five percent of income fee agreement is unreasonably low. That evidence could have taken the form of testimony stating a five percent of income fee impaired the proper administration of the Trust, or no other corporate fiduciary would assume the trusteeship for the specified fee, or similar evidence suggesting the specified compensation from income was unreasonable. On the contrary, Mr. Payne testified Accountant has never complained the cost of administering the Trust exceeds its five percent of income fee. The Court refuses to award Accountant additional compensation from income because, with the benefit of hindsight, Accountant does not consider the fee agreement financially advantageous.

Likewise, the Court finds Accountant failed to meet its burden under *Duncan* by not presenting clear and convincing evidence of how its duties are so substantially different as to warrant an adjustment of its specified compensation. The Court readily concedes the trust landscape underwent, as Ms. Manfredonia testified, a radical transformation between 1954 and the present. Moreover, Accountant is correct when it states "[m]uch has changed from the days when the lone trust officer could almost single-handedly administer a trust." Accountant's Br. at

5. But Ms. Manfredonia's testimony dealt only in generalities and did not specifically address how this panorama of change directly affected the administration of *this* Trust. In short, Accountant's evidence never progressed from the casual to the causal, and the Court cannot assume historical processes in a given field affect all things within that field or affect them in the same way. Without testimony linking changes in trust administration overall to concrete changes in Accountant's duties vis-à-vis this Trust, the Court cannot find Accountant's duties to be substantially different. If anything, Mr. Payne's testimony shows administration of the Trust is a "matter of math, not discretion," and his statements about the run-of-the-mill nature of the Trust's administration undermines Accountant's claim of substantially different duties.

Moreover, some of the changes Ms. Manfredonia identified are immaterial. For example, the abolition of the "legal list" of investments had no effect on the Trust.

At the time of the Trust's creation, and unless otherwise provided by the trust instrument, Section 940 of the Fiduciaries Act of 1949, No. 121, 1949 P.L. 512, 558, limited a trustee's ability to make, retain, and manage investments to those "proscribed by law generally for fiduciaries," *id.*, and the Fiduciaries Investment Act of 1949, No. 544, 1949 P.L. 1828, identified those investments that bore the General Assembly's imprimatur. *See Fridenberg*, 33 A.3d at 590 (stating Pennsylvania's legal list consisted mainly of "conservative income generators . . . such as bonds and first mortgages").

But as with most trust law, the legal list was not mandatory, and Section 18 of the Fiduciaries Investment Act of 1949 provided:

> The testator or settlor in the instrument establishing a trust may prescribe the powers, duties and liabilities of the fiduciary regarding . . . the acquisition, by purchase or otherwise, retention, and disposition, by sale or otherwise, of any property which, at any time or by reason of any circumstance, shall come into his control; and whenever any such provision shall conflict with this act, such provision shall control notwithstanding this act.

1949 P.L. at 1837. Hence, a settlor could elide the legal list with careful drafting.

Here, the Settlor included language in the Trust instrument enlarging the trustees' investment powers beyond the scope of the Fiduciaries Investment Act of 1949. Section 2(5)(b) of the Trust instrument reads:

> The Trustees and their successors shall have *the following powers in addition to those vested in them by law* and by other provisions hereof and applicable to all property held by them and which shall be exercisable by them without the order of any court and until such property is actually distributed: . . . *[t]o invest in all forms of property without restriction to investments authorized for Trustees*, except that nothing herein contained shall authorize the investment by said Trustees of any funds forming a part of this trust in certificates of participation in mortgages nor in mortgages created by individuals covering properties used for commercial or industrial purposes where the entire indebtedness created by such mortgage shall be held by the Trustees herein as sole obligees . . . .

Ex. O–1, at 3, 4 (emphasis added). Subject only to a narrow caveat, this language in the Trust instrument negated the restrictions imposed by the legal list. In fact, this language is akin to a fiduciary's broad investment powers under the prudent investor standard. *See* 20 Pa. C.S. § 7203(b) ("A fiduciary may invest in every kind of property and type of investment, including, but not limited to, mutual funds and similar investments, consistent with this chapter."). Thus, the abolition of the legal list is not a substantial change in Accountant's duties.

Even if the Court found Accountant's duties are substantially different, Accountant also failed to meet its burden under *Duncan* by not presenting clear and convincing evidence of the *value* of its substantially different duties—i.e., how the Trust tangibly benefited from Accountant's new duties. Again, Ms. Manfredonia spoke in generalities about how "everything" modern trustees do is in that client's "best interest," how correcting errors and preventing fraud accrues to the client's benefit. Agreed, but these bromides inadequately address the issue of

value. Without more specific testimony, the Court cannot properly appraise Accountant's alleged substantially different duties and adjust its specified compensation accordingly.

Thus, the Court declines to adjust Accountant's specified compensation from income.

3. Accountant's compensation from principal

Tradesmens' letter is ambiguous insofar as its wording does not expressly prohibit interim principal commissions. Unlike the letter in *Breyer* which explicitly provided a one percent termination fee from principal, and which the court interpreted as barring any interim principal commissions whatsoever, Tradesmens' letter does not reference compensation from Trust principal at all. On its face, this silence is susceptible to at least two reasonable interpretations: (1) Accountant is not authorized to receive any principal commissions; or (2) the parties left the issue subject to the prevailing law governing principal commissions.

Applying the doctrine of *contra proferentem,*[11] all ambiguities should be construed against Tradesmens, the drafter of the letter, and its successor in interest, Accountant. *Caveat scriptor*: let the writer beware. Also, the parties' course of dealing over the life of the Trust could suggest Accountant waived its right to principal commissions or equity dictates Accountant is estopped from seeking a principal commission. Under either theory, Accountant's compensation would be limited to the customary five percent of income.[12] But things are not that simple.

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[11] A Latin phrase that roughly translates as "against the offeror," the doctrine of *contra proferentem* requires ambiguous provisions in a contract to be construed against the drafter of the contract. *E.g.*, RESTATEMENT (SECOND) OF CONTRACTS § 206. "A contract is ambiguous if it is reasonably susceptible of different constructions and capable of being understood in more than one sense." *Hutchinson v. Sunbeam Coal Corp.*, 519 A.2d 385, 390 (Pa. 1986).

[12] In addition to waiver and equitable estoppel, Objectors also raise clean hands as a bar to Accountant's request for a principal commission; however, Objectors waived the doctrine of clean hands when they failed to raise this defense in their objections.

Clean hands is an affirmative defense, *Luitweiler v. Northchester Corp.*, 319 A.2d 899, 902 (Pa. 1974), and affirmative defenses, if not pleaded, are waived. PA. R. CIV. P. 1032(a); *see also Val. Forge Hist. Soc. V. Wash. Mem. Chapel*, 479 A.2d 1011, 1016 n.4 (Pa. Super. Ct. 1984) (discussing how pleading rules apply to Orphans'

First, Accountant has not waived its right to principal commissions. The question of waiver is case-specific and fact-intensive. *Compare In re Account of Reed*, 357 A.2d 138, 142 (Pa. 1976) (no waiver presumed from trustee's failure to seek interim principal commissions during her lifetime), *with Card*, 9 A.2d at 559 (waiver found from thirty-four-year failure to claim additional compensation from income). Nonetheless, "where a fiduciary either by words or deeds creates a basis for a reasonable belief that compensation will not be sought, a beneficiary should be entitled to rely on such a belief." *Ischy*, 415 A.2d at 43. Declining to seek compensation does not thwart a trustee's right to seek compensation at a later time. *Id.* ("[O]ur research reveals no prior case in which the mere failure to express an intention to collect compensation in the future has been sufficient to support a finding of waiver."); *In re Appeal of Wister*, 86 Pa. 160, 162 (1878) ("In the absence of an agreement to waive commissions, the mere holding over of them for a proper account would be no waiver."); *see also Breyer*, 379 A.2d at 1311 n.7 (noting trustee's failure to regularly demand principal commissions is not evidence of an agreement never to seek them, and a reasonable explanation for seeking belated principal commissions is simple: earlier commissions proved insufficient).

Accountant's inaction is insufficient evidence of waiver, especially considering Accountant sought, and the Court granted, an interim principal commission as part of its second account only fifteen years ago. Accountant never expressly waived its rights, nor can its failure to seek a principal commission sooner be reasonably construed as waiver as it was under no legal

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Court proceedings). Objections are a responsive pleading to a fiduciary's account and petition for adjudication/statement of proposed distribution. *Compare* PA. O.C. RULE 1.3 (defining "pleading" as "a type of legal paper that must be signed and verified"), *with id.* 2.7(b) (stating objections must be in writing, signed by counsel, and verified by at least one objector).

Here, Objectors raised the doctrine of clean hands for the first time in their brief. Objectors' Br. at 24–25. Since Objectors did not raise this defense in either their original or amended objections, it has been waived.

obligation to make regular demands on principal in order to preserve its right to principal commissions. Thus, the Court finds Accountant has not waived its right to anything.

As for equitable estoppel, the defense "recognizes that an informal promise implied by one's words, deeds or representations which leads another to rely justifiably thereon to his own injury or detriment, may be enforced in equity." *Novelty Knitting Mills, Inc. v. Siskind*, 457 A.2d 502, 503 (Pa. 1983). "The two essential elements of equitable estoppel are inducement and justifiable reliance on that inducement." *Id.* Equity aids the vigilant, though, and if the party asserting equitable estoppel "had knowledge of the truth, or had the means by which with reasonable diligence he could acquire the knowledge so that it would be negligence on his part to remain ignorant by not using those means, he cannot claim to have been misled." 3 JOHN NORTON POMEROY, EQUITY JURISPRUDENCE § 810, at 219 (Spencer W. Symons ed., 5th ed. 1941); *see also Vail v. Nw. Mut. Life Ins. Co.*, 61 N.E. 651, 652 (Ill. 1901) ("A party claiming the benefit of an estoppel cannot shut his eyes to obvious facts, or neglect to seek information that is easily accessible, and then charge his ignorance to others.").

Here, as in the waiver context above, Accountant's failure to make regular demands for a principal commission cannot reasonably form an implied promise never to seek a principal commission since the law does not require trustees to make such regular demands. Also, even if Accountant's inaction somehow induced Objectors' reliance on Accountant never seeking a principal commission that reliance is baseless considering this Court granted Accountant a principal commission as part of the second account. Objectors were, therefore, on notice as to Accountant's preferred—and legally permissible—practice of waiting to file an account before claiming a principal commission. Moreover, Jamie testified he never made inquiries during the

third accounting period regarding Accountant's compensation. The Court cannot overlook how Objectors' incuriosity formed the basis of their ignorance. Thus, equitable estoppel is inapposite.

Second, the fact Tradesmens' letter is silent on interim principal commissions does not bar principal commissions. Subsection (a) of Section 7768 of the UTA provides: "Neither a compensation provision in a trust instrument nor a fee agreement governs compensation payable from trust principal *unless it explicitly so provides*." 20 Pa. C.S. § 7768(a) (emphasis added); *see also In re Estate of Schwenk*, 490 A.2d 428, 432 (Pa. 1985) (holding trustee not entitled to terminal principal commission where trust instrument explicitly limited trustee compensation to income); *Cahen*, 394 A.2d at 963 (holding trustee not entitled to interim principal commissions where trust instrument explicitly provided for terminal principal commissions); *Breyer*, 379 A.2d at 1310 (same). *But see In re Trust of Thomas*, 5 Fid. Rep. 2d 306, 307–08 (O.C. Phila. 1985) (holding trustee entitled to interim principal commission where trust instrument only specified compensation of one and one-half percent of the trust's net income).

Tradesmens' letter may be a fee agreement, but it does not *explicitly* proscribe principal commissions. The Court declines to interpret the letter's silence as a prohibition against interim principal commissions or, for that matter, *any* commissions from principal.[13] Thus, Accountant may seek an interim principal commission.

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[13] Pennsylvania courts have repeatedly held where the trust instrument allowed for interim income commissions but was silent on terminal principal commissions, this silence did not bar terminal principal commissions. *See Reed*, 357 A.2d at 141 (holding terminal principal commission allowed since trust was silent on termination compensation and only "compensation from income was 'expressly proscribed' by the provisions of the will"); *In re Trust of Kennedy*, 72 A.2d 124, 126 (Pa. 1950) (holding trustees entitled to terminal principal commission because there was "no suggestion that the deductible commission on income was to be in complete discharge of the trustees' services with respect to the corpus"); *In re Indenture Agreement of Lawson*, 607 A.2d 803, 805 (Pa. Super. Ct. 1992) (holding compensation clause limiting compensation to trust income "by its terms applies only to compensation 'during the continuance of the trust'" and did not preclude a terminal principal commission).

As the Supreme Court of Pennsylvania stated in *Kennedy*: "[A trustee's] *prima facie* right to remuneration . . . is not to be overridden by a mere implication drawn from incidental mention in the deed of trust of a five per cent commission to the trustees on income. That reference . . . evidences no intended bearing on the extent of the trustees' full remuneration." 72 A.2d at 126.

4. Calculating Accountant's interim principal commission

Like all jurisdictions that have adopted the UTA, Pennsylvania does not have a statutory fee schedule for trustees. Favoring a more flexible standard, the adjective used to limn the bounds of trustee compensation is "reasonable." 20 Pa. C.S. § 7768(a). Generally, a trustee bears the initial burden of proving the reasonableness of the compensation claimed which must bear some relation to services actually performed and not an arbitrary metric. *Ischy*, 415 A.2d at 42. *But see* 20 Pa. C.S. § 7768(d) (providing a court may consider "the market value of the trust and may determine compensation as a fixed or graduated percentage of the trust's market value"). When determining reasonable compensation, a court should consider the "character of the services rendered, the responsibility incurred, and the zeal and fidelity with which the trust of the accountants was carried out." *In re Estate of Taylor*, 126 A. 809, 810 (Pa. 1924).

The bedrock law governing reasonable trustee compensation remains valid but was modified by the UTA. Notably, subsection (d) of Section 7768 of the UTA upends the traditional analysis of reasonable trustee compensation by creating a presumption of reasonableness for trustee compensation arising in a "competitive market." 20 Pa. C.S. § 7768(d). The presumption is a kind of heuristic designed to bypass the fact-intensive inquiry into the reasonableness of trustee compensation. Under this regime, the trustee has an initial burden of proving only its requested compensation arose within a competitive market before the burden shifts to the objector to present "compelling evidence to the contrary."[14] *Id.*

Reed, *Kennedy*, and *Lawson* are distinguishable from the situation here as all three cases involve termination fees, and neither this Trust nor Accountant's tenure as trustee are ending. Yet each case stands for the proposition a trustee is entitled to additional compensation from principal in the face of language which, at first glance, would limit trustee compensation to an agreed amount of income. In short, the compensation clauses in *Reed*, *Kennedy*, and *Lawson* were not interpreted as representing total compensation for all the trustees' services.

[14] The Probate, Estates, and Fiduciaries Code ("PEF Code") generally, and the UTA in particular, contain several references to burdens of proof—both the preponderance of the evidence standard and the clear and convincing evidence standard. Subsection (d) of Section 7768, however, is the only mention of the "compelling evidence to the

The parties stipulated Accountant's requested compensation arose in a "competitive market" as contemplated by subsection (d) of Section 7768. Thus, Accountant's requested compensation from principal gained the benefit of the presumption of reasonableness. The burden shifted to Objectors to produce compelling evidence Accountant's compensation was unreasonable, and that evidence appears in the record—namely, Accountant's August 2018 email. Accountant stated in the email it would seek a principal commission of $145,000.00, later describing the sum as a "gesture of good faith" and a way to "engender goodwill with the family." This gesture was not part of settlement negotiations or the like as the email predates this litigation by seven months.

Accountant's magnanimity pleases the Court as it rarely sees such acts of noblesse oblige. If Accountant believed $145,000.00 was a reasonable principal commission, why then the Court agrees. To hold otherwise means Accountant can seek cover behind Section 7768's presumption of reasonableness despite the fact it was prepared to accept a principal commission considerably lower than what its fee schedules would require of the Trust. The Court will not condone this tactic and finds Accountant's email compelling evidence of the unreasonableness of its requested principal commission.

That said, between the second and third accounts the fair market value of the trust increased from $1,996,897.75 to $2,615,100.27—an increase of over $600,000.00. Also, $944,388.43 of Trust income was distributed to the beneficiaries during the third accounting

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contrary" standard in either the UTA or the PEF Code. Neither statute nor case law define this term of art. In the absence of controlling authority, and considering its use in the context of shifting burdens and a rebuttable presumption, the Court finds "compelling evidence to the contrary" in subsection (d) synonymous with the clear and convincing evidence standard used in other Orphans' Court proceedings such as will contests. *See, e.g.*, *In re Estate of Kuzma*, 408 A.2d 1369, 1371 (Pa. 1979) ("The burden of proving testamentary capacity is initially with the proponent; however, a presumption of testamentary capacity arises upon proof of execution [of a will] by two subscribing witnesses. Thereafter, the burden of proof as to incapacity shifts to the contestants to overcome the presumption by clear, strong and compelling evidence.").

period (spanning thirteen years) compared to only $102,320.27 of Trust income distributed to the beneficiaries during the second accounting period (spanning thirty-three years). Under these circumstances, it is difficult to justify not granting an interim principal commission, but the extent of that commission must be curtailed by Accountant's email.

Thus, Accountant is entitled to an interim principal commission of $145,000.00 which is reasonable given the Trust's outstanding performance over the third accounting period.

5. Impairment of contract

Lastly, Objectors argue awarding Accountant an interim principal commission pursuant to Section 7768 unconstitutionally impairs the parties' contract since Tradesmens' letter is a fee agreement and predates the enactment of the UTA. This argument is more anti- than climax.

Mirroring its federal counterpart, the Contract Clause of the Pennsylvania Constitution states: "No . . . law impairing the obligation of contracts . . . shall be passed." PA. CONST. art. I, § 17; *see also* U.S. CONST. art. I, § 10, cl. 1 ("No State shall . . . pass any Law impairing the Obligation of Contracts . . . ."). There is no material textual difference between the Contract Clauses of the United States and Pennsylvania Constitutions, and Pennsylvania courts turn to federal case law interpreting the former to aid in understanding the latter. *E.g.*, *Paronese v. Midland Nat'l Ins. Co.*, 706 A.2d 814, 816–19 (Pa. 1998) (holding retroactive application of revocation-upon-divorce statute to insurance contract violated the Contract Clauses of the United States and Pennsylvania Constitutions), *abrogated by Sveen v. Melin*, 138 S. Ct. 1815, 1821 (2018) (holding retroactive application of revocation-upon-divorce statute to insurance contract does not violate the Contract Clause of the United States Constitution).

The purpose of the Clause is to "protect those contracts freely arrived at by the parties to them from *subsequent* legislative impairment." *First Nat'l Bank of Pa. v. Flanagan*, 528 A.2d

134, 137 (Pa. 1987) (emphasis added). On its face, the Clause appears absolute, but its prohibition does not eclipse the State's police power. *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 241 (1978). As the Supreme Court of the United States wrote over a century ago:

> It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the State from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power, which in its various ramifications is known as the police power, is an exercise of the sovereign right of the Government to protect the lives, health, morals, comfort and general welfare of the people, and is paramount to any rights under contracts between individuals.

Manigault v. Springs, 199 U.S. 473, 480 (1905); *see also Hudson Cty. Water Co. v. McCarter*, 209 U.S. 349, 357 (1908) (Holmes, J.) ("One whose rights, such as they are, are subject to state restriction cannot remove them from the power of the State by making a contract about them. The contract will carry with it the infirmity of the subject matter.").

To prevent the Clause from becoming completely toothless, there are limits to a State's ability to impair contracts pursuant to its police power. The test for whether a State is properly exercising its police power under the Clause has three prongs: (1) whether the law "substantially impairs" a contractual relationship; (2) if the law substantially impairs a contractual relationship, whether the law has "a significant and legitimate public purpose . . . such as the remedying of a broad and general social or economic problem"; and (3) if a legitimate public purpose is found, whether the law adjusting the contractual relationship is a "reasonable" and "appropriate" means of advancing that purpose. *Energy Reserves Grp., Inc. v. Kan. Power & Light Co.*, 459 U.S. 400, 411–12 (1983). *But see Sveen*, 138 S. Ct. at 1821–22 (referring to a "two-step test" which encompasses the three prongs identified in *Energy Reserves*).

Here, the Court need not proceed past the first prong: substantial impairment. The substantial impairment prong has three components: "whether there is a contractual relationship,

whether a change in law impairs that contractual relationship, and whether the impairment is substantial." *Gen. Motors Corp. v. Romein*, 503 U.S. 181, 186 (1992). True enough Tradesmens' letter establishes a contractual relationship, but Objectors' argument fails on the second component requiring actual impairment.

Awarding interim principal commissions here does not impair, let alone substantially impair, Tradesmens' letter. As detailed below, the law authorizing interim principal commissions (now codified in Section 7768 of the UTA) predates the execution of Tradesmens' letter by more than a year, and the Contract Clause only prevents retroactive, not prospective, impairment. The same law also required trustee compensation clauses to explicitly proscribe principal commissions if that was the intent of the parties. Since the law authorizing interim principal commissions predates Tradesmens' letter, the letter is a species of contract, and the contract is silent on interim principal commissions, the law authorizing interim principal commissions is not an impairment but an implied term of the parties' agreement (and the Trust). *See, e.g.*, *Petty v. Hosp. Serv. Ass'n of Ne. Pa.*, 23 A.3d 1004, 1012 (Pa. 2011) ("[T]he laws in place at the time of a contract's execution are incorporated into the contract . . . .").

The law authorizing interim principal commissions is a derogation of the common law rule which generally barred those commissions. *In re Estate of Williamson*, 82 A.2d 49, 53 (Pa. 1951) (citing multiple cases). In *Williamson*, the Supreme Court of Pennsylvania outlined the bar on interim principal commissions as follows:

> We have repeatedly decided that except in extraordinary or unusual circumstances a trustee is to be compensated *only at the termination of the trust or at the ending of the trustee's connection therewith.* No *interim* commission on principal is ordinarily allowable under the law so declared. Where, however, extraordinary services are rendered, or unusual labor is entailed, an *immediate* allowance is permissible.

Id. (cleaned up). At the time, a trustee's highest priority was to preserve the trust corpus until the time of distribution. *E.g.*, RESTATEMENT (FIRST) OF TRUSTS § 176. Interim principal commissions were disallowed as they siphoned money from the trust corpus during the life of the trust, reducing its earning power. *See, e.g.*, *In re Estate of Mylin*, 32 Pa. Super. 504, 505 (1906).

Acknowledging the bar on interim principal commissions may have outlived its usefulness, the *Williamson* court stated:

> It may well be that present conditions demand that the system requires general revision. If this be true, such radical change should be made by the *Legislature* and not by the Court. We decline to overrule the host of our decisions over such a long period. . . . [B]efore a change of such magnitude should be enacted by the Legislature, there should be a wide and searching investigation by a legislative committee concerning the entire subject matter . . . .

82 A.2d at 54.

In 1953, apparently in response to *Williamson* and a year before the Trust was created, the General Assembly enacted legislation vitiating the rule against interim principal commissions absent unusual or extraordinary circumstances. Section 1 of the Act of May 1, 1953, No. 10, 1953 P.L. 190, 191, provided: "Neither the fact that a fiduciary's service has not ended nor the fact the trust has not ended shall be a bar to the fiduciary receiving compensation for his services out of the principal of the trust." *Id.* And Section 2 of the Act provided:

> Whenever it shall appear either during the continuance of a trust or at its end, that a fiduciary has rendered services for which he has not been fully compensated, the court having jurisdiction over his accounts shall allow him such original or additional compensation out of the trust income or the trust principal or both, as may be necessary to compensate him for the services theretofore rendered by him.

Id. Both Sections applied to "ordinary and extraordinary services alike" and repealed "effective immediately" the bar on interim principal commissions. *Id.*

Regarding prospective as well as retroactive application, Section 5 of the Act provided:

> This act shall apply: (1) To all services heretofore rendered by any fiduciary; (2) To all services hereafter rendered by any fiduciary heretofore appointed; (3) To all services hereafter rendered by any fiduciary hereafter appointed in a trust heretofore created; and (4) *To all services hereafter rendered by any fiduciary of a trust hereafter created.*

Id. (emphasis added); *see also In re Estate of Ehret*, 235 A.2d 414, 421 (Pa. 1967) (holding retroactive repeal of interim commission rule constitutional since, "absent a statute *or a controlling provision by a testator or a settlor*, there is no vested right in a beneficiary in the time of payment of a commission" (emphasis added)).

The Act did not mandate interim principal commissions of all trusts. Section 4 of the Act provided that where a trustee's compensation was "expressly prescribed" by a trust instrument or separate agreement, "nothing in this act shall change in any way the rights of any party in interest or of the fiduciary." 1953 P.L. at 191. Thus, the new rule was a default rule only.[15]

The Act was later repealed, re-enacted, and amended with the PEF Code in 1972 then the UTA in 2006. *Fridenberg*, 33 A.3d at 586–87. Each version preserved the Act's authorization of interim principal commissions. *See id.* But to understand why the General Assembly repealed the bar on interim principal commissions one must place the Act in context.

Early trustees served gratuitously as many believed the expectation of payment promoted greed and other vile character traits. *See* GEORGE G. BOGERT & GEORGE T. BOGERT, THE LAW OF TRUSTS AND TRUSTEES § 975, at 3 (2d rev. ed. 1983); *see also* Zoob, *supra*, at 733 (stating early trusteeship "was accepted not as a matter of profit, but as a gratuitous burden"). The lack

[15] Legislatures and courts have long used default rules to approximate settlors' intent, and the Act of May 1, 1953, is no different. The Act supplied a statutory presumption a settlor would not object to the trustee receiving principal commissions absent explicit language to the contrary. Section 7768 of the UTA works the same way. Section 7705 of the UTA states all trust law is default law except those mandatory rules listed under subsection (b). 20 Pa. C.S. § 7705(a). The provisions of Section 7768 which govern compensation payable from principal are not listed among the mandatory rules. *Id.* § 7705(b)(1)–(14).

of compensation, however, was a double-edged sword. On one hand, it ensured a trustee's honor. On the other hand, it incentivized laziness. All work and no pay made Jack a dull trustee.

Trustee inertia was possible since the early trust was simply "a device for holding and transferring real property within the family,"[16] and the trustee had "few duties, few powers, and few skills." John H. Langbein, *Questioning the Trust-Law Duty of Loyalty: Sole Interest or Best Interest?*, 114 YALE L.J. 929, 940 (2005) [hereinafter Langbein, *Questioning*]. But a system of aloof, amateur, and unpaid trusteeship could not last.

The novice trustee's demise came when "the trust ceased to be primarily a tool for conveying ancestral lands and became instead a device for the active management of a portfolio of financial assets." *Id.* at 941. As one noted jurist observed: "Wealth, in a commercial age, is made up largely of promises." ROSCOE POUND, AN INTRODUCTION TO THE PHILOSOPHY OF LAW 236 (1922). Most modern wealth does not take the form of land; rather, wealth manifests as stocks, bonds, mutual fund shares, and other securities backed by contractual rights against the issuer. These assets are the warp and woof of modern trusts, and they demand skilled, active management to keep pace with dynamic market forces. *See* Gordon, *supra*, at 503–04 (stating investments change by "under or over-performing, reacting to world events, or re-forming into a different shape altogether").

The fundamental shift in the nature of wealth and how families transfer that wealth to succeeding generations via trusts entailed a parallel change in the rules governing trustee compensation. The social and economic conditions that once allowed unpaid laymen and

[16] In a different article, Professor Langbein explains the trust's origins as a popular means of avoiding harsh intestacy rules like dower and primogeniture. *See* John H. Langbein, *Why Did Trust Law Become Statute Law in the United States?*, 58 ALA. L. REV. 1069, 1071–72 (2007). Most draconian inheritance restrictions have made their way to the ash heap of history; however, many still choose not to bequeath their wealth outright, favoring the prolonged, structured, and managed approach offered by a trust—as is the case here.

dilettantes to serve as trustees slowly vanished as trusts were funded with complex financial assets. These assets required trustees who were more than confidantes of the settlor. A trustee had to possess ample knowledge of the governing trust instrument, the law affecting its interpretation, fiduciary administration, regulatory compliance, accounting, taxation, *and* investment strategy. This expertise does not come cheap, yet gratuitous trusteeship meant the skilled professionals needed for trusts to remain viable were off limits. But the cost-benefit analysis was clear: "the advantages of using skilled professionals came to outweigh the disadvantage of having to compensate them." Langbein, *Questioning*, *supra*, at 941.

As early as 1836, Pennsylvania allowed trustees "reasonable and just" compensation. *Williamson*, 82 A.2d at 55 (citing the Act of June 14, 1836, No. 175, 1835-36 P.L. 628). In practice, courts allowed trustees "a reasonable allowance on the income passing through [their] hands during the term of the trust and, at the end of the trust, reasonable compensation from the corpus." *Kennedy*, 72 A.2d at 126. The interim commission was the *amuse-bouche* while the terminal commission was the entrée. This paradigm made trustee recruitment easier, and judges no longer had to actively discourage people from accepting trusteeships due to a lack of payment. Zoob, *supra*, at 734. To quote the Bard: "If money go before, all ways do lie open."[17]

Nonetheless, the scheme of interim income commissions and terminal principal commissions was not without its critics and proved unsatisfactory to many. *See, e.g.*, *Williamson*, 82 A.2d at 56–57 (Bell, J., concurring in part and dissenting in part) ("This rule is so unnecessarily harsh . . . . There is no fairness or justice in any longer applying such a principle to [a long-term] trust."). Trustees wanted fair and, above all, *prompt* payment for services

[17] WILLIAM SHAKESPEARE, THE MERRY WIVES OF WINDSOR act 2, sc. 2, ll. 169–70.

rendered, but this was impossible under a rule requiring trustees to wait until some future, frequently unknown, date to receive full compensation.

The only thing that produces more ire than the mechanical application of outdated legal rules is the seemingly glacial pace of reform, but by the mid-twentieth century the rules governing trustee compensation were primed for change. The terminal principal commission rule no longer made sense, if it ever did, considering the law entitled a trustee to a principal commission. What difference did it make if the principal commission was paid in more than one installment so long as it did not affect the total amount of the award? Hence, the Act of May 1, 1953, authorizing interim principal commissions.

Addressing the policy goals of the Act, the Supreme Court of Pennsylvania wrote:

> Realistically speaking, it is a matter of common knowledge that financial and modern conditions have changed so greatly . . . that we . . . should allow, if earned, the payment of a fair and reasonable interim commission on principal to a (non-executor) trustee of a long-term trust. Without such a policy rule to cope with modern conditions and to "make both ends meet," how otherwise in these days can a corporate trustee continue to exist as a fiduciary, and why otherwise would an individual trustee, or indeed a bank or trust company, ever accept a long-term trust?

Ehret, 235 A.2d at 421.

At the time of the Trust's creation, all the parties concerned should have known the Act of May 1, 1953, unambiguously altered the rights of all future trustees to receive interim principal commissions. Given a trustee's right to seek interim principal commissions, it would have been in the Settlor's interest to specifically negate this right for Tradesmens and its successors in interest if that was the intent of the parties. And the Settlor was not some unwitting individual wholly unfamiliar with trusts and trustee compensation. Quite the opposite. The Trust, as attested to in Tradesmens' letter, was the Settlor's second trust, and his wife had a trust of her own, too. Given the Otts' familiarity with trusts and, by extension, trustee compensation,

it is possible the Settlor relied on the pre-1953 rule barring interim principal commissions when creating the Trust, but that reliance was misplaced given the legislative sea-change that happened more than a year before its creation.[18]

As it stands, the Court finds no evidence of an intent to bar interim principal commissions in either the Trust instrument or Tradesmens' letter. Thus, interim principal commissions have been available to Accountant and its predecessors *ab initio*,[19] and awarding Accountant an interim principal commission does not unconstitutionally impair the parties' contract.

6. Conclusion

The objection to Accountant's compensation is SUSTAINED IN PART and OVERRULED IN PART. Accountant's compensation from income is fixed at the five percent of income it has collected per Tradesmens' letter while compensation from principal is limited to an interim commission of $145,000.00.

B. Accountant's attorney's fees

Objectors argue Accountant's attorney's fees and costs for the defense of the third account should be paid out of Accountant's corporate funds, not Trust funds. The Court agrees.

Litigants would, if they could, "pay liberally out of the pockets of their adversaries," *Alexander v. Herr*, 11 Pa. 537, 539 (1849), yet each side generally pays its own attorney's fees. 42 Pa. C.S. § 1726(a)(1). The obligation to pay one's attorney's fees does not apply when "there

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[18] In light of the Act of May 1, 1953, the scrivener's failure to explicitly address principal commissions in the Trust instrument would give rise to a colorable claim of legal malpractice if not for the passage of time.

[19] If Objectors dislike Accountant's right to principal commissions they can always negotiate a new fee agreement with Accountant barring those commissions. Accountant will either agree or not. If Accountant does not agree, Objectors, as the individual trustees, are empowered by the Trust's portability clause to remove Accountant and appoint a successor corporate fiduciary who will agree. *See* Ex. O–1, at 8. Alternatively, Objectors could leave well enough alone and follow the procedure established by this litigation: wait until the filing of an account and object to any request for principal commissions. The choice is theirs.

is express statutory authorization, a clear agreement of the parties[,] or some other established exception." *Mosaica Acad. Charter Sch. v. Bensalem Twp.*, 813 A.2d 813, 822 (Pa. 2002).

Here, the UTA expressly authorizes payment of a trustee's attorney's fees out of a trust. "A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for expenses that were properly incurred in the administration of the trust." 20 Pa. C.S. § 7769(a)(1). Specifically, subsection (a)(1) "authorizes the reimbursement of expenses that the trustee incurs to defend the trustee's administration absent the trustee's breach of trust." *Id.* § 7769, J. St. Gov't Comm'n cmt. 2005. Other authorities support this position. *See Allard v. Pac. Nat'l Bank*, 663 P.2d 104, 112 (Wash. 1983) (stating an award of attorney's fees is appropriate when "the litigation is indispensable to the proper administration of the trust; the issues presented are neither immaterial nor trifling; the conduct of the parties or counsel is not vexatious or litigious; and that there has been no unnecessary delay or expense"); RESTATEMENT (THIRD) OF TRUSTS § 88 cmt. d (stating trustee can properly incur expenses for reasonable counsel fees and other costs in "bringing, defending, or settling litigation as appropriate to proper administration or performance of the trustee's duties," and this right of indemnification applies "even though the trustee is unsuccessful in the action, as long as the trustee's conduct was not imprudent or otherwise in violation of a fiduciary duty").

Nevertheless, "the responsibility for determining the amount of counsel fees rests primarily with the auditing judge." *In re Estate of Thompson*, 232 A.2d 625, 631 (Pa. 1967) (cleaned up). The trial court always has "the authority to reduce to a 'reasonable and just' level those fees and commissions claimed by the fiduciary *and her counsel*." *In re Estate of Sonovick*, 541 A.2d 374, 376 (Pa. Super. Ct. 1988) (emphasis added).

Objectors allege neither breach of fiduciary duty by Accountant nor the defense of an account is an illegitimate part of trust administration. Still, the Court finds the defense of the third account an unnecessary expense due to Accountant's imprudent conduct.

In its August 2018 email, Accountant told Objectors it would seek $145,000.00 in additional compensation. The sum has been referred to as a "compromise" and a "discount" designed to "engender goodwill" and "avoid the time and hassle" of litigation. Yet for reasons unknown, between August 2018 and the filing of the third account in April 2019, Accountant changed course and blindsided Objectors with a request for $285,503.25 in additional compensation which was later reduced to $265,517.18—$120,000.00 more than Accountant's original figure. It is unclear why Accountant ignored its own sage advice. Conventional wisdom says never burn bridges, but Accountant apparently loves the smell of smoke.

The Court cannot pretend that had Accountant hewed to its original $145,000.00 request everything would be copacetic. Jamie testified that, in his opinion, any amount of additional compensation is unreasonable. N.T. 11/05/2019, at 120. But the fact Accountant never had a full and honest conversation with Objectors on the subject of compensation—then sought a fee significantly higher than what it had originally told Objectors—guaranteed a long and costly legal fight resulting in a Pyrrhic victory.[20] The Court will not reward that outcome, nor the folly that precipitated it, by allowing Trust funds to pay Accountant's attorney's fees.

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[20] In 279 BC, King Pyrrhus defeated the Roman Republic at the Battle of Asculum, but his army suffered heavy casualties. While surveying the corpse-strewn field, one of Pyrrhus's officers congratulated him on his victory, and Pyrrhus said, "If we are victorious in one more battle with the Romans, we shall be utterly ruined." 9 PLUTARCH, PLUTARCH'S LIVES 417 (Bernadette Perrin trans., The Loeb Classical Library 1920) (c. 100 AD).

Objectors, like Pyrrhus, have won a battle but might have lost the war. They have successfully reduced Accountant's compensation and attorney's fees but incurred tens of thousands of dollars of their own attorney's fees in the process. Usually, these fees are of no moment in themselves. If, for example, an objector wishes to pay out of pocket to challenge an account, so be it. But that is not the case here.

On December 3, 2019, Objectors filed a petition in which they asked the Court to order Accountant to honor a decision of the majority of the trustees: that Trust funds pay for Objectors' attorney's fees. In its answer, Accountant characterized the objections are "meritless" and "baseless" and Objectors' strategy as "obvious and

Thus, the objection is SUSTAINED insofar as Accountant's attorney's fees and costs associated with the defense of the third account are not properly incurred expenses of the Trust's administration and are not reimbursable out of Trust funds. As for Accountant's attorney's fees and costs during the third accounting period, including the preparation and filing of the third account, these are proper expenses and are reimbursable out of Trust funds.

Conclusion

All objections having been addressed, the account shows a balance of principal of $1,285,000.25—which includes a principal commission of $216,038.89. Adjusted to reflect an interim principal commission of $145,000.00, the balance of principal totals $1,356,039.14. The account shows a balance of income of –$54,269.96—which includes an additional income commission of $69,464.36. Adjusted to reflect an income commission of $0.00, the balance of income totals $15,194.40. Thus, the combined balances of principal and income total $1,371,233.54. This sum, composed as stated in the account, plus income received since the filing thereof, subject to distributions already properly made, is awarded as set forth in the petition of adjudication:

Income

Robert W. Prigge, Sr.	25%
Katherine O. Koelle	12.5%

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improper"; however, Accountant conceded that if Objectors "were to substantially succeed on their objections, then, and only then, will they have an argument that their fees should be paid from the Trust."

The Court finds nothing improper in Objectors challenging the third account: Objectors had standing to object both as trustees and beneficiaries of the Trust; they followed proper procedure throughout; and the objections were neither trifling nor immaterial. Where once was uncertainty, there is now clarity thanks to Objectors' efforts with benefits accruing to all of the Trust's beneficiaries. Moreover, as trustees, Objectors are entitled to have their attorney's fees paid out of the Trust. 20 Pa. C.S. § 7769(a)(1).

Thus, the Court is inclined to award Objectors their attorney's fees as long as they are reasonable under the *LaRocca* factors. *See In re Trust of LaRocca*, 246 A.2d 337, 339 (Pa. 1968) (outlining eleven factors courts may consider when determining the reasonableness of attorney's fees); *see also Gilmore ex rel. Gilmore v. Dondero*, 582 A.2d 1106, 1110 (Pa. Super. Ct. 1990) ("Consideration of any one or combination of the *LaRocca* factors may convince the court that a different fee is justified."). The Court asks the parties to resolve the issue of Objectors' attorney's fees amicably in light of this adjudication so as to avoid another time-consuming and costly fact-finding hearing to probe the reasonableness of Objectors' attorney's fees. Here endeth the lesson.

Spencer B. Koelle	6.25%
Lucy B. Koelle	6.25%
Cynthia O. S. Blank	5%
Chipman S. Hogan	5%
Barbara S. Brack	5%
Richard W. Shyrock, Jr.	5%
James E. Shyrock	5%
John S. Prigge III	6.25%
Robin M. Moreno	6.25%
Karen D. Harvey	6.25%
Sandra P. Larson	6.25%

Principal

PNC Bank, N.A., for continued administration	100%

Leave is hereby granted to Accountant to make all transfers and assignments necessary to effect distribution in accordance with this adjudication.

AND NOW, this 20TH day of July 2020, the account is confirmed absolutely.

A motion for reconsideration may be filed pursuant to Pa. O.C. Rule 8.2. An appeal from this adjudication may be taken to the appropriate appellate court within thirty (30) days from the issuance of this adjudication. *See* PA. R. APP. P. 902, 903.

BY THE COURT:

JOHN W. HERRON, J.

Vincent Carissimi, Esquire
Karl Prior, Esquire
Lisa Rhode, Esquire