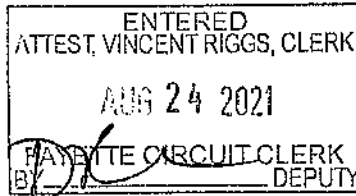


COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
FOURTH DIVISION

HAYNES PROPERTIES, LLC, et al.

v.

BURLEY TOBACCO GROWERS
COOPERATIVE ASSOCIATION,
et al.



PLAINTIFFS

20-CI-332

DEFENDANTS

ORDER

The above-styled matter came before the Court on August 20, 2021, on a Motion for Entry of Order of Method and Manner of Actual Notice of Petition for Allowance of Attorneys' Fees and Notice and a Motion for Award of Attorneys' Fees and Notice, both filed by W.H. Graddy & Associates, W. Henry (Hank) Graddy, IV and Dorothy Rush, counsel for the Roger Quarles, et al., Objectors. Having reviewed the Record, relevant case law, and memorandums of parties, as well as having heard the arguments of counsel, this Court **HEREBY DENIES** the motions for the following reasons:

A common fund recovery is only applicable to attorneys who create a common fund. See *Kincaid v. Johnson, True & Guarnieri, LLP*, 538 S.W.3d 901, 919-20 (Ky. App. 2017). In this case, there has been no change in the common fund available to the class members, though the distribution of certain assets has changed. The mediated Partial Settlement as approved by the Court in its Amended Opinion and Order of July 26, 2021 treated the gross sum of \$1.5 million as a pre-dissolution grant by the Board of

Directors of BTGCA to the newly-formed Burley and Dark Tobacco Producers Association, under certain modified terms, that was not to be reduced by any claim for attorneys' fees except to compensate the actual time spent by Class Counsel overseeing the postcard opt-out program.

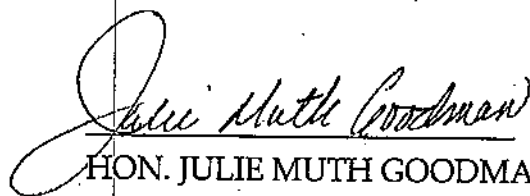
At the core, what the Court did in response to the many objectors was to change the method and manner of distribution of the \$1.5 million, without any guarantee it would be given to the class members. While the class members may, upon the conclusion of two years, withdraw their contribution, this is entirely dependent on the individual and is consistent with a member's right to withdraw their contribution. Therefore, the amount potentially granted to the class is speculative, as it is possible that all or most class members will choose to donate their share to the Burley and Dark Tobacco Producers Association and remain members of said organization. This means that Graddy as counsel for certain objectors did not create a common fund or increase the assets of the common fund; rather, Graddy helped provide a different framework for the distribution of the \$1.5 million.

Graddy was not involved in the prosecution of this action; he was neither class counsel nor did he take part in the original settlement in this case. He became involved in this case after the Court asked for objections from the class, and though he was involved in many hearings and proceedings following his clients' objections, he was ultimately involved in the narrow issue objected to by his clients. Therefore, while he

was certainly an effective attorney for the sake of his clients, his role in this case was largely tied to the desires of his clients—even if those desires were beneficial to the class.

While Graddy advocated for its clients' position on the settlement, it has not shown that this advocacy alone was the cause of the change in how the \$1.5 million will be distributed. The Court took into consideration the concerns raised by the unrepresented objectors regardless of their pro se status. Aside from the Objectors represented by Graddy, there were at least ten (10) other objections filed in opposition to the 1.5 million distribution. Graddy has not established that its actions "created" something more than did the pro se objectors or that, absent its presence in the case, the Court would not have sustained the objections. The Court has been extremely cognizant throughout this process of its position as the fiduciary for the class. As such, the Court paid great care to ensuring that the class members were heard and properly protected, as demonstrated by the Court's decision to deviate from other terms of the settlement, such as the other firms' awards of attorneys' fees and the proposed class definition.

Given under my hand this 27th day of August 2021.



HON. JULIE MUTH GOODMAN
JUDGE, FAYETTE CIRCUIT COURT

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been served on this _____ day of August, 2021, via U.S. Mail, first class, to the following:

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