

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
FOURTH DIVISION
CIVIL ACTION NO. 20-CI-00332
FILED ELECTRONICALLY

HAYNES PROPERTIES, LLC, et al.

PLAINTIFFS

v. **RESPONSE OF BTGCA TO GRADY LAW FIRM'S
MOTION FOR ATTORNEY'S FEES**

BURLEY TOBACCO GROWERS COOPERATIVE
ASSOCIATION, et al.

DEFENDANTS

** ** * * * * *

The Burley Tobacco Growers Cooperative Association in Dissolution ("BTGCA"), by counsel, respectfully opposes the motion by the Graddy law firm seeking a "common fund" award of attorney fees equal to 7.5% of whatever amount Settlement Class Members claim and withdraw from the \$1.325 million grant reserve which was set aside for funding of the new nonprofit Burley and Dark Tobacco Association, Inc. The grounds for opposition are simple:

1. When still active and governing the BTGCA, its Board of Directors voted in 2019, after considerable discussion at which Roger Quarles was present (and outvoted) by a vote of 14-2, to make a \$1.5 million grant to a new nonprofit that would represent growers of all types of tobacco in Kentucky and the other member states.

2. That grant was then the subject of negotiations in a lengthy mediation under supervision of mediator Robert F. Houlihan, Jr., and it was agreed by all sides that counsel for Named Plaintiffs and the Billings law firm would not claim any attorney fees on the \$1.5 million grant reserve for the new tobacco growers nonprofit.

3. This Court approved that settlement, with the modification allowing Settlement Class Members the right to opt out, claim and withdraw their proportionate share of the remaining grant of \$1,325,000 after approving initial funding in years one and two for the new nonprofit of \$100,000 and \$75,000, respectively. Counsel for Named Plaintiffs was not allowed any legal fee against the grant reserve, but the Court did allow that Class Counsel could charge the fund a fee based on their hourly rates for actual work in facilitating the notice to Settlement Class Members and other related activities.

4. The mere fact that Roger Quarles objected and that he hired the Graddy law firm to make that objection does not afford any basis under which to claim an attorney fee under the common fund statute, KRS 412.070. The Court itself determined that Class Settlement members should have notice and the opportunity to opt out and claim their proportionate share of the grant reserve of \$1,325,000. Mr. Quarles had already been outvoted overwhelmingly by the BTGCA Board, representing 17 of the 18 districts in its membership.

5. The grant was made before dissolution of BTGCA, but is also consistent with the law of nonprofit organizations in dissolution, and both the BTGCA Articles and KRS 272.325(3) specifically permit an agricultural cooperative association to pay a portion of its remaining assets “to any nonprofit farm organization operating within the areas served by the Cooperative.” That afforded ample legal basis for the Court to approve the set-aside of this grant reserve for the Burley and Dark Tobacco Producers Association, Inc. with opt-out opportunity.

6. Last, but not least, the Graddy law firm raised its request or motion for attorney fees after notice of the proposed Class Settlement was sent to all putative Class members. Therefore, the qualified Settlement Class Members (approximately 2,602 individuals or business entities) have not had fair notice and opportunity to object to the motion of the Graddy law firm seeking attorney fees

out of the grant reserve fund from which the Court has determined that Settlement Class Members have a right to opt out and withdraw their proportionate share. The Court has already rejected the previous motion of the Graddy law firm to claim such attorney fees, and there still has been no notice and opportunity for objection to Settlement Class Members to make it fair to reduce the amount of the share which those who opt out may claim and withdraw.

WHEREFORE, the BTGCA respectfully prays the Court to deny the motion of the Graddy law firm.

Respectfully Submitted,

/s/ Kevin G. Henry

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CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2023, the foregoing document was electronically filed with the Clerk of this Court using their filing system and served electronically by the Clerk of this Court upon the following:

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Courtesy Copy (emailed):

Hon. Julie Muth Goodman
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and via first-class U.S. Mail, postage prepaid, on unrepresented objectors listed on Schedule A of the Opinion and Order entered June 11, 2021, at addresses given in their respective objections or as thereafter updated:

J.B. Amburgey
Robert E. Barton
Wayne Cropper
Jennifer Darnell
William David Furnish
Dudley Wayne Hatcher
Bruce Quarles
Danny Townsend
Jarrod Stephens
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