

KRAMER LEVIN NAFTALIS &
FRANKEL LLP
Kenneth H. Eckstein (KE-6021)
919 Third Avenue
New York, New York 10022
(212) 715-9100

Counsel for the Unofficial Committee of
6% Subordinated Debentureholders

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
	:	
CITYSCAPE FINANCIAL CORP.,	:	Case Nos. 98-B22569 (ASH) and
and CITYSCAPE CORP.,	:	98-B22570 (ASH)
	:	
Debtors.	:	Jointly Administered
	:	

MOTION PURSUANT TO 11 U.S.C. §503(b)(4) FOR ALLOWANCE
AND PAYMENT OF FEES AND EXPENSES OF KRAMER
LEVIN NAFTALIS & FRANKEL LLP, COUNSEL TO THE UNOFFICIAL
COMMITTEE OF 6% SUBORDINATED DEBENTUREHOLDERS

TO: THE HONORABLE ADLAI S. HARDIN,
UNITED STATES BANKRUPTCY JUDGE:

Kramer Levin Naftalis & Frankel LLP ("Applicant" or "Kramer Levin"),
counsel for the Unofficial Committee of holders of the 6% Subordinated Debentureholders
(the "Subordinated Debentureholders' Committee" or "Unofficial Committee") of Cityscape
Financial Corp. ("Cityscape", the "Reorganized Debtor" or, together with Cityscape Corp.,
"the Debtors") hereby submits this motion (the "Motion") pursuant to 11 U.S.C. §503(b)(4)
for an order authorizing the payment, as an administrative expense, of fees and expenses

incurred by Kramer Levin, as counsel for the Unofficial Subordinated Debentureholders' Committee. In support of the Motion, Kramer Levin respectfully represents as follows:

I. INTRODUCTION

As the Court knows, these cases were commenced by way of a "prepackaged" bankruptcy filing in which the Debtors expected to emerge from bankruptcy in a very short period of time; as a result, no statutory creditors' committee was appointed. Instead, the two separate "unofficial" bondholder groups that were formed during the extensive pre-petition work-out phase of this case continued to represent their respective constituencies upon the filing of the chapter 11 cases. At that time it was agreed among the parties, with notice to the United States Trustee, that the fees and expenses incurred by counsel and other professionals retained by the two unofficial committees would be paid at the conclusion of the case subject to approval of the Bankruptcy Court. The agreement regarding payment of professional fees was incorporated in the Debtors' First Amended Plan of Reorganization, which was confirmed on June 10, 1999.

By this Motion, Kramer Levin seeks compensation for services and reimbursement of expenses incurred in connection with the representation of the Subordinated Debentureholders' Committee in the amounts of \$157,966.00 and \$11,828.11 respectively. Kramer Levin submits that its efforts on behalf of the Unofficial Committee, together with the efforts of the other professionals retained in these cases, played an important and highly beneficial role in bringing these chapter 11 cases to a successful conclusion. As set forth herein, Applicant submits that the standards for awards of compensation under section 503(b)(4) are amply satisfied here and that the amounts requested are reasonable.

Accordingly, Applicant respectfully requests that the Motion be granted and that the Court enter an order awarding the Applicant compensation for services rendered and reimbursement of expenses in the amounts requested herein.

In further support of this Motion, Applicant submits as follows:

II. FACTUAL BACKGROUND AND PROCEEDINGS

1. In May 1998, after suffering from a significant liquidity crisis, Cityscape, one of the debtors herein, contacted the holders of its then-outstanding 6% Subordinated Debentures (which aggregated approximately \$130 million) regarding a proposed restructuring based upon terms previously negotiated by Cityscape and an unofficial committee of holders of Cityscape's 12 3/4% Series A Senior Notes (the "Senior Noteholders' Committee" or, when referred to with the Subordinated Debentureholders' Committee, the "Unofficial Committees"). Shortly thereafter, thirteen holders of the subordinated debentures, with claims aggregating approximately \$69 million (more than a majority in amount of the then-outstanding subordinated debentures), formed an Unofficial Subordinated Debentureholders' Committee.¹ The Subordinated Debentureholders' Committee retained Kramer Levin to represent it as counsel in the restructuring negotiations.

¹ The Unofficial Subordinated Debentureholders' Committee consisted of (i) Forest Investment Management, (ii) Bear, Stearns & Co. Inc., (iii) KA Management, (iv) Tamar Securities Inc., (v) Aristeia Capital LLC, (vi) Zazove Associates, LLC, (vii) J. Robbins Securities, LLC, (viii) RAS Securities Corp., (ix) D.A. Davidson & Co., (x) Donaldson, Lufkin & Jenrette Securities Corporation, (xi) Mercantile Bank, (xii) Mellon Bank, as trustee for General Motors Employees Domestic Group Pension Trust, and (xiii) Ramat Securities Ltd. Collectively, these entities held or managed approximately 53% of the total principal amount outstanding of the 6% Convertible Subordinated Debentures issued by Cityscape.

2. From May 1998 through August 1998, the Debtors and the Unofficial Committees negotiated the terms of a prepackaged plan of reorganization (the "Initial Plan") for the Debtors and assisted the Debtors in the preparation of a disclosure statement and related documents for the prepackaged plan dated August 28, 1998 (the "Disclosure Statement"). The Debtors' creditors and equity holders subsequently voted overwhelmingly in favor of the prepackaged plan.²

3. On October 6, 1998 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of New York, along with numerous first-day motions and proposed orders, including a motion for an order setting the date, time and place for a hearing to consider approval of the Debtors' Disclosure Statement, solicitation procedures and confirmation of the Initial Plan. Due in part to the Debtors' inability to obtain necessary exit financing, the Initial Plan was not confirmed.

4. On March 26, 1999, after several months of negotiations between counsel for the Debtors, the Unofficial Committees and others, the Debtors filed their First Amended Plan of Reorganization (the "Amended Plan") and First Amended Disclosure Statement. In connection with the Amended Plan the Debtors also filed a Motion for Order Appointing a Balloting Agent, Setting the Voting Record Date for Bondholders, Establishing

² The only class of claims or interests that voted against the prepackaged plan was the junior preferred shareholders, which class was dominated by Elliott Associates, L.P. ("Elliott") and Westgate International, L.P. ("Westgate"). A majority in number of the interest holders in Elliott's and Westgate's class voted in favor of the plan.

Procedures for Dissemination of Revised Disclosure Materials and Approving Forms of Ballots.

5. On April 28, 1998, the Court approved the amended Disclosure Statement and related solicitation materials. On June 10, 1999 the Amended Plan was confirmed and, thereafter, on July 1, 1999, the Amended Plan became effective.

III. RELIEF REQUESTED

A. Summary of Relief Requested

6. By this Motion, Kramer Levin seeks payment of \$157,966.00 in fees and reimbursement of \$11,828.11 in expenses incurred (a) during the Debtors' chapter 11 cases while representing the Unofficial Subordinated Debentureholders' Committee, and (b) after the Effective Date for services rendered in ensuring timely and accurate distributions pursuant to the Plan and in preparing this Motion for substantial contribution. Applicant submits that the services provided by Kramer Levin to the Unofficial Subordinated Debentureholders' Committee were both actual and necessary, as well as beneficial to the Debtors' estates and creditors in reaching a consensual, confirmed plan of reorganization in these cases.

7. Annexed as Exhibit A to this Motion is a schedule setting forth the names of the various attorneys and legal assistants who worked on these cases and their respective billing rates. The rates charged by Applicant in these cases are no greater than the rates charged by Applicant to its non-bankruptcy clients. Annexed as Exhibit B is a copy of Applicant's daily time entries, which were prepared substantially contemporaneously.

Annexed as Exhibit C is a summary of disbursements incurred by Applicant during the period covered by this Motion. Applicant has made every effort to ensure that its services were rendered efficiently and without duplication, by professionals having the appropriate level of skill and expertise. Because of the complexity and significance of certain issues, the services of more than one Kramer Levin attorney was sometimes required in dealing with a particular matter. Applicant also utilized its paraprofessionals whenever possible to perform administrative non-legal tasks.

B. Summary of Legal Services
Rendered During the Fee Period

8. As counsel to the Unofficial Subordinated Debentureholders' Committee, Kramer Levin has been involved in virtually every aspect of these cases. As detailed herein, the first few months of the Debtors' bankruptcy cases involved a high degree of activity on multiple fronts. In addition to the myriad "routine" tasks necessary to the proper and efficient functioning of a committee in a large chapter 11 case, Applicant expended considerable time and effort working with the Debtors and the Unofficial Senior Noteholders' Committee trying to preserve, to the extent possible, the terms of the prepackaged plan that was negotiated by the parties prepetition and overwhelmingly accepted by creditors.

9. We have summarized below several of the more significant tasks performed by Applicant during these cases:

(i) Disclosure Statement and Plan Confirmation Issues

10. Throughout the cases, Applicant worked with the Debtors and the Unofficial Senior Noteholders' Committee towards confirmation of a consensual plan of reorganization. In the weeks before the November 13, 1998 confirmation hearing on the Initial Plan, Applicant reviewed and commented on the Debtors' memorandum of law and affidavits in support of confirmation of the prepackaged plan and the proposed confirmation order. Applicant also prepared a response to the various objections to the Debtors' Disclosure Statement, prepetition solicitation procedures and confirmation of the prepackaged plan interposed by Elliott, the U.S. Trustee, the S.E.C. and the plaintiffs in various class action lawsuits.

11. After the failure of the Initial Plan, Applicant participated in settlement negotiations and plan modification discussions regarding, among other things, the nature and extent of the third-party releases contained in the plan and the possible creation of a litigation trust to prosecute certain causes of action. In that regard, Applicant conducted legal research on these issues and reviewed precedents regarding the formation and operation of a litigation trust. Applicant also negotiated and reviewed several drafts of a term sheet for proposed modifications to the prepackaged plan and participated in numerous telephone conferences regarding the term sheet, and prepared memoranda to Committee members on a variety of legal and strategic matters. Development of the plan term sheet required careful analysis of a wide range of bankruptcy, litigation, trust and other legal issues, as well as consideration of a wide range of business issues in connection with the Plan. This work also required coordination among counsel for the Unofficial Committees, the Debtors and other parties in

interest, as well as presentations to the Members of the Subordinated Debentureholders' Committee, regarding the status of the settlement negotiations and plan confirmation.

12. As described above, the efforts of the parties resulted in the filing of the Amended Plan and related Disclosure Statement. The Amended Plan was ultimately confirmed by the Court on June 10, 1999 and became effective on July 1, 1999. Under the Plan, all of the outstanding pre-petition indebtedness of the Debtors has been converted into equity with the holders of the Subordinated Debentures receiving approximately 5.435% of the shares of common stock of the reorganized Debtors.

(ii) Examiner Motion

13. One of the most hotly contested issues in this case (aside from objections to the Disclosure Statement and plan confirmation) was the Examiner Motion filed by Elliott on the second day of these cases. After reviewing the Examiner Motion, Applicant conferred with counsel for the Debtors and the Unofficial Senior Noteholders' Committee to coordinate efforts in responding to that Motion. Applicant researched the applicable law and prepared an objection to the Examiner Motion on behalf of the Subordinated Debentureholders' Committee. Applicant also reviewed the objections filed by the Debtors, the Unofficial Senior Noteholders' Committee, and the Indenture Trustee for the Subordinated Debentures, as well as the reply brief filed by Elliott. Applicant also attended and participated in the hearing on the Examiner Motion. Thereafter, Applicant participated in discussions with counsel for Elliott, the Debtors and the Unofficial Senior Noteholders' Committee regarding the selection of an examiner and the scope of the examiner's duties.

Applicant reviewed and commented on the proposed order appointing the examiner and participated at a follow-up hearing regarding the terms of the proposed order.

14. Following appointment of the examiner, Applicant had several telephonic conferences and meetings with, and was interviewed by, the examiner about, among other things, the events leading up to these chapter 11 cases and the negotiation of the plan of reorganization. Applicant participated in several conversations with the examiner regarding the status of his report and attended the November 2, 1998 status conference regarding the scope of the examiner's report and the examiner's request for additional compensation. Applicant subsequently received and reviewed the examiner's report and discussed the contents thereof with the Unofficial Subordinated Debentureholders' Committee and other parties in interest.

(iii) Debtor-in-Possession Financing

15. Upon the commencement of these chapter 11 cases, Applicant reviewed the proposed DIP financing facilities and conveyed the comments of the Subordinated Debentureholders' Committee to counsel for the Debtors and the proposed DIP lenders. Applicant also reviewed the objection to the DIP Facilities interposed by Elliott. At the interim hearing on the DIP Facilities, Applicant, on behalf of the Subordinated Debentureholders' Committee requested and was granted an expanded period of time to object to the validity of the DIP Lenders' prepetition security interests. Applicant subsequently reviewed several modifications to the proposed orders approving the DIP Facilities, both on an interim and final basis, and appeared at the final hearing on the DIP Facilities.

16. At the request of the Unofficial Committees, Applicant conducted an examination of the extent and validity of the DIP Lenders' prepetition security interests by verifying, updating and analyzing numerous UCC searches previously conducted by Debtors' counsel, conferring with Debtors' counsel regarding the results of such searches and completing an analysis regarding the extent and validity of the DIP Lenders' liens before expiration of the December 4, 1998 objection deadline.

(iv) Rule 2004 Motions

17. Applicant reviewed the Rule 2004 Motions filed by Jay Botchman and JLB Equities and researched the applicable legal standards and procedural guidelines for the prosecution of Rule 2004 discovery. After consultation with Debtors' counsel, Applicant prepared and filed an objection to the Rule 2004 motion and participated at the hearing regarding the motion.

(v) General Motions and Other Documents

18. During the Fee Period, Applicant reviewed virtually every motion, proposed order, stipulation, fee application and other documents filed by the Debtors and other parties in interest, with a view toward protecting the interests of all subordinated debentureholders represented by the Unofficial Subordinated Debentureholders' Committee. Applicant reviewed and analyzed the issues raised by each motion, apprised members of the Subordinated Debentureholders' Committee of such motions, and, in each instance, recommended an appropriate response. Applicant then consulted with counsel for the

Debtors regarding the Unofficial Committee's position. When appropriate, Applicant would prepare, file and serve a response on behalf of the Subordinated Debentureholders' Committee, but only after conferring with Debtors' counsel regarding how to avoid duplication of effort. Applicant's efforts in that regard included the review of and, where appropriate, the appearance at hearings regarding:

- Chapter 11 schedules, operating reports and other routine Bankruptcy Court filings.
- Debtors' motion to establish a claims bar date and related notice and form of order.
- Applications and related affidavits to approve the retention of the Debtors' bankruptcy professionals.
- Stipulation and order between the Debtors and Financial Guaranty Insurance Company and Harris Trust and Savings Bank with respect to certain of the Debtors' pooling and servicing agreements and sub-servicing agreements.
- Debtors' motion to approve and authorize the entry into certain loan brokerage agreements with Hanover Capital Partners.
- Motion by Newcourt Communications to compel the assumption or rejection of certain equipment leases and pay certain administrative expense claims.
- Debtors' motion for order approving the sale of certain loans to Corus Bank, N.A.
- Debtors' motion seeking approval of bonus payments and employment arrangements with certain employees.

(vi) Committee Meetings and Case Administration

19. During these cases Applicant necessarily devoted time to communicating with members of the Unofficial Subordinated Debentureholders' Committee

and the Indenture Trustee (by telephone or through written memoranda) regarding administrative matters and to apprise them of developments in and the status of the case. When necessary, Applicant prepared written memoranda to the Committee summarizing the relief requested in important motions, raising relevant issues, and setting forth recommendations. Applicant also consulted with members of the Unofficial Committee, individually or collectively, in an effort to arrive at a position regarding important issues, motions or objections. Such calls and memoranda were critical to the efficient functioning of the Subordinated Debentureholders' Committee in these cases. In addition, Applicant frequently responded to inquiries of individual debentureholders and other creditors.

C. Summary of Disbursements

20. As set forth in Exhibit C, Applicant seeks reimbursement of \$11,828.11 of expenses during the Fee Period. Applicant submits that all of these disbursements were necessarily incurred and are reasonable in amount. In order to save time and expense, Committee meetings were conducted by conference call, rather than in person, whenever possible. None of the travel expenses of Kramer Levin attorneys included in this Fee Application were for first-class airfare, luxury accommodations or deluxe meals. Where necessary, the amount charged for a particular disbursement has been reduced in order to comply with the Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases.

D. The Applicant has made a Substantial Contribution to these Cases

21. Section 503(b) of the Bankruptcy Code provides that a creditor, equity holder or unofficial committee of creditors or equity holders that has made a "substantial contribution" to a chapter 11 case shall receive an administrative expense claim equal to its actual and necessary expenses, including reasonable attorneys' fees and expenses. 11 U.S.C. § 503(b)(3)(D) and (b)(4). This provision is intended to "encourag[e] meaningful creditor participation in the reorganization process," while avoiding the incurrence of excessive fees and administrative expenses. Lebron v. Mechem Financial Inc., 27 F.3d 937, 944 (3d Cir. 1994) (quotation omitted). Accord, e.g., In re Baldwin-United Corp., 79 B.R. 321, 338 (Bankr. S.D. Ohio 1987); In re Richton Intern. Corp., 15 B.R. 854, 855 (Bankr. S.D.N.Y. 1981).

22. The touchstone in determining whether a "substantial contribution" has been conferred is the nature and extent of the resulting benefit to the debtor's estate:

[T]he applicable test is whether the efforts of the applicant resulted in an actual and demonstrable benefit to the debtor's estate and the creditors. Services which substantially contribute to a case are those which foster and enhance . . . the progress of reorganization.

Lebron, 27 F.3d at 944 (quotations omitted). Accord, e.g., In re White Motor Credit Corp., 50 B.R. 885, 892 (Bankr. N.D. Ohio 1985) ("measurement of benefit to the estate, the creditors and the stockholders . . . continues to be the touchstone" under Section 503(b)).

The moving party also must show that the services for which it seeks compensation were not undertaken solely in furtherance of its own self-interest:

[T]he benefit received by the estate must be more than an incidental one arising from activities the applicant has pursued in protecting his or her own interests. . . . [However,] the existence of a self-interest cannot in and of itself preclude reimbursement.

Lebron, 27 F.3d at 944. See also, e.g., Richton, 15 B.R. at 856 (services that further both the reorganization and the individual clients' self-interests should be compensated under Section 503(b)); In re Roberts, 93 B.R. 442, 444-45 (D.S.C. 1988) (same).

23. These standards are amply satisfied in the present case. As detailed above, Applicant and the Unofficial Subordinated Debentureholders Committee played a pivotal role in these cases and the ultimate confirmation of a largely consensual plan of reorganization. As detailed above, racing against the Debtors' rapidly deteriorating financial condition and the genuine risk of the liquidation of the Debtors, the Unofficial Committee and Applicant worked diligently with the Unofficial Senior Noteholders' Committee and counsel for the Debtors, to resolve objections to the initial prepackaged plan and to negotiate the terms of a revised plan of reorganization for the Debtors to enable them to emerge from bankruptcy without exit financing.

24. Under the confirmed plan of reorganization, all of the outstanding pre-petition indebtedness of the Debtors has been converted into equity with the holders of the Subordinated Debentures receiving approximately 5.435% of the shares of common stock of the reorganized Debtors. The success in facilitating this plan was attributable in large part to the agreements with the Unofficial Committee regarding the terms of the restructuring and ultimate plan of reorganization. The successful conclusion of these cases, which was the

result of the combined efforts of Applicant and each of the other retained professionals, is precisely the sort of accomplishment that Section 503(b) was intended to promote and to reward.

25. In addition to meeting the standards under Section 503(b), Applicant further submits that the factors typically considered in determining compensation -- complexity, results achieved, special expertise, magnitude of the matter, emergency nature of services and professional standing -- all support the conclusion that the amount of compensation and reimbursement requested by Applicant in these cases is fair, reasonable, actual and necessary. As detailed above, the legal services rendered by Applicant during the Fee Period were substantial, highly professional and instrumental to the confirmation of the First Amended Plan of Reorganization for the Debtors.

26. All services for which compensation is sought were performed for and on behalf of the Unofficial Committee and not on behalf of any other creditor or party in interest. Applicant charged its standard hourly rates for professionals performing services in this case. Applicant has not entered into any agreement, express or implied, with any other party in interest for the purpose of fixing or sharing fees or other compensation to be paid for professional services rendered in this case.

27. In addition to the amounts sought herein, Applicant also requests that an additional \$10,000 be awarded to compensate Applicant for services rendered in connection with the prosecution of this Motion and in connection with ongoing work related to the consummation of the Amended Plan. To the extent less than \$10,000 is expended by Applicant, such excess will be promptly returned to the Reorganized Debtors.

WHEREFORE, Applicant respectfully requests that this Court enter an order (i) awarding to Applicant compensation in the amount of \$157,966.00 representing billable time for services rendered by Applicant as counsel to the Unofficial Subordinated Debentureholders' Committee; (ii) approving the reimbursement of expenses incurred and recorded by Applicant in the amount of \$11,828.11 and (iii) granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York
August 20, 1999

KRAMER LEVIN NAFTALIS & FRANKEL LLP

By: /s/ Kenneth H. Eckstein
Kenneth H. Eckstein (KE-6021)

919 Third Avenue
New York, New York 10022
(212) 715-9100

COUNSEL TO THE UNOFFICIAL COMMITTEE
OF SUBORDINATED DEBENTUREHOLDERS