

In the United States Bankruptcy Court

for the Northern District of Iowa

CRAIG A. PETERS and MARILYN S. PETERS
Debtors.

Bankruptcy No. L92-00314C
Chapter 7

ORDER RE: APPLICATION FOR COMPENSATION

The matter before the court is an application for professional compensation filed by Dennis D. Appelgate. Parties-in-interest have received notice of the application, and none has objected. The U. S. Trustee filed comments raising his concerns about the adequacy of the information submitted in support of the application. Hearing was held on January 5, 1993, in Cedar Rapids.

FINDINGS OF FACT

Craig A. Peters filed his joint voluntary petition on February 14, 1992. At the time of filing, Peters owned an \$8,967.20 judgment against Allied Mutual Insurance Co. The judgment resulted from a jury verdict in his favor in the Iowa District Court for Tama County. At the time of filing, the judgment was on appeal to the Iowa Supreme Court. The judgment was not listed as an asset in the debtors' schedules.

Debtor was represented in the state court proceeding by attorney Dennis Appelgate. While the bankruptcy case was pending, Appelgate received an offer of \$7,500.00 from Allied to settle the case. At about the same time, he learned of the bankruptcy filing. Appelgate contacted William D. Martin, the case trustee, and notified him of the settlement offer.

On April 16, 1992, Martin filed a "Notice and Motion to Compromise" in which he proposed accepting Allied's settlement offer. On May 12, 1992, Martin applied to the court for Appelgate's appointment as his attorney for the purpose of collecting the judgment. The application disclosed that a settlement offer had been made. The U. S. Trustee did not recommend the appointment, and instead filed "comments" which raised concerns about the amount of compensation. On February 14, 1992, Appelgate filed an "Attorneys' Lien" with the Tama County District Court, claiming a lien for fees in the amount of \$5,175.55 against judgment entered against Allied.

On June 2, 1992, the bankruptcy court approved the settlement and entered an order approving the trustee's employment of Appelgate, but leaving the amount of fees for later determination. The trustee has received the settlement monies. Appelgate has filed a fee application requesting allowance of \$5,162.00 in fees and \$363.55 in expenses. The application shows a credit of \$350.00 by virtue of a payment by the debtor. Approximately four hours of Appelgate's time was spent postpetition in pursuing the settlement for the trustee. Appelgate's regular hourly rate is \$60.00.

DISCUSSION

Appelgate seeks allowance of his full fee as an administrative expense. Although the court is sympathetic to his claim, it concludes that there is no legal basis upon which the full claim can be allowed as an administrative expense. All but four hours of Appelgate's time was expended prior to the filing of the petition. As a result of his pre-petition work, he has a contract claim against the debtor. The trustee's retention of Appelgate does not convert the pre-petition claim to an administrative claim. The court rejects the attorney's argument that the trustee's hiring of Appelgate was tantamount to the assumption of an executory contract between the debtor and the attorney. Assuming without deciding that the contract was executory, had the motion to appoint been treated as a motion to assume, the trustee would have had difficulty convincing the court that assumption was a sound business judgment. The trustee had moved the court for approval of the \$7,500.00 compromise. Inasmuch as the settlement was approved on June 2, 1992, it would have made no financial sense to permit a concurrent assumption of a contract to pay more than \$5,000.00 in fees. This is so because the settlement could have been consummated by the trustee or by a new attorney. There would have been no need for the trustee to assume such a burdensome obligation. In other words, despite Appelgate's fine work in obtaining the judgment, there would have been little need to retain him to collect the \$7,500.00 from a judgment debtor with the apparent desire and ability to pay-

Thus the only effect of the retention was to avail the trustee of Appelgate's services in wrapping up the matter postpetition. In providing that service, Appelgate expended four hours for which he should be compensated at the rate of \$60.00 per hour. However, he will not be allowed an administrative claim for his full fee. To the extent that he can show he has a valid attorney's lien against the settlement funds, he could collect his fee as a secured creditor. However, the filing of the "Attorney's Lien" in the Iowa District Court cannot be the basis for such a claim as it was filed post-petition without authorization by the court. It may be that there is another basis for the lien under Iowa Code 602.10116, but that issue is not before the court. Accordingly,

IT IS ORDERED that Dennis D. Appelgate is allowed professional fees as a chapter 7 administrative expense in the amount of \$240.00. The trustee may pay Appelgate's fee at any time after receipt of the settlement monies from Allied Mutual Insurance Co.

SO ORDERED ON THIS 16th DAY OF FEBRUARY, 1993.

William L. Edmonds
Chief Bankruptcy Judge