In the United States Bankruptcy Court

for the Northern District of Iowa

HAROLD E. MENSCHING.	Bankruptcy No. 92-61313LW
Debtor.	Chapter 7

ORDER RE: FINAL REPORT AND ACCOUNTING

The above-captioned matter came on for hearing on February 16, 1994 pursuant to assignment. The matter before the Court is a Final Report and Accounting and an Objection to the Final Report filed by the U.S. Trustee's Office. Appearing by telephone conference call were Attorney Chris Foy representing the Debtor. Also present were Attorney Michael Dunbar, Chapter 7 Trustee in this case, and John Schmillen of the U.S. Trustee's Office. The matter was argued after which the Court took the matter under advisement.

The file reflects that Attorney Foy represented Debtor Harold Mensching throughout these proceedings. Mr. Foy filed a proof of claim on June 7, 1993 for attorney's fees in the amount of $1,458.15. In the Final Report, the Trustee sought approval of the payment of these attorney's fees as a priority administrative claim. The U.S. Trustee filed an Objection to the Final Report on January 11, 1994 which is directed at these attorney's fees. The U.S. Trustee asserts that the itemization for attorney's fees reflects services which were related to a dischargeability complaint filed by Farmers State Bank. The objection states that the rule in the Northern District of Iowa is that, absent a showing of benefit to the estate, attorney's fees and expenses should not be treated as administrative expenses. The U.S. Trustee cites In re Holden, 101 B.R. 573 (Bankr. N.D. Iowa 1989) for the proposition that attorney's fees related to discharge litigation are not recoverable from the estate. The Attorney for the Debtor, Mr. Foy, provided an explanation. He states that while it appears that a substantial amount of the attorney's fees incurred relate to discharge litigation, in reality, many of these fees were necessary to clear title to certain farm ground which was sold during the course of the bankruptcy. He states that most, if not all, of the attorney's fees billed were necessary even if the nondischargeability complaint had not been filed. Mr. Foy feels that these fees are not the result of discharge litigation but were actually incurred in order to clear title to real estate. He argues clearing title was a necessary and direct benefit to the estate.

In interpreting the legal standard for attorney fees, Attorney Foy states that the rule enunciated in Holden is overbroad in that the law does not require a showing that attorney's fees be incurred for the benefit of the estate. The test should be whether or not the attorney's fees are fair and reasonable in order to be treated as an administrative expense.

Section 330 of the Bankruptcy Code governs compensation of attorneys. This section states in relevant part:

(a) After notice to any parties in interest and to the United States trustee and a hearing . . . the court may award to a professional person employed under section 327 or 1103 of this title, or the debtor's attorney -

(1) reasonable compensation for actual, necessary services rendered by such . . . attorney, based on the nature, the extent, and the value of such services, the time spent on such services, and the cost of comparable services other than in a case under this title; and

(2) reimbursement for actual, necessary expenses.

11 U.S.C. 330(a)(1) & (2). In addition to 330, 503 of the Bankruptcy Code must be considered on the issue of attorney's fees. Section 503 governs the allowance of administrative expenses. Section 503(b) states in relevant part:

(b) After notice and hearing, there shall be allowed administrative expenses . . . including -

(2) compensation and reimbursement awarded under section 330(a) of this title.

11 U.S.C. 503(b)(2).

It is clear from a reading of these two code sections, that there is no direct mandate contained in these sections which require that an attorney's actions must benefit the estate before compensation can be given, though the sections clearly show that not all legal services will be compensated.

Some Courts have accepted the view espoused by counsel in this case that compensation can be allowed regardless of whether the services benefit the estate rather than only the debtor. In re Deihl, 80 B.R. 1 (Bankr. D. Me. 1987); In re Cleveland, 80 B.R. 204 (Bankr. S.D. Cal. 1987). This interpretation, however, constitutes the minority view.

The majority view is that enunciated in In re Holden, 101 B.R. 573 (Bankr. N.D. Iowa 1989) and subsequently accepted as the law in this circuit in In re Reed, 890 F.2d 104 (8th Cir. 1989). The holding in Holden and in Reed is similar, if not identical. The Court in Holden found that it has the "authority to independently examine debtor's counsel's fee application and in the court's discretion, the court may award or decline to award attorney's fees." In re Holden, 101 B.R. at 574. The Holden court disagreed with the minority position, stating that it "failed to consider that in order for a debtor's attorney to be entitled to compensation from the estate . . . the services rendered must be in aid of the administration of the estate." Id. at 576. The 8th Circuit in Reed utilized essentially the same analysis. The court noted that there is a split of authority regarding the requirement that services rendered by counsel must benefit the estate before they can be recovered. After briefly discussing the minority view, the court enunciated its position rejecting this minority position. The court stated, "the overwhelming weight of authority propounds the better rule requiring benefit to the estate and we find no error of law in the adoption by the courts below of that rule." In re Reed, 890 F.2d at 105. The Court concluded, by affirming the decision of the lower courts, that "an attorney fee will be denied to the extent the services rendered were for the benefit of the debtor and did not benefit the estate." Id. at 106.

While not directly applicable to this case, a subsequent 8th Circuit Bankruptcy case has slightly expanded on the holding of Holden and Reed. The court in In re Brandenburger, 145 B.R. 624 (Bankr. D.S.D. 1992), held that:

Although the phrase benefit to the estate is not defined in Reed, there is no indication that the court intended it to encompass only monetary benefit. Instead the court emphasizes the distinction between services that benefit the estate and those that benefit only the debtor.

Id. at 628. The court then ultimately concluded that while it is necessary that the fees be incurred for the benefit of the estate, the benefit shown is not necessarily limited to monetary benefit to the estate. Id. at 628-29.

There is no general argument, in this case, that the attorney's fees requested are unfair or unreasonable. The issue for determination is whether they are of a benefit to the estate and should be compensated as an administrative claim. It is the conclusion of this Court, based upon the record presented that while a substantial amount of these attorney's fees are nominally listed as involving discharge litigation, in reality, the focus of much of Mr. Foy's services was to clear title which formed the underlying basis for the original dischargeability complaint. It is, therefore, the conclusion of this Court that, in this case, the fees were incurred in a manner which establishes a direct benefit to the estate. For that reason, it is the conclusion of this Court that the objection to the Final Report filed by the U.S. Trustee's Office should be denied. Additionally, as this is the only objection to the Final Report and Accounting, the Final Report and Accounting should be approved.

WHEREFORE, the objection to the Final Report filed by the U.S. Trustee's Office is DENIED and OVERRULED.

FURTHER, the attorney's fees for Attorney Chris Foy sought in the Final Report by the Chapter 7 Trustee are fair and reasonable and are approved as being shown to have been incurred for the benefit of the estate.

FURTHER, as the foregoing was the only objection filed to the Final Report and Accounting, the Final Report and Accounting of the Chapter 7 Trustee is APPROVED.

SO ORDERED this 4th day of March, 1994.

Paul J. Kilburg, Judge
U.S. Bankruptcy Court