

In the United States Bankruptcy Court

for the Northern District of Iowa

GARY LEE VAN DUSSELDORP
Debtor.

Bankruptcy No. 95-40911XM
Chapter 11

DECISION RE: APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES

Richard D. Raymon and Todd P. Forsythe, former attorneys for the debtor, seek allowance and payment of professional fees and reimbursement of expenses. Written objections were filed by the debtor and by the United States Trustee. Hearing was held on September 7, 1995 in Mason City. Larry S. Eide, new counsel for debtor, informed the court that he was withdrawing debtor's objection to the application. The U. S. Trustee did not appear. Despite the lack of a prosecuted objection, the court inquired into the facts underlying the application and will exercise its independent responsibility to examine professional fee applications. This is a core matter under 28 U.S.C. 157(b)(2)(A).

In ruling on the application, the court will consider statements made by Messrs. Raymon and Forsythe at the hearing and the written documents in the case files of debtor's present and previous bankruptcy cases. The court takes judicial notice of the nature of the filings, the content of filings signed by Raymon and Forsythe, and the dates of filings in each case.

Findings

Gary Van Dusseldorp is in the trucking business. He filed a chapter 11 petition on April 26, 1995. It was a "short filing" consisting only of a petition and a list of the 20 largest unsecured creditors. Van Dusseldorp and his attorneys Raymon and Forsythe signed the petition where required. The petition was assigned case number 95-40748XM. The clerk of court notified debtor and his attorneys of debtor's obligation to file all required schedules within 15 days of the petition date. The notice specified that if the schedules were not timely filed, the case would be dismissed (docket no. 4). The schedules were not timely filed, and the court dismissed the case on May 15, 1995 (docket no. 8). Judgment entered the same day (docket no. 9).

Debtor filed this case on May 17, 1995. This time the filing included the chapter 11 petition, the debtor's statement of affairs, the schedules, the list of 20 largest unsecured creditors and other documents. On May 17, 1995, attorneys Raymon and Forsythe filed their joint statement as required by 11 U.S.C. 329(a) and by Fed.R.Bankr.P. 2016(b) (docket no. 2). The attorneys disclosed receipt of a \$1,880.00 cash retainer and payment of the \$800.00 filing fee.

Debtor first contacted Richard Raymon on February 7, 1995 for representation in dealing with the IRS. Shortly after the initial meeting, debtor paid Raymon a retainer of \$4,000.00. Work by Raymon was charged against the retainer. By April 25, 1995, the retainer was exhausted. The problems with the IRS had not been solved. The IRS threatened to "close down" the debtor. Raymon recommended bankruptcy. He told Van Dusseldorp that he required a retainer of \$13,000.00 to represent him in the bankruptcy. Debtor paid Raymon the \$13,000.00 retainer on or about April 25. The debtor's first chapter 11 petition was filed the next day. Neither of the retainers was paid to Todd Forsythe. He knew debtor had paid Raymon a retainer, but he did not know how much. Raymon and Forsythe are not partners. They share office space. Raymon involved Forsythe in the first and second bankruptcy filings. Both filed applications for appointment as counsel for the debtor, and both were appointed.

A clerical employee working for Forsythe, or Raymon, or both typed some or all of the bankruptcy documents, including the attorneys' fee disclosure statement. That statement does not disclose the \$13,000.00 retainer. The debtor's

statement of affairs states that he paid the attorneys \$1,880.00 prior to the case. The statement of affairs does not mention the \$13,000.00 or the \$4,000.00 payment made to Raymon for the IRS work. Raymon says that the typist erred in what was submitted to the court.

Debtor decided to obtain new counsel. He hired Larry S. Eide, who applied for appointment on May 30, 1995. The only substantial filings made by the debtor prior to that date were the petition and schedules. Raymon and Forsythe filed their withdrawals as counsel on June 2. Debtor consented to the withdrawals, and they were approved by the court.

Raymon and Forsythe filed their joint fee application and amended it several times. The application before the court is dated August 9, 1995 (docket no. 39); it supersedes all previous applications. Counsel ask approval and payment of \$3,025.65 in professional fees and \$1,909.36 for reimbursement of expenses.

The request for professional compensation is comprised of the work of three professionals:

Forsythe	25.83 hours @ \$100.00	= \$2,316.00
Raymon	2.43 hours @ 110.00	= 267.30
Mike Cahalan	9.83 hours @ 45.00	= 442.35

Cahalan is a paralegal with a Bachelor of Arts degree in history from the University of Iowa and an Associate of Arts degree from Kirkwood Community College in its paralegal program. He has worked for Raymon on bankruptcy cases since 1994.

Expenses for which reimbursement is sought include filing fees for the two cases in the amount of \$1,600.00, phone, copying, postage and similar expenses. Expenses other than filing fees total \$309.36.

Discussion

Raymon's failure to disclose the \$13,000.00 retainer paid to him in this bankruptcy case was a glaring disregard of his obligation to truly and accurately disclose the retainer to the court. 11 U.S.C. 329(a). Raymon filed an inaccurate fee disclosure in each case. He knew he had taken a retainer of \$13,000.00. Yet he represented to the court that he received only \$1,880.00. For his failure to adequately disclose his retainer, the court declines to award fees to Raymon.

There is no evidence that Forsythe knew the amount of the retainer. He apparently relied on Raymon for that information. He should have been able to do so. Forsythe will not be denied fees for the inaccurate disclosure which he signed. Forsythe requests compensation at an hourly rate of \$100.00. Forsythe graduated from law school at the University of Iowa in 1992, presumably in May. The undersigned judge handled all bankruptcy proceedings and matters for the Northern District from August 1992 to April 1993. Prior to April 1993, Forsythe's practice before this court was not extensive. To the court's knowledge, Forsythe has not had extensive experience in chapter 11 cases. There is no indication in his application to the contrary. Based on the court's assessment of his reorganization experience and the fees of experienced counsel, the court finds that \$100.00 per hour is excessive. He shall be allowed \$85.00 per hour. The court will disallow .10 hours of time for the entries of June 1, 1995 and June 16, 1995. The former seeks compensation for the attorney's fee application. This will not be allowed absent proof of extraordinary billing requirements. The latter seeks compensation for the withdrawal of counsel. Forsythe will be allowed 25.73 hours at \$85.00 for total compensation of \$2,187.05.

Mike Cahalan, the paralegal, spent 9.83 hours on the case. Of this, 7.5 hours was spent researching and drafting a brief to quash a state court garnishment. This time was spent while the debtor was in bankruptcy. There is nothing to show that this time or the preliminary time spent reviewing the file (.50 hours) was beneficial or necessary to the estate. No compensation for such time will be allowed. Cahalan expended .5 hours copying the file to send to Larry Eide. This is clerical work and will not be compensated at professional rates. The remaining time spent by the paralegal, .33 hours, included a conference with Forsythe and a phone call with a creditor. This will be allowed at \$45.00 per hour. Compensation will be allowed for the paralegal in the amount of \$14.85. All requested expenses will be allowed.

IT IS ORDERED that the application of Richard D. Raymon for professional compensation is DENIED.

IT IS ORDERED that Todd P. Forsythe is allowed professional compensation in the amount of \$2,187.05.

IT IS ORDERED that professional compensation will be allowed for Forsythe's use of a paralegal in the amount of \$14.85.

IT IS ORDERED that Todd P. Forsythe is to receive reimbursement of expenses in the amount of \$1,909.36.

IT IS ORDERED that the foregoing allowances shall be paid from the retainer of \$13,000.00 with the balance of the retainer to be paid to the debtor.

SO ORDERED THIS 26th DAY OF SEPTEMBER 1995.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on _____ I mailed a copy of this order and a judgment by U.S. mail to: Larry Eide, Richard Raymon, Todd Forsythe, Debtor, 2002 List and U. S. Trustee.