

# In the United States Bankruptcy Court

## for the Northern District of Iowa

### Western Division

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JEFFREY B. CUTLER and LISA C. CUTLER  
Debtors.

Bankruptcy No. 94-50104XS  
Chapter 13

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### ORDER RE: STANDING TRUSTEE'S FINAL REPORT

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The standing trustee filed her final report on March 14, 1997. It was served on all parties. The report shows the debtor overpaid on the plan by \$230, and this amount will be returned to the debtors. The trustee correctly received \$8,280 from the debtors. Of this, she distributed under the plan \$6,762 to unsecured creditors under the plan and \$690 to the debtors' attorney. Although total payments under the plan were \$7,452, the standing trustee calculated her fee based on her receipt of \$8,280 from the debtors. She calculates her fee at \$828.

The court scheduled a telephonic hearing on the final report and inquired whether the fee calculation was correct in light of the Circuit Court's decision in Pelofsky v. Wallace, 102 F.3d 350 (8<sup>th</sup> Cir. 1996). The trustee contends that the Pelofsky case arose in the context of chapter 12 and that she has not been advised by the U.S. Trustee that its reasoning applies to cases under chapter 13.

Closing a case is a judicial responsibility which the court is able to perform when there is assurance that the estate has been fully administered. 11 U.S.C. 350(a). A chapter 13 trustee's certification to that effect creates the presumption that the estate has been fully administered and is ready to be closed. Fed.R.Bankr.P. 5009. However, the U.S. Trustee or a party-in-interest may object to the trustee's final report. Id. Here there has been no certification by the standing trustee. The court is not precluded from raising an objection on its own. 11 U.S.C. 105(a).

In Pelofsky, the Circuit Court held that the standing trustee fees provided by 28 U.S.C. 586(e) were to be calculated on the money distributed to creditors under the plan but not calculated on the payment to the trustee of her fees. The Court determined that the trustee could not collect a fee on her fee.

Whether this decision applied in the context of a chapter 13 case came up recently in the chapter 13 bankruptcy of Charles A. Norenberg. Feasibility was at issue because the trustee argued that the plan payments were insufficient to pay the priority claim of the IRS and the standing trustee's statutory fee. However, in making her argument, the trustee had calculated her fee based on the payments received from the debtors. I concluded in that matter, as I conclude here, that the Pelofsky decision is applicable in chapter 13 cases. There is nothing in section 586 of Title 28 that leads me to conclude that the calculation of a standing trustee's fee differs by whether the case is under chapter 12 or 13. The U.S. Trustee agrees. (U.S. Trustee brief, docket no. 25.) See In re Norenberg, No. 96-52422XS, slip op. at 4 (Bankr. N.D. Iowa April 7, 1997).

In the pending case, the standing trustee's fee should have been calculated at 10 per cent of \$7,452, the amount distributed under the plan. The correct fee is \$745.20, not \$828. The difference of \$82.80 must be distributed in accordance with the plan.

IT IS ORDERED that the trustee's fee as stated in the final report is not approved. The trustee is allowed a fee in the amount of \$745.20. The difference between the trustee's request for fees and the amount allowed--\$82.80--shall be distributed by the standing trustee in accordance with the plan. Judgment shall enter accordingly.

SO ORDERED THIS 17th DAY OF APRIL 1997.

William L. Edmonds  
Chief Bankruptcy Judge  
April 17, 1997

I certify that on \_\_\_\_\_ I mailed a copy of this order by U.S. mail to: Wil Forker, Carol Dunbar and USTrustee.