

In the United States Bankruptcy Court

for the Northern District of Iowa

PATRICIA ANN BEER

Debtor(s).

Bankruptcy No. 97-00586-c

Chapter 7

ORDER RE: APPLICATION FOR COMPENSATION

This matter came on for hearing before the undersigned on January 21, 1998 on Application for Compensation of Debtor's Attorney's Fees and Expenses. Ray Terpstra appeared as Debtor's Attorney. Dan Childers appeared for the Chapter 7 Trustee. Brad Brady represented Creditor E.G. Kolkmeier. After the presentation of evidence and argument, the Court took the matter under advisement. The time for filing briefs has now passed and this matter is ready for resolution. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A).

STATEMENT OF THE CASE

Attorney Ray Terpstra requests payment of attorney fees and expenses incurred in representing Debtor Patricia Beer in these proceedings. He asserts he has provided legal services beneficial to the bankruptcy estate. Creditor E.G. Kolkmeier objects. He states that payment of Mr. Terpstra's fees from the estate is unjustified. He argues Mr. Terpstra's legal services were performed for the sole benefit of Debtor personally.

FINDINGS OF FACT

Mr. Kolkmeier is a major creditor in this case. He procured a judgment of \$407,701 against Debtor in December 1996 and began garnishment proceedings in January 1997. Mr. Kolkmeier levied on Debtor's stock in a company called Impact Sales, Inc. Debtor then filed her Chapter 7 petition on March 7, 1997.

Debtor inherited the stock of Impact Sales from a friend, Anne Riley, who died in May 1993. Debtor was a long time employee of Ms. Riley and her company. Debtor was named executor of Ms. Riley's probate estate. Debtor's daughter, Jeanne Kewley, was also an employee of Impact Sales.

The parties entered into a Settlement Agreement near the end of October 1997 which was approved by the Court. The Agreement resolves all claims and rights of Jeanne Kewley and her husband, Debtor and her husband, Mr. Kolkmeier, Impact Sales, Inc., and Trustee. Issues resolved include the Kewleys' purchase of personal property of Impact Sales and assumption of corporate liability; transfer of the stock of Impact Sales to Mr. Kolkmeier and change of the corporation's name; the Kewley's and the Beer's waiver of claims against the corporation and Trustee; mutual releases of claims between Mr. Kolkmeier, the Kewleys and the Beers, and Trustee; and payment to the remaining creditors in this bankruptcy case, with the balance distributed to Mr. Kolkmeier. This Settlement Agreement resolves all substantive issues in Debtor's Bankruptcy case.

Mr. Terpstra asserts his services benefitted the estate by, among other things, facilitating the Settlement Agreement. He specifies that services benefitting the estate include prepetition advice to Debtor and negotiations with Mr. Kolkmeier, filing the petition and schedules, representing Debtor at the §341 meeting and Rule 2004 exam, providing information to Trustee regarding Debtor's assets including stock in Impact Sales, and assisting Debtor regarding the Estate of Anne Riley. He excludes 31.1 hours for time spent settling dischargeability issues and resisting objections to exemptions. Mr. Terpstra describes this proceeding as an unusual Chapter 7 case in which approximately \$250,000 of assets were collected for distribution.

Mr. Kolkmeier points out that the Court has approved appointment of attorney for Trustee, accountant and real estate consultant. These professionals have been or will be paid from estate funds. Mr. Kolkmeier asserts Mr. Terpstra's services were inimical to the interests of the estate. He states counsel's prebankruptcy advice led to rejection of settlement attempts, necessitating bankruptcy and substantial administrative costs. Mr. Kolkmeier asserts counsel's representation of Debtor in objections to exemptions, abandonment of property, tax liabilities, and preferential and fraudulent transfer claims were directly contrary to the interests of the estate. He also argues that Mr. Terpstra's services duplicated services by Trustee's attorney. Mr. Kolkmeier states payment of Mr. Terpstra's fees would be unfair and contrary to the release provisions of the Settlement Agreement.

CONCLUSIONS OF LAW

Under §330(a)(1), a court can, in its discretion, award debtor's attorney compensation for actual and necessary services. In re Kohl, 95 F.3d 713, 714 (8th Cir. 1996). The Eighth Circuit and this Court have both stated that services rendered by debtors' counsel are compensable from the estate only if they actually benefit the estate. Id.; In re Reed, 890 F.2d 104, 106 (8th Cir. 1989); In re Holden, 101 B.R. 573, 577 (Bankr. N.D. Iowa 1989).

Courts have been fairly restrictive in interpreting what benefits the estate. Holden, 101 B.R. at 576. In undertaking a "benefit analysis", a court should consider:

- (1) whether the debtor's attorney's actions duplicated the duties of the trustee or the trustee's counsel . . . ;
- (2) whether the services have in fact obstructed or impeded the administration of the estate; and
- (3) whether the debtor's attorney's actions are consistent with the debtor's duties under 11 U.S.C. §521.

In re Melp, Ltd., 179 B.R. 636, 640 (E.D. Mo. 1995), aff'd mem., 117 F.3d 1422 (8th Cir. 1997).

Services rendered by a debtor's attorney which benefit the estate can include analyzing the debtor's financial condition, advising on whether to file for bankruptcy relief, preparing and filing the petition and schedules, and representing the debtor at the §341 meeting of creditors. Id.; In re Burmester, Bankr. No. 86-00710M, slip op. at 2-3 (Bankr. N.D. Iowa Dec. 11, 1987). These services are consistent with debtors' duties under §521. Such duties include filing schedules and creditor lists, cooperating with the trustee, surrendering property of the estate and books and records to the trustee and appearing at the §341 meeting. In re Spanjer Bros., Inc., 203 B.R. 85, 92 (Bankr. N.D. Ill. 1996).

Services rendered that benefit only the debtor personally and are not compensable from the estate include resisting objections to exemptions and resisting dischargeability proceedings. Holden, 101 B.R. at 577. Services concerning lien avoidance, exemptions and stay relief are also matters which only benefit debtors and are not compensable under §330(a). In re Miller, 211 B.R. 399, 403 (Bankr. D. Kan. 1997).

Thus, some postconfirmation services by a debtor's counsel, those that benefit the estate, will be examined under §330(a) and Rule 2016(a). In re Bradenburger, 145 B.R. 624, 631 (Bankr. D.S.D. 1992). 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. Others services that do not benefit the estate will be subject only to disclosure under §329(b) and Rules 2016(b) and 2017. Id. at 631. Debtors will have the personal obligation to pay for postconfirmation services that are not recognized as compensable from the estate. Id.

In Spanjer Bros., the court concluded that services by the debtor's attorney concerning various prospects for possible sale of the debtor's assets, after appointment of the trustee, were not compensable from the estate. 203 B.R. at 94. In In re Convenient Foods, Inc., 197 B.R. 6, 7 (Bankr. D.N.H. 1996), the court found that debtor's attorney's services were intended to get a high sale price of the debtor's assets to benefit the debtor's principals, not the debtor. The court allowed a fraction of the attorney's fees. Id. at 8. It noted that the fact that the attorney's actions may have incidentally benefitted the debtor's creditors does not justify full payment of fees from the estate. Id. at 7. See also In re Greater Miami Trading, Inc., 177 B.R. 1022, 1026 (Bankr. S.D. Fla. 1995) (refusing to compensate debtor's attorney from estate where counsel for trustee performed the bulk of the work done in connection with sale of debtor's assets); In re Hanson, 172 B.R. 67, 73 (B.A.P. 9th Cir. 1994) (concluding debtor's attorney's services opposing sale of homestead were not consistent with

debtor's §521 duties and obstructed administration of estate); In re Waxman, 148 B.R. 178, 183 (Bankr. E.D.N.Y. 1992) (allowing fees for debtor's attorney's services in overcoming creditor's objection to sale of debtor's interest in homestead as benefitting estate).

This Court has refused to allow compensation to a debtor's attorney for correspondence with creditors, reviewing pleadings, motions and applications, objecting to trustee's proposed settlement and communications with the debtor, the attorney's own client. In re Cargo, No. X90-00200S, slip op. at 9-10 (Bankr. N.D. Iowa Jan. 24, 1992). In In re Burmester, No. 96-00710M, slip op. at 7-8 (Bankr. N.D. Iowa Dec. 11, 1987), the Court refused to allow a debtor's attorney compensation for postpetition services, except those related to the §341 meeting, amendments to schedules and review of final report.

Some courts have recently held that §330(a) as amended by the Bankruptcy Reform Act of 1994 no longer provides a basis for an award of attorney fees from estate funds to the debtor's attorney in a Chapter 7 case. In re Fassinger, 191 B.R. 864, 865 (Bankr. D. Or. 1996); In re Friedland, 182 B.R. 576, 580 (Bankr. D. Colo. 1995); In re Kinnemore, 181 B.R. 520, 521 (Bankr. D. Id. 1995). This amended provision is applicable in this case. It is now apparent, however, that Congress inadvertently omitted reference to allowance of fees to debtors' attorneys in Chapter 7 in the Reform Act of 1994 and is in the process of correcting that error. H.R. 764, 105th Cong., 1st Sess., §7 (1997) ("A bill to make technical corrections to title 11"). Miller, 211 B.R. at 403 n.1. The correction would amend §330(a)(1) by inserting ", or the debtor's attorney" after "1103". Id. The Court concludes that §330(a)(1) allows the award of compensation to a debtor's attorney in appropriate circumstances.

Generally, in reviewing fee applications, the Court calculates the lodestar amount by considering the hours expended by the attorneys and estimating the reasonable time required to perform the compensable services. In re National Cattle Congress, Inc., No. 93-61986KW, slip op. at 9 (Bankr. N.D. Iowa March 26, 1996). The Court then multiplies the number of hours reasonably expended by a reasonable hourly rate. In re Apex Oil Co., 960 F.2d 728, 731 (8th Cir. 1992). Section 330(a)(3), enacted in 1994, adopted the lodestar analysis, codifying existing case law. In re Holder, 207 B.R. 574, 583 (Bankr. M.D. Tenn. 1997).

Some general rules apply to fee applications in this District. "Lumping" of fees and vagueness in billing statements is prohibited. No compensation will be granted for work performed which is inadequately explained. Nor will the court indulge in guesswork or undertake extensive labor to justify fees not justified in the application itself. In re Snook, No. 92-62249LW, slip op. at 3 (Bankr. N.D. Iowa Jan. 11, 1994) (citations omitted). Generally, fees are not allowed for simply reading the work product of another as a matter of interest. In re Pettibone, 74 B.R. 293, 303 (Bankr. N.D. Ill. 1987). Document review is compensable only if review is required to form some kind of response or to perform a particular task in the case. Id.

The Court has examined the itemization of fees and expenses which Attorney Terpstra submitted with his Application for compensation. There being no evidence to the contrary, the Court determines that the hours claimed are reasonable for the services rendered. Mr. Terpstra's hourly rate of \$135.00 is within the reasonable limits recognized in this district.

Essentially all of Mr. Terpstra's services performed prepetition are compensable under §330(a). These services benefit the estate. Mr. Terpstra analyzed Debtor's financial condition, advised on filing for bankruptcy relief and prepared the petition and schedules. By necessity, in performing these duties, Mr. Terpstra was involved in discussions with Attorneys Reasoner, Brady and Carmichael concerning settlement with Mr. Kolkmeier. The Court concludes that 17.1 hours of Mr. Terpstra's prepetition services benefit the estate and are compensable under §330(a). At Mr. Terpstra's hourly rate of \$135.00, this amounts to \$2,308.50.

As to postpetition services, the Court finds that time Mr. Terpstra spent communicating with Debtor, reviewing documents, and communicating with creditors are not compensable from the bankruptcy estate. These services benefit only Debtor. Mr. Terpstra's fees for matters concerning the Riley probate estate also benefit only Debtor, except for his involvement in seeing that executor's fees were paid to the Trustee.

The Court finds that time Mr. Terpstra spent representing Debtor at the §341 meeting, amending schedules, and cooperating with Trustee and his counsel by surrendering records and property of the estate, including expediting payment of Debtor's executor fees in the Riley estate to Trustee, benefit the bankruptcy estate. In regard to the

Kolkmeier settlement, the Court considers Mr. Terpstra's time spent gathering and disseminating information compensable. Any time spent negotiating the settlement, however, duplicates the duties of Trustee and his counsel and is not compensable. The Court concludes that 14.2 hours of Mr. Terpstra's postpetition services benefit the estate and are compensable under §330(a). At Mr. Terpstra's hourly rate of \$135.00, this amounts to \$1,917.00.

Expenses listed in Mr. Terpstra's itemized statement are comprised of copying costs. These costs are not broken down to correspond with specific itemizations of time spent by Mr. Terpstra. The first entry of copying costs of \$143.50 from 2/25/97 obviously relates to Mr. Terpstra's prepetition services and is compensable in full. The Court concludes that the remainder of the copying costs are compensable in the same proportion that Mr. Terpstra's compensable postpetition services have to total postpetition services. That is, because the Court is allowing \$1,917 for Mr. Terpstra's postpetition services, or approximately 37% of the total charged for postpetition services, the same percentage of postpetition copying costs will be paid by the estate. Of postpetition copying costs of \$72.50, the Court finds that 37% or \$26.82 is compensable under §330(a)(1).

Nothing in the parties' settlement agreement precludes payment of Mr. Terpstra's fees and expenses from the estate, to the extent they benefitted the estate. To the contrary, the agreement states that Trustee shall pay "from the proceeds received from Kolkmeier all appropriate fees and expenses of the bankruptcy estate, as approved by the Bankruptcy Court." Attorney fees and expenses are appropriate fees and expenses of the estate under §330(a). Trustee has paid Dan Childers, attorney for Trustee, fees and expenses in the amount of \$27,182 from the estate. Mr. Terpstra's fees and expenses are also payable from the estate as set out above.

In summary, the Court concludes the following fees and expenses owed to Attorney Ray Terpstra are compensable from the estate under §330(a) for services and expenses as Debtor's attorney.

	Fees	Expenses
Prepetition	\$2,308.50	\$ 143.50
Postpetition	1,917.00	26.82
Subtotal	\$4,225.50	\$ 170.32
Total fees and expenses compensable from estate:		\$4,395.82

Mr. Terpstra has received prepetition payment of \$2,131.50 from Debtor. The remainder, \$2,264.32, shall be paid from Debtor's bankruptcy estate.

WHEREFORE, the Application for Compensation of Debtor's Attorney's Fees and Expenses is GRANTED IN PART and DENIED IN PART.

FURTHER, Attorney Ray Terpstra is entitled to compensation from the bankruptcy estate under §330(a) for services and expenses as Debtor's attorney in the amount of \$2,264.32.

SO ORDERED this 4th day of March, 1998.

Paul J. Kilburg
U.S. Bankruptcy Judge