

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

Sytje's Pannekoeken Huis BKY No. 96-31250
Family Restaurants, Inc.

Chapter 7

Debtor.

ORDER

This matter came before the Court on September 22, 1997 on application for interim compensation by Molly T. Shields of Doherty, Rumble & Butler ("DRB") as attorney for the Trustee. An objection to the fee application was filed ostensibly on behalf of Sytje's Pannekoeken Huis Family Restaurants, Inc. ("Debtor") through its Chapter 11 attorneys, Robins, Kaplan, Miller & Ciresi, L.L.P. ("RKM&C"). The United States Trustee did not file an objection.

I.
FACTS

This case was filed as a Chapter 11 on March 7, 1996. It converted to a case under Chapter 7 on October 21, 1996. Molly Shields was assigned to the case as the Chapter 7 trustee. On October 30, 1996, an order approving DRB to act as attorney for the Trustee was entered.

This is the first application for interim compensation presented by DRB. At the time the application was made the estate had a deposit balance of \$205,849.46. DRB is seeking compensation in the amount of \$48,055.95 and reimbursement in the amount of \$1,550.46 for a total amount of \$49,606.41.

II.
DISCUSSION

A. STANDING

At the hearing, DRB raised the issue of the standing of "the Debtor" or the former principal of the Debtor, in employing RKM&C to bring the objection to the fee application. While RKM&C was not able to cite any authority allowing it to bring an objection to the fee application on behalf of the Debtor in the contested case, it is not necessary for the Court to reach the issue of the proper standing of the objecting party.

Courts have an independent duty to examine the reasonableness of attorney fees, even when no objection has been raised to the fee application. In

re Alberto, 121 B.R. 531, 534 (Bankr. N.D. Ill. 1990); In re Allied Computer Repair, 202 B.R. 877, 881 (Bankr. W.D.Ky. 1996); In re Crawford Hardware, Inc. 82 B.R. 885, 887 (Bankr. S.D. Ohio 1987). Courts bear this duty of independent review based on the significant role that the Bankruptcy Court plays in protecting the assets of the bankruptcy estate and maximizing those assets for creditors. In re Allied Computer Repair, 202 B.R. at 881. It is in carrying out this duty that the Court examines the fee application of DRB, using the objections raised as guidance.

B. IN GENERAL

Compensation of attorneys is governed by 11 U.S.C. Section 330 which provides that an attorney may receive "reasonable compensation for actual, necessary services rendered . . . and . . . reimbursement for actual, necessary expenses." 11 U.S.C. Section 330 (a)(1)(A) & (B). The appropriate method to calculate reasonable compensation under Section 330 is the lodestar approach, which is determined by multiplying the number of hours reasonably expended in connection with a particular service by a reasonable hourly rate. In re Apex Oil Co., 960 F.2d 728, 730-731 (8th Cir. 1992). Any hours not reasonably expended during the representation are to be excluded from the lodestar calculation. In re Kula, No. 97-6014NE, 1997 W.L. 694299 at *11 (8th Cir.BAP Neb.). The lodestar amount is to reflect: "(1) the novelty and complexity of the issues, (2) the special skill and experience of counsel, (3) the quality of representation, and (4) the results obtained. . .". Apex Oil, 960 F.2d at 731-732. Once made, the lodestar calculation is presumed to be the allowable compensation, and the amount should be adjusted only in rare situations. Kula, at *8.

The burden of proof as to reasonableness of fees rests on the applicant. Initially, the burden is met by the applicant filing an application with the court which sets forth a detailed statement of (1) the services rendered, time expended and expenses incurred; and, (2) the amounts requested. Fed.R.Bankr.P. 2016(a). Additionally, a fee application must list each activity, its date, the attorney who performed the work and a description of the work performed.

Where the application is contested, "[t]he bankruptcy court must make a finding as to whether the number of hours billed were reasonable in light of the complexity of the case, and then multiply that by a reasonable hourly rate for those services. The party seeking an award of fees should submit evidence supporting the hours worked and the rates claimed....If the hours or rate requested by the professional is not reasonable under the circumstances for the work performed, the bankruptcy court should make such a finding." Kula, at *6 (citation omitted).

The required findings must be based on evidence in the record; not simply upon ad hoc argument of counsel, or on self determined notions of the judge. "The bankruptcy court's decisions must be supported by evidence and the bankruptcy court should issue findings and conclusions which will allow a reviewing court to determine whether the amount awarded was reasonable under the guidelines." Kula, at *8. Ordinarily, this will require evidentiary hearing. Kula, at *12.

C. IN PARTICULAR

1. Reasonable and Necessary Fees

An objection is raised that the fees charged by DRB were not reasonable and necessary fees as they were excessive and duplicative. Specifically, the objection is made in the following categories: motion to set bar date; motions for sales free and clear and motions for rejection, assumption and assignment of leases; application and order for Rule 2004 examination; and, trustee tasks.

a. Motion To Set Bar Date

DRB asserts that this was a complex issue which required the assistance of the United States Trustee as it involved setting up a procedure in which the numerous employees could assert claims. The employees had been without pay for three weeks and without medical insurance. The motion at issue is five pages long with the accompanying memorandum being four pages and citing one case. A paralegal spent 11.6 hours solely on researching, writing, revising, and collecting exhibits to the motion. Additionally, she spent 3.2 hours on revising, researching, writing the motion, lumped with other time entries such as phone calls and PACER searches. Ms. Shields spent 4.5 hours of attorney time solely reviewing and revising the motion. Additionally, she spent 5.6 hours doing the same lumped with two additional tasks of writing a letter and finalizing a proof of claim. A total of 24.9 hours was spent on the project. The time charged appears excessive. However, there is insufficient evidence in the record to support a lodestar calculation for these services, and an evidentiary hearing is required

b. Motions for Sales Free and Clear, and Motions for Rejection, Assumption and Assignment of Leases

The objection is based on the argument that the time spent on these four motions was excessive and duplicative. DRB billed approximately 21.1 hours, at \$85 per hour in paralegal time, and 7.9 hours at \$190 per hours in senior attorney time. DRB takes the position that the motions dealt with different locations with different liens making the situation complicated. Review of the motions, the attached exhibits, legal memorandum, and the time records raises questions of reasonableness; but the record fails to support a lodestar calculation, and an

evidentiary hearing is required.

c. Application and Order For Rule 2004
Examination

DRB asserts that the application and order were directed to Debtor's bank, and required the bank to provide information regarding hundreds of transactions. Examination of the time records reveals that 4.4 hours of paralegal time and 1.6 hours of attorney time was spent on the application. Upon review of the Rule 2004 application and exhibits, the charges appear excessive. The record, however, does not support a lodestar calculation for the services, and an evidentiary hearing is required.

d. Trustee Functions

RKM&C also objects, claiming that DRB charged for trustee fees. The duties of a trustee are listed in 11 U.S.C. Section 704. The objection listed numerous entries believed to be trustee time. It is well settled that the trustee's attorney is not entitled to receive compensation for performing the trustee's statutory duties. DRB asserts that the numerous entries focused on by RKM&C have been taken out of context, making it difficult to respond to each objection individually. DRB essentially takes the position that all time billed was properly that of attorney time. There is not an adequate record to support a lodestar calculation, and an evidentiary hearing is required.

2. Inadequately Described and Detailed Entries.

An objection is raised that DRB has failed to provide adequate description and details on certain time entries, specifically large time increments and lumped time. Every application with the court for attorney fees must set forth a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested. Fed.R.Bankr.P. 2016(a). DRB argues that all the lumped time was actually and necessarily incurred by the estate. Again, not enough information exists to support a lodestar calculation, and evidentiary hearing is required.

III.
DISPOSITION

Based on the foregoing, IT IS HEREBY ORDERED: that DRB's Application for Interim Compensation dated August 22, 1997 and filed August 25, 1997, is continued for evidentiary hearing, subject to discovery, to be set by DRB consistent with this order.

Dated:

By the Court

