

United States Bankruptcy Court
Northern District of Illinois
Eastern Division

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Bankruptcy Caption: In re Jeffery K. Harbin

Bankruptcy No. 01 B 26324

Date of Issuance: June 4, 2002

Judge: John H. Squires

Appearance of Counsel:

Attorney for Movant/Trustee: Carolyn A. Suzzi, Esq., Office of Glenn B. Stearns,
Chapter 13 Standing Trustee, 4343 Commerce Court, #120, Lisle, IL 60532

Attorney/Respondent: Susan G. Castagnoli, Esq., Law Office of Susan G. Castagnoli
& Associates, 29 South Weber Street, Suite 320, Naperville, IL 60540

Trustee: Glenn B. Stearns, Chapter 13 Standing Trustee, 4343 Commerce Court,
#120, Lisle, IL 60532

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:)	Chapter 13
JEFFERY K. HARBIN,)	Bankruptcy No. 01 B 26324
)	Judge John H. Squires
Debtor.)	

MEMORANDUM OPINION

This matter comes before the Court on the application of Susan G. Castagnoli (“the Attorney”) for fees in the sum of \$3,420.00 and reimbursement of expenses totaling \$185.00, and the objection thereto filed by Glenn B. Stearns, the Chapter 13 Standing Trustee (the “Trustee”). For the reasons set forth herein, pursuant to 11 U.S.C. § 330, the Court awards the Attorney compensation in the sum of \$2,205.00 and authorizes reimbursement of expenses in the amount of \$185.00. The Court sustains, in part, the objection of the Trustee.

I. JURISDICTION AND PROCEDURE

The Court has jurisdiction to entertain this matter pursuant to 28 U.S.C. § 1334 and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O).

II. FACTS AND BACKGROUND

On November 24, 1999, the Debtor filed the first Chapter 13 bankruptcy petition (Case No. 99 B 36626). The Attorney represented the Debtor in that case. She received fees in the sum of \$2,626.50. The plan was confirmed, but the case was ultimately dismissed on September 1, 2000 for a default in monthly payments. On September 14, 2000, thirteen days after the dismissal of the first case, the Debtor filed a second Chapter 13 case (Case No. 00 B 26957). Once again, the Attorney represented the Debtor. She received fees in the sum of \$3,273.00. This case was dismissed on February 23, 2001. Thereafter, on July 26, 2001, the Debtor filed this third Chapter 13 petition again with the assistance of the Attorney. The Court denied confirmation of the plan on January 25, 2002. Then, on April 4, 2002, the Debtor filed a notice of conversion to Chapter 7.

On March 5, 2002, the Attorney filed the instant request for payment of her fees and expenses in the sum of \$3,420.00 and \$185.00, respectively. On May 3, 2002, the Trustee filed a response to the Attorney's request for fees. The Trustee recommends that the Court only award the Attorney \$1,895.00, the amount the Attorney disclosed in the statement pursuant to Federal Rule of Bankruptcy Procedure 2016(b). The Trustee argues that many of the services rendered were unreasonable and excessive. In particular, the Trustee notes that the time expended drafting the petition, schedules, statement of affairs and plan, in light of the fact that the Attorney represented the Debtor in the two prior cases, constitutes an unreasonable expenditure of time. Moreover, the Trustee objects on the basis that there are inconsistencies in the Attorney's billing. First, the Rule 2016 statement that she filed with the

Debtor's petition and signed on July 25, 2001, indicates that she has agreed to accept \$1,895.00 for her services with limited exceptions. The Trustee points out, however, that on her invoice for July 26, 2001, she indicates her estimated fees at \$3,500.00. The Trustee argues that this constitutes an increase of fees by 80% in one day without any explanation. Further, according to the Trustee, page two of the fee agreement, which was signed by the Debtor on November 16, 2001, four months after the Attorney began representing the Debtor in this case, states that "basic services" are estimated at 8.5 hours of attorney time, which amounts to \$1,912.50 at her hourly rate of \$225.00. On the first page of the fee agreement, however, the Attorney estimates her fees at \$3,500.00. The Trustee contends that by signing this fee agreement, the Debtor agreed to pay \$3,500.00 for \$1,912.50 worth of legal services. Consequently, the Trustee argues that the Attorney's fee agreement is unreasonable on its face and unconscionable in its use. The Trustee recommends that the Attorney's fees be limited to the amount she requested in her Rule 2016 statement—\$1,895.00.

The Attorney filed a reply to the Trustee's response in objection to her fees. The Attorney argues that this case was not a typical Chapter 13 case because it involved the Debtor's operation of a business. Further, she states that the prior two Chapter 13 cases failed because the Debtor had unforeseen medical problems that derailed his ability to complete a reorganization plan. The Attorney states that this third case was filed to save the Debtor's home. Finally, the Attorney states that the Debtor signed two fee retainer agreements. The first was contemporaneous with the Attorney's retention in July 2001. The second fee agreement

was the result of this Court's Opinion in another case in which the Attorney was involved.¹ She maintains that the hourly rate did not change. Rather, the second agreement was intended to make clear to the Debtor that other attorneys may be utilized in the representation of the Debtor.

The Debtor has not objected to the Attorney's request for fees. The Trustee and the Attorney waived their opportunity for an evidentiary hearing and the Court took the matter under advisement.

III. DISCUSSION

A. Award of Attorney's Fees

Pursuant to 11 U.S.C. § 330 professionals applying for fees payable out of the bankruptcy estate must demonstrate that their services were actual, necessary and reasonable. Specifically, § 330(a)(4)(B) provides in relevant part:

In a . . . chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor's attorney for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section.

11 U.S.C. § 330(a)(4)(B) (emphasis supplied). Those other factors referred to are set forth as follows:

(3)(A) In determining the amount of reasonable compensation

¹ See In re Palladino, 267 B.R. 825 (Bankr. N.D. Ill. 2001).

to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including--

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance and nature of the problem, issue, or task addressed; and
- (E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

4(A) Except as provided in subparagraph (b), the court shall not allow compensation for--

- (i) unnecessary duplication of services; or
- (ii) services that were not--
 - (I) reasonably likely to benefit the debtor's estate; or
 - (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(3) and (4)(A).

The Court has a duty to examine independently the reasonableness of the fees requested. In re Wyslak, 94 B.R. 540, 541 (Bankr. N.D. Ill. 1988); In re Chicago Lutheran Hosp. Ass'n, 89 B.R. 719, 734-35 (Bankr. N.D. Ill. 1988). The burden of proof to show entitlement to the fees requested is on the Attorney. See In re Kenneth Leventhal & Co., 19 F.3d 1174, 1177 (7th Cir.1994); In re Stoecker, 114 B.R. 965, 969 (Bankr. N.D. Ill. 1990); In re Pettibone Corp., 74 B.R. 293, 299 (Bankr. N.D. Ill. 1987); Cohn v. United States

Trustee (In re Ostas), 158 B.R. 312, 323 (N.D. N.Y. 1993). This burden must "not be taken lightly, especially given that every dollar expended on legal fees results in a dollar less that is available for distribution to the creditors." Pettibone, 74 B.R. at 299 (citations omitted). The fee application must stand or fall on its own merits. See In re Wildman, 72 B.R. 700 (Bankr. N.D. Ill. 1987).

The Court has utilized the factors cited in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974). The twelve Johnson factors are as follows: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill required to perform the legal services properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the result obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. Id. at 717-19.²

The Court may determine what is the reasonable amount of time a professional should have to spend on a given project. Wildman, 72 B.R. at 713 (citing In re Shades of Beauty, Inc., 56 B.R. 946, 951 (Bankr. E.D. N.Y. 1986), aff'd in part, remanded in part, 95 B.R. 17 (E.D. N.Y. 1988)). The Supreme Court, in Hensley v. Eckerhart, 461 U.S. 424 (1983), ruled

² The Johnson factors are referenced in LR83.51.5 of the Rules of Professional Conduct for the Northern District of Illinois, applicable here via Local Bankruptcy Rule 608. All of these factors have been considered in this matter and are discussed hereinafter.

that "excessive, redundant or otherwise unnecessary" hours should be excluded from the fees sought. In other words, applicants should exercise good faith "billing judgment." Id. at 434; see also In re Temple Retirement Community, Inc., 97 B.R. 333, 339 (Bankr. W.D. Tex. 1989); In re Pothoven, 84 B.R. 579, 584 (Bankr. S.D. Iowa 1988).

Reasonable time spent does not necessarily include all time actually expended. See In re Chas. A. Stevens & Co., 105 B.R. 866, 870-71 (Bankr. N.D. Ill. 1989). Hence, the exercise of good faith billing judgment comes into play. Compensation will not be awarded for nonproductive time, or for time spent on services that are duplicative of previously rendered services. In determining what constitutes reasonable compensation, the Seventh Circuit has stated that "there are limits--measured by standards of reasonableness--to what a professional can demand in a bankruptcy case." Leventhal, 19 F.3d at 1178.

The Seventh Circuit has stated that the appropriate measure for determining reasonable attorneys' rates charged is the market approach. See In re Continental Illinois Sec. Litig., 962 F.2d 566, 572 (7th Cir. 1992) ("The object in awarding a reasonable attorney's fee . . . is to give the lawyer what he would have gotten in the way of a fee in an arm's length negotiation, had one been feasible. In other words the object is to simulate the market where a direct market determination is infeasible."). The Court also views the attorney/client relationship as one in which the terms of the engagement should normally be upheld, including the fee arrangement, so as not to unduly intrude upon the bargain struck between the parties who have entered into an important professional relationship. Moreover, the Seventh Circuit has noted that the Bankruptcy Code requires that attorneys involved in bankruptcy matters receive the

same compensation as they would earn in performing similar services outside the bankruptcy context. See In re UNR Indus., Inc., 986 F.2d 207, 209-10 (7th Cir. 1993).

The Court has considered all of the Johnson factors. It is clear that although some time and effort was required by the Attorney to draft the petition, schedules and a facially confirmable plan, the Court finds that, given the fact that this case was the third Chapter 13 case in a two-year period, the Attorney did not need to expend the amounts of time charged for the results obtained. The Attorney received a total of \$5,899.50 for representing the Debtor in the prior two cases. This third case did not involve any new or difficult questions or call for any exceptional skills. The fact that the Debtor was operating a business made this case a bit more complex than the average Chapter 13 case, but it did not involve any difficult questions or require exceptional skills. The Court disagrees with the Attorney's statement that this case was complicated by the two prior failed cases and required exceptional skills. Furthermore, there was no showing that the Attorney was precluded from accepting other employment by taking this case. Moreover, there is no customary fee for this work in this district. There was no showing of any specific time limitations imposed by the client or the circumstances. The result obtained here was unfavorable for the Debtor. The Court denied confirmation of the Debtor's plan, the stay was modified as to certain real property of the Debtor, and he was barred from filing another case for 180 days. Subsequently, the Debtor filed a notice converting the case to Chapter 7. Consequently, the result obtained here was less than desirable and the fees sought by the Attorney are simply too high. The case was typical of many Chapter 13 cases filed in this district in which debtors attempt to save their homes and, as such, was neither undesirable

nor unusually difficult, even though it was the third case filed by this Debtor. The Attorney's experience, reputation, and ability have been considered and her requested fees and her \$225.00 per hour billing rate for work performed are somewhat higher than those of other counsel in this district seeking fees in comparable Chapter 13 cases.

First, the Court will address the Trustee's objection regarding the discrepancies in the fee agreements. The Rule 2016(b) statement, which was filed with this case on July 26, 2001, provides that the Attorney agreed to accept \$1,895.00 for legal services. The first fee agreement between the Debtor and the Attorney was signed on July 5, 2001. The Attorney estimated the legal fees at \$1,895.00. The second fee agreement between the Debtor and the Attorney, however, which was signed on November 6, 2001, four months after the date the case was filed, states on the first page that fees are estimated at \$3,500.00. The Attorney responds that the Debtor signed two fee agreements: one contemporaneous with the Attorney's retention in July and a second agreement that she claims conforms to this Court's ruling in another case. The Attorney contends that she had the Debtor sign the second fee agreement to make clear that other attorneys would be appearing in the case.

The Court shares the Trustee's concern regarding the difference in the estimated fees as indicated on the July and November fee agreements. The Trustee states that taken as a whole, the agreements and the fee application obfuscate and mislead. For this reason, the Trustee request the reduction of the Attorney's fees to \$1,895.00--the amount sought in her Rule 2016(b) statement. While the Court agrees with the Trustee's position that these documents are confusing and perhaps the result of careless drafting, the Court disagrees that the Attorney

should be penalized and held to the amount she initially disclosed in her Rule 2016(b) statement. After all, many attorneys expended additional time not included in the estimated sum at the front end of the case when the statement is due. The “punishment” suggested here by the Trustee does not fit the “crime.” The record is devoid of any evidence that the Attorney intended to perpetrate any fraud or false representations on either the Debtor or the Court. The Court admonishes the Attorney, however, to proceed cautiously in the future, now that she has been made aware of the ambiguity and discrepancy in her fee agreements, the Rule 2016(b) statement and the fee application.

The Court agrees with the Trustee and finds that the amount of time expended by the Attorney to draft the petition, schedules and plan was unreasonable and excessive especially in light of the fact that the Attorney received approximately \$5,900.00 in fees from the Debtor in the two prior cases. It appears that the Attorney spent 2.50 hours on these tasks (07/25/01 1.50 hours and 09/05/01 1 hour). Given the fact that the Attorney represented the Debtor in the prior Chapter 13 cases, it should not have required the amount of time she expended. Comparing and contrasting the three sets of papers shows few material changes. Thus, the Court declines to award the Attorney fees for the entire 2.50 hours spent on the task of preparing the petition, schedules, statement of affairs and plan because same is excessive. Rather, the Court will award the Attorney only 1 hour for those tasks. Hence, the Court disallows 1.50 hours of the Attorney’s time for a total of \$337.50.

Next, the Court agrees with the Trustee’s objection to the amount of time the Attorney spent meeting with the Debtor. It appears that she spent 6.60 hours meeting and conferring

with him (07/25/01 2.0 hours; 11/06/01 2.50 hours; 11/07/01 .80 hours; 11/09/01 .60 hours and 01/20/02 .70 hours). The Court finds this time unreasonable and excessive given the result obtained here. The Attorney, having filed two prior cases, was certainly familiar with the Debtor's financial background. These meetings could have been kept to a minimum because, after all, the Attorney was fully aware of the Debtor's ongoing desire to save his home. Consequently, the Court allows only the time expended on 07/25/01 and 01/20/02. The 2.50 hours spent on 11/06/01, the .80 hours spent on 11/07/01, and the .60 hours spent on 11/09/01 are hereby disallowed for a total of \$877.50.

In sum, the Court awards the Attorney the total amount of \$2,205.00 for the time expended. The Court concludes that many of the points made by the Trustee are well-founded, and thus, sustains, in part, his objection to the Attorney's application.

B. Expense Reimbursement

The Attorney seeks reimbursement of expenses in the amount of \$185.00. The Attorney bears the burden of establishing that she is entitled to reimbursement of expenses. In re Convent Guardian Corp., 103 B.R. 937, 939 (Bankr. N.D. Ill. 1989); In re Affinito & Son, Inc., 63 B.R. 495, 497 (Bankr. W.D. Pa. 1986). The Court will not assume any expense is necessary. See In re Lindberg Prods., Inc., 50 B.R. 220, 221 (Bankr. N.D. Ill. 1985). An expense is necessary if it was incurred because it was required in order to file this case for the Debtor. See Wildman, 72 B.R. at 731.

The Court will reimburse the Attorney for the \$185.00 statutory fee for filing this case. Payment of this sum is required in every Chapter 13 case and cannot be waived. The Court

finds that this expense was incurred by the Attorney to accomplish the proper representation of the Debtor.

IV. CONCLUSION

For the foregoing reasons, the Court awards the Attorney compensation in the sum of \$2,205.00 and authorizes reimbursement of expenses in the amount of \$185.00. The Court sustains, in part, the objection of the Trustee.

This Opinion constitutes the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. A separate order shall be entered pursuant to Federal Rule of Bankruptcy Procedure 9021.

ENTERED:

DATE: _____

John H. Squires
United States Bankruptcy Judge

cc: See attached Service List

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:) Chapter 13
JEFFERY K. HARBIN,) Bankruptcy No. 01 B 26324
) Judge John H. Squires
Debtor.)

ORDER

For the reasons set forth in a Memorandum Opinion dated the 4th day of June, 2002, the Court hereby awards Susan G. Castagnoli compensation in the sum of \$2,205.00 and authorizes reimbursement of expenses in the amount of \$185.00 pursuant to 11 U.S.C. § 330. The Court sustains, in part, the objection thereto of Glenn B. Stearns, the Standing Chapter 13 Trustee.

ENTERED:

DATE: _____

John H. Squires
United States Bankruptcy Judge

cc: See attached Service List