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Re: PATRICK R. BENNETT
CASE NO. 97-65399

LETTER DECISION and ORDER

On February 12, 2004, the Debtor, Patrick R. Bennett ("Debtor" or "Bennett") filed a motion with this Court seeking an order directing the Trustee in his voluntary chapter 7 bankruptcy case, Lee E. Woodard, Esq. ("Woodard" or "chapter 7 Trustee"), to provide funds from the bankruptcy estate to the Debtor to enable him to pay expenses and retain counsel for the purposes of defending various adversary proceedings pending in this Court, generally, objecting to his discharge in the bankruptcy and investigating and possibly pursuing claims against Woodard and Richard Breeden ("Breeden"), the Trustee appointed in the related case of the Bennett Funding Group Inc., Case 96-61376 ("BFG case"), as well as to retain additional criminal counsel to represent him in connection with a "proceeding pursuant to 28 U.S.C. 2255" in the United States District Court for the Southern District of New York ("District Court"). The motion, which was opposed by the chapter 7 Trustee,

was argued before the Court on February 26, 2004.¹ Following oral argument, the Court indicated that it would issue a letter decision.

Debtor, relying generally on § 105(a) of the Bankruptcy Code (11 U.S.C. §§ 101-1330) (“Code”), specifically requests that the chapter 7 Trustee make available to him the sum of \$175 per month for six months for expenses necessarily incurred in “4 proceedings related to the chapter 7 case in which Mr. Bennett is defending himself pro se.” The Debtor describes these actions, generally, as an adversary proceeding commenced in this Court by the U.S. Department of Labor to deny him a chapter 7 discharge; an adversary proceeding commenced by Breeden to also deny Debtor a discharge; a potential civil RICO claim against Breeden; and, finally, “legal advise (sic) concerning the removal of Trustee Woodard pursuant to 11 U.S.C. 324 for collusion (sic) with and conflict of interest eptaining (sic) to Trustee Breeden.” Alternatively, Debtor seeks authorization of “up to \$7500 for standby counsel” in connection with the aforementioned proceedings.²

Debtor also seeks the disbursement from the estate of up to the sum of \$7,500 to pay for the services of attorney George W. Galgano, Jr. to continue to represent him in connection with a habeas corpus proceeding pursuant to 28 U.S.C. 2255 alleged to be presently pending in the District Court.

The chapter 7 Trustee opposes the Debtor’s motion asserting that the Debtor is actually seeking the use of the funds of the bankruptcy estate for his own personal benefit without citing to any valid legal theory. The Trustee points out that by filing a voluntary chapter 7 case the Debtor “relinquished any custody or control over the administration of non-exempt assets listed in his

¹ The Debtor argued the motion telephonically from the Federal Correctional Institution at Otisville, New York where he is currently incarcerated.

² The Court notes in reviewing the docket of the Debtor’s chapter 7 case, that there are at least two additional adversary proceedings pending against Bennett having been commenced by Woodard seeking the turnover of money or property from him and his non-debtor spouse.

bankruptcy petition or subsequently discovered or disclosed.” The Trustee notes that the Debtor “claimed any and all exemptions to which he was entitled.” The chapter 7 Trustee suggests that the Debtor’s reliance on Code § 105(a) is also misplaced since that section provides equitable relief to a debtor who comes before the Court with “clean hands.” Finally, the chapter 7 Trustee contends that the Debtor “takes liberties with the facts in an effort to denigrate the Chapter 7 Trustee as well the Chapter 11 Trustee for their administering the bankruptcy estate in a manner other than to the Debtor’s liking.”

The law is well settled that attorney’s fees payable out of estate assets must initially pass muster pursuant to Code § 503(b)(2), which incorporates by reference Code § 330. Those sections, when read together, mandate that the services rendered or to be rendered by the attorney seeking compensation from the bankruptcy estate provide some benefit to the estate. *See In re Engel*, 124 F.3d 567, 575 (3d Cir. 1997); *In re Quisenberry*, 295 B.R. 855, 865 (Bankr. N.D. Tex. 2003); *In re Waxman*, 148 B.R. 178, 182 (Bankr. E.D.N.Y. 1992). In the instant contested matter, it is difficult for this Court to discern what benefit will inure to this Debtor’s estate if the chapter 7 Trustee is directed to provide the requested funds. Clearly, reimbursement of expenses or, alternatively, retention of counsel in connection with Debtor’s defense of the adversary proceedings presently pending which seek a denial of his discharge will provide no perceptible benefit to the creditors of the chapter 7 estate. *See id.* The objections to discharge filed by the U.S. Department of Labor and Breeden, if successfully repelled, will benefit only the Debtor. Conversely, the adversary proceedings commenced by Woodard seeking the turnover of certain property by the Debtor and his non-debtor spouse, if successful, will directly benefit creditors. Thus, the defense of those latter proceedings will actually be detrimental to the estate and, therefore, clearly not compensable out of estate assets.

Similarly, the expenditure of \$7,500 to compensate counsel to pursue Debtor's habeas corpus petition before the District Court provides no perceptible benefit to the estate. Debtor cites the Court to two cases that are easily distinguishable. The first is *Hoffenberg v. Hoffman & Pollok*, 288 F. Supp. 2d 527 (S.D.N.Y. 2003) a case which has little or no bankruptcy implications. The only significant reference to bankruptcy in the decision is found on page 531, which refers to a consent judgment negotiated by and between Hoffenberg and the trustee in the Towers Financial Corp. bankruptcy case which, *inter alia*, provided funds whereby Hoffenberg could retain counsel. Hoffenberg had defrauded Towers's creditors out of some \$475,000,000 and had numerous civil and criminal proceedings pending against him. Hoffenberg, however, was not a debtor in bankruptcy and the case came before the District Court, essentially as a malpractice action by Hoffenberg against his former counsel. The second case relied upon by Debtor is *In re Adelphia Communications Corp.*, 302 B.R. 439 (Bankr. S.D.N.Y. 2003). That case, though currently pending, involves, *inter alia*, a demand by the debtor's former officers and directors to be both defended and indemnified under the terms of a so called "D&O" policy of insurance maintained by the debtor. Again, the individual officers and directors are not debtors in bankruptcy and Bennett can draw no precedential value from the case.

Case law is fairly clear. The bankruptcy estate should not bear the cost of defending a debtor in a criminal proceeding. See *In re Engel*, 124 F.3d at 575; *In re Jordan*, 190 B.R. 549, 551 (Bankr. N.D. Miss. 1995). Unless it can be shown that defense of a criminal proceeding will provide protection for estate assets, criminal counsel must look elsewhere for payment of fees. See *In re Delta Petroleum (P.R.), Ltd.*, 193 B.R. 99, 109 (D.P.R. 1996).

Finally, the Debtor suggests that he has potential claims against both Woodard and Breeden for which he requires the services of counsel to be paid for by the bankruptcy estate. In the case of

Woodard, Bennett alleges that the chapter 7 trustee has been generally uncooperative with him in gaining access to certain information. Once again, the Debtor misunderstands the role of the chapter 7 Trustee. A clear symptom of that misunderstanding is Debtor's statement at page 9 of his Memorandum of Law, filed January 15, 2004, indicating that "one thing is sure -Trustee Woodard cannot be counted upon to look after the interests of the debtor, and stand-by counsel is required." Notwithstanding Debtor's citation to language found in the case of *In re WHET, Inc.*, 750 F.2d 149 (1st Cir. 1984), it is not the responsibility of a chapter 7 trustee to "look after the interests of the debtor," except to the extent that the protection of those interests may result in a direct benefit to the creditors of the estate. Further, if the Debtor truly believes that Woodard is clearly acting in violation of his fiduciary duty, his first resort should be to the U.S. Trustee who has general oversight functions concerning chapter 7 trustees pursuant to 28 U.S.C. § 586(a)(1).

With regard to Breeden, the Debtor asserts that he "squandered estate assets with an employee of the company (BFG) being paid with estate funds, on personal use and enjoyment." He indicates that legal counsel is necessary to determine whether the Debtor should assert his claims as a defense to Breeden's objection to his discharge or whether he should commence an independent "civil RICO action." Once again, the allegations are vague and resulting benefit to the creditors of Bennett's chapter 7 estate is difficult to discern. Certainly to the extent that the alleged conduct of Breeden would be used defensively in his adversary proceeding seeking denial of Debtor's discharge, it would confer no benefit on Bennett's creditors. To the extent that Bennett could maintain a civil RICO action against Breeden, it is presumed that he would be doing so either on behalf of BFG creditors or solely as a former BFG stockholder. Only in the latter case would the Debtor's individual creditors conceivably receive any benefit. Against this backdrop, the Court must also consider Bennett's current status. He is a convicted felon serving an extended sentence

for having engineered arguably the “largest Ponzi scheme in U.S. history.” While that status does not entitle Debtor to less protection from the bankruptcy laws than any other debtor, it does cause the Court to afford less credibility to the allegations contained in this motion.

Accordingly, it is

ORDERED that the Debtor’s motion seeking to utilize estate funds to pay for various legal fees and expenses outlined in the motion papers is denied.

Dated at Utica, New York

this 31st day of March 2004

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge