

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re

Richard C. Blowers,

Debtor.

Case No. 00-10495

Chapter 7

In re

George W. Blowers & Son, Inc.,

Debtor.

Case No. 00-10494

Chapter 7

APPEARANCES:

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Chapter 7 Trustee George W. Blowers & Son, Inc.
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Hon. Robert E. Littlefield, Jr., United States Bankruptcy Judge

Memorandum, Decision & Order

Before the court is the final fee application of Hodgson, Ross, Andrews, Woods & Goodyear, LLP. (“Applicant”). Creditor Central National Bank, Canajoharie (“Creditor”) has objected.

Facts

The facts of this case indicate its contested nature and a brief summary of material portions of the court’s docket follow:

1. On February 3, 2000, two Chapter 11 petitions were filed: case number 00-10495 (Richard C. Blowers) and case number 00-10494 (George W. Blowers & Son, Inc.).
2. On February 9, 2000, the Creditor moved, on shortened notice, for relief from the automatic stay, to prohibit the use of cash collateral and for adequate protection. The debtors opposed the request. The motion was eventually settled without court intervention.
3. On March 14, 2000, the Applicant’s request to be retained as debtor’s counsel was approved and retroactively applied to February 3, 2000.
4. On May 4, 2000, an order providing for the joint administration of the cases was entered.
5. The cases proceeded through the summer and early fall of 2000.
6. On October 31, 2000, the disclosure statement and Chapter 11 plan were filed.
7. On November 16, 2000, the Creditor filed a motion, on shortened notice, to dismiss the case. The evidentiary hearing was held on November 22, adjourned to December 20, 2000, and then to January 3, 2001.
8. The January 3rd evidentiary hearing was continued to January 9, 2001 when the cases voluntarily converted to Chapter 7.

Arguments

The Creditor's objection is limited. It does not object to the hours expended or the hourly rate charged by Attorney Richard Weisz, Esq., a partner at the firm. However, it argues that some of the services could have been performed by associate attorneys at a lesser hourly rate with Mr. Weisz's supervision. The Creditor contends that the estate should not have to pay the higher billing rate because of the failure to delegate.

The Applicant argues that it performed the services in the most cost effective manner possible and that it would have taken an associate twice as long to accomplish these tasks. It contends that this Creditor should not be allowed to foster litigation and then argue that the fees paid to counter it are excessive; it questions the motivation behind the objection.

Discussion

Despite the underlying innuendos concerning motivation, this fee application and its objection raise complex issues. The court has previously addressed the technical requirements of a fee application and familiarity with that case¹ is presumed. Presently, for the most part, these technical requirements have been met, e.g., there is no lumping and the court can readily discern what services were rendered. However, as previously noted, the Creditor questions whether it was necessary or beneficial to the estate to have a partner perform a variety of the services rather than a less expensive associate.

11 U.S.C. § 330² governs and places upon the court a nondelegable duty to evaluate all

¹In re Lawrence Agency Corporation, Case No. 97-11302 (July 8, 1998).

²11 U.S.C. § 330 states, in part:

(3) In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking

services rendered and determine whether they were necessary or beneficial to the estate. The court is familiar with the difficulties and nuances of the present case and is certain that the Applicant has rendered competent and effective service. The court also shares the Applicant's concern that heavily funded creditors might engage in extensive litigation and then object to debtors' counsel's fee applications. However, this Creditor has legitimately objected to the cost of certain services. Thus, the court will address the specific objections.

The fee application has 12 separate categories and the Creditor objects to the costs in three of them. The United States Trustee has not objected; the Chapter 7 Trustees' limited objections do not deal with the substance of the fee application, rather they request any payment of approved fees be deferred. The court has reviewed the entire application and the fees requested in the nine categories, not particularly objected to, are granted in full. These include: litigation with Central National Bank – \$242.00; disclosure statement and plan – \$2,538.00;

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.

conversion to Chapter 7 – \$658.00; motion to extend exclusive period – \$565.00; claim of John Deere Company – \$791.00; attendance of 341 hearings and filing monthly reports – \$598.50; Central National Bank order to show cause for dismissal – \$11,850.00; miscellaneous tasks – \$652.50; preparation of the final fee application – \$826.00. Thus, \$18,721.00 is approved. The court will now turn to the three categories in dispute.

I. Preparation of Corporate Schedules

The Creditor contends that a junior attorney could have prepared the corporate schedules at a reduced cost. The Applicant does not disagree but counters that Mr. Weisz's work product was accomplished in approximately one-half the time that it would have taken an associate, and therefore, there was no additional cost to the estate. However, the court is not convinced that it would have taken a junior attorney twice as long to perform the perfunctory task of preparing schedules. The Applicant suggests, "[a]s the Trustees can attest, Mr. Blowers is loquacious and must be kept on task. There were a lot or questions that had to be resolved to complete the schedules." (Applicant's Responding Affidavit to Supplemental Submission, ¶ 8.) It might be the case that this Debtor's principal is verbose, however, the estate should not be required to pay a partner's fees due to an unfocused debtor's principal. These Debtors requested relief from this court and in doing so are expected to fully and expeditiously cooperate with the Trustees and **any** member of the law firm representing them. Thus, the court is not convinced that it was necessary for Mr. Weisz to prepare and complete the schedules. For this reason, the court grants fees in the amount of \$1,280.30.³

³This amount is determined by multiplying 9.7 hours (the amount of time allocated to this task) by \$131.99 (Ms. Tambasco's billing rate) (9.7 x \$131.99 = \$1280.30).

II. Transition Services

The Creditor suggests that a substantial portion of the transition services could have been accomplished by an associate. However, Mr. Weisz points out that almost one-half of these hours were attributable to court appearances; the remaining time includes communications with the Trustees or other attorneys handling different aspects of these cases. The court agrees with the Applicant's position that due to the highly contested nature of the proceedings, it was necessary for experienced counsel, intimately familiar with the particulars and personalities, to attend the hearings. While it is true that a junior attorney might have benefitted from the court appearances, it is uncertain that the estate would have.

The Applicant argues that the remaining hours were expended by Mr. Weisz serving as a liaison between the Trustees, Mr. Blowers and a buyer for estate assets. 11 U.S.C. § 704 is entitled "Duties of trustee" and section one provides, in part, "the trustee shall collect and reduce to money the property of the estate for which such trustee serves..." The time records raise concerns because seemingly the Applicant is requesting compensation for matters delegated to the Trustees and for which they receive a commission. However, the contested nature of this case called for the Applicant to assist the Trustees in familiarizing themselves with the file in an expedited fashion (the Creditor moved to lift the stay immediately prior to conversion). Moreover, the complicated interrelatedness of the parties and their status required Mr. Weisz's expertise and knowledge of the case, and therefore, equity dictates that he should be afforded compensation for his services during the transition. Thus, based upon the facts of this case the court will grant the fees requested in the amount of \$4,747.00.

I. Future Services

The initial fee application requested \$4,000.00 for estimated future services. The applications states, “[t]he applicant believes that it has provided attorneys’ service in March with a value of approximately \$1,800.00, including preparation of this fee application, responses to Trustee’s inquiries, appearances at a 341 hearing on March 7, 2001, and answering the debtors’ questions. The applicant believes that it will provide a total of \$4,000.00 worth of attorneys’ services ... The Applicant will bring time and billing records for March, April and May to the hearing on this fee application.” (Fee Application ¶ 32.) The court has not yet received these billing records.

The Creditor suggests that the \$4,000.00 “... should be reduced to acknowledge that much of these services, which are described by the applicant to be in the nature of obtaining information from the Debtors, can be performed by junior personnel.” (Creditor’s Supplemental Submission ¶ 8.) Without benefit of the detailed and itemized billing records, the court cannot conclusively determine what services were provided and if they could have been handled by junior attorneys. The Applicant is directed to submit the necessary records within 30 days so the court may decide this limited issue.⁴ If the records are not provided, the request for the fees will be denied.

The Trustees suggest that Mr. Weisz’s blended hourly rate billed at \$224.33 should be reduced to \$200.00; the Creditor agrees. Considering the experience of Mr. Weisz, the particularities of these cases, and the lack of a specific and detailed objection to the blended rate,

⁴The United States Trustee has reserved its right to object to these billing records; that right is preserved.

the court overrules them. The Applicant will be paid at the blended rate resulting from the adjustments previously made according to this opinion.

Finally, the Trustees request that the payment of any awarded fees be deferred. At the hearing on this application the court indicated that if the parties could not come to an agreement it would allow additional submissions on this issue. However, the Applicant indicates that it has not been paid since the inception of this case (approximately 18 months) and argues it would be prejudicial to have to wait for payment. Considering the nature and extent of the services provided, the reputation of the Applicant and that all payments of professional fees are subject to disgorgement, the Trustees have 15 days from the date of this decision to submit pleadings to convince the court that payment should not be made immediately.

Conclusion

For the above reasons fees in the amount of \$24,748.30 are approved. The applicant has 30 days from the date of this decision to submit the necessary paperwork for the court to determine the proper amount of future services and the Trustees have 15 days from the date of this decision to submit their argument as to why the all the fees that have been authorized to date should not be immediately paid.

Dated:
Albany, New York

Hon. Robert E. Littlefield, Jr.
United States Bankruptcy Judge