

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

LARRY SANDERS and
LINDA F. SANDERS,

Case No. 87-495
Chapter 7

Debtors.

ORDER - OBJECTION TO ALLOWANCE OF ADMINISTRATIVE CLAIMS

On July 21, 1988, a telephonic hearing was held on trustee's objection to allowance of administrative claims. Appearing were David A. Erickson, Chapter 7 panel trustee (hereinafter "Trustee") and Elizabeth A. Nelson, former Chapter 12 standing trustee (hereinafter Claimant"). At the conclusion of said hearing, the Court took the matter under advisement and now considers it fully submitted.

This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A). The Court, upon review of the pleadings and arguments of counsel, now enters its findings and conclusions pursuant to Fed. R. Bankr. P. 7052.

FINDINGS OF FACT

1. On February 26, 1987, Debtors filed a petition for relief under Chapter 12 of the Bankruptcy Code.

2. Shortly thereafter, Claimant was appointed, pursuant to 28 U.S.C. §586(b), as trustee of Debtors' Chapter 12 estate.

3. On July 17, 1987, Debtors moved to convert their case to Chapter 7.

4. On July 22, 1987, an Order was entered allowing the conversion.

5. On July 31, 1987, Trustee was appointed as the Chapter 7 trustee.

6. On August 3, 1987, Claimant filed her report of standing trustee following conversion of the Chapter 12 case. In said report, Claimant indicated she had neither received any property nor paid any money on account of the Chapter 12 estate.

7. On November 23, 1987, an Order was entered approving Claimant's report of the standing trustee.

8. On May 2, 1988, Trustee filed an application to set a final date for the filing of administrative claims. On May 3, 1988, an Order was entered setting June 10, 1988, as the deadline for filing request for allowance of administrative expenses.

9. On May 25, 1988, Trustee filed an objection to the allowance of administrative claims. Trustee objected to claim No. 6, filed September 1, 1987, by Claimant. In said claim, Claimant requested \$630.50 for administrative compensation for the standing trustee in the prior chapter 12 proceeding. Trustee also objected to claim Nos. 7 and 10, which are duplicates of claim No. 6. In objecting to said claims, Trustee argued there were no distributions upon

which to base said claims, and there is no statutory authority to allow a standing trustee compensation on an hourly basis in such cases.

10. On June 15, 1988, Claimant filed a response to Trustee's objection. In said response, Claimant cited statutory authority and case law interpreting such which supported her claims.

11. On July 8, 1988, Trustee filed a brief in support of his objection. In said brief, Trustee argued Claimant was relying on the wrong part of the statute and, as a result, Claimant's cited authority was distinguishable.

DISCUSSION

The issue in this case is whether a Chapter 12 standing trustee is entitled to administrative expenses for services provided before the case is converted to Chapter 7. Section 326 provides in relevant part:

- (a) In a case under Chapter 7. .the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed fifteen percent of the first \$1,000 or less, six percent on any amount in excess of \$1,000 but not in excess of \$3,000, and three percent on any amount in excess of \$3,000 upon all monies disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.

(b) In a case under Chapter 12, the court may not allow compensation for services or reimbursement of expenses of the United States Trustee or of a standing trustee appointed under section 586(b) of title 28, but may allow reasonable compensation under section 330 of this title of a trustee appointed under section 1202(a)...for the trustee's services, payable after the trustee renders such services, not to exceed five percent of all payments under the plan....

11 U.S.C. §326 (emphasis added). The dispute between Trustee and Claimant centers on which subsection of section 326 is applicable.

In reviewing both subsections, it is clear that section 326(a) grants the court discretion to allow compensation for a trustee's services in a case under Chapter 7. Section 326(b), on the other hand, prevents the court from allowing compensation for the services of a standing trustee, appointed under 28 U.S.C. §586(b), in a case under Chapter 12. Thus, the plain language of the statute supports Trustee's argument that since the case was originally filed under Chapter 12, and since Claimant was the standing trustee appointed pursuant to 28 U.S.C. §586(b), section 326(b) applies which prevents Claimant from recovering administrative expenses.

In her brief, Claimant cited a number of cases allowing compensation on a quantum meruit basis for a trustee's services provided prior to a case being converted. See,

e.g., In re Woodworth, 70 B.R. 361 (Bankr. N.D. N.Y. 1987); In re Parameswaran, 64 B.R. 341 (Bankr. S.D. N.Y. 1986). However, the Court agrees with Trustee that said cases are easily distinguishable because they dealt with cases originally filed under Chapter 7 and subsequently converted to Chapter 13. Because those cases were originally filed under Chapter 7, the courts were interpreting section 326(a), not section 326(b) as is this Court in the case at bar. Claimant did not cite and this Court has not been able to locate a single case allowing compensation under section 326(b) for a case originally filed under Chapter 12 and subsequently converted to Chapter 7. As a result, given the plain language of the statute and the lack of any case law supporting Claimant's position, the Court concludes section 326(b) applies which prohibits the Court from allowing administrative expenses for Claimant.

CONCLUSION AND ORDER

WHEREFORE, based on the foregoing analysis, the Court concludes that since Debtors originally filed their case under Chapter 12, and since Claimant was appointed, pursuant to 28 U.S.C. §586(b), as standing trustee in that case, the plain language of 11 U.S.C. §326 requires the Court to apply §326(b) and not allow any compensation to Claimant for her services prior to conversion.

IT IS ACCORDINGLY ORDERED that Trustee's objection to the allowance of administrative claims is sustained.

IT IS FURTHER ORDERED that claim Nos. 6, 7, and 10 are disallowed.

Dated this 11th day of October, 1988.

RUSSELL J. HILL
U.S. BANKRUPTCY JUDGE