

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF IOWA

In the Matter of	:	
SCOTT ALAN ZIMMERMAN,	:	Case No. 95-00515-C J
Debtor.	:	Chapter 7
	:	

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**MEMORANDUM OF DECISION AND ORDER**

On February 13, 1996 Jerrold Wanek, counsel for the Chapter 7 debtor, filed a "Motion Pursuant to Federal Rule of Civil Procedure 59 to Enlarge the Findings and Conclusions." In that motion, he requested the court take into account his affidavit filed with the motion, enlarge the January 31, 1996 order denying his earlier motion for allowance of compensation without prejudice, and grant the prior motion. On March 12, 1996 the court conducted a telephonic hearing on the matter. In addition to Mr. Wanek, Assistant U.S. Trustee James L. Snyder and Chapter 7 Trustee Thomas L. Flynn appeared.

BACKGROUND

The debtor filed a voluntary petition under Chapter 7 of the Bankruptcy Code on February 22, 1995.

On December 26, 1995 Mr. Wanek submitted his motion for allowance of compensation for debtor's attorney requesting \$2,214.00 in fees and \$363.32 in expenses. The application was properly bar-dated and served pursuant to Federal Rule of Bankruptcy Procedure 2002(a)(7) and 2016(a) and Local

Bankruptcy Rules 11 and 14.

No objections were filed and the U.S. Trustee submitted a statement of no objection.

Exercising its duty to determine the reasonableness of all fee requests, the court reviewed the motion and the attached itemization and found that neither readily established Mr. Wanek's services were reasonably likely to benefit the debtor's estate or were necessary to the administration of the case as required by 11 U.S.C. section 330(a)(4)(A). The court entered an order denying the motion without prejudice on January 31, 1996.

More than ten days later, Mr. Wanek filed his request for reconsideration.

#### DISCUSSION

At the outset, the court notes it is treating Mr. Wanek's pending motion as one brought pursuant to Federal Rule of Bankruptcy Procedure 9024, which incorporates Federal Rule of Civil Procedure 60, rather than pursuant to Federal Rule of Bankruptcy Procedure 9023, which makes Federal Rule of Civil Procedure 59 applicable in cases under the Bankruptcy Code, except as provided in Federal Rule of Bankruptcy Procedure 3008. Hence, consistent with the intent behind the January 31, 1996 order, the court finds the pending request has been brought timely.

Pursuant to 11 U.S.C. section 503(b)(2), Mr. Wanek will

be allowed an administrative claim if he establishes he is entitled to compensation and reimbursement under 11 U.S.C. section 330(a). Since this Chapter 7 case was filed after October 22, 1994, the effective date of the Bankruptcy Reform Act of 1994, Pub. L. 103-394, the modified language of section 330(a) applies.

As can be seen from the interlined copy of 11 U.S.C. section 330 in the attached Appendix, the reference to "debtor's attorney" in the introductory paragraph of former section 330(a) does not appear in the introductory paragraph of current section 330(a)(1). Yet the reference to "attorney" in former section 330(a)(1) does appear in current section 330(a)(1)(A). Some courts have held the deletion of the specific reference to "debtor's attorney" prevents any allowance of compensation from estate assets to counsel representing Chapter 7 debtors. In re Kinnemore, 181 B.R. 520 (Bankr. D. Idaho 1995), In re Friedland, 182 B.R. 576 (Bankr. D. Colo. 1995), and In re Fassinger, 191 B.R. 864 (Bankr. D. Or. 1996).

This court held in the January 31, 1996 order that Mr. Wanek could not claim compensation and reimbursement under section 330(a)(1) because he was not employed pursuant to section 327. The court attempted to reconcile the modified language and somewhat awkward structure of amended section 330(a) by holding Mr. Wanek could proceed under section

330(a)(4)(A). That is, amended section 330(a) has not changed significantly the result for a Chapter 7 debtor's attorney seeking compensation from the estate. In order for fees for professional services to be recoverable from a debtor's estate, the services performed must benefit the estate and not merely the debtor. In re Reed, 890 F.2d 104, 105 (8th Cir. 1989). However, section 330(a)(3) does add more factors for the court to keep in mind when reviewing applications for fees and expenses.

Noticeably section 330(a)(4)(B) does provide a mechanism by which counsel for Chapter 12 and Chapter 13 debtors may seek compensation for work done for the debtors. At least with respect to counsel for Chapter 13 debtors, this subsection seemingly supports finding the omission of "debtor's attorney" in section 330(a)(1) is an oversight of no consequence. That is, the concept of a "debtor in possession" is an integral part of Chapter 11 and Chapter 12, not of Chapter 13. An attorney representing a Chapter 13 debtor, like an attorney representing a Chapter 7 debtor, typically is not employed under section 327.

Finally, with respect to the merits of the pending motion, the affidavit filed in support of that motion and the professional statements of Mr. Wanek, Mr. Snyder and Mr. Flynn, in response to the court's questions during the telephonic hearing, clarified that the services were of

benefit to the estate or were necessary to the administration of the case and were not duplicative.

CONCLUSION

WHEREFORE, based on the foregoing discussion, the court concludes that an attorney for a Chapter 7 debtor may seek compensation and reimbursement to the extent permitted by 11 U.S.C. section 330(a)(4)(A), and that Mr. Wanek has established that the services and related expenses in issue were reasonably likely to benefit the estate or were necessary to the administration of the case and were not duplicative.

ORDER

THEREFORE, IT IS ORDERED that Jerrold Wanek be allowed \$2,214.00 in attorney fees and \$363.32 in expenses.

Dated this 28<sup>th</sup> day of March, 1996.

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LEE M. JACKWIG  
U.S. BANKRUPTCY JUDGE

APPENDIX

11 USC § 330

§ 330. Compensation of officers.

~~(a) After notice to any parties in interest and to the United States trustee and a hearing, and subject to sections 326, 328, and 329 of this title, the court may award to a trustee, to an examiner, to a professional person employed under section 327 or 1103 of this title, or to the debtor's attorney—~~

~~(1) reasonable compensation for actual, necessary services rendered by such trustee, examiner, professional person, or attorney, as the case may be, and by any paraprofessional persons employed by such trustee, professional person, or attorney, as the case may be, based on the nature, the extent, and the value of such services, the time spent on such services, and the cost of comparable services other than in a case under this title; and~~

*(a)(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103 –*

*(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person, employed by any such person; and*

*(B) reimbursement for actual, necessary expenses.*

~~(2) reimbursement for actual, necessary expenses.~~

*(2) The court may, on its own motion, or on the motion of the United States Trustee, the United States Trustee for the District or Region, the trustee for the estate, or any other party in interest, award compensation that is less than the amount of compensation that is requested.*

*(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 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.*

*(B) In a chapter 12 or chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor's attorney for representing the interest 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.*

*(5) The court shall reduce the amount of compensation awarded under this section by the amount of any interim compensation awarded under section 331, and, if the amount of such interim compensation exceeds the amount of compensation awarded under this section, may order the return of the excess to the estate.*

*(6) Any compensation awarded for the preparation of a fee application shall be based on the level and skill reasonably required to prepare the application.*

**(b)(1)** There shall be paid from the filing fee in a case under chapter 7 of this title \$45 to the trustee serving in such case, after such trustee's services are rendered.

*(2) The Judicial Conference of the United States—*

*(A) shall prescribe additional fees of the same kind as prescribed under section 1914(b) of title 28; and*

*(B) may prescribe notice of appearance fees and fees charged against distributions in cases under this title; to pay \$15 to trustees serving in cases after such trustees' services are rendered. Beginning 1 year after the date of the enactment of the Bankruptcy Reform Act of 1994, such \$15 shall be paid in addition to the amount paid under paragraph (1).*

**(c)** Unless the court orders otherwise, in a case under Chapter 12 or 13 of this title the compensation paid to the trustee serving in the case shall not be less than \$5 per month from any distribution under the plan during the administration of the plan.

**(d)** In a case in which the United States trustee serves as trustee, the compensation of the trustee under this section shall be paid to the clerk of the bankruptcy court and deposited by the clerk into the United States Trustee System Fund established by section 589a of title 28.