

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of :  
: Case No. 88-2449-C  
ROGER D. MURPHY, :  
: Ch. 7  
Debtor. :

-----  
**ORDER--APPLICATION FOR ATTORNEY COMPENSATION**

On May 3, 1990, a hearing was held on the application for attorney compensation and U.S. Trustee's objection thereto. The following attorneys appeared on behalf of their respective clients: Terry L. Gibson as Assistant U.S. Trustee; Jeffrey A. Schlei for Debtor; and Larry R. Curtis as applicant. At the conclusion of said hearing, the Court took the matter under advisement and the Court considers the matter fully submitted.

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

**FINDINGS OF FACT**

1. On November 9, 1988, Debtor filed a voluntary Chapter 11 petition.

2. On November 23, 1988, the Court entered an order approving the Debtor's application to employ Larry R. Curtis as Debtor's attorney pursuant to 11 U.S.C. §327.

3. On May 8, 1989, Debtor filed a disclosure statement and plan of reorganization.

4. Creditor Kim Christiansen filed an objection to the May 8, 1989 disclosure statement, asserting that the disclosure statement failed to contain adequate information as required by 11 U.S.C. §1125(a)(1). Among other objections, Christiansen specifically objected to the lack of disclosure regarding the collectability, the proposed settlement, and availability of funds from the promissory note of Kim and Becky Christiansen.

5. The U.S. Trustee also filed an objection to the May 8, 1989 disclosure statement, asserting that the Debtor's disclosure statement failed to contain adequate information as required and defined by §1125(a). Among other objections, U.S. Trustee specifically objected to: a) the lack of information regarding the current status of the receivable owing to the Debtor from Kim and Becky Christiansen; and b) the lack of a detailed liquidation analysis, including potential settlement offers that had been offered by the Christiansens.

6. On June 19, 1989, the Court held a hearing on Debtor's May 8, 1989 disclosure statement. Debtor's disclosure statement was not approved and Debtor was ordered to file an amended disclosure statement within 14 days. The U.S. Trustee's motion to convert to Chapter 7, filed April 3, 1989, was continued until the time of the hearing on the amended disclosure statement.

7. On July 3, 1989, Debtor filed an amended disclosure statement and amended plan of reorganization.

8. U.S. Trustee filed an objection to the July 3, 1989 amended disclosure statement. U.S. Trustee reasserted its objection regarding adequate information. Among other objections, U.S. Trustee specifically objected to the lack of information regarding the Kim and Becky Christiansen promissory note. Further, U.S. Trustee specifically objected to the lack of an adequate liquidation analysis, and the failure to disclose the fact that United Bank and Trust's security interest in the Christiansen promissory note may be unperfected.

9. Kim Christiansen filed an objection to the July 3, 1989 amended disclosure statement. Among other objections, Christiansen reasserted his objection regarding adequate disclosure of the Kim and Becky Christiansen promissory note.

10. On September 12, 1989, a hearing was held on Debtor's July 3, 1989 amended disclosure statement. While sustaining other objections, the Court specifically sustained the Christiansen objection regarding the Kim and Becky Christiansen promissory note. Further, the Court specifically sustained the U.S. Trustee's objection regarding the Kim and Becky Christiansen promissory note and the United Bank and Trust interest in said promissory note. U.S. Trustee's motion

to convert was continued until further order of the Court.

11. On September 28, 1989, Debtor filed an amended disclosure statement and amended plan of reorganization.

12. Kim Christiansen objected to the September 28, 1989 amended disclosure statement. Among other objections, Christiansen reasserted the objection regarding the Kim and Becky Christiansen promissory note.

13. U.S. Trustee objected to the September 28, 1989 amended disclosure statement. Among other objections, U.S. Trustee specifically reasserted its objection regarding the Christiansen receivable and the perfection of United Bank and Trust's security interest in said promissory note.

14. On November 14, 1989, the Court held a hearing on Debtor's amended disclosure statement, U.S. Trustee's motion to convert to Chapter 7, and Kim Christiansen's application for appointment of Trustee. The Court sustained Kim Christiansen's and the U.S. Trustee's objection to the September 28, 1989 amended disclosure statement. The Court specifically stated that the disclosure statement failed to give adequate information concerning United Bank and Trust's interest in the Christiansen promissory note and the liquidation analysis was inadequate. The Court further sustained U.S. Trustee's motion to convert, and converted the case to a Chapter 7 case pursuant to §1112(b)(2) and (3).

15. Larry R. Curtis then filed a motion for permission

to withdraw as counsel.

16. On December 15, 1989, the Court entered an order granting the Larry Curtis motion to withdraw as counsel and approved Jeffrey A. Schlei as substitute counsel of record for the Debtor, Roger Murphy.

17. On February 27, 1990, Larry R. Curtis filed an application for attorney compensation pursuant to 11 U.S.C. §§330 and 331. The application sought reimbursement for expenses and fees for services rendered from January 25, 1989 through November 14, 1989. The February 27, 1990 application sought \$4,096.00 in fees and \$390.83 in expenses.

18. The U.S. Trustee objected to Larry Curtis's application. U.S. Trustee objected to: a) compensation for travel time at a full hourly rate rather than a one-half hourly rate in compliance with Matter of Pothoven, 84 B.R. 579 (Bankr. S.D. Iowa 1988); b) compensation for computerized legal research; and c) compensation for time preparing the plan and disclosure statements, and compensation for time spent attending hearings on Debtor's disclosure statements.

19. On April 26, 1990, Larry R. Curtis filed an amended application for attorney compensation reducing travel time for all three disclosure hearings from 4.8 hours to 2.4 hours, a reduction of \$192.00 in total compensation requested. Further, the amended application reduced the requested compensation for computerized legal research from \$86.21 to

\$0.00. Therefore, the Larry R. Curtis amended application requests \$3,904.00 in fees and \$304.62 in expenses.

20. The following application entries describe Larry Curtis time spent in relation to the July 3, 1989 amended disclosure statement and September 28, 1989 amended disclosure statement: 6/19/89 (.5); 6/19/89 (.2); 6/22/89 (1.2); 6/28/89 (2.50); 6/29/89 (.5); 6/30/89 (.2); 7/12/89 (.2); 7/13/89 (.2); 7/14/89 (.2); 7/14/89 (.3); 8/10/89 (.2); 8/11/89 (.2); 8/14/89 (.2); 8/18/89 (.3); 8/21/89 (.5); 9/5/89 (.8); 9/7/89 (.5); 9/12/89 (.8); 9/12/89 (1.3); 9/12/89 (.8); 9/14/89 (.2); 9/14/89 (1.0); 9/18/89 (.2); 9/19/89 (1.5); 9/22/89 (.2); 9/25/89 (2.6); 10/16/89 (.5); 10/17/89 (.2); 10/30/89 (.3); 11/2/89 (.2); 11/8/89 (.8); 11/9/89 (.6); 11/10/89 (.3); 11/14/89 (.8); 11/14/89 (1.3); 11/14/89 (.8). The total time for the above-described entries is 23.10 hours. Larry Curtis reduced the travel time entries on 9/12/89 and 11/14/89 hours by a total of 1.6 hours. Therefore, the total hours for the above-described entries as adjusted for travel time reductions is 21.5 hours.

21. The Court has previously allowed by order of April 12, 1989, interim attorney fees for Larry R. Curtis in the amount of \$1,248.00.

#### **DISCUSSION**

Bankruptcy Rule 2016 requires an applicant seeking interim or final compensation for services from the estate, or

reimbursement of necessary expenses, to provide a detailed statement of services rendered, time expended, expenses incurred, and the amounts requested. The adequacy of a fee application in this district is governed by those guidelines set forth in Matter of Pothoven, 84 B.R. 579 (Bankr. S.D. Iowa 1988).

An attorney can only be compensated for services which are actual and necessary professional services for the trustee based on "the nature, the extent, and the value..." of the services; "the time spent on" the services; and "the cost of comparable services" in a case other than bankruptcy. The awarded compensation must be "reasonable." §330(a)(2). The court may also award "reimbursement for actual, necessary expenses." §330(a)(2).

Benefit to the estate, while not the sole criterion, is a relevant factor in determining reasonable compensation. Matter of Urban American Development Co., 564 F.2d 808, 810 (8th Cir. 1977); In re Tamarack Trail Co., 25 B.R. 259 (Bankr. S.D. Ohio 1982); In re Rosen, 25 B.R. 81 (Bankr. D.S.C. 1982); In re Zweig, 35 B.R. 37 (Bankr. N.D. Ga. 1983); In re Jordan, 54 B.R. 864 (Bankr. D.R.I. 1985). Attorney compensation should be reasonable and based upon the time, the complexity of the matter, the extent and value of such services, and the compensation to be expected for comparable nonbankruptcy services. In re McCombs, 751 F.2d 286, 287 (8th Cir. 1984).

Courts have disallowed or reduced fees requested by an attorney where the attorney services were of reduced or no benefit to the estate. See, e.g., In re Tamarack Trail Co., 25 B.R. 259 (Bankr. S.D. Ohio 1982) (Disallowed a portion of the fees requested by the debtor's attorney on the grounds that the services rendered in connection with the plan, which was ultimately rejected by the creditors, was of reduced benefit to the estate); In re Zweig, 35 B.R. 37 (Bankr. N.D. Ga. 1983) (Allowed compensation to debtor's attorney only for those services which benefited the estate and not for those which were personal to the debtor in his individual capacity); In re Nelson, 96 B.R. 868 (Bankr. C.D. Ill. 1989) (Compensation reduced where much of attorney's time and labor was not required in that debtors had stubbornly fought for reorganization even though from the very beginning debtors had been advised against reorganization in favor of liquidation and even though creditor at one point had proposed partial liquidation which would have permitted debtors to continue farming on reduced scale).

In the April 26, 1990 amended application for attorney compensation, Larry R. Curtis reduced his travel time and requested compensation for computerized legal research in compliance with Pothoven. Therefore, the issue is whether Larry Curtis should be compensated for time preparing the plan and disclosure statements and time spent attending hearings on



Debtor's disclosure statements.

Concerning this issue, despite three hearings and three drafts of the disclosure statement, Debtor was unable to obtain approval of a disclosure statement. The primary reason for Debtor's failure to obtain approval of the disclosure statement was the refusal to provide adequate disclosure regarding the Kim and Becky Christiansen promissory note and the possible defenses to the security interest claim by United Bank and Trust in said promissory note. There was nothing complex or unusual about these facts and nothing complex or unusual about disclosing them in a disclosure statement.

On June 19, 1989, when Debtor's May 8, 1989 disclosure statement was not approved by the Court, Larry Curtis was aware that adequate disclosure of the Christiansen promissory note and possible defenses to the security interest in said note claimed by United Bank and Trust was necessary for court approval of the disclosure statement. Therefore, the Court finds that all services performed by Larry Curtis relating to the July 3, 1989 amended disclosure statement and September 28, 1989 amended disclosure statement were not beneficial to the Debtor's estate, and at best benefitted the Debtor in his individual capacity. As described supra, the total time for said services is 21.5 hours. The Court, therefore, reduces Larry R. Curtis's application for compensation by \$1,720.00 [(21.5) hours X \$80.00 per hour]. The total fees approved are

thus \$2,184.00 and expenses are \$304.62.

IT IS ACCORDINGLY ORDERED that the Larry R. Curtis February 27, 1990 application for attorney compensation and April 26, 1990 amended application for attorney compensation are approved as reduced in this order. Larry Curtis is entitled to fees in the amount of \$2,184.00 and expenses in the amount of \$304.62.

Dated this 1st day of June, 1990.

/s/ \_\_\_\_\_  
RUSSELL J. HILL  
U.S. BANKRUPTCY JUDGE