

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of :
 : Case No. 90-0327-D
JOSEPH MARION NEILL and :
MICKEY MARY NEILL, :
 : Ch. 13
Debtors. :

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ORDER--APPLICATION FOR ATTORNEY COMPENSATION

On October 4, 1990, a hearing was held on the application for attorney compensation and Small Business Administration ("SBA") objection thereto. The following attorneys appeared on behalf of their respective clients: Walter Conlon for Debtors; John E. Beamer for SBA; Joe W. Warford as Chapter 13 Trustee. At the conclusion of said hearing, the Court took the matter under advisement. Thereafter, in a November 21, 1990 order, the Court denied the application with leave granted for the submission of an amended application in compliance with Matter of Pothoven, 84 B.R. 579 (Bankr. S.D. Iowa 1988). Debtors' attorney submitted said application 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 February 8, 1990, Debtors filed a voluntary Chapter 13 petition.

2. Debtors' Chapter 13 statement revealed unsecured claims of \$143,335.32, of which Debtors admitted liability for only \$90,142.74.

3. On April 6, 1990, Internal Revenue Service ("IRS") and SBA filed a motion to dismiss. The motion alleged Debtors were ineligible for Chapter 13 relief because their unsecured debts exceeded \$100,000.00.

4. On April 12, 1990, Debtors filed a resistance to the motion to dismiss.

5. On May 24, 1990, Debtors filed an objection to numerous claims filed by the creditors.

6. On October 16, 1990, the Court dismissed Debtors' Chapter 13 case. The Court found that Debtors' schedules showed "on their face" that unsecured debts exceeded \$100,000.00, and thus Debtors were not eligible for Chapter 13 relief under 11 U.S.C. §109(e).

7. SBA filed a complaint with the U.S. District Court for the Southern District of Iowa (Civil No. 88-0227-D-1) requesting foreclosure of its interest in the homestead owned by Debtors on August 26, 1988. Trial on the civil foreclosure was scheduled to commence May 7, 1990.

8. On October 25, 1990, Debtors filed a voluntary Chapter 11 petition.

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." 11 U.S.C. §330(a)(2). The court may also award "reimbursement for actual, necessary expenses." 11 U.S.C. §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). It is well-established that "results obtained" is a factor to be used in determining reasonableness of compensation requested by a professional. See e.g. In re Heck's, Inc., 112 B.R. 775, 784 (Bankr. S.D. W.Va. 1990); In re Port Royal Land & Timber Co., 105 B.R. 72, 75 (Bankr. S.D. Ala. 1989); In re Paul, 100 B.R. 38, 40 (Bankr. D. Colo. 1989); Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974).

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 instant case, the eligibility problems and inevitable dismissal pursuant to 11 U.S.C. §109(e) are apparent from the schedules filed at the outset of the Chapter 13 case. Debtors' attorney could have noted the eligibility problems and appropriately counselled Debtors at the outset of this case concerning their legal right to pursue Chapter 13 relief. The Court finds that Debtors' attorney should not be entitled to compensation for services rendered where he has contributed no value to the realistic representation of Debtors or otherwise contributed toward preserving assets of the Chapter 13 estate. The Court denies the application for attorney compensation because Debtors' attorney provided no benefit to the Chapter 13 estate and obtained no results in the Chapter 13 case.

ORDER

IT IS ACCORDINGLY ORDERED that the application for attorney compensation is denied. However, Debtors' attorney

shall be allowed compensation for expenses incurred in the amount of \$107.40.

IT IS FURTHER ORDERED that the Chapter 13 Trustee shall refund the remaining Chapter 13 estate funds in his possession to Debtors in their current capacity as Debtors-in-Possession in their Chapter 11 case, The Matter of Joseph Marion Neill and Mickey Mary Neill, Case No. 90-2754-D.

Dated this 28th day of January, 1991.

RUSSELL J. HILL
U.S. BANKRUPTCY JUDGE