

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
Southern Division

In re:) Bankr. No. 01-40301
) Chapter 7
ROBERT L. BOEKA, JR.)
Soc. Sec. No. 508-98-6797) DECISION RE: FEE
) APPLICATION BY
Debtor.) DEBTOR'S COUNSEL

The matter before the Court is the Amended Rule 2016(a) Application for Administrative Expenses filed by David M. Hosmer, counsel for Debtor. This is a core proceeding under 28 U.S.C. § 157(b)(2). This Decision and accompanying Order shall constitute the Court's findings and conclusions under Fed.R.Bankr.P. 7052 and 9014. As set forth below, the Court concludes that Attorney Hosmer is entitled to \$567.93 from the estate as an administrative expense for compensation of services and reimbursement of costs.

I.

Robert L. Boeka, Jr., ("Debtor") filed a Chapter 7 petition on March 27, 2001. His bankruptcy attorney, David M. Hosmer, disclosed that he had received \$200 from Debtor pre-petition, which was applied to the case filing fee, and that he was owed another \$750 for general Chapter 7 services he rendered through the meeting of creditors.

On June 27, 2001, Attorney Hosmer filed an Amended Rule 2016(a) Application for Administrative Expenses seeking payment of \$753.43 as an administrative expense. He sought \$700 for compensation of 10 hours of service, expenses of \$11.43 (excluding the filing fee that already had been paid), and sales tax on

compensation of \$42. Attorney Hosmer disclosed in his Application that he and Debtor had a pre-petition understanding that he could be paid from Debtor's income tax refund, which was estate property, less a portion declared exempt by Debtor.

No objections to Attorney Hosmer's Amended Application were filed. The matter was taken under advisement.

II.

The standards for allowing compensation and reimbursement from the bankruptcy estate to a debtor's counsel are established by 11 U.S.C. § 330(a). Federal Rule of Bankruptcy Procedure 2016(a) sets forth what information a fee application must include if compensation and reimbursement are sought from the estate. The applicant bears the burden of documenting the appropriate hours expended and showing an entitlement to a fee award. *H.J. Inc. v. Flygt Corp.*, 925 F.2d 157, 260 (8th Cir. 1991). A case by case, item by item review of the application is appropriate. *In re Marolf Dakota Farms Cheese, Inc.*, Bankr. No. 89-50045, slip op. at 8 (Bankr. D.S.D. Oct. 19, 1990) (cites omitted). "[U]ncertainties should be resolved against the [applicant], if arising because of imprecise recordkeeping without adequate justification." *H.J. Inc.*, 925 F.2d at 261 (quoting *International Travel Arrangers, Inc. v. Western Airlines, Inc.*, 623 F.2d 1255, 1275 (8th Cir. 1980)); *In re Hanson*, Bankr. No. 386-00136, slip op. at 7 (Bankr. D.S.D. March 8, 1989).

A Chapter 7 debtor's attorney¹ generally is entitled to compensation from the estate for analyzing the debtor's financial condition, rendering advice and assistance to Debtor in determining whether to file a petition in bankruptcy; preparing the petition, the schedule of assets and liabilities, and the statement of financial affairs; and representing the debtor at the § 341 meeting of creditors. *In re Dawson*, 180 B.R. 478, 479 (Bankr. E.D. Tex. 1994); *In re Walgamuth*, Bankr. No. 91-50270, slip op. at 5 (Bankr. D.S.D. July 1, 1992). These are the services that aid the Chapter 7 debtor in performing his legal duties under the Bankruptcy Code and that are necessary to the administration of the case. *Dawson*, 180 B.R. at 479.

III.

Most of the services rendered by Attorney Hosmer fall under the "basic" services category discussed above for Chapter 7 cases: analyzing the case, preparing the necessary documents, and attending the meeting of creditors with Debtor. He may be compensated from the estate for these services, plus applicable sales tax and related costs.

There are three items, however, for which Attorney Hosmer may

¹ As amended in 1994, there is no specific provision under § 330(a) for awarding a Chapter 7 attorney fees from the bankruptcy estate. This Court has not strictly applied the amended statute absent controlling authority to the contrary. See *United States Trustee v. Garvey, Schubert & Barer (In re Century Cleaning Services, Inc.)*, 195 F.3d 1053 (9th Cir. 1999).

not be compensated from the estate. These services are typing documents on February 25, 2001; photocopying documents on March 25, 2001; and preparing a mailing to the Clerk's office on March 25, 2001. Those are all services that are nonprofessional in nature and may not be compensated from the estate. *In re Klammes*, Bankr. No. 0050433, slip op. at 4 (Bankr. D.S.D. April 25, 2001) (cites to reported cases therein). Instead, such services are included in Attorney Hosmer's overhead. *Id.* The time disallowed for these services is 1.75 hours on February 25, 2001 and .75 hours on March 25, 2001. A quarter hour on March 25, 2001 will still be allowed for Attorney Hosmer's meeting with his client for the signing of the necessary documents. The reduction in compensation totals \$175 (2.5 hours x \$70 per hour, the rate used by Attorney Hosmer in his fee application). Allowed sales tax will be \$31.50. The requested photocopying and mailing expenses will be allowed as requested.

An appropriate order will be entered.

So ordered this 16 day of July, 2001.

BY THE COURT:


Irvin N. Hoyt
Bankruptcy Judge



Charles L. Nail, Jr., Clerk


I hereby certify that a copy of this document was mailed, hand delivered, or faxed this date to the parties on the attached service list.

JUL 17 2001

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court, District of South Dakota
By 

NOTICE OF ENTRY
Under F.R. Bankr.P. 9022(a)
Entered

JUL 17 2001

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota

Case: 01-40301 Form id: 122 Ntc Date: 07/17/2001 Off: 4 Page : 1

Total notices mailed: 5

Debtor Boeka, Robert L., Jr. 102 E. Francis, Yankton, SD 57078

Aty Hosmer, David M. PO Box 7051, Yankton, SD 57078

Trustee Pierce, Lee Ann PO Box 524, Brookings, SD 57006

Aty Gering, Bruce J. Office of the U.S. Trustee, #502, 230 South Phillips Avenue, Sioux Falls, SD 57104-6321

Creditor Wells Fargo Bank, Attn: Carol Schwenn, Officer, P.O. Box 30095, Walnut Creek, CA 94598