

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH DAKOTA

ROOM 211

FEDERAL BUILDING AND U.S. POST OFFICE

225 SOUTH PIERRE STREET

PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

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December 28, 2000

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Chapter 13 Trustee
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Subject: *In re Gerald B. Greenwood,*
Chapter 13; Bankr. No. 00-50415

Dear Counsel and Trustee:

The matter before the Court is the RULE 2016(b) FINAL APPLICATION FOR COMPENSATION AND REIMBURSEMENT filed by Debtor's former attorney, Christopher J. Baumann, Debtor's objection, and Attorney Baumann's response. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and accompanying order shall constitute the Court's findings and conclusions under Fed.Rs.Bankr.P. 7052 and 9014. As set forth below, the Court concludes that fees awarded to Attorney Baumann shall be limited to \$800.

SUMMARY OF MATERIAL FACTS. Debtor filed a Chapter 13 petition, schedules, and statement of financial affairs on September 14, 2000. Debtor's real property included only a home in Rapid City and he had limited personalty. Debtor scheduled two secured creditors: one holding the mortgage on his home and the second holding a lien on his 2000 Ford Taurus. Debtor did not have any priority creditors. He scheduled three different unsecured general creditors. Debtor is not married and he does not have any

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dependents. He lives on a fixed disability income of \$3,080.00 per month and has expenses of \$2,865.31 per month. He stated he would use his excess income of \$214.69 to fund his plan.

Debtor employed Christopher J. Baumann as his bankruptcy attorney. Attorney Baumann filed a disclosure stating Debtor had agreed to pay him \$1,500 for his services. He received \$1,250 of that total pre-petition. The disclosure stated that for the \$1,500, Attorney Baumann had agreed to: analyze Debtor's financial affairs; prepare the petition, schedules, statement of financial affairs "and any other documents required by the court;" represent Debtor at the meeting of creditors and the confirmation hearing; and represent Debtor in any adversary proceedings.

Debtor filed his plan on September 18, 2000. It included treatment outside the plan for the two secured claims and it provided that unsecured claim holders would be paid about 50% on their claims.

Before the confirmation hearing was held, James P. Hurley, Debtor, and Attorney Baumann stipulated that Attorney Hurley would be substituted as Debtor's counsel. Attorney Hurley disclosed that Debtor would pay him \$125 per hour for his services, which essentially mirrored those to be performed by Attorney Baumann. No additional services to be rendered were identified. Attorney Hurley supplemented his disclosure a few days later to state that he had received a retainer of \$250 from Debtor.

On November 8, 2000, Attorney Baumann filed a final fee application. He requested approval of fees totaling \$1,250. It covered services from his initial meeting with Debtor in July 2000 to preparation of the stipulation for substitution of counsel in October 2000. The services rendered did not include attendance at the meeting of creditors or those related to the confirmation, hearing, any contested matters, or any adversary proceedings.

Trustee Dale A. Wein and Black Hills Federal Credit Union each filed objections to the proposed plan. A confirmation hearing was held November 14, 2000. The objections were resolved prior to the hearing. Debtor, represented by Attorney Hurley, agreed to submit a Plan as Confirmed that incorporated the necessary changes.

On November 15, 2000, Debtor filed an objection to Attorney Baumann's fee application. Debtor stated that he understood that about half of the \$1,500 total fees would be used to prepare the petition, schedules, statement, and plan and that the other half would be used for the meeting of creditors, the confirmation hearing, and amending the plan. Debtor also disputed some of the

times Attorney Baumann had stated he spent in conference with Debtor. Debtor stated he thought \$750 was a reasonable fee for the services rendered by Attorney Baumann.

Attorney Baumann filed a response on November 29, 2000. He stated Debtor signed a contract which provided that all but \$250 of the services would rendered by the time required documents were filed. Attorney Baumann also stated that Debtor was a difficult client who showered his office with questions and concerns, sometimes repetitively.

Neither Attorney Baumann nor Debtor requested a hearing on the fee application and objection. A copy of the fee contract was filed with Attorney Baumann's response. It provided that Debtor, "unless unusual matters arise," would pay Attorney Baumann \$1,500 for services and costs in this Chapter 13 case.

APPLICABLE LAW. The standards for allowing compensation and reimbursement from the bankruptcy estate to a debtor's counsel in this District are provided by 11 U.S.C. § 330, which was amended substantially in 1994. It essentially provides that a debtor's attorney is entitled to "reasonable compensation for actual, necessary services" and "reimbursement for actual, necessary expenses." It also provides that:

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.

11 U.S.C. § 330(a)(3). Further,

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 interests 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.

11 U.S.C. § 330(a)(4)(B). The applicant bears the burden of establishing entitlement to a fee award and documenting the appropriate hours expended. *H.J. Inc. v. Flygt Corp.*, 925 F.2d 257, 260 (8th Cir. 1991). A case by case, item by item review of the fee application is appropriate. *In re Marolf Dakota Farms Cheese, Inc.*, Bankr. No. 89-50045, slip op. at 8 (Bankr. D.S.D. October 19, 1990) (cites omitted). The "lodestar" method of calculating the fee award is used: the number of hours reasonably expended multiplied by a reasonable hourly rate. *Chamberlain v. Kula (In re Kula)*, 213 B.R. 729, 736-37 (B.A.P. 8th Cir. 1997).

DISCUSSION. The contract with Debtor to which Attorney Baumann refers does not provide that all fees but \$250 are earned by him pre-petition. Instead, the contract simply breaks down when the total fees of \$1,500 (compensation of \$1,200; \$160 filing fee¹; \$68 travel expenses and copies; and \$72 for sales tax) was to be paid (\$250 upon engagement; \$250 when forms are returned by Debtor; \$750 when the forms are filed with the Court; and \$250 "when we appear in Court"). There simply is not enough specificity in the contract for the Court to conclude that Debtor agreed that pre-confirmation services would be worth \$1,250. More important, the contract cannot supplant § 330(a)(1), which requires the Court to measure the reasonableness of the compensation sought with the necessary services actually rendered.

Upon a review of the circumstances of this particular case, it is clear that there was limited work left for Attorney Hurley to do. Attorney Baumann prepared and filed all the major paper work and conducted the majority of conferences with Debtor that were necessary to get that paper work completed. Attorney Hurley essentially stepped in and represented Debtor at the meeting of creditors and the confirmation hearing and he prepared the Plan as Confirmed.

Based on the services typically rendered in a Chapter 13 case and the usual fees charged for routine Chapter 13 cases in this District, see *Bachman v. Pelofsky (In re Peterson)*, 251 B.R. 359, 365 (B.A.P. 8th Cir. 2000), and it appearing that this case was routine and did not present any difficult legal questions, the

¹ The filing fee actually paid was the required \$185.

Court finds that the services (including the filing fee, expenses, and sales tax) rendered by Attorney Baumann are worth \$800. See *Bachman v. Laughlin (In re McKeeman)*, 236 B.R. 667, 671-72 (B.A.P. 8th Cir. 1999). The reduction from the amount requested reflects those services which Attorney Baumann agreed to perform under the contract with Debtor, but which were actually undertaken by Attorney Hurley. This includes attendance at the meeting of creditors and the confirmation hearing, resolving the plan objections through negotiation, and preparing the Plan as Confirmed. While Debtor may have not been the easiest client with whom Attorney Baumann has worked, that difficulty was not an "unusual matter" factored into their flat-fee agreement which would warrant additional charges. Like all debtors' attorneys, Attorney Baumann takes bankruptcy clients as they come, especially in flat-fee cases.

The Court will enter an appropriate order.

Sincerely,



Irvin N. Hoyt
Bankruptcy Judge

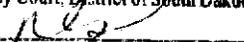
INH:sh

CC: case file (docket original; serve parties in interest)

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.

DEC 28 2000

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

DEC 28 2000

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

Case: 00-50415 Form id: 122 Ntc Date: 12/28/2000 Off: 3 Page : 1
Total notices mailed: 5

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