

**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

TELEPHONE (605) 224-0560  
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August 25, 2004

John Harmelink, Esq.  
P.O. Box 18  
Yankton, South Dakota 57078

John S. Lovald, Trustee  
P.O. Box 66  
Pierre, South Dakota 57501

Subject: *In re Bradley M. and Debra J. Doerr*  
Chapter 7; Bankr. No. 01-40036

Dear Mr. Harmelink and Trustee Lovald:

The matter before the Court is Attorney Harmelink's Rule 2016(a) Application for Compensation and Reimbursement. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and subsequent order shall constitute the Court's findings and conclusions under Fed.Rs.Bankr.P. 7052 and 9014. As set forth below, the Court will allow Attorney Harmelink an administrative expense of \$358.02 to be paid from the bankruptcy estate to the extent funds are available with which to do so.

**Summary.** On January 11, 2001, Bradley M. and Debra J. Doerr ("Debtors") filed a petition for relief under chapter 7 of the bankruptcy code. According to the Disclosure of Compensation of Attorney for Debtor Attorney Harmelink filed with their petition, Debtors paid him \$1,244.00 for "all legal services and expenses incurred through first meeting of creditors."

On July 29, 2004, Attorney Harmelink filed a Rule 2016(a) Application for Compensation and Reimbursement. In it, he asked the Court to approve his request for compensation of \$801.09, representing \$1,496.25 for attorney fees, \$86.95 for sales tax, and \$296.89 for expenses, less \$1,079.00 previously received from Debtors. No party in interest objected. The Court was thus left to conduct its own review of Attorney Harmelink's Application. In *re Clark*, 223 F.3d 859, 863 (8<sup>th</sup> Cir. 2000) ("The bankruptcy court has the broad power and discretion to award or deny attorney fees, and, indeed, a duty to examine them for reasonableness."); *In re Busy Beaver Building Centers, Inc.*, 19 F.3d 833, 841 (3<sup>rd</sup> Cir. 1994) ("[T]he bankruptcy court has a duty to review fee applications,

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notwithstanding the absence of objections by the United States trustee . . . , creditors, or any other interested party . . . .").

**Discussion.** Prior to the Supreme Court's January 25, 2004 ruling in *Lamie v. United States Trustee*, 124 S.Ct. 1023 (2004), this Court generally allowed a chapter 7 debtor's attorney reasonable compensation from the bankruptcy estate for "basic" chapter 7 services. Such basic services included analyzing the debtor's financial condition, rendering advice and assistance to the debtor in determining whether to file a petition in bankruptcy; preparing the petition, the schedules of assets and liabilities, and the statement of financial affairs; and representing the debtor at the § 341 meeting of creditors. See, e.g., *In re Lorraine M. Hankins*, Bankr. No. 01-41241, slip op. at 3-6 (Bankr. D.S.D. May 9, 2003); *In re Robert L. Boeka, Jr.*, Bankr. No. 01-40301, slip op. at 2-4 (Bankr. D.S.D. July 11, 1996); and *In re Tommy O. and Diane E. Rice*, Bankr. No. 93-40057, slip ops. (Bankr. D.S.D. Dec. 18, 1995 and August 14, 1995). Following *Lamie*, however, the Court may no longer do so. A chapter 7 debtor's attorney may not be compensated by the bankruptcy estate for any services rendered after January 25, 2004, unless the attorney is employed by the case trustee for a specific purpose. *Lamie*, 124 S.Ct. at 1031-32; *In re Danny C. and Marla J. Wolff*, Bankr. No. 03-40853, slip op. at 3 (Bankr. D.S.D. May 17, 2004; *In re Linda L. Rosenow*, Bankr. No. 99-50365, slip op. at 4 (Bankr. D.S.D. Feb. 9, 2004).

In this case, all of the services and expenses for which Attorney Harmelink seeks compensation and reimbursement were rendered and incurred prior to January 25, 2004. However, the following services and expenses were personal to Debtors and did not benefit the estate:

DATE	SERVICE(S)	FEE
01/17/01	Office conference with client re: changing date for first meeting of creditors; phone call to John Lovald changing hearing date; phone call to Clerk; file amended notice of hearing	41.25
01/22/01	Prepare Notice of Continued 341 Meeting of Creditors	41.25
01/23/01	Telephone conference with Dick Payne to discuss auction proceeds received from the sale	12.50
01/31/01	Draft letter to client re: letter from USDA; advise client to contact USDA to reaffirm its claim with USDA	21.25

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02/01/01	Office conference with client re: payment by Dick Payne from auction sale proceeds; discuss reaffirmation matters; draft letter to client	62.50
02/22/01	Review reaffirmation agreement received from Bass and Associates; draft letter to Bass and Associates	16.25
02/25/01	Review reaffirmation agreement provided by Farm Services Agency; sign agreement along with clients	41.25
	<b>TOTAL</b>	<b>236.25</b>

DATE	EXPENSE(S)	COST
01/17/01	Long distance telephone expense re (9) call to John Lovald and to Clerk with regard to changing hearing date	2.61
01/18/01	Photocopies - (4) Chapter 7 Notice of Meeting of Creditors with attachments	.80
01/18/01	Postage	.34
01/22/01	Photocopies - (48) Notice of Continued 341 Meeting	9.60
01/22/01	Postage	9.05
01/24/01	Photocopies - (14) letter to Dick Payne re: Wholesale Financing Agreement	2.80
01/24/01	Postage	.76
01/31/01	Photocopies - (1) letter to client re USDA letter	.20
01/31/01	Postage	.34
02/02/01	Photocopies - (6) letter to client re: reaffirmation of Chrysler Financial debt	1.20
02/02/01	Postage	.55
02/21/01	Photocopies - (4) Reaffirmation Agreement to Chrysler Corp.	.80
02/21/01	Postage	.34
02/23/01	Photocopies - (2) letter to Bass & Assoc. re: debt due Brauns	.40

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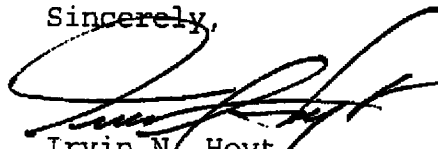
02/23/01	Postage	.68
	<b>TOTAL</b>	<b>30.47</b>

Therefore, Attorney Harmelink could not have been compensated by the bankruptcy estate for those services and expenses even prior to *Lamie*, and he cannot be compensated by the bankruptcy estate for them now. *Hankins*, slip op. at 6.

Attorney Harmelink is thus entitled to an award of \$1,260.00 for attorney fees, \$75.60 for sales tax, and \$266.42 for expenses. The total of \$1,602.02 will be reduced by the \$1,244.00 Attorney Harmelink received from Debtors according to his Disclosure of Compensation of Attorney for Debtor.<sup>1</sup> The balance of \$358.02 shall be paid as an administrative expense to the extent funds are available with which to do so.

The Court will enter an appropriate order.

Sincerely,



Irvin N. Hoyt  
Bankruptcy Judge

INH:sh

cc: case file (docket original; copies to parties in interest)

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

**AUG 25 2004**

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

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

**AUG 25 2004**

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

<sup>1</sup> Since Attorney Harmelink did not amend his disclosure of compensation, see Fed.R.Bankr.P. 2106(b), the Court presumes the \$1,244.00 figure is correct, even though it differs slightly from the \$1,079.00 Attorney Harmelink claims to have received from Debtors in his application for compensation. Attorney Harmelink offered no explanation for the discrepancy.

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