

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

IN RE:) CASE NO. 88-10199-INH
)
MC DANIEL ENTERPRISES, INC.,) CHAPTER 11
)
) MEMORANDUM OF DECISION
) RE: APPLICATION FOR
Debtor.) FINAL FEES

The matter before the Court is the Application for Allowance of Attorney's Fees filed by Cecelia A. Grunewaldt, counsel for Debtor, and the objection thereto by the United States Trustee. This is a core proceeding under 28 U.S.C. § 157(b)(2). This ruling shall constitute Findings and Conclusions as required by Bankr. R. 7052.

I.

Cecelia A. Grunewaldt, counsel for Debtor McDaniel Enterprises, Inc., filed an Application for Allowance of Attorney's Fees on December 20, 1990. Therein, Ms. Grunewaldt requested compensation for services of \$8,762.50, sales tax on services of \$525.75, and reimbursement of expenses of \$2,347.57. The United States Trustee filed an objection to the Application on January 7, 1991 on the grounds that the Application failed to disclose funds Ms. Grunewaldt held in trust, the Application insufficiently documented air travel expenses and legal fees paid to the Ganje Law Office, and expenses for an appraiser [whose employment was never approved by the Court] should be considered only under a separate fee application for the appraiser.

Ms. Grunewaldt filed a Response on January 22, 1991 in which

she agreed to amend her Application to acknowledge trust funds she holds, she explained that Mr. Ganje represented Debtors at the § 341 meeting of creditors, she agreed to amend her Application to explain how she divides travel expenses among several clients, and she agreed to withdraw all expense claims associated with the appraiser. Ms. Grunewaldt filed a Supplemental Response to the Objection on February 19, 1991. Therein, she provided a more detailed itemization of air travel expenses and she identified sums held in trust.

A hearing on the Application and Objection was held February 20, 1991 (rescheduled from January 23, 1991 due to a conflict for Ms. Grunewaldt). In addition to the objections of the United States Trustee, the Court noted several problems in the Application concerning, for example, the great amount of time spent on the Chapter 11 plan, the large increment of time [.25 of an hour] by which she itemizes her time, and the lack of specificity in her description of many of the services rendered. Ms. Grunewaldt stated that she had agreed with Debtors to take one-half of the compensation sought plus actual expenses. The Court took the matter under advisement to determine whether the agreed reduced fee adequately cured all problems with the Application.

II.

Upon consideration of applicable law and Ms. Grunewaldt's agreement to take one-half of the compensation requested plus actual expenses as modified by her Responses dated January 22, 1991 and February 19, 1991, the Court concludes that compensation and

reimbursement as agreed between Ms. Grunewaldt and Debtor is appropriate. A one-half reduction in her legal services adequately compensates for the failure of the Application to show the benefit to the estate of several services and for the large increment of time by which counsel billed her time. The reduced compensation also accommodates the fact that counsel spent an inordinate amount of time preparing a plan in this small Chapter 11 case. Further, counsel's better explanation of her travel time and the expense to Ganje Law Firm plus her agreement to eliminate all costs associated with the appraiser cured the Court's and United States Trustee's key problems with the expense portion of her Application.

Counsel is cautioned that all future applications must comport with standards established by § 330(a) and Bankr. R. 2016. All services and expenses must be separately itemized and adequately described. See In re Grimes, 115 B.R. 639 (Bankr. D.S.D. 1990); In re Hanson, Bankr. No. 386-00136, slip. op (Bankr. D.S.D. March 8, 1989). The benefit to the estate of each service and expense item must be shown. In re Reed, 890 F.2d 104, 106 (8th Cir. 1989).

Further, the Court will no longer accept itemizations of service that use a minimum increment of time for billing unless the applicant can show that the increment is reasonable. In re Temple Retirement Community, Inc., 97 B.R. 333, 339 (Bankr. W.D. Texas 1989); In re Pothoven, 84 B.R. 579, 581 (Bankr. S.D. Iowa 1988); In re Wildman, 72 B.R. 700, 708-09 (Bankr. N.D. Ill. 1987); In re S.T.N. Enterprises, Inc., 70 B.R. 823, 832-33 (Bankr. D. Vt. 1987); In re Wabash Valley Power Association, Inc., 69 B.R. 471, 478

(Bankr. S.D. Ind. 1987); In re Four Star Terminals, Inc., 42 B.R. 419, 427-27 n.1 (Bankr. D. Alaska 1984). Section 330 allows compensation only for actual services rendered. Accordingly, time records should reflect the **actual** time necessary to render each particular service.

An order allowing compensation of services and reimbursement of expenses as set forth herein will be entered.

Dated this 9th day of April, 1991.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By _____
Deputy Clerk

(SEAL)

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IN RE:) CASE NO. 88-10199-INH
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MC DANIEL ENTERPRISES, INC.,) CHAPTER 11
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) ORDER
) RE: APPLICATION FOR
Debtor.) FINAL FEES

In recognition of and compliance with the Memorandum of Decision re: Application for Final Fees entered this day,

IT IS HEREBY ORDERED that Cecelia A. Grunewaldt is allowed compensation for her services of \$4,175, compensation for her paralegal of \$206.25, sales tax on compensation of \$262.87, and reimbursement of expenses of \$1,814.12, with said sums to be reduced by all funds held in trust.

So ordered this _____ day of April, 1991.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By _____
Deputy Clerk

(SEAL)