

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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March 28, 2000

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Subject: ***In re Debra J. Otten***  
Chapter 12; Bankr. No. 96-40513

Dear Counsel:

The matter before the Court is the Rule 2016(a) Application for Final Compensation and Reimbursement filed by Konold Appraisal Service on January 18, 2000. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A). This letter decision and subsequent order shall constitute the Court's findings and conclusions under F.R.Bankr.P. 7052. As set forth below, the Court concludes that Konold Appraisal Service is entitled to an additional award of \$1,814.71, representing the full amount sought by its application.

**Summary of facts.** On November 5, 1999, Konold Appraisal Service ("Konold") filed a Rule 2016(a) Application for Final Compensation and Reimbursement. On November 29, 1999, Debtor filed an Objection to Application for Compensation and Reimbursement of Appraiser. The matter was heard on January 4, 2000. By order dated January 18, 2000, the Court awarded Konold \$1,202.24, representing the full amount sought by its application.<sup>1</sup>

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<sup>1</sup> The events leading up to Konold's November 5, 1999 application are set forth in detail in the Court's January 11, 2000 letter decision and need not be repeated herein.

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In its order, the Court granted Konold 10 days to file a supplemental application for reimbursement of the attorneys fees and costs it incurred in preparing and defending its November 5, 1999 application. Konold filed its supplemental application on January 18, 2000. Debtor filed an objection thereto on February 7, 2000. Following a hearing on February 29, 2000, the matter was taken under advisement.

**Discussion.** While other courts are split on the issue,<sup>2</sup> this Court has long held that an attorney "will be allowed reasonable compensation for preparing his fee application and the necessary expenses for filing and serving the application." *In re Brandenburger*, 145 B.R. 624, 630 (Bankr. D.S.D. 1992). See also *In re Kauer*, Bankr. No. 88-30038, slip op. at 10-11 (Bankr. D.S.D. March 27, 1992). This holding is in keeping with 11 U.S.C. § 330(a)(6), which clearly contemplates that a court may compensate an attorney for such services:

Any compensation awarded for the preparation of a fee application shall be based on the level and skill reasonably required to prepare the application[.]

Those courts that deny compensation for such services focus primarily on the "benefit to the estate," and conclude that preparing a fee application benefits only the applicant, not the estate. See, e.g., *In re Jefsaba, Inc.*, 172 B.R. 786, 802 (Bankr. E.D. Pa. 1994); *Matter of The Mansfield Tire & Rubber Company*, 65 B.R. 446, 458 (Bankr. N.D. Ohio 1986). However, such reasoning overlooks not only the express language of § 330(a)(6), but also the very real benefit to the estate that a properly prepared fee application provides in the way of improved case administration:

[A]ccurate and detailed applications prepared in accordance with the Bankruptcy Code and Rules aid in the administration of the case and do more than serve the self-interest of the person seeking fees.

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<sup>2</sup> See, e.g., *In re Nucorp Energy, Inc.*, 764 F.2d 655, 662 (9th Cir. 1985) ("[B]ankruptcy counsel are entitled to compensation for the time and effort spent in preparing fee applications."); *In re Courson*, 138 B.R. 928, 933 (Bankr. N.D. Iowa 1992) ("[C]ompensation . . . for the preparation of . . . fee applications . . . is not warranted.").

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*In re Jensen-Farley Pictures, Inc.*, 47 B.R. 557, 583 (Bankr. D. Utah 1985).

An accurate and detailed fee application benefits the estate in much the same way that an accurate and detailed application to employ benefits the estate. Both ensure that the court is given sufficient information to make an informed decision as to whether to grant the application. Attorneys are routinely compensated for preparing applications to employ. See, e.g., *In re Schachter*, 228 B.R. 359, 367 (Bankr. E.D. Pa. 1999). The Court can think of no legitimate reason why they should not be similarly compensated for preparing a fee application.

The Court likewise sees no meaningful distinction between an attorney preparing her own fee application and her assisting another professional who is unfamiliar with the procedure for seeking compensation from a bankruptcy estate. An accurate and detailed application would still be desirable. And the attorney's preparation of such an accurate and detailed application on behalf of the other professional would still aid in the administration of the case.

Thus, in this case, had Attorney Grunewaldt prepared Konold's November 5, 1999 application, she would have been entitled to reasonable compensation for doing so. That did not happen, however. This left Konold with three choices. It could simply write off its fees, prepare the necessary fee application itself, or seek the assistance of another attorney.

It would be completely unreasonable to expect Konold to write off its fees. Konold performed the appraisal for which it was employed and testified in support of its appraisal. It was entitled to be paid.<sup>3</sup> There has been no showing that Konold had the requisite knowledge and experience to prepare its own application. Under the circumstances, the Court cannot fault Konold's decision to seek the assistance of another attorney.

In doing so, Konold necessarily incurred attorneys fees. Debtor would have the Court deny Konold reimbursement for those

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<sup>3</sup> Debtor's arguments regarding the terms of Konold's employment and the quality of Konold's work were disposed of, in Konold's favor, by the Court's earlier decision regarding Konold's November 5, 1999 application.

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attorneys fees and related costs. Had Debtor offered to prepare the necessary application for Konold, the Court may have been inclined to do so, as there would have been no reason to involve another attorney. However, where, as here, a professional employed by the estate has effectively been barred from seeking compensation by the debtor's failure to prepare the necessary application, the Court must reimburse the professional for reasonable attorneys fees and costs it incurred in having done what the debtor refused to do.<sup>4</sup> To hold otherwise would, for all practical purposes, cede control over the fee application process to debtors and their attorneys.<sup>5</sup>

Konold seeks reimbursement for more than the attorneys fees and costs it incurred in preparing its application, however. It also seeks reimbursement for the attorneys fees and costs it incurred in defending its application. Ordinarily, the Court would not reimburse a professional for such fees and costs. See *Brandenburger, supra*, 145 B.R. at 630; *Kauer, supra*, slip op. at 10-11. The facts of this case mandate a different result.

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<sup>4</sup> There was much discussion at the February 29 hearing regarding a proposed settlement offer by Debtor. Konold claims to have accepted Debtor's offer. Attorney Grunewaldt denies ever having received the letter from Konold's attorney accepting Debtor's offer, even though the letter was properly addressed. This discrepancy, while troublesome, has no bearing on the Court's decision, as the Court sees no meaningful distinction between a refusal to prepare a fee application for the full amount requested and a refusal to prepare a fee application at all. In either case, the debtor's attorney is creating an impediment to the other professional being paid.

<sup>5</sup> The alternative suggested by the court in *In re Auto Parts Club, Inc.*, 191 B.R. 848, 851 (Bankr. S.D. Calif. 1996), to which Debtor referred the Court during the February 29 hearing, i.e., that the debtor should apply for authority to employ special counsel to prepare the necessary fee application, is simply not workable. Having refused to prepare the fee application herself, the debtor's attorney is not likely to agree to prepare an application to employ special counsel for that purpose. In any event, Debtor did not file such an application to employ in this case, and the Court is not prepared to penalize Konold for Debtor's failure to do so.

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In *In re Wilson Foods Corporation*, 36 B.R. 317, 323 (Bankr. W.D. Okla. 1984), the court aligned itself with those courts that deny compensation for preparing fee applications. However, it also acknowledged a possible exception to its general rule:

[T]he Court envisions a possible exception to this general rule in circumstances where the debtor, either frivolously or without foundation, interposes objections to applications for purposes of delay or animosity. Under such circumstances the applicant may justifiably seek compensation for in-court time defending his application.

*Id.* This Court agrees that such an exception is both necessary and appropriate.

While Debtor's conduct in this case may not rise to the level described in *Wilson Foods*, the Court cannot avoid the conclusion that but for Debtor's actions, this matter would have been resolved much more quickly and much less expensively. Just as Debtor's refusal to assist Konold in preparing its fee application left it with essentially no choice but to seek the assistance of another attorney, Debtor's objections to its fee application, which the Court has already ruled were not well-taken,<sup>6</sup> left Konold with no choice but to defend its application. Under the circumstances, the Court will make an exception to its general rule against awarding compensation for defending fee applications and reimburse Konold for the attorneys fees and costs it incurred in doing so herein.

The Court recognizes that the sum requested by Konold for preparing and defending its application exceeds the sum awarded to it pursuant to that application, a fact alluded to in Debtor's objection. Such a result is never desirable. However, the Court has carefully examined Konold's application and cannot identify any entries that should be disallowed as either unnecessary or

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<sup>6</sup> See the Court's January 11, 2000 letter decision herein. The Court also notes that the United States Trustee, who is statutorily charged with the responsibility of reviewing all fee applications, see, 28 U.S.C. § 586(1)(3)(A)(i), did not object to either Konold's November 5 application or its January 18 application.

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unreasonable, given the facts and circumstances of this case.<sup>7</sup> Someone must bear those costs. For the reasons discussed above, in this case, that someone must be Debtor.

Konold Appraisal Service is awarded an additional \$1,814.71, which, together with its earlier award of \$1,202.24, represents reasonable compensation for actual, necessary services rendered, and reimbursement for actual, necessary expenses incurred, by it in this matter. Attorney Dougherty shall prepare an appropriate order.

Sincerely,



Irvin N. Hoyt  
Bankruptcy Judge

INH:sh

cc: case file (docket original; serve copies on counsel for each party, chapter 12 trustee, and U.S. Trustee)

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.

**MAR 29 2000**

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

By mn

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

**MAR 29 2000**

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

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<sup>7</sup> Debtor objected to Attorney Dougherty's "lumping" of entries (which Attorney Dougherty explained to the Court's satisfaction at the February 29 hearing) and to the characterization of Attorney Dougherty's October 18, 1999 entry. However, she did not identify any entries that should be disallowed as unnecessary or unreasonable.

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Total notices mailed: 9

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