

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
Central Division

In re:)	
)	Bankr. Case No. 90-30016
ROSE RANCH OPERATING)	Jointly Administered
PARTNERSHIP,)	Chapter 12
Employer's Tax ID No.46-0354920)	
Debtor,)	
)	
ROBERT HOUSTON ROSE)	
MARGARET ROSE,)	MEMORANDUM OF DECISION RE:
Debtors,)	FINAL COMPENSATION AND
)	REIMBURSEMENT FOR
AUGUST H. ROSE, a/k/a A.H. ROSE)	DEBTORS' COUNSEL
GLADYS C. ROSE)	
Debtors.)	
)	

The matter before the Court is the final fee application filed by James P. Hurley, Debtors' counsel. This is a core proceeding under 28 U.S.C. § 157(b)(2). This Memorandum of Decision and accompanying Order shall constitute findings and conclusions under F.R.Bankr.P. 7052. As set forth below more fully, the Court concludes that Debtors' counsel shall be allowed \$45,958.87 as final compensation for services and reimbursement of expenses from the estate.

I.

Debtors filed Chapter 12 petitions on April 10, 1990. On May 14, 1990, the Court ordered the three cases to be jointly administered. Debtors' application to employ Attorney James P. Hurley and the firm of Bangs, McCullen, Butler, Foye & Simmons as their bankruptcy counsel was approved by Order entered May 31, 1990. Neither Attorney Hurley's Disclosure of Compensation nor his affidavit of disinterestedness disclosed the actual receipt of any retainer. By Order entered October 16, 1990, a stipulation between

Debtors and ASCS\CCC was approved that allowed Debtors to pay Attorney Hurley a retainer of \$5,600.00. Post-petition, Debtors paid Attorney Hurley expenses totaling \$767.50. Debtors' plan was confirmed on July 9, 1991. Debtors' discharge will be entered after a disposable income payment is made.

Attorney Hurley filed a final fee application on December 16, 1994. Therein, he requested compensation for 459.9 hours of service by him at \$100.00 per hour and 66.8 hours of service by Paralegal Debra Niemi at \$40.00 per hour for a total of \$48,662.00, sales tax of 6% on services of \$2,919.72, and reimbursement of expenses of \$3,460.37 for a total request of \$55,042.09.

Objections to Attorney Hurley's final fee application were filed by Trustee John S. Lovald, the Farmers Home Administration [now the Rural Economic and Community Development Agency (RECD)], and the United States Trustee. A hearing was held January 9, 1995. Attorney Hurley requested more time to file a written response to the objections. The Court gave him fifteen days to respond to the objections and file an amended fee application. The objectors were allowed ten days thereafter to respond. The hearing was continued to February 14, 1995.

By letter on January 9, 1995, the Court advised Attorney Hurley of several dates when the professional services rendered were not adequately described on the itemization of services. The Court also reminded Attorney Hurley that the Court's main concern "is still whether the size and complexity of these Chapter 12 estates warranted fees in excess of \$55,000.00."

Attorney Hurley requested a continuance of the February 14, 1995 hearing so that he could have more time to respond. The hearing was continued to March 21, 1995.

Attorney Hurley filed responses to the objections and the Court's letter on March 10, 1995. The U.S. Trustee filed a written response on March 21, 1995.

A second hearing on Attorney Hurley's final fee application was held March 21, 1995. Appearances included Attorney Hurley, Trustee Lovald, Bruce J. Gering for the United States Trustee, and Assistant U.S. Attorney Thomas A. Lloyd for RECD. To better address whether all fees incurred by Debtors in this case were reasonable -- those payable from the estate as well as those that Debtors must pay personally -- the Court asked Attorney Hurley to submit a statement of his fees related to the determination of disposable income.

On April 10, 1995, Attorney Hurley supplemented his fee application and stated his services and expenses related to the determination of disposable income, which must be paid by Debtors personally, were \$10,892.00. This brought the total of all compensation and reimbursement requested from the estate or Debtors to \$65,934.09.

II.

The standards for allowing compensation and reimbursement to a debtor's counsel in this District are based on substantial case law from the Court of Appeals for the Eighth Circuit and from this

Court. The case law, of course, is based on 11 U.S.C. § 330.¹

Section 330 of the Bankruptcy Code states the Court may award to a debtor's attorney

(1) reasonable compensation for actual, necessary services rendered by such . . . attorney . . . based on the nature, the extent, and the value of such services, the time spent on such services, and the cost of comparable services other than in a [bankruptcy case].

(2) reimbursement for actual, necessary expenses.

Services rendered by the debtor's counsel must benefit the estate to be compensated from the estate. *In re Reed*, 890 F.2d 104, 105-06 (8th Cir. 1989). As this Court previously noted,

[a]lthough the phrase "benefit the estate" is not defined in *Reed*, . . . the court emphasizes the distinction between services that benefit the estate and those that benefit only the debtor. One court has noted that compensation for services that "benefit the estate" was a standard established under the Bankruptcy Act but that there was no evidence that Congress intended to modify that reasoning when it adopted § 330(a). *In re Ryan*, 82 B.R. 929, 932 (N.D. Ill. 1987). Another court, after comparing § 330(a) with its pre-Code predecessor, concluded that the "benefit the estate" standard is subsumed by the "reasonable compensation for actual, necessary services" standard set forth in § 330(a). *In re Lifschultz Fast Freight, Inc.*, 140 B.R. 482, 485-86 (Bankr. N.D. Ill. 1992). Most notable, neither court, like the court in *Reed*, limited "benefit to the estate" to monetary benefit.

In re Brandenburger, 145 B.R. 624, 628-29 (Bankr. D.S.D. 1992). In essence, the tangible benefit conferred on the estate and its creditors is a proper measure of the appropriate compensation. Moreover, the fees awarded should be reasonable in light of the

¹ Section 330 was amended on October 22, 1994. The pre-amendment version of § 330 is applied here since most services were rendered before October 22, 1994.

results obtained. *H.J. Inc. v. Flygt Corp.*, 925 F.2d 257, (8th Cir. 1991).

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:

1. a statement of the payments already made or promised to the applicant;
2. the source of the compensation paid or promised;
3. the particulars of any sharing agreement;
4. the services rendered;
5. the time expended;
6. the expenses incurred; and
7. the amounts requested.

Time records should reflect the actual time spent rendering each particular service. *In re McDaniel Enterprises, Inc.*, Bankr. No. 88-10199, slip op. at 4 (Bankr. D.S.D. April 9, 1991). The applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended. *H.J. Inc.*, 925 F.2d at 260.

Inadequate documentation may warrant a reduced fee. [Cites omitted.] Incomplete or imprecise billing records preclude any meaningful review by the . . . court of the fee application for "excessive, redundant, or otherwise unnecessary" hours[.]

Id. (citing *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)).

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. October 17, 1990) (cites omitted). "[U]ncertainties should be resolved against the [applicant], if arising because of imprecise record keeping 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). The applicant should be allowed to submit additional records before the Court decides to reduce the lodestar for inadequate documentation. *H.J. Inc.*, 925 F.2d at 260.

An attorney may be allowed reasonable compensation for preparing his fee application and the necessary expenses for filing and serving the application. *In re Kauer*, Bankr. No. 88-30038, slip op. at 10-11 (Bankr. D.S.D. March 27, 1991). In contrast, defending or amending an application are not compensable from the estate.

There is no *per se* rule in the Code against compensation for multiple appearances by members of the applicant's firm or for intra-office conferences. *Marolf Dakota Farms Cheese*, slip op. at 8. Instead, if compensation for more than one professional or paraprofessional is sought for the same service or for an inter- or intra-office conference, the applicant must show that the multiple appearances were necessary and that the fee charged for each professional or paraprofessional was reasonable. *Id.*

Post-Confirmation Services. The commencement of a bankruptcy case creates an estate. 11 U.S.C. § 541(a). Except as otherwise provided in the plan or confirmation order, property of a Chapter 12 estate is reconveyed to the debtor at confirmation. 11 U.S.C. § 1207(b). Since a Chapter 12 plan must provide for the full

payment of priority administrative claims under § 507 (unless the claim holder agrees otherwise), confirmation of a Chapter 12 plan does not necessarily divest the bankruptcy estate of the property necessary to pay allowed fees for the debtor's attorney. 11 U.S.C. §§ 507(a)(1), 503(b)(2), 1222(a)(2) and 1207(b). *In re McDonald Brothers Construction, Inc.*, 114 B.R. 989, 994 (Bankr. N.D.Ill. 1990). Consequently, a Chapter 12 debtor's counsel may seek compensation from the estate after confirmation under § 330 for services that benefit the estate. *Brandenburger*, 145 B.R. at 629-30.

Historically, courts have not awarded compensation under § 330 for services by a debtor's attorney that seek to protect the debtor's discharge or the dischargeability of a certain debt. *Id.* at 629(citing *Reed*, 890 F.2d 104, 105 (8th Cir. 1989)). That concept has been extended to Chapter 12 cases.

The Court finds no basis in a Chapter 12 case to deviate from that premise *when discharge is contested*. In this District, compliance with the local rule governing a Chapter 12 discharge generally entails the completion, filing, and service of a final report and account and notice. . . . Those services are *compensable* because they are necessary for the administration of the estate. Once discharge is contested, however, whether by an objection for failure to complete plan payments under Local Bankr. R. 309(I) or a complaint seeking revocation of discharge under 11 U.S.C. § 1228(d) for alleged fraud, the remaining services are not compensable from the estate because securing a discharge is for the debtor's benefit, not the estate's.

Brandenburger, 145 B.R. at 629 (emphasis in original; footnote omitted).

III.

Attorney Hurley has consented to some deductions from his application. Those are set forth below. In addition, the Court concludes that further deductions must be made for non professional services. Each objection and the Court's conclusions are set forth below.

Liquidation analysis litigation. All three objectors argue that litigation over Debtors' liquidation analysis did not benefit the estate. In response, Attorney Hurley stated valuation of assets is an integral part of reorganization that should be compensated from the estate. He argues that litigating values of estate property is unlike litigating dischargeability of a debt, which may not be compensated from the estate.

The Court finds that no deduction of fees related to the liquidation analysis is warranted in this case. Establishing values is a key element of a reorganization case. Good valuations are needed so that the best interest of creditors test is accurate and so that feasibility is considered based on sound information. Therefore, services related to valuation of estate property should be compensated from the estate unless it can be shown that the debtor was overly litigious or unreasonable in the valuation process. That contention was not raised in this case when the liquidation analysis was being contested. Therefore, the Court cannot now find that Attorney Hurley's efforts were spurious and of no benefit to the estate.

Review of monthly reports by Attorney Hurley. The objectors argue that Attorney Hurley's legal assistant should review Debtors' monthly reports at her lower hourly rate since it is an administrative service, not a legal one. The Court disagrees, to a certain extent.

A Chapter 12 debtor's attorney should review the post-confirmation monthly reports to monitor whether the debtor is meeting income projections and not exceeding projected expenses and for other problems. That time is compensable from the estate, assuming some benefit to the estate is gleaned. That is, if there are problems, the attorney should be addressing them promptly. Otherwise, the attorney's review of the report would serve no tangible purpose.

Attorney Hurley will be compensated for reviewing Debtors' monthly reports. However, he also has billed for mailing these reports to the Trustee and sending the blank forms to Debtors to complete. These services are secretarial and will not be compensated from the estate. These secretarial entries are described below with other non professional services.

Non professional services. In addition to mailing the monthly reports and forms, Attorney Hurley and Paralegal Niemi sought compensation for other services that are not of a professional nature, such as preparing certificates of service, sending bills to Debtors, making copies, preparing form letters, and forwarding documents to the Clerk for filing. Compensation for these non

professional services will not be allowed from the estate. They should be included in the law firm's overhead. Both Attorney Hurley and Paralegal Niemi carefully need to distinguish true professional or para professional services from routine matters that are secretarial. For example, Attorney Hurley should not charge as a professional service, for sending copies of documents to his client. His secretary can do that. Paralegal Niemi should not charge for telephone calls with clients or creditors in which she merely relays information to and from Attorney Hurley. Again, that is a secretarial function.

The non professional services that will not be compensated from the estate are set forth below. If a service was secretarial, no compensation was allowed. If the service was professional in nature but more appropriately charged at the paralegal's hourly rate rather than at the attorney's hourly rate, then a reduction in compensation was made. Since the time spent on several services on the same day were often lumped, the Court had to approximate the time spent on each service.

Attorney Hurley's entries

April 9, 1990 "Prepare letter to Clerk of U.S. Bankruptcy Court filing originals and appropriate number of copies. Send copies to client." - .50

"Prepare letter to Clerk of U.S. Bankruptcy Court filing originals and appropriate number of copies. Send copies to client." - .50

"Prepare letter to Clerk of U.S. Bankruptcy Court filing originals and appropriate number of copies. Send copies to client." - .50

April 10, 1990 First two entries. - .35

May 1, 1990 "Prepare letters to Clerk of U.S. Bankruptcy Court filing originals and appropriate copies. Send copies to client and U.S. Trustee." -1.50

May 9, 1990 "Prepare letter to Clerk of U.S. Bankruptcy Court forwarding the same for Court's consideration. Send copy to clients." -.15

May 11, 1990 "Prepare letter to Clerk of U.S. Bankruptcy Court enclosing check paying their fee for filing Motion to Allow Debtors to Apply and Enter Into Agreements for Farmers Home Administration Debt Servicing Options. Send copy to clients." -.10

May 15, 1990 "Prepare Application for Employment of Attorney, Verified Statement of Attorney, and Certificate of Service for Application and Verified Statement, proposed Order for Employment of Attorney, and Certificate of Service for the Order. Prepare letter to Clerk of U.S. Bankruptcy Court filing originals. Complete service on parties in interest. Send copies to clients." -.25

[These are routine pleadings that the paralegal should prepare at her lower rate. Copying and service of documents are secretarial services. One-half of the .50 hour requested is allowed.]

May 29, 1990 "Prepare Certificate of Service for Application for Employment of Accountant and Verified Statement of Accountant. Prepare proposed Order for Employment of Accountant and Certificate of Service for Order. Prepare letter to the Clerk of U.S. Bankruptcy Court filing originals. Complete service on parties in interest. Send copies to client." -.15

[These are routine pleadings that the paralegal should prepare at her lower rate. Copying and service are secretarial services. One-half of the .30 hour requested is allowed.]

June 5, 1990 "Prepare letter to the Clerk of U.S. Bankruptcy Court filing originals. Complete service on parties in interest. Send copies to clients." -.25

June 11, 1990 "Prepare letter to Trustee Lovald filing originals. Prepare letter to Bob and Peggy Rose enclosing copy of letter to Trustee Lovald, copy of Monthly Reports, and blank forms to fill out for the next month. Send copies to Rose Ranch." -.10

June 13, 1990 "Prepare letter to clients requesting reimbursement of bill." -.05

June 22, 1990 "Prepare letter to Capital Reporting Services forwarding check in payment of their bill. Send copy to clients." -.10

"Prepare . . .Certificate of Service. Prepare letter to the Clerk of U.S. Bankruptcy Court filing originals. Complete service

on parties in interest. Send copies to clients."

-.25

"Prepare letter to Trustee Lovald filing original. Prepare letter to Bob and Peggy Rose enclosing copy of letter to Trustee Lovald, copy of Monthly Report, and blank forms to fill ou[t] for the next month. Send copies to Rose Ranch."

-.05

June 28, 1990 "Prepare . . . Certificate of Service. Prepare letter to the Clerk of U.S. Bankruptcy Court filing originals. Complete service on parties in interest. Send copies to clients."

-.25

July 11, 1990 "Prepare letter to Trustee Lovald filing original and enclosing copy of proof of Bob and Peggy Rose's automobile insurance. Prepare letter to Bob and Peggy Rose enclosing copy of letter to Trustee Lovald, copy of Monthly Report and insurance information, and blank forms to fill out for the next month. Send copies to Rose Ranch."

-.10

July 12, 1990 "Prepare letter to the Clerk of U.S. Bankruptcy Court filing original Stipulation and Stipulation and Settlement Agreement Between Debtors and Farmers and Merchants Bank, Motion, Notice of Hearing, and Certificate of Service. Complete Service on parties in interest. Send copies to clients."

-.25

July 26, 1990 "Prepare . . . Certificate of Service. Prepare letter to the Clerk of U.S. Bankruptcy Court filing originals. . . . Complete service on parties in interest. Send copies to clients."

-.50

"Prepare . . . Certificate of Service, Prepare letter to the Clerk of U.S. Bankruptcy Court filing originals of Stipulation, Motion, Notice and Certificate of Service. Complete service on parties in interest. Send copies to clients."

-.50

"Prepare . . . Certificate of Service. Complete Service on creditors and parties in interest. Send copies to client."

-.50

"Prepare Certificate of Service for Application for Employment of Real Estate Appraiser Prepare . . . Certificate of Service for Order. Prepare letter to the Clerk of U.S. Bankruptcy Court filing original Application, Verified Statement, Certificate of Service for Application and Verified Statement and Order for Employment of Real Estate Appraiser and Certificate of Service for Order. Complete service on parties in interest. Send copies to clients."

-.35

August 13, 1990 "Prepare . . . Certificate of Service. Prepare letter to the Clerk of U.S. Bankruptcy Court filing originals. Complete service on parties in interest. Send copies to clients."

-.25

August 16, 1990 "Prepare letter to Robert and Peggy Rose enclosing copy of the billing from the Clerk of U.S. Bankruptcy Court for faxed pages and requesting reimbursement." -.10

August 20, 1990 "Prepare Certificate of Service for Debtors' Response to ASCS/CCC's Motion for Modification of Automatic Stay and for Setoff. Prepare letter to the Clerk of U.S. Bankruptcy Court filing original. Send copies to clients." -.25

August 27, 1990 "Prepare letter to Trustee Lovald filing original and enclosing copy of A.H. and Gladys Rose's automobile insurance. Prepare letter to Bob and Peggy Rose enclosing copy of letter to Trustee Lovald, copy of Monthly Report and insurance information, and blank forms to fill out for the next month. Send copies to Rose Ranch." -.25

August 28, 1990 "Prepare . . . Certificate of Service. Prepare letter to the Clerk of U.S. Bankruptcy Court filing originals along with the Stipulation. Complete service on parties in interest. Send copies to clients." -.30

"Prepare . . . Certificate of Service. Prepare letter to Clerk of U.S. Bankruptcy Court filing originals along with the Stipulation. Complete service on parties in interest. Send copies to clients." -.30

September 7, 1990 "Prepare Certificate of Service for Debtors' Response to Farmers Home Administration's Motion for Determination of Secured Status and Valuation of Security; Debtors' Pre-Trial Statement; Debtors' Response to Small Business Administration's Motion for Valuation; Debtors' Pre-Trial Statement." -.25

September 17, 1990 "Prepare letter to Robert and Peggy Rose enclosing copy of billing from Clerk of Courts and requesting reimbursement." -.10

September 27, 1990 "Prepare letter to Trustee Lovald filing original. Prepare letter to Bob and Peggy Rose enclosing copy of letter to Trustee Lovald, copy of Monthly Report, and blank forms to fill out for the next month. Send copies to A.H. and Gladys Rose." -.10

September 28, 1990 "Prepare . . . Certificate of Service. Prepare letter to the Clerk of U.S. Bankruptcy Court filing originals. Complete service on parties in interest. Send copies to clients." -.25

October 12, 1990 "Prepare . . . Certificate of Service. . . . Prepare letters to Clerk of U.S. Bankruptcy Court enclosing

originals for the Court's approval. Send copies to clients."-.25

October 17, 1990 "Prepare . . . Certificate of Service. Prepare letter to the Clerk of U.S. Bankruptcy Court filing originals. Complete service on parties in interest. Send copies to clients."
-.25

October 25, 1990 "Prepare . . . Certificate of Service. Prepare letter to the Clerk of U.S. Bankruptcy Court filing originals. Complete service on parties in interest. Send copies to clients."
-.25

October 26, 1990 "Prepare . . . Certificate of Service. . . . Certificate of Service. Prepare letter to the Clerk of the U.S. Bankruptcy Court filing originals. Complete Service on parties in interest. Send copies to clients."
-.50

November 6, 1990 "Prepare letter to the Clerk of U.S. Bankruptcy Court filing originals. Complete service on parties in interest. Send copies to client."
-.25

November 7, 1990 "Prepare mailing of Debtors' First Amended Chapter Twelve Plan of Reorganization to creditors in preparation for the preconfirmation meeting."
-.50

November 26, 1990 "Prepare . . . Certificate of Service. Prepare letter to the Clerk of U.S. Bankruptcy Court filing original Plan, Notice, and Certificate of Service. Complete service on creditors and parties in interest. Send copies to clients."
-.25

November 29, 1990 "Prepare letter to Trustee Lovald filing originals. Prepare letter to Bob and Peggy Rose enclosing copy of letter to Trustee Lovald, copy of Monthly Report, and blank forms to fill out for the next month. Send copies to A.H. and Gladys Rose."
-.25

December 7, 1990 "Prepare . . . Certificate of Service. Prepare letter to the Clerk of U.S. Bankruptcy Court filing originals. Complete service on parties in interest. Send copies to clients."
-.25

December 18, 1990 "Prepare letter to Trustee Lovald filing original. Prepare letter to Bob and Peggy Rose enclosing copy of letter to Trustee Lovald, copy of Monthly Report, and blank forms to fill out for the next month. Send copies to A.H. and Gladys Rose."
-.10

December 31, 1990 "Prepare letter to the Clerk of U.S. Bankruptcy Court enclosing originals for the Court's consideration."
-.25

January 9, 1991 "Send copies to clients." -.05

"Prepare Certificate of Service for Addendum to Debtors' First Amended Chapter Twelve Plan of Reorganization. Prepare letter to the Clerk of U.S. Bankruptcy Court filing original Addendum and Certificate. Complete service on parties in interest. Send copies to clients." -.30

"Prepare . . . Certificate of Service. Prepare letter to the Clerk of U.S. Bankruptcy Court filing originals. Complete service on parties in interest. Send copies to clients." -.25

January 14, 1991 "Prepare letter to Clerk of U.S. Bankruptcy Court advising of address change for the Stanley County ASCS/CCC. Send copy to clients." -.05

"Prepare letter to Trustee Lovald filing original. Prepare letter to Bob and Peggy Rose enclosing copy of letter to Trustee Lovald, copy of Monthly Report, and blank forms to fill out for the next month. Send copies to A.H. and Gladys Rose." -.15

February 4, 1991 "Prepare letter to Clerk of U.S. Bankruptcy Court enclosing original Order Approving Stipulation and Settlement Agreement with Security Bank of South Dakota, N.A. and Certificate of Service for the Court's consideration. Send copy to clients." -.15

February 8, 1991 "Certificates of Service, and correspondence to the Clerk of Courts." -.25

February 13, 1991 "Prepare . . . Certificate of Service." -.10

"Prepare letter to Trustee Lovald filing original. Prepare letter to Bob and Peggy Rose enclosing copy of letter to Trustee Lovald, copy of Monthly Report, and blank forms to fill out for the next month. Send copies to A.H. and Gladys Rose. Prepare letter to Assistant U.S. Attorney Lloyd enclosing copy of the report pursuant to his Request for Production of Documents. Send copy of letter to clients." -.20

February 14, 1991 "Prepare letter to the Clerk of U.S. Bankruptcy Court filing originals. . . . Send copies to clients." -.10

March 1, 1991 "Prepare . . . Certificate of Service. Prepare letter to the Clerk of U.S. Bankruptcy Court filing originals. Complete service on parties in interest. Send copies to client." -.25

"Prepare letter to the Clerk of U.S. Bankruptcy Court filing originals. . . . Send copies to clients." -.10

"Prepare . . . Certificate of Service. Prepare letter to the Clerk of U.S. Bankruptcy Court filing originals. Complete service on parties in interest. Send copies to clients." -.25

March 5, 1991 "Prepare letter to Judith Thompson enclosing Rose's check in payment of her court reporter fees. Send copy to clients." -.10

March 18, 1991 "Prepare letter to Trustee Lovald filing original. Prepare letter to Bob and Peggy Rose enclosing copy of letter to Trustee Lovald, copy of Monthly Report, and blank forms to fill out for the next month. Send copies to A.H. and Gladys Rose." -.10

March 27, 1991 "Prepare letter to Trustee Lovald enclosing originals. Send copy to clients and Assistant U.S. Attorney Lloyd." -.25

April 1, 1991 "Send copy to clients. Complete service of documents upon creditors and parties in interest." -.25

April 2, 1991 "Prepare letter to clients enclosing bill from State Publishing for reimbursement." -.05

April 3, 1991 "Prepare letter to Hughes County Sheriff enclosing copies of subpoena for Cecil Ice along with witness fee check and check for his service of process. Send copies to clients." -.10

"Prepare . . . Certificate of Service, . . . and Certificate of Service. Prepare letter to the Clerk of U.S. Bankruptcy Court filing originals. Serve copies on Assistant U.S. Attorney Lloyd. Send copies to clients." -.25

April 9, 1991 "Prepare letter to Clerk of U.S. Bankruptcy Court filing original. Send copies to clients." -.05

"Review letter from Peggy Rose and enclosed Checks for State Publishing and Capital Reporting Service. Prepare letters to State Publishing and Capital Reporting Service enclosing checks. Send copies to clients." -.10

"Prepare letter to Assistant U.S. Attorney Lloyd enclosing page 1 of January monthly statement for A.H. Rose Ranch Checking Account #771-120. Send copies to client." -.10

May 2, 1991 "Prepare letter to Clerk of U.S. Bankruptcy Court enclosing original Debtors' First Amended Chapter Twelve Plan of Reorganization (Restated April 20, 1991) and Certificate of Service. Complete service on all creditors and parties in interest. Send copies to clients." -1.00

May 17, 1991 "Prepare letter to Trustee Lovald filing original. Prepare letter to Bob and Peggy Rose enclosing copy of letter to Trustee Lovald, copy of Monthly Report, and blank forms to fill out for the next month. Send copies to A.H. and Gladys Rose and Assistant U.S. Attorney Lloyd." -.10

June 7, 1991 "Phone conference with Clerk of U.S. Bankruptcy Court." -.05

July 10, 1991 "Prepare letter to clients enclosing copy of Certification of Fees and Bill for Collection requesting reimbursement of expense." -.50

July 23, 1991 "Prepare letter to Trustee Lovald filing original. Prepare letter to Bob and Peggy Rose enclosing copy of letter to Trustee Lovald, copy of Monthly Report, and blank forms to fill out for the next month. Send copies to A.H. and Gladys Rose and Assistant U.S. Attorney Lloyd." -.10

August 21, 1991 "Prepare letter to Trustee Lovald filing original. Prepare letter to Bob and Peggy Rose enclosing copy of letter to Trustee Lovald, copy of Monthly Report, and blank forms to fill out for the next month. Send copies to A.H. and Gladys Rose and Assistant U.S. Attorney Lloyd." -.10

October 1, 1991 "Prepare letter to Trustee Lovald enclosing original with copies to Assistant U.S. Attorney Lloyd, Bob and Peggy Rose, and A.H. and Gladys Rose. Prepare letter to Bob and Peggy Rose enclosing blank statement to be filled out for the month of September 1991." -.10

November 7, 1991 "Prepare letter to Trustee Lovald enclosing original with copies to Peggy and Bob Rose, Gladys and A.H. Rose, and Assistant U.S. Attorney Lloyd. Prepare letter to Peggy Rose. Send copy to A.H. and Gladys Rose." -.10

November 26, 1991 "Prepare letter to Trustee Lovald enclosing original with copies to Peggy and Bob Rose, Gladys and A.H. Rose, and Assistant U.S. Attorney Lloyd. Prepare letter to Peggy Rose. Send copy to A.H. and Gladys Rose." -.10

December 24, 1991 "Prepare letter to Trustee Lovald with copies to clients and Assistant U.S. Attorney Lloyd. Prepare letter to Bob and Peggy Rose. Send copy to A.H. and Gladys Rose." -.10

January 31, 1992 "Prepare letter to Trustee Lovald enclosing report. Send copy to Assistant U.S. Attorney Lloyd. Prepare letter to Robert and Peggy Rose enclosing copies along with a blank form for the January 1992 report. Send copies to A.H. and Gladys Rose." -.10

February 20, 1992 "Prepare letter to Trustee Lovald enclosing report. Send copy to Assistant U.S. Attorney Lloyd. Prepare letter to Robert and Peggy Rose enclosing copies along with a blank

form for the February 1992 report. Send copies to A.H. and Gladys Rose." - .10

March 19, 1992 "Prepare letter to Trustee Lovald enclosing report. Send copy to Assistant U.S. Attorney Lloyd. Prepare letter to Robert and Peggy Rose enclosing copies along with a blank form for the March 1992 report. Send copies to A.H. and Gladys Rose." - .10

April 28, 1992 "Prepare letter to Trustee Lovald enclosing report. Send copy to Assistant U.S. Attorney Lloyd. Prepare letter to Robert and Peggy Rose enclosing copies along with a blank form for the April 1992 report. Send copies to A.H. and Gladys Rose." - .10

June 1, 1992 "Prepare letter to Trustee Lovald enclosing report. Send copy to Assistant U.S. Attorney Lloyd. Prepare letter to Robert and Peggy Rose enclosing copies along with a blank form for the May 1992 report. Send copies to A.H. and Gladys Rose." - .10

June 22, 1992 "Prepare letter to Trustee Lovald enclosing report. Send copy to Assistant U.S. Attorney Lloyd. Prepare letter to Robert and Peggy Rose enclosing copies along with a blank form for the June 1992 report. Send copies to A.H. and Gladys Rose." - .10

July 31, 1992 "Prepare letter to Trustee Lovald enclosing report. Send copy to Assistant U.S. Attorney Lloyd. Prepare letter to Robert and Peggy Rose enclosing copies along with a blank form for the July 1992 report. Send copies to A.H. and Gladys Rose." - .10

September 23, 1992 "Prepare letter to Trustee Lovald enclosing report. Send copy to Assistant U.S. Attorney Lloyd. Prepare letter to Robert and Peggy Rose enclosing copies along with a blank form for the August 1992 report. Send copies to A.H. and Gladys Rose." - .10

October 30, 1992 "Prepare letter to Trustee Lovald enclosing reports. Send copies to Assistant U.S. Attorney Lloyd. Prepare letter to Robert and Peggy Rose enclosing copies along with a blank form for the October 1992 report. Send copies to A.H. and Gladys Rose." - .10

December 16, 1992 "Prepare letter to Trustee Lovald enclosing original for filing. Send copies to Assistant U.S. Attorney Lloyd, A.H. and Gladys Rose and Bob and Peggy Rose. Prepare letter to Bob and Peggy Rose enclosing copies and blank form for the month of November 1992. Send copies to A.H. and Gladys Rose." - .10

February 18, 1993 "Prepare letter to Trustee Lovald enclosing originals. Send copies to Assistant U.S. Attorney Lloyd. Prepare

letter to Bob and Peggy Rose enclosing copies and also enclosing blank statement for January 1993. Send copies to A.H. and Gladys Rose." - .10

April 1, 1993 "Prepare letter to Trustee Lovald enclosing originals. Send copies to Assistant U.S. Attorney Lloyd. Prepare letter to Bob and Peggy Rose enclosing copies and also enclosing blank statement for March 1993. Send copies to A.H. and Gladys Rose." -.10

June 23, 1993 "Prepare letter to Trustee Lovald enclosing original. Send copy to Assistant U.S. Attorney Lloyd. Prepare letter to Bob and Peggy Rose enclosing copies. Send copies to A.H. and Gladys Rose." -.10

June 28, 1993 "Prepare letter to Trustee Lovald enclosing originals. Send copies to Assistant U.S. Attorney Lloyd. Prepare letter to Bob and Peggy Rose enclosing copies and blank statement for June 1993. Send copies to A.H. and Gladys Rose." -.10

July 24, 1993 "Prepare letter to Trustee Lovald enclosing report originals. Send copies to Assistant U.S. Attorney Lloyd. Prepare letter to Bob and Peggy Rose enclosing copies and blank form for August 1993. Send copies to A.H. and Gladys Rose." -.10

October 5, 1993 "Prepare letter to Trustee Lovald enclosing original. Send copy to Assistant U.S. Attorney Lloyd. Prepare letter to Bob and Peggy Rose enclosing copies and blank form for September 1993. Send copies to A.H. and Gladys Rose." -.10

Paralegal Debra Niemi's entries

April 10, 1990 "Phone conference with Bankruptcy Court." -.10

July 26, 1990 "Phone conference with Bankruptcy Court. Prepare memo to Attorney Hurley." -.10

September 7, 1990 "Phone conference with Peggy Rose. Prepare memo to Attorney Hurley." -.10

September 17, 1990 "Phone conference with Gladys Rose. Phone conference with Peggy Rose. Prepare memo to Attorney Hurley." -.50

September 19, 1990 "Phone conference with Bob Rose. Prepare memo to Attorney Hurley." -.20

September 28, 1990 "Phone conference with Peggy Rose. Review file. Prepare memo to Attorney Hurley." -.25

November 26, 1990 "Phone conference with Bob Rose." -.10

December 18, 1990 "Phone conference with Raymond Kintz. Prepare draft of letter and fax pleadings. Phone conference with Bob Rose." - .25

March 20, 1991 "[C]opy cases at law library." - .25

April 4, 1991 "[C]opy case law regarding abandonment." - .20

April 9, 199 "Prepare four exhibit books." -1.50

April 15, 1991 "Phone conference with Peggy Rose. Prepare memo to Attorney Hurley. Prepare draft of letter to SBA." - .25

Deductions

Attorney Hurley: 19.9 hours x \$100.00/hour = \$1,990.00
Paralegal Niemi: 3.8 hours x \$ 40.00/hour = \$ 152.00

Disclosure of the retainer received. This objection has been resolved. Attorney Hurley reports in his responses that he received a retainer of \$5,600.00 and expense checks totaling \$767.50. The funds will be recognized in the final fee award. In the future Attorney Hurley -- and all other debtors' counsel employed by an estate -- must file and serve on the U.S. Trustee a supplemental statement within 15 days of receipt of any payment or change in the compensation agreement, as required by F.R.Bankr.P. 2016(a). Further, all funds received must be clearly disclosed in any fee application, as required by F.R.Bankr.P. 2016(a).

Inadequate description or itemization of services. Attorney Hurley's responses resolved the majority of these problems. The services rendered on the following dates, however, still are not adequately described and will not be compensated:

Attorney Hurley's entries

August 6, 1990 "Phone conference with Dick Tieszen." - .10

December 26, 1990 "Phone conference with U.S. Bankruptcy Court

Scheduling Clerk, Nita Leafgreen." [Without further explanation, the entry does not show that a professional, rather than secretarial service, was performed.] - .10

March 11, 1991 "Review file documents." [Subject or purpose of the review was not disclosed.] - .25

Paralegal Debra Niemi's entries

April 25, 1991 "Review of Plan and exhibits." [Purpose not set forth.] - .25

Deductions:

Attorney Hurley: .45 x \$100.00 = \$45.00

Paralegal Niemi: .25 x \$40.00 = \$10.00

On future applications, Attorney Hurley needs to insure that the time spent on each different item of service is listed separately. The time spent on several different services on a single day should not be lumped.

Late preparation of orders. On a few occasions, Attorney Hurley was late in preparing an order. He charged the estate for reading the dunning letter from the Court. Attorney Hurley has agreed to that deduction: .20 hours x \$100.00/hour = \$20.00.

Preparation of accountant's amended fee application. Attorney Hurley charged the estate for preparing an amended fee application for the accountants after objections to it were filed. The objection will be sustained.

Stulken Peterson should prepare their own original and amended fee applications or compensate Attorney Hurley for doing so. As noted above, preparation of the original fee application is compensable from the estate. Amendments are not.

Attorney Hurley has agreed to a reduction of 3.35 hours x

\$100.00 and .25 hours x \$40.00 = \$345.00.

Reasonableness of total fees sought. In Debtors' confirmed plan, they projected that total attorney's fees would be approximately \$30,600.00 (\$5,600.00 already received and \$25,000.00 projected). Now Attorney Hurley's application for estate services and his statement for discharge-related services total \$65,934.52. While this was a fairly large, jointly administered case that was complicated by the Debtors' other business interests (spraying service, real estate investments, etc.), Attorney Hurley was blessed with cooperative Debtors and good records. Consequently, it is difficult for the Court to discern whether the total fees sought are reasonable.

Several factors, however, weigh against any reduction for unreasonableness. Attorney Hurley kept accurate time records. Non professional services have been deducted. Expenses charged were not unreasonable. A successful reorganization was obtained. No party, including Debtors, the Trustee, or creditors, complained during the case that Attorney Hurley was delaying confirmation or being unnecessarily litigious. Therefore, no deduction for the unreasonableness of the total allowance sought will be made in this case.

Summary.

Attorney Hurley:

compensation sought	459.90 hours
deductions	23.90 hours
allowed compensation	436.00 hours x \$100.00/hour = \$43,600.00

Sales tax: \$43,600.00 x 6% = \$2,616.00

Paralegal Niemi:
compensation sought 66.80 hours
deductions 4.30
allowed compensation 62.50 hours x \$40.00/hour = \$2,500.00

Sales tax: \$2,500.00 x 6% = \$150.00

Expenses: \$3,460.37 [no deductions]

Less Retainer Received: <\$5,600.00>

Less Expenses Received: <\$ 767.50.>

TOTAL ALLOWANCE AS ADMINISTRATIVE EXPENSE: \$45,958.87

An appropriate order will be entered.

Dated this _____ day of July, 1995.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:

PATRICIA A. JOHNSON, ACTING CLERK

By _____
Deputy Clerk

(SEAL)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
Central Division

In re:)
) Bankr. Case No. 90-30016
ROSE RANCH OPERATING) Jointly Administered
PARTNERSHIP,) Chapter 12
Employer's Tax ID No.46-0354920)
Debtor,)
)
ROBERT HOUSTON ROSE) ORDER ALLOWING FINAL COMPENSATION
MARGARET ROSE,) FOR SERVICES AND REIMBURSEMENT
Debtors,) OF EXPENSES FOR DEBTORS' COUNSEL
)
AUGUST H. ROSE, a/k/a A.H. ROSE)
GLADYS C. ROSE)
Debtors.)
)

In recognition of and compliance with the Memorandum of Decision
Re: Final Compensation and Reimbursement for Debtors' Counsel
entered this day,

IT IS HEREBY ORDERED that James P. Hurley, counsel for Debtors,
shall be allowed from the estate as an administrative expense
\$45,958.87; and

IT IS FURTHER ORDERED that all other compensation and
reimbursement for Attorney Hurley shall be paid by Debtors personally
from non estate funds after discharge.

So ordered this _____ day of July, 1995.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:

PATRICIA A. JOHNSON, ACTING CLERK

By _____
Deputy Clerk

(SEAL)