

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
Central Division

In Re:)
) Bankr. No. 87-30110
 VERNELL E. SMITH and) Chapter 12
 CAROL J. SMITH,)
) MEMORANDUM OF DECISION RE:
 Debtors.) APPLICATION FOR FEES BY
) DEBTORS' COUNSEL
)
)

The matter before the Court is the Rule 2016(a) Application for Compensation and Reimbursement filed by John Harmelink, counsel for Debtors, the objection thereto filed by the United States Trustee, a supplemental itemization of services filed by Attorney Harmelink, and a supplemental objection thereto filed 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 F.R.Bankr.P. 7052.

I.

Debtors Vernell E. and Carol J. Smith filed a Chapter 12 petition on July 14, 1987. Their plan of reorganization was confirmed on January 7, 1988. Some post-confirmation litigation ensued because Debtors became delinquent on plan payments. Those problems were eventually resolved. Debtors received their discharge on September 29, 1992.

John Harmelink, Debtors' counsel, filed a fee application on behalf of his law firm on August 11, 1992. That application sought an award of \$6,796.35 in fees, taxes, and expenses. It further stated Attorney Harmelink had received \$5,234.00 from Debtors,

which left a balance due of \$1,562.35. The United States Trustee filed several objections to the application, including that the application did not contain an itemization of services rendered prior to March 31, 1988 and that most post-confirmation services did not benefit the estate.

A hearing on the original application and objection was held September 15, 1992. Appearances included Attorney Harmelink and Bruce J. Gering for the United States Trustee. At that hearing, Attorney Harmelink agreed to submit the supplemental itemization for services rendered prior to March 31, 1988. Of the United States Trustee's original objections, all were resolved except his argument that most of Attorney Harmelink's post-confirmation services did not benefit the estate.

Attorney Harmelink filed his supplemental itemization on September 17, 1992. The United States Trustee filed a supplemental objection on September 22, 1992 that argued an "administrative charge" of \$200.00 on July 13, 1987 was for services that should be included in the applicant's overhead.

II.

Following In re Reed, 890 F.2d 104 (8th Cir. 1989), this Court recently ruled that a debtor's counsel may seek compensation from the estate for post-confirmation services in a Chapter 12 case that benefit the estate. In re Brandenburger, Bankr. No. 87-10162, slip op. at 10-11 (July 17, 1992).¹ Post-confirmation services which

¹ This decision has been submitted for publication in the West Bankruptcy Reporter.

benefit the estate include those that are necessary for the administration of the estate.

The disallowed post-confirmation services rendered by the debtors' counsel in Brandenburger involved representing the debtors during a contested discharge proceeding. Those services benefited the debtors, not the estate. In contrast, most of the post-confirmation services rendered by Attorney Harmelink were to address and cure a delinquency in plan payments. It would be unrealistic for this Court to presume that all Chapter 12 plans will be executed without delay or problems. Moreover, the Court expects the debtor's counsel to aid in the resolution of those post-confirmation problems just like it expects the debtor's counsel to insure that the debtor's final report and account is filed and properly noticed. Brandenburger, slip op. at 10-11 and 14. Consequently, post-confirmation services by Attorney Harmelink that addressed Debtors' delinquent payments will be compensated as necessary to the administration of this case. Had these services been excessive or had they been rendered by Attorney Harmelink when a reasonable opportunity for resolution did not exist, see In re Alderson, 114 B.R. 672, 679-81 (Bankr. D.S.D. 1990), compensation would not have been allowed. Brandenburger, slip op. at 14.

III.

The administrative charges of \$200.00 made by Attorney Harmelink on July 13, 1987 include typing, unexplained interviews and telephone calls, copying, handling mail, filing, management time, indexing, and miscellaneous. The United States Trustee is

correct that these services are not compensable. Specifically, typing, copying, preparing mail, filing, and indexing are not professional services compensable under § 330(a). In re Yankton College, 101 B.R. 151, 159 (Bankr. D.S.D. 1989). These costs should be included in the law firm's overhead. The other items, including telephone calls, interviews, management time, and "miscellaneous," are not sufficiently described and itemized for the Court to assess whether or not these services were actual and necessary professional services that benefited the estate. In re Grimes, 115 B.R. 639, 643 (Bankr. D.S.D. 1990) (citing In re Hansen, Bankr. No. 386-00136, slip op. at 6-7 (Bankr. D.S.D. March 8, 1989)). Therefore, none of the \$200.00 for services on July 13, 1987 will be allowed.

An order will be entered in compliance with the findings and conclusions of this memorandum.

Dated this 5th day of October, 1992.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By _____
Deputy Clerk

(SEAL)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
Central Division

In Re:)
) Bankr. No. 87-30110
 VERNELL E. SMITH and) Chapter 12
 CAROL J. SMITH,)
) ORDER AWARDED COMPENSATION
 Debtors.) AND REIMBURSEMENT TO
) DEBTORS' COUNSEL
)

In recognition of and compliance with the Memorandum of Decision Re: Application for Fees by Debtors' Counsel entered this day,

IT IS HEREBY ORDERED that Debtors' counsel, John Harmelink and firm, is awarded final compensation for services, tax on compensation, and reimbursement of expenses of \$6,584.35 less funds already received of \$5,234.00 for a total award of \$1,350.35.

So ordered this ____ day of October, 1992.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By _____
Deputy Clerk

(SEAL)