

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

IN RE:)
)
RONALD MARION WALGAMUTH and)
KARLA KAY WALGAMUTH,)
)
Debtors)
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CASE NO. 91-50270-INH
CHAPTER 7
MEMORANDUM OF DECISION RE:
FEE APPLICATION OF
DEBTORS' COUNSEL

The matter before the Court is the Petition for Approval [of] Payment of Attorney Fees filed by Ramon A. Roubideaux, counsel for Debtors Ronald M. and Karla K. Walgamuth. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). This ruling shall constitute the Court's Findings and Conclusions as required by F.R.Bankr. P. 7052.

I.

Ronald M. and Karla K. Walgamuth filed a Chapter 7 petition on August 21, 1991. A creditor, the Estate of Oliver Hanson (Hanson Estate), and Chapter 7 Trustee Dennis Whetzal both filed objections to Debtors' claimed exemptions. A hearing on those objections is scheduled for July 8, 1992. The Hanson Estate also filed a dischargeability complaint against Debtors. That trial will be concluded in conjunction with the objection to exemptions hearing.

Ramon A. Roubideaux, counsel for Debtors, filed his Statement of Attorney for Petitioner Pursuant to Bankruptcy Rule 2016(b) on September 11, 1991. This disclosure of compensation states

Debtors paid Roubideaux \$795.00 before the petition was filed.¹

On April 13, 1992, Roubideaux filed a Petition for Approval [of] Payment of Attorney Fees [i.e., "fee application"]. Therein he requested compensation for seventy-seven hours of professional services at \$75.00 per hour less \$106.99 for a transcript for which Debtors had already reimbursed Roubideaux. In the "Petition" Roubideaux stated that he had received a retainer totaling \$2,250.00 from Debtors. This sum included the \$795.00 retainer disclosed on September 11, 1991, \$530.00 from Debtors' earnings during the pendency of the case, and \$1,000.00 "on October 24, 1991 [post-petition] . . . out of funds derived from the sale of stock which was listed as part of [Debtors'] estate."² Roubideaux also requested that he be reimbursed from the stock funds another \$300.00 to pay for appraisals needed by Debtors.

The Hanson Estate filed an objection to Roubideaux's fee application on April 20, 1992. The Hanson Estate argued that the appraisal costs and all post-petition services by Roubideaux, except representing Debtors at the 341 meeting of creditors, were not compensable from the estate because the services did not benefit the estate.

The United States Trustee filed an objection to Roubideaux's

¹ Roubideaux's disclosure of compensation states that the \$120.00 filing fee had been paid but it is not clear whether Debtors reimbursed him for that fee in addition to the \$795.00 retainer or whether the \$120.00 was included in the retainer.

² In an earlier hearing, Debtor Ronald M. Walgamuth testified that contrary to a state court order he had sold some stocks and had retained the proceeds. The stock sale was post-petition.

fee application on April 20, 1992. The United States Trustee argued that Roubideaux failed to notice his application in compliance with F.R.Bankr.P. 2002(a)(7) and that Roubideaux erroneously captioned his application under the dischargeability adversary proceeding.³ Further, the UST argued that at most, only the services rendered on August 14, 1991; August 19 1991; August 20, 1991; and November 7, 1991 were services that benefited the estate and thus were compensable from the estate as an administrative expense pursuant to 11 U.S.C. 507 and *In re Reed*, 890 F.2d 104, 105 (8th Cir. 1989), and other cited cases. Finally, the UST argued Roubideaux's fee application did not comport with the itemization and description standards established by this Court in *In re Hanson*, Bankr. No. 386-00136, slip op. at 6 (Bankr. D.S.D. March 8, 1989).

On April 30, 1992, Trustee Dennis C. Whetzal filed objections to Roubideaux's fee application. Trustee argued that the appraisal fees sought in Roubideaux's application should not be paid from the estate because they did not benefit the estate. Trustee, like the UST, also argued that Roubideaux erred in receiving estate funds from Debtors as a retainer. Finally, Trustee argued that Roubideaux's services as set forth in his fee application were not adequately itemized and described.

A hearing on the fee application and the objections thereto was held May 14, 1992. Appearances included Ramon Roubideaux, pro

³ The Bankruptcy Clerk properly filed Roubideaux's fee application in the main case.

se; Charles L. Nail, Jr., Assistant U.S. Trustee; Trustee Dennis C. Whetzal, pro se; and Terry G. Westergaard for the Hanson Estate. Roubideaux did not introduce any evidence in support of his application. Nail summarized the UST's objections and strongly argued that Roubideaux should not be awarded any compensation above the \$795.00 retainer received pre-petition because, contrary to the Code, Roubideaux had directed Debtors to pay him an additional \$1,000.00 retainer from the stock proceeds that were estate property. The UST argued that Roubideaux's actions constituted a conversion of estate property that should not be rewarded through a fee award from the estate. Trustee⁴ and counsel for the Hanson Estate supported the UST's position.

After receiving arguments of counsel and in compliance with the authorities submitted by the UST, the Court concluded that only the services totaling \$787.50 rendered by Roubideaux on August 14, 1991; August 19, 1991; August 20, 1991; and November 7 1991 were compensable as services that benefited the estate. The Court took under advisement the question of whether Roubideaux should be awarded any compensation in addition to the \$1,325.00 retainer (\$795.00 pre-petition retainer plus \$530.00 post-petition retainer from non estate funds) because without Court approval Roubideaux had directed Debtors to pay him a \$1,000.00 retainer from estate

⁴ Trustee Whetzal stated in his objection that he knew Debtors had sold some stocks that were estate property and had retained the proceeds. Trustee stated he had discussed this problem with Roubideaux and that Roubideaux said he was not going to turnover the estate funds until after he had asked the Court to allow him some compensation from that money.

funds.

II.

The law is well settled in this Circuit that services compensated from a bankruptcy estate must benefit that estate. *Reed*, 890 F.2d at 104-05. In a Chapter 7 case, the debtor's attorney is generally compensated from the estate

for analyzing the debtor's financial condition; rendering advice and assistance to the debtor in determining whether to file a petition in bankruptcy; the actual preparation of the petition, schedules of assets and liabilities, and the statement of affairs; and representing the debtor at the [§] 341 meeting of creditors.

In re Nu-Process Industries. Inc., 13 B.R. 136, 138 (Bankr. E.D. Mich. 1981) (citing *In re Kross*, 96 F. 816 (S.D.N.Y. 1899)).

When a debtor's attorney seeks compensation for his services, he has two unavoidable duties to perform. First, a debtor's attorney must disclose any compensation he receives for his bankruptcy services, whether from the debtor or any other source. 11 U.S.C. 329(a) and F.R.Bankr.P. 2016(b). Second, if a debtor's attorney seeks compensation from the estate, he must file a fee application in compliance with F.R.Bankr.P. 2016(a) and obtain court approval for those fees before he receives the funds. 11 U.S.C. 330(a).

III.

Roubideaux has failed to show that any of the services he

rendered -- except for those on August 14, 19, and 20, 1991 and November 7, 1991 -- benefited the estate. There was no showing that the remaining services itemized on his application related to the filing of the petition, completion of the schedules, or attendance at the § 341 meeting. Moreover, Roubideaux's argument at the hearing essentially conceded that most of his services were tied to the dischargeability complaint against Debtors or the contested matters regarding Debtors' claimed exemptions. Therefore, those services are not compensable from the estate.

The Court also finds that the compensable services rendered by Roubideaux on August 14, 1991 (discuss compensation and review case); August 19, 1991 (office conference); August 20, 1991 (preparation and filing of petition, schedules, and statement); and November 7, 1991 (attend 341 meeting) were adequately covered by the two retainers that Roubideaux received that were not estate property (the \$795.00 pre-petition retainer and the \$530.00 post-petition retainer from Debtors' post-petition earnings). The services on those four dates essentially encompass the standard services by a Chapter 7 debtor's attorney that are compensable from the estate. See, e.g., *Stewart v. Law Offices of Dennis Olson*, 93 B.R. 91, 95 (N.D. Texas 1988); *In re Office Products of America, Inc.*, 136 B.R. 964, 972-76 (Bankr. W.D. Texas 1992); *In re Holden*, 101 BR. 573 (Bankr. N.D. Iowa 1989); *In re Riverview Financial Services, Inc.*, 67 B.R. 714 (Bankr. E.D. Mich. 1986); *In re Kirlan*, 55 B.R. 105 (Bankr. S.D. Fla. 1985); and *Nu-Process Industries*, 13 B.R. at 138; see also *In re Saturley*, 131

B.R. 509 (Bankr. D. Maine 1991). The compensation sought for the legal services on those four days totaled \$787.50. Thus, even after the \$787.50 in services, the \$120.00 filing fee, \$38.20 in sales tax, and a \$106.99 transcript expense are paid, Roubideaux still has some of his \$1,325.00 retainer to cover his services that did not benefit the estate.⁵

Roubideaux also failed to follow the prescriptions of 11 U.S.C. § 329(a) and F.R.Bankr.P. 2016(b) because he did not file a supplemental disclosure of compensation when he received the two additional post-petition retainers of \$1,000.00 and \$530.00 from Debtors. Roubideaux failed to follow the prescriptions of 11 U.S.C. 330(a) and F.R.Bankr.P. 2016(a) because he did not file an adequately itemized fee application for the compensation he requested from the estate. Most egregious, Roubideaux counseled Debtors to give him a \$1,000.00 retainer from property of the estate. Roubideaux's disregard of the Code and Rules only compounded Debtors' misstep of selling estate property in violation of both a state court order and 11 U.S.C. § 521(4) and in possible violation of 18 U.S.C. § 152. Consequently, even if some of Roubideaux's post-petition services had benefitted the estate, the Court would be averse to awarding him any additional fees from the estate due to his failure to follow the mandates of the Code and Rules.

⁵ No interested party objected to the expense of \$106.99 Roubideaux requested for a transcript nor did anyone file an objection under 11 U.S.C. § 329(b) to the \$530.00 retainer he received post-petition.

Accordingly, the Court concludes there is no basis on which to award Roubideaux additional fees from the estate. He has failed to show that any of the post-petition services set forth in his application, except representing Debtors at the meeting of creditors, benefitted the estate. He has failed to comply with the mandates of 11 U.S.C. §§ 329(a) and 330(a) and F.Rs.Bankr.P. 2016(b) and 2016(a). Consequently, an order will be entered denying Roubideaux's fee application in its entirety. Roubideaux must look to Debtors -- not the estate -- for payment of those post-petition services not covered by his allowed retainer.⁶

Dated this 1st day of July, 1992.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:
PATRICIA MERRITT, CLERK

By: _____
Deputy

(SEAL)

UNITED STATES BANKRUPTCY COURT

⁶ This Memorandum does not render a decision on whether Roubideaux and Debtors must turnover to Trustee the funds from the stock sold by Debtors. If Roubideaux and Debtors do not surrender voluntarily these funds, Trustee is in no way prohibited by the findings and Conclusions of the Court herein from bringing an appropriate action to obtain those assets for the estate.

DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

IN RE:) CASE NO. 91-50270-INH
)
RONALD MARION WALGAMUTH and) CHAPTER 7
KARLA KAY WALGAMUTH,)
) ORDER DISALLOWING
) FEE APPLICATION OF
Debtors.) DEBTORS' COUNSEL

In recognition of and compliance with the Memorandum of Decision re: Fee Application by Debtors' Counsel entered this day,

IT IS HEREBY ORDERED that the Petition for Approval [of] Payment of Attorney Fees filed by Ramon A. Roubideaux, counsel for Debtors Ronald M. and Karla K. Walgamuth, is DENIED.

So ordered this 1st day of July, 1992.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By: _____
Deputy

(SEAL)