

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

In Re

TELCAR, INC.

Debtor.

**Bankruptcy Case
No. 00-00762-JDP**

MEMORANDUM OF DECISION

Appearances:

Kimbell Gourley, TROUT JONES GLEDHILL FUHRMAN, Boise, Idaho, Attorney for Trustee.

Richard Crawford, Boise, Idaho, Chapter 7 Trustee.

Janine Reynard, Boise, Idaho, Office of the U.S. Trustee.

Chapter 7¹ trustee, Richard Crawford (“Trustee”), seeks compensation in the amount of \$6,122.21² and \$237.39 in costs. Docket No. 189.

¹ Unless otherwise indicated, all chapter, section, and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1330 and to the Federal Rules of Bankruptcy Procedure, Rules 1001– 9036, in effect prior to the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), Pub. L. 109-8, 119 Stat. 23 (Apr. 20, 2005).

² This amount is the statutory maximum compensation allowed to a chapter 7 trustee pursuant to § 326(a), less a deduction of \$119.25 which represents the amount of unapproved and undisclosed buyer’s premiums collected and retained by Trustee’s

No objections to his fee request were filed. A hearing was held on May 2, 2007, at which the Court allowed Trustee through May 4, 2007, to make any further submissions in support of his fee request. No additional submissions were made, and the matter is now ripe for disposition. The following constitutes the Court's findings of fact and conclusions of law. Fed. R. Bankr. P. 7052; 9014.

Findings of Fact

Telcar, Inc. ("Debtor") filed a petition for relief under chapter 11 of the Bankruptcy Code on March 28, 2000. Docket No. 1. A chapter 11 plan was confirmed on August 10, 2001. Docket No. 76. However, Debtor's case was converted to one under chapter 7 on January 15, 2002. Docket No. 85.

Trustee was appointed on February 1, 2002. In his affidavit, he explains that the administration of this bankruptcy estate was complicated by several factors. Docket No. 195. Debtor was operating a telephone answering and paging service for professionals when Trustee was appointed. Trustee was required to close down the business. Trustee met with Debtor's owner at the Debtor's business premises to discuss the best way to liquidate the assets. Debtor owned assets located in different locations in the Boise area, which required Trustee to travel to the different sites to evaluate the property. Trustee took steps

auctioneer in this case. *See* Docket No. 189.

to secure the property, and tried to solicit interest in Debtor's assets among others with similar operations. Trustee was successful in attracting a purchase offer only as to one piece of real estate, and was able to negotiate and close a sale of the property without the assistance of a realtor or other professional which yielded \$10,000 for the bankruptcy estate.

Trustee required help in converting other assets to cash, though. He hired both bankruptcy and special counsel to assist him. Trustee's general counsel supplied advice to Trustee on a variety of matters. *See* Counsel's App. for Compensation at 6–12, Docket No. 170. Trustee's special counsel settled a lawsuit with the local telephone company for \$45,000, which after payment of special counsel's fees and costs, netted \$33,999 for the estate.

Trustee also hired an accountant to complete bankruptcy estate tax returns for several years. Trustee indicated Debtor's record-keeping practices created a challenge, since the records were "in complete disarray." *Aff.* of Trustee at 2, Docket No. 195.

Trustee retained an auctioneer to sell Debtor's office equipment and supplies. Trustee met with the auctioneer to determine which of the personal property assets would have a potential for resale value. This was again complicated because items were "scattered all over the entire building." *Id.*

Overall, in this case, after payment of secured debt, unsecured creditors will receive a payout of about 60% on their claims. Trustee believes this good result is attributable to his hard work and attention to detail. While he maintained no detailed, contemporaneous time records, Trustee estimates he spent 76 hours working on this case. He accounts for his time as follows:

1. Analyze bankruptcy schedules and enter data in Trustee's database - 2 hours
2. Prepare for and attend court hearing to include 341(a) meeting, stay relief matters, employment and compensation of professionals, adversary matters and objections to claims. - 20 hours
3. Monitoring of bank accounts, miscellaneous maintenance to maintain control of assets - 15 hours
4. Travel to debtors' place of business to meet with various professionals (or potential purchasers) to assess assets and determine [the] best way to liquidate those assets. - 30 hours
5. Discuss settlement and compromise of legal action with attorneys - 5 hours
6. Analyze schedules for preferences and fraudulent conveyances - 1 hours
7. Prepare final accounting and affidavit in support of trustee's fees and expenses and deliver to U.S. Trustee - 3 hours

Ex. 1, Docket No. 195. However, during the hearing on the fee request, Trustee conceded that his time records for this case were not thorough. Mr. Gourley, Trustee's attorney, suggested that the Court also review Mr. Gourley's time sheets to substantiate the amount of time Trustee spent in consultation with him. The

Court has done so, which revealed that Trustee was actively involved in the legal issues which Mr. Gourley was retained to resolve. *See* Docket No. 170. The time entries indicate numerous conferences with Trustee occurred and that Trustee was involved and remained updated on all of the legal issues, as well as continued to provide information to Mr. Gourley. *Id.*

This is the factual record that the Court must consider in determining the reasonableness of Trustee's requested fees.

Legal Standard

Bankruptcy Code §§ 330(a)(1) and 326(a) govern the bankruptcy court's determination of the amount of reasonable compensation to be awarded to a chapter 7 trustee. *In re Jenkins*, 130 F.3d 1335, 1337 (9th Cir. 1997); *Roderick v. Levy (In re Roderick Timber Co.)*, 185 B.R. 601, 605 n. 3 (9th Cir. BAP 1995); *In re Andona*, 00.2 I.B.C.R. 105, 105 (Bankr. D. Idaho 2000); *In re Mazon*, Case No. 05-42215, 2006 WL 3106708, (Bankr. D. Idaho October 30, 2006); *In re Mason*, Case No. 03-41192, 2006 WL 3714578 (Bankr. D. Idaho December 14, 2006). Trustee fee applications must conform to the requirements of Fed. R. Bankr. P. 2016. *Id.* at 605; *In re Travel Headquarters, Inc.*, 140 B.R. 260, 261-62 (9th Cir. BAP 1992).

Section 326(a) fixes the maximum compensation payable to a chapter 7 trustee in any particular case.³ The statute establishes a compensation cap, not an entitlement; the bankruptcy court must decide what amount of compensation is reasonable in each case. *Arnold v. Gill (In re Arnold)*, 252 B.R. 778, 788 n.12 (9th Cir. BAP 2000); *In re Clampitt*, 92 I.B.C.R. 153, 154 (Bankr. D. Idaho 1992); *In re Mazon*, Case No. 05-42215, 2006 WL 3106708; *In re Mason*, Case No. 03-41192, 2006 WL 3714578; *In re Castro*, 320 B.R. 690, 693 (Bankr. S.D. Cal. 2005).⁴

³ § 326(a) provides: “In a case under chapter 7 or 11, the court may allow *reasonable compensation under section 330 of this title of the trustee for the trustee’s services*, payable after the trustee renders such services, *not to exceed 25 percent of the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in excess of \$50,000, 5 percent on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.*” (Emphasis added).

§ 330(a)(1) provides: “After notice . . . , the court may award *to a trustee . . . – (A) reasonable compensation for actual, necessary services rendered by the trustee . . . ; (B) reimbursement for actual, necessary expenses.* (Emphasis added).

Fed. R. Bankr. P. 2016(a) provides: “An entity seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate shall file an application setting forth *a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested. . . .*” (Emphasis added.)

⁴ Under BAPCPA's new § 330(a)(7), Congress has instructed that “[i]n determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.” The new provision is inapplicable in this case, and the Court expresses no opinion concerning its

Sections 330(a)(3)(A)–(E) list the criteria the bankruptcy court shall consider in determining the amount of reasonable compensation to be awarded under § 330(a). These Code provisions instruct the bankruptcy court to consider, among other things, the time spent by the trustee providing services; the necessity of the services; the rate charged for the services; and the complexity, importance and nature of the problems, issues or tasks addressed. Additional factors used in evaluating a trustee’s request for compensation closely resemble those used in evaluating attorney fee applications, which include the time and labor involved, the novelty and difficulty of the questions presented in the bankruptcy case, and the experience, reputation and ability of the professional. *In re Fin. Corp. of Am.*, 114 B.R. 221, 223 (9th Cir. BAP 1990), *aff’d* 945 F.2d 689 (9th Cir. 1991).

Trustee bears the burden of proving the reasonableness of the fees requested under § 330(a). *In re Roderick Timber Co.*, 185 B.R. at 606; *accord*, *In re Evangeline Refining Co.*, 890 F.2d 1312, 1327 (5th Cir. 1989). As explained in *Roderick Timber*, “[i]t has long been the rule in this circuit that trustees have a duty to meticulously maintain accurate records of time expended on behalf of the estate.” *Id.* at 605 (quoting *Matter of Beverly Crest Convalescent Hosp., Inc.*, 548 F.2d 817, 820 (9th Cir. 1976)). “In obedience to the statute, in

effect.

every case, a bankruptcy court should award only those fees that are proven to be actual, necessary and reasonable. Any lesser requirement would make the Trustee's burden of proof a mere shell." *In re Roderick Timber*, 185 B.R. at 606.

There was no objection made in this case by any interested party or by the U.S. Trustee to Trustee's fee request. But because "there is a tension between the Trustee's role as the representative of creditors on the one hand and, on the other hand, his own self-interest in maximizing his compensation, beyond the mere *power* to review this fee application, the Court has a *duty* to scrutinize the application in the interest of protecting the integrity of the bankruptcy system." *In re Pruitt*, 319 B.R. 636, 638 (Bankr. S.D. Cal. 2004) (citing *In re Busy Beaver Bldg. Ctrs, Inc.*, 19 F.3d 833, 841 (3rd Cir. 1994) (emphasis in original)). Under appropriate circumstances, "the court may, on its own motion . . . award compensation that is less than the amount of compensation that is requested." § 330(a)(2).

Disposition

Trustee seeks fees in the amount of \$6,122.21. He avers he spent 76 hours working on this bankruptcy case. Ex. A, Docket No. 195. His time records, however, provide little information because Trustee lumped together all the services rendered into very general categories containing imprecise, nondescript

accounts of his activities, and which appear to “round” the amounts of time spent. The case law is explicit that lumping of services is “universally disapproved by bankruptcy courts[.]” *In re Staggie*, 00.4 I.B.C.R. 203, 206 (Bankr. D. Idaho 2000) (*In re Automobile Warranty Corp.*, 138 B.R. 72, 76 (Bankr. D. Color. 1991) (citations omitted)). Often, as was the case in *Staggie*, the time entries are “lumped” for the entire day. *See Staggie*, 00.4 I.B.C.R. at 205. Here, however, Trustee lumped the services together for the entire case, spanning several years. For example, Trustee states he spent 20 hours to prepare for and attend court hearings. This provides little information for the Court to effectively review the time entries.

Courts have taken various approaches when confronted with lumped fees. These approaches range from assessing a twenty to forty percent across-the-board reduction for all fees, *In re Ward*, 190 B.R. 242, [(Bankr. D. Md. 1995)] to reducing the total amount of fees by more than half, *In re Oliver*, 183 B.R. [89, 91 (Bankr. W.D. Pa 1995)] to denying compensation entirely for all entries which are lumped together. *In re Breeden*, 180 B.R. 802, 810 (Bankr. N.D. W.Va. 1995).

Id. at 206.

Although Trustee’s time records are lacking, the Court does not doubt that Trustee provided services that were not only necessary to the

administration of the estate, but also of a nature extending beyond those basic services performed by trustees in all bankruptcy cases. In this sense, this is a situation unlike others encountered by this court, where a chapter 7 trustee primarily spent his time supervising the professionals he hired. *See In re Helsley*, Case No. 03-41411, Docket No. 63 (Bankr. D. Idaho Apr. 5, 2007); *In re Mason*, Case No. 03-41192, Docket No. 55 (Bankr. D. Idaho Dec. 14, 2006).

Here, Trustee spent time showing Debtor's real property to potential purchasers, and handled the sale of property himself. Trustee worked with his professionals to determine the best course of action to obtain the greatest recovery for the estate. Based on the Court's familiarity with the case, Trustee was required to engage in activities above and beyond those regularly required in administering a routine chapter 7 asset estate, which resulted in a payout of approximately 60 cents on the dollar to unsecured creditors.

Based upon the claimed number of hours Trustee worked, 76, and his requested compensation of \$6,122.21, Trustee has requested an hourly rate of approximately \$80, which is the rate this Court recently found reasonable for standard trustee work. *See In re Helsely*, Case No. 03-41411, Docket No. 63 (Bankr. D. Idaho Apr. 5, 2007). Considering the type of services performed by

Trustee in the administration of this estate, the Court concludes such a rate is reasonable.

However, Trustee failed to provide adequate time records to allow the Court to review the reasonableness of the time spent as required by both § 330 and Fed. R. Bankr. P. 2016(a). The requirement for a trustee to keep adequate time records is not new. *See In re Roderick Timber Co.*, 185 B.R. at 605 (quoting *Matter of Beverly Crest Convalescent Hosp., Inc.*, 548 F.2d 817, 820 (9th Cir. 1976)). Because Trustee's time records lack detail and are service descriptions are lumped, the Court concludes a reduction of fifteen percent in the amount of fees otherwise deemed reasonable is appropriate in this case. Trustee conceded during argument that when he began administering this estate he did not keep adequate time records. Trustee has now remedied this problem and the Court is confident Trustee's future fee applications will not lack an appropriate accounting for his time. Because the Court does not doubt Trustee's veracity nor that he performed valuable services in administering this estate, but only the time spent in performing these tasks, a fifteen percent reduction is sufficient.

Conclusion

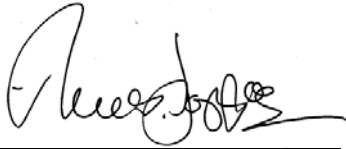
After considering all of the factors set forth in § 330 and the limitation on trustee compensation contained in § 326(a), the Court finds and

concludes Trustee is entitled to reasonable compensation in the amount of \$5,168.00.⁵ Trustee's request for reimbursement of costs of \$237.39 is approved.

Trustee shall submit an appropriate form of order approving his request for fees and costs, and his final accounting, consistent with this decision.

The U.S. Trustee shall approve the form of the order.

Dated: May 15, 2007



Honorable Jim D. Pappas
United States Bankruptcy Judge

⁵ While Trustee's fee request seeks an award of \$6,122.21 based upon § 326(a), Trustee's time accounting suggests he worked 76 hours on this case. At \$80 per hour, this would result in fees in the amount of \$6,080.00. A fifteen percent reduction of this amount (\$912) results in net fees of \$5,168.00.