

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
Eastern Division

FILED
2008 FEB -7 AM 9:46
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
COLUMBUS, OHIO

In Re: **In Proceedings Under Chapter 7**
KELLY KIRKPATRICK, **Case No.: 06-10114**
Debtor. **JUDGE RANDOLPH BAXTER**

MEMORANDUM OF OPINION AND ORDER

Before the Court is the Application for Attorney Fees (the “Application”) submitted by Chapter 7 trustee, Mary Ann Rabin (the “Trustee”). This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and General Order No. 84 of this District. After considering the Application, the Court rules as follows:

*

The Debtor filed a petition for relief under Chapter 7 of Title 11 of the United States Code (the “Bankruptcy Code”) on January 17, 2006 (the “Petition Date”). Mary Ann Rabin was appointed as the Chapter 7 trustee. On October 8, 2007, the Trustee filed an application to employ her law firm, Rabin & Rabin Co., LPA as counsel on behalf of the Chapter 7 trustee. This Court approved said application on October 30, 2007. Subsequently, on November 12, 2007, the Trustee filed the subject Application.

**

The issue before this Court is whether the services provided by counsel, on behalf the Chapter 7 trustee, satisfy the requirements for compensation pursuant to sections 327 and 330 of the Bankruptcy Code, Bankruptcy Procedural Rule 2016, and Local Bankruptcy Rule 2016-1.

In Chapter 7 cases, the Bankruptcy Code requires the Court to evaluate applications for professional services and compensation to determine whether they were necessary or beneficial to the estate, as provided for in 11 U.S.C. § 327 and 11 U.S.C. § 330. Although 11 U.S.C. § 327 permits the trustee, with the court's approval, to employ an attorney to assist him or her, professionals are not entitled to compensation for duties that ought to have been performed by the Chapter 7 trustee. *11 U.S.C. § 327; See 11 U.S.C. § 704, Fed. R. Bankr. P. 2016, Local Bankruptcy Rule 2016-1, In re Wright Air Lines, Inc.*, 147 B.R. 20, 21 (Bankr. N.D. Ohio 1992).

Section 330 states, in pertinent part:

§ 330. Compensation of officers

(a)(2) The court may, on its own motion, ... award compensation that is less than the amount of compensation that is requested.

(3) In determining the amount of reasonable compensation to be awarded to [a] ... professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including--

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title [11 USCS §§ 101 et seq.];

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title [11 USCS §§ 101 et seq.].

11 U.S.C. § 330.

It is important for the Trustee to distinguish between tasks requiring the services of an attorney from those that do not. A review of the Application for Attorney Fees filed by the Trustee reveals two entries dated from June 19, 2006 that fail to satisfy the requirements of 11 U.S.C. § 330. One entry seeks attorney fees for a “Telephone call from Debtor re: she wants to set up payments - she received her refund before she came to the meeting of creditors” (Application for Attorney Fees, page 1). There is no question that responding to the Debtor’s inquiry about payments did not require the services of a lawyer. Arranging for a Debtor to make payments is an administrative duty and not legal work. The other entry seeks attorney fees for preparation of a “Consent for Revocation in case payments are not made”. *Id.* The Consent for Revocation was not filed with the Court and the Court has not otherwise been notified that the Debtor has not made payments. To be compensable, section 330 requires the professional service to be “necessary ... or beneficial at the time at which the service was rendered toward the completion of a case”. *11 U.S.C. § 330*. The burden is on the applicant to demonstrate the reasonableness of the [fees] requested. *See In re L & S Industries, Inc.*, 112 B.R. 886, 887 (Bankr. N.D. Ohio 1990). As the Consent for Revocation was not filed, it is not clear to this Court that it was necessary or beneficial to this case and “where the Court has difficulty discerning what services were actually rendered, such services are not compensable.” *In re Tenaya Lodge Joint Venture*, Ch. 11 Case No. B87-823, slip op. at 2 (Bankr. N.D. Ohio January 6, 1989). Therefore, this Court awards compensation for attorney services that is less than the amount requested because the fees requested were not properly compensable pursuant to sections 327 and 330 of the Bankruptcy Code, Bankruptcy Procedural Rule 2016, and Local Rule 2016-1.

Accordingly, the Application is approved, in part, and denied, in part. Rabin & Rabin Co., LPA, the attorneys for the trustee, are awarded \$350.00 in fees and \$1.79 in expenses.

IT IS SO ORDERED.

**Dated, this _____ day of
February 2008**



**JUDGE RANDOLPH BAXTER
UNITED STATES BANKRUPTCY COURT**

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
Eastern Division

FILED
2008 FEB -7 AM 9:46
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

In Re:

In Proceedings Under Chapter 7

KELLY KIRKPATRICK,

Case No.: 06-10114

Debtor.

JUDGE RANDOLPH BAXTER

JUDGMENT

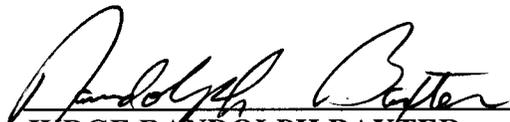
At Cleveland, in said District, on this ____ day of February, 2008.

A Memorandum of Opinion and Order having been rendered by the Court in this matter,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Application for Attorney Fees is approved, in part, and denied, in part. Rabin & Rabin Co., LPA, the attorneys for the trustee, are awarded \$350.00 in fees and \$1.79 in expenses. .

IT IS SO ORDERED.

Dated, this 6th day of
February 2008



JUDGE RANDOLPH BAXTER

UNITED STATES BANKRUPTCY COURT