

THIS OPINION IS NOT INTENDED
FOR PUBLICATION
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
98 MAY 20 PM 2:27
NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:) Case No. 96-15177
) Jointly Administered
FRETTER, INC., et al.,) Chapter 11
)
Debtors.) Judge Pat E. Morgenstern-Clarren
)
) **MEMORANDUM OF OPINION**

This case is before the Court on the balance of the Application of Strobl & Borda, P.C. (“Strobl & Borda” or the “Firm”) for Interim Compensation. (Docket 515, 618, 625, 644).

JURISDICTION

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered on July 16, 1984 by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157 (b)(2)(A).

BACKGROUND

Strobl & Borda serves as special counsel to the Debtors with respect to real estate matters and commercial litigation. Through its Application, as modified by three supplements, the Firm requests compensation in the amount of \$372, 514.05 and expenses in the amount of \$15,390.52 (the “ Application”). This covers the time period from September 24, 1996 through July 31, 1997. The United States Trustee, the Debtors, and the Official Committee of Unsecured Creditors (the “Committee”) objected to the Application. The Court held an evidentiary hearing on all of the Objections.

Objection of the United States Trustee to the Application: The United States Trustee objected to the entire Application because he claimed that Strobl & Borda’s appointment as

special counsel was invalid and the Firm had not complied with the bankruptcy disclosure rules.

By Order dated March 24, 1998, this Objection was sustained in part and fees in the amount of \$109,996.80 relating to some of the real estate work were disallowed (the "First Fee Order").

(Docket 859, 860). The First Fee Order also disallowed the Firm's pre-petition claim.

Other Objections to the Application: The Debtors and the Committee objected based on (1) the value of the services performed; (2) the inadequacies of time entries; and (3) block billing. (Docket 603, 604). After the evidentiary hearing, but before the Court issued the First Fee Order, the Debtors, the Committee, and the Firm stipulated to a settlement of these Objections. (Docket 668). The Court asked Debtors and the Committee to clarify the status of their Objections and the Stipulation in light of the First Fee Order. (Docket 859, 860). Debtors and the Firm responded with this Clarified Stipulation:

the Court's action in disallowing [the Firm's] pre-petition unsecured claim in its entirety and the post-petition fees in the amount of \$109,996.80 fully and completely satisfies any and all objections of the Debtor to the Application without any additional reduction beyond that sum disallowed by the Court in its Memorandum of Decision. [The Firm] has been informed that the Committee will not file any written statement in derogation of the Settlement represented by the Original Stipulation into which the Committee has already entered.

(Docket 880).

The Remaining Issue: While the First Fee Order resolved the Objection of the United States Trustee, it did not address that portion of the Application which requested \$109,740.50 for litigation services and the balance of \$152,776.75 for real estate services. The Court held another hearing on April 29, 1998 to permit Strobl & Borda to respond to questions that the Court had with respect to the remaining request. The Firm did so, and then followed up with a written Response. (Docket 945).

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DISCUSSION

Section 331 of the Bankruptcy Code permits the allowance and payment of interim professional compensation and reimbursement of expenses as provided for in 11 U.S.C. § 330. Section 330 provides for an award of “reasonable compensation for actual, necessary services” and for “reimbursement for actual, necessary expenses.” 11 U.S.C. § 330(a)(1)(A) and (B). Applications for interim compensation are reviewed under 11 U.S.C. § 330, the bankruptcy rules related to professional compensation, the legal principles set forth in *In Re Boddy*, 950 F.2d 334 (6th Cir. 1991), and the Guidelines for Compensation and Expense Reimbursement for Professionals set forth in General Order No. 93-1 of the Bankruptcy Judges of the Northern District of Ohio (the “Guidelines”). Additionally, requests for expense reimbursement are reviewed with a “strict eye” as to reasonableness. *Bowling v. Pfizer, Inc.*, 132 F.3d 1147, 1152 (6th Cir. 1998).

“The attorney seeking compensation ‘bears the burden of establishing the facts necessary to an award of fees and costs under Sections 330 and 331’.” *In re Bolton-Emerson, Inc.*, 200 B.R. 725, 729 (D.Ct. D. Mass. 1996). A court has the power and the duty to review fee applications even if there is no objection by the United States Trustee or any other interested party. *In re Busy Beaver Building Centers, Inc.*, 19 F.3d 833, 840-41 (3d Cir. 1994).

After reviewing and considering the Application, the Firm’s post-hearing Response, the evidence from the first hearing, and the statements of counsel made at both hearings, the Court finds that the balance of the Application is deficient in these respects:

1. The Application includes “block billing” entries which list multiple tasks, but do not disclose the time required for each task. (Guidelines ¶ 10).¹ Applicants are required to provide this information so that the Court may

¹ “If separate tasks are performed on a single day, the fee application shall disclose the time required for each task (i.e., ‘no grouping’ or ‘lumping’).”

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consider the nature, extent, and value of the services. See numerous entries for Attorney Ilana Ben-Ze'ev (IBZ) in the First Application filed on September 16, 1997, including for representative purposes, the entries for 3/27/97 (7.6) ; 4/2/97 (7.4); 5/13/97 (6.2) ; 5/20/97 (7.2) ; 6/16/97 (7.8) ;6/19/97 (8.5). See all of the entries for paralegal Roxanne LaChance. The reasonableness, necessity, and benefit of these services cannot be properly evaluated without this information.²

2. The Application indicates that in many instances too many lawyers worked on a litigation matter, given the relatively small amounts in dispute and the nature of the issues. The Attachments to the Supplement to the First Application filed on November 25, 1997 indicate that as many as four attorneys with hourly billing rates that range from \$150 to \$225 were involved in many minor pieces of litigation. This practice necessarily results in a duplication of services. While Strobl & Borda suggests that the duplication was caused by the client and/or opposing counsel, the Court does not accept that explanation. It is the Firm's responsibility to staff cases in such a way that services are not duplicated.
3. The Application includes numerous time entries which are too vague to explain the service that was rendered or the benefit to the estate. (Guidelines ¶ 9.)³ See, for example, numerous entries for Attorney Ilana Ben-Ze'ev (IBZ) in the Second Supplement to the First Application filed on November 28, 1997 which read in their entirety "Attention to file." It is not possible to tell from these descriptions what activity took place, the extent to which the activity benefited the estates, and whether the activity took an appropriate amount of time. While the Firm represents that the work was done economically, there is nothing in this record that would permit the reader to test that conclusion. See footnote 2.
4. The Application includes services which were not for the Debtors' benefit or did not benefit the estates. These include: preparing and filing of the Firm's own Proof of Claim for pre-petition services; reviewing Sixth Circuit law unrelated to the matters for which the Firm was retained (but related to the Firm's own claim for fees); performing services for Fretter Real Estate, a non-debtor company, without court authorization; removing various small lawsuits from state courts to this Court without analysis of whether the cost bore an appropriate relationship to any benefit;

² This deficiency is not a reflection on the quality of services rendered by these individuals.

³ "Time entries shall identify the person who performed the service, the date performed, matter involved and service rendered. Mere notations of telephone calls, conferences, research, drafting, etc., without appropriately identifying the matter involved, may result in disallowance of the applicable time."

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prolonging discovery issues; and using time-consuming procedures for obtaining default judgments instead of the more economical ones that were available.

5. The Application includes telecopy charges which are not reimbursable. (Guidelines ¶ 25).⁴ The Firm billed telecopies at \$2.00 for one to ten pages and billed all telecopies exceeding 10 pages at \$5.00. See the Supplemental Response filed on May 7, 1998.
6. The Application includes secretarial overtime charges which are not reimbursable. (Guidelines ¶ 17).⁵ See Third Supplement to the First Application entries for 3/10/97 (\$35.18); 3/14/97 (\$82.08); 4/4/97 (\$79.15). (Docket 644).

Based on these facts, the Firm did not establish its entitlement to fees in the amount which it requests. One remedy is to disallow specific time entries. Such a disallowance in this case, however, would be excessively time consuming due to the volume of the entries. When faced with multiple inadequate descriptions and block time entries, other courts have applied a percentage reduction in amounts from 20% to 45%. *In re Pinkins*, 213 B.R. 818 (Bankr. E.D. Mich. 1997); *In re Weldon*, 176 B.R. 665 (Bankr. D. R.I. 1995); *In re Smuggler's Beach Properties, Inc.*, 149 B.R. 740 (Bankr. E.D. Mass. 1993). Under the circumstances of this case, the Court finds that a 5% reduction in fees in the sum of \$13,125.86 is appropriate. A higher reduction is actually warranted by the pervasive nature of the Application's deficiencies; in arriving at the 5% figure, however, the Court considered that the Firm's fees have already been reduced by the First Fee Order. In addition to the fee reduction, a 5% reduction for reimbursement of telecopy charges will be applied because the Firm did not provide information regarding its actual costs with respect to these charges. The telecopy charges total \$3,027,

⁴ "Actual costs of telephone charges for outgoing transmissions are reimbursable. Transmissions received are reimbursable at actual cost not to exceed 20 cents per page."

⁵ "Office overhead is generally not reimbursable. Overhead includes secretarial time or overtime, word processing time and cost of meals or transportation provided professionals and staff who work late or on weekends."

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resulting in a reduction of \$151.35. The secretarial overtime charges totaling \$196.41 are also disallowed.

After applying the reductions noted, the Firm is awarded fees for its services in the amount of \$249,391.39 and reimbursement for actual and necessary expenses in the amount of \$15,042.76. To the extent funds are available, the Debtors are authorized to disburse interim payment of 90% of the fees awarded and 100% of the expenses. The Court previously authorized payment of 85% of the interim fees awarded to other professionals in these cases. The higher payment of 90% is being authorized as to Strobl & Borda after taking into consideration the amount of time the Firm has waited for these fees and the previous substantial fee reduction.

* * * * *

A separate Order reflecting this decision will be entered.

Date: 20 May 1998

Pat E. Morgenstern-Clarren
Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Sean Malloy, Esq.
Dean Wyman, Esq.
Jeffrey Levinson, Esq.
Alan Lepene, Esq.
Thomas Strobl, Esq.

By: Joyce L. Gordon, Secretary
Date: 5/20/98

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In re:)	Case No. 96-15177	NORTHERN DISTRICT OF OHIO
)	Jointly Administered	CLEVELAND
FRETTER, INC., et al.,)	Chapter 11	
)		
Debtors.)	Judge Pat E. Morgenstern-Clarren	
)		
)	ORDER	

This case is before the Court on the Application of Strobl & Borda, P.C. for allowance of interim compensation and expense reimbursement (the "Application"). (Docket 515, 618, 625, 644). For the reasons stated in the Memorandum of Opinion filed this date, together with the Memorandum of Opinion filed on March 24, 1998,

IT IS, THEREFORE, ORDERED that the Application is granted in part. Under 11 U.S.C. § 331, Applicant is awarded fees in the amount of \$249,391.39 and reimbursement for actual and necessary expenses in the amount of \$15,042.76. To the extent funds are available, Debtors are authorized and instructed to disburse to Applicant 90% of the fees awarded and 100% of the expenses.

Date: 20 May 1998

Pat E. Morgenstern-Clarren
Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

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