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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
00 APR 13 PM 4:17
NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:) Case No. 98-15227
)
IGLESIA DE JESUCRISTO MONTE) Chapter 11
MORIAH, INC.,)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **MEMORANDUM OF OPINION**

This case is before the Court on these fee applications filed by Donald S. Nance Co., L.P.A. (the "Firm") as counsel for the Debtor and the Objections of the United States Trustee:

1. The Firm's first Application for fees for allowance of post-effective date compensation in the sum of \$9,056.53 for services from June 29, 1998 through November 23, 1999 (filed January 21, 2000). (Docket 82).
2. The Firm's Amended Application for fees for allowance of post-effective date compensation in the sum of \$9,744.03 for services from June 29, 1998 through November 23, 1999 (filed February 4, 2000). (Docket 85).
3. Objection of the United States Trustee to Amended Application (filed February 15, 2000). (Docket 87).
4. The Firm's Response to Objection of the United States Trustee to Amended Application seeking compensation in the amount of \$8,910.32 (filed March 8, 2000). (Docket 88).
5. The Firm's Motion to Allow Attorney's Application for Employment Nunc Pro Tunc Instante (filed March 8, 2000). (Docket 89).

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6. Objection of the United States Trustee to Motion to Allow Attorney's Application for Employment Nunc Pro Tunc Instanter (filed March 9, 2000). (Docket 90).

7. The Firm's Second Amended Response to Objection of the United States Trustee to Amended Application seeking compensation in the amount of \$12,179.12 (filed March 20, 2000). (Docket 91).

8. The Firm's Second Amended Application for Attorney Fees (the "Application") (filed March 20, 2000). Although the Firm requests \$11,888 in fees and \$291.12 in expenses on page 2, the last page shows a total request of \$13,984.62. This number includes \$13,693.50 in fees and \$291.12 in expenses. (Docket 92).

9. Objection of the United States Trustee to Second Amended Application for Attorney Fees (the "Objection") (filed March 24, 2000). (Docket 93).

The Court held an initial hearing on this issue on March 9, 2000 and a final hearing on March 30, 2000.

JURISDICTION

The Court has jurisdiction over this matter under 28 U.S.C. § 1334, General Order No. 84 entered on July 16, 1984 by the United States District Court for the Northern District of Ohio, and Article X of the Plan. This is a core proceeding under 28 U.S.C. § 157(b)(2)(O).

DISCUSSION

Bankruptcy Code § 330 provides for an award to professionals of "reasonable compensation for actual, necessary services" and for "reimbursement of actual, necessary expenses." 11 U.S.C. §§ 330(a)(1)(A) and (B). Applications for compensation are reviewed under 11 U.S.C. § 330, the bankruptcy rules related to professional compensation, the legal

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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. (See *In re ...*). The Court has the power and the duty to review fee applications notwithstanding the absence of objection by any party in interest. *In re Busy Beaver Bldg. Centers, Inc.*, 19 F.3d 833, 840-41 (3d Cir. 1994); *see also* 11 U.S.C. § 330(a)(2). Additionally, expense requests are reviewed with a “strict eye” as to reasonableness. *Bowling v. Pfizer*, 132 F.3d 1147, 1152 (6th Cir. 1998).

Initially, the Court notes two matters: (1) this was a relatively straightforward small case, with only one major creditor; and (2) the Court has some question as to whether the Application is based on contemporaneously kept time records, as the Firm’s filings request different fee amounts and describe the time spent in different ways. Nevertheless, the Court will assume in this Opinion that the Firm did keep the required records based on counsel’s signature. See Fed. R. Bankr. P. 9011(b). After review of this Application, and having considered the statements of counsel at the hearing, the Court finds:

1. This case was filed on July 10, 1998; however, the Debtor’s Application to employ the Firm was not filed until July 29, 1998. As a general rule, the Court authorizes professional employment dating back only to the date the application for employment is filed. An Order authorizing the Firm’s retention was entered on February 3, 1999. (Docket 47). The Firm now requests that its retention be authorized to the date the Chapter 11 case was filed. The United States Trustee objects because this request fails to set forth either a factual or legal basis for requesting this relief more than a year and a half after retention was requested (and more than a year after the Firm’s employment was authorized). The Court finds the objection is well taken and the request for nunc pro tunc retention is, therefore, denied. As a result, the Firm’s request for

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compensation for services performed from July 10, 1998 to July 23, 1998 in the amount of \$1,737.50 is denied.

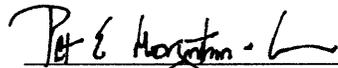
2. The Application includes time spent on office tasks, which time is generally not compensable. Guidelines ¶ 13. See the entries for 1/20/99(second entry); 1/25/99 (first and second entries); 1/26/99; 2/15/99; and 4/28/99 (first and second entries). The fee request for those services (\$90) is denied.
3. The Application includes time spent filing documents at court, which time is generally not compensable. Guidelines ¶ 15. See the entries for 8/28/98; and 10/2/98 (first entry). The fee request for those services (\$60) is denied.
4. The Application includes entries for services which took an unusual amount of time. The following entries are, therefore, reduced in the amount of time stated as the original amount requested was excessive in light of the activity and/or experience level of the billing attorney: 10/17/98 (.3); 11/19/98 (.6); 1/7/99 (second entry) (.25); 2/25/99 (1.0); 7/22/99 (second entry) (1.0); and 8/23/99 (.5). This results in a fee reduction of \$547.50.
5. The Application requests compensation for services which were required as a result of the Firm's failure to comply with specific procedural requirements. These services did not benefit the estate. See the entries for 6/23/99 (1.0); 6/30/99 (.75); 7/15/99 (second entry) (.5); 7/27/99 (.1); 7/30/99 (.1); 2/10/00 (.5); and 3/9/00 (first entry) (.5). The fee request for those services (\$517.50) is denied.
6. The Application includes two entries for September 16, 1998 which request compensation for 30.12 hours of services related to disclosure statement and plan preparation. The format of these entries does not conform to the Guidelines in that the entries: (1) include services performed on more than one day; and (2) do not include an adequate description of the services rendered or the specific amount of time spent on those services. As a result, there is an insufficient basis to allow the amount of time requested. The Court finds based upon a review of the disclosure statement and plan and the relative simplicity of this Chapter 11 case that 8 hours is the reasonable amount of time spent on those services at the hourly rate of \$150 charged by the Firm. This results in a fee reduction of \$3,318.

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7. The Application includes a \$1,000 charge for a retainer and an \$835.50 charge for filing fees which are amounts advanced by the Debtor (entry below 7/10/98). The Firm did not explain its treatment of these items, which appears to result in a \$1,835.50 overcharge. The fees will be reduced in that amount.
8. The Application requests reimbursement of expenses in the amount of \$291.12. See the entries for 7/10/98; 1/20/99 (first, third, and fourth entries); 4/22/99; 5/7/99; and 5/11/99, each of which exceeds \$25.00. The Firm was only able to provide a receipt for the 5/7/99 entry (\$88.71). Paragraph 16 of the Guidelines requires that receipts be retained and produced for all expenditures exceeding \$25.00. All expense requests for which no receipt was produced (\$202.41) are, therefore, denied.

When these amounts are deducted from the fee request of \$13,693.50 and expenses request of \$291.12, it results in an award of \$5,587.50 in fees and \$88.71 in expenses. The Court will enter a separate order reflecting these findings of fact and conclusions of law.

Date: 13 April 2000



Pat E. Moegenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Donald Nance, Esq.
Amy Good, Esq.
Mr. Antonio Jaime

By: Joyce L. Gordon, Secretary
Date: 4/13/2000

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MORIAH, INC.,)
) Judge Pat E. Morgenstern-Clarren
Debtor.)
) **ORDER**

This case is before the Court on the: (1) Second Amended Application for Attorney Fees; and (2) Motion for Employment Nunc Pro Tunc Instanter, filed by Donald S. Nance Co., L.P.A., and the Objections to them filed by the United States Trustee. (Docket 89, 90, 92, 93). For the reasons stated in the Memorandum of Opinion filed this date,

IT IS, THEREFORE, ORDERED that the Objections of the United States Trustee are sustained and: (1) the Second Amended Application is granted in part and the Applicant is awarded fees in the amount of \$5,587.50 and reimbursement for actual and necessary expenses in the amount of \$88.71; and (2) the Motion for Employment Nunc Pro Tunc Instanter is denied. Donald S. Nance Co., L.P.A. is authorized to apply its \$1,000 retainer against this amount, with the balance to be paid by the Debtor.

Date: 13 April 2000

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

Served by mail on: Amy Good, Esq.
Donald Nance, Esq.
Mr. Antonio Jaime

By: Joyce L. Gordon, Secretary
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