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FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FILED  
04 OCT 19 PM 3:06  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

In re: ) Case No. 03-25461  
)  
DEACONESS HOSPITAL, LLC, *et al.*, ) Chapter 11  
) (jointly administered)  
Debtors. )  
) Judge Pat E. Morgenstern-Clarren  
)  
) **MEMORANDUM OF OPINION**

Brouse McDowell, LPA, counsel to the unsecured creditors committee, applies for compensation for the period from December 17, 2003 through July 31, 2004. (Docket 690). The firm requests \$137,004.00 in fees and \$1,297.47 in expenses. The debtors object and ask that the fee request be reduced by \$32,472.50. (Docket 721). The firm responded to the objection. (Docket 736). For the reasons given below, part of the objection is sustained (\$684.00) and the balance is denied.

**JURISDICTION**

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered 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)(O).

**DISCUSSION**

A professional who provides services in a bankruptcy case may be awarded “reasonable compensation for actual, necessary services” and “reimbursement for actual, necessary expenses.” 11 U.S.C. §§ 330(a)(1)(A) and (B). Applications for compensation are reviewed

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under bankruptcy code § 330, the bankruptcy rules related to professional compensation, the legal principles set forth in *In re Boddy*, 950 F. 2d 334 (6<sup>th</sup> 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 (guidelines). The applicant has the burden of proving it is entitled to compensation in the amount requested. *In re Bolton-Emerson, Inc.*, 200 B.R. 725, 729 (D.Ct. D. Mass. 1996). Expense requests are reviewed with a “strict eye” as to reasonableness. *Bowling v. Pfizer*, 132 F.3d 1147, 1152 (6<sup>th</sup> Cir. 1998).

**DISCUSSION**

These are the objections and responses:

1. The debtors object to the amount of time spent drafting a motion to conduct 2004 examinations. The firm responds that the requests were complex and comprehensive. Having reviewed the motion, the court finds that it exhibits an appropriate depth of factual and legal analysis under the circumstances and the time spent is compensable.

2. The debtors object that certain time entries are lumped in violation of the guidelines. The complained of entries are not, however, lumped.

3. The debtors object to time spent investigating whether the committee should move to appoint a chapter 11 trustee. The objection is that the estates did not benefit from this activity because a chapter 11 trustee would have added expense and delay. The firm responds that although a trustee would add expense and delay, the behavior of Dr. Saad and certain of the debtors’ actions warranted exploring this possibility. The court agrees with the firm’s assessment and finds the time compensable.

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4. The debtors object to certain case administration entries as duplicative of services properly performed by the debtors. The firm responds that two of the four challenged entries do not exist and the other two relate to review of pleadings regarding sale procedures, cash collateral motions and the like. The entries reflect appropriate activities on behalf of the committee and they are compensable.

5. The debtors object that the firm spent an excessive amount of time preparing its fee application. The court will reserve ruling on this objection until the final fee application is reviewed.

6. The debtors object to the time spent reviewing proofs of claim. The firm responds that it must have some idea of who the creditors are and who is filing claims. The court agrees with this general proposition, but there was no showing that this was part of an organized review of claims; instead the entries appear to be random. This objection is sustained and the fees are reduced by \$684.00.

7. The debtors object to time spent reviewing Bank One's claim that it is an oversecured party entitled to interest because it was obvious this claim could not be sustained. The firm responds that this was an active issue at the time the work was performed. This is one of the issues that seems to have dragged out longer than it needed to, but the court cannot say that the committee should not have reviewed and researched the claim. The fees are, therefore, compensable.

8. The debtors object to excessive time spent investigating Bank One's claims against the estates because Bank One had not produced any documents during this application period and the debtors were conducting this work. The firm replies that Bank One did provide

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documents to the firm (if not to the debtors) and that the debtors could not be counted on to perform this task because Dr. Saad had a conflict of interest given his personal obligations to Bank One. The court accepts the firm's position and finds the work compensable.

9. The debtors object to time spent investigating the GE HFS claim in part because this is the debtors' responsibility. In light of the complicated relationship between and among the debtors, GE HFS, and Dr. Saad, it was appropriate for the committee to undertake these activities and this time is compensable.

10. The debtors object to time spent considering substantive consolidation issues as premature and states that all parties acknowledge substantive consolidation would not benefit the estates. The firm denies this. In a case like this where there are multiple debtors and interlocking financial issues, the firm was warranted in spending this relatively small amount of time on this issue.

**CONCLUSION**

For the reasons stated, the objection is sustained in part and overruled in part. The Brouse McDowell, LPA application for compensation is approved in the amount of \$136,320.00 in fees and \$1,297.47 in expenses. A separate order will be entered reflecting this decision.

Date: 19 October 2004

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

To be served by clerk's office email and the Bankruptcy Noticing Center on:

Daniel DeMarco, Esq.  
Andrew Vara, Esq.  
Ronald Beacher, Esq.  
Russell Kornblut, Esq.  
Joseph Hutchinson, Esq.

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) (jointly administered)  
Debtors. )  
) Judge Pat E. Morgenstern-Clarren  
)  
) **ORDER**

For the reasons stated in the memorandum of opinion filed this same date,

IT IS, THEREFORE, ORDERED that the application of Brouse McDowell, LPA for compensation for the period from December 17, 2003 through July 31, 2004 is granted in part and the debtors' objection is sustained in part. (Docket 690, 721, 736). Brouse McDowell, LPA is awarded compensation in the amount of \$136,320.00 and reimbursement of expenses in the amount of \$1,297.47.

Date: 19 October 2014

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

To be served by clerk's office email and the Bankruptcy Noticing Center on:

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