UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:	)	CHAPTER 13
	)	
	)	
DONALD C. LARSEN and	)	CASE NO. 03-67007
	)	
AMANDA L. LARSEN,	)	JUDGE RUSS KENDIG
	)	
Debtors.	)	
	)	**MEMORANDUM OF DECISION**
	)	

This matter is before the court upon a motion seeking approval of disbursement of settlement proceeds and an application for attorney fees filed by Erin Kick ("Counsel") as attorney for Donald and Amanda Larsen ("Debtors"). For reasons that follow, the fees requested must be reduced and the distribution of proceeds adjusted.

I. JURISDICTION AND VENUE

The court has jurisdiction of this matter pursuant to 28 U.S.C. § 1334(b) and the General Order of Reference entered in this district on July 16, 1984. This is a core proceeding over which the court has jurisdiction pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this judicial district pursuant to 28 U.S.C. § 1408.

II. BACKGROUND

Debtors filed their Chapter 13 bankruptcy petition on December 30, 2003. On June 7, 2005, Counsel filed a motion to show cause and for sanctions for violation of the automatic stay. See Dkt. #42. Debtors alleged that NCO Financial ("NCO"), as collection agent for National City Bank, willfully violated the automatic stay by continuing to contact Debtors regarding a debt after their case was filed and after NCO had notice of the stay. NCO filed a brief in opposition and a motion to dismiss, and the matter was set for hearing on August 3, 2005. At the hearing, the parties agreed to conduct discovery and a status conference was set for October 12, 2005. By the date of the status conference the parties had reached a settlement and informed the court of their intent to submit an agreed order.

Counsel filed her application for compensation on November 29, 2005, and sought $2,884 in attorney fees even though no agreed order resolving the motion for sanctions had been submitted to the court. See Dkt. #55. On February 14, 2006, Counsel withdrew the motion to show cause and for sanctions, and on March 7, 2006 she filed a motion seeking approval of disbursement of settlement proceeds. See Dkt. #58. The motion states that NCO agreed to pay $7,000 in settlement of all claims regarding violation of the automatic stay, and proposes distribution of $2,884 to Counsel, $2,400 to the Chapter 13 trustee, and $1,716 to Debtors. By way of an order entered March 28, 2006, this court approved the amount of the settlement but disallowed distribution pending a decision on Counsel's application for compensation. See Dkt. #59.

III. LAW AND ANALYSIS

Sections 329 and 330 limit compensation in a bankruptcy case to the reasonable value of the services. If the compensation paid or agreed to be paid exceeds the reasonable value of services, the court may order the return of any excessive payment to the bankruptcy estate. 11 U.S.C. § 329(b). The court has an obligation to review all fee applications, even if no objections are raised. See In re Riker Indus., Inc., 122 B.R. 964, 970 (Bankr. N.D. Ohio 1990); In re Bush, 131 B.R. 364, 365 (Bankr. W.D. Mich. 1991). The court may award compensation only for actual and necessary services. 11 U.S.C. § 330(a)(1)(A). Congress has provided a list of factors deemed relevant to assessing the value of professional services. These factors can be summarized briefly as the attorney's experience and hourly rate, comparable rates charged by attorneys with similar experience and expertise, the quality of work performed, the novelty or difficulty of the case, the distribution of the work among professionals and paraprofessionals, and any billing judgment exercised by the attorney. See 11 U.S.C. § 330(a)(3).

In this case, Counsel filed a detailed list of time charged which states that she expended 20.6 hours on the motion for sanctions and related activities. The motion resulted in a settlement of $7,000 and, if approved, Counsel's proposed distribution would result in thirty-four percent ($2,400) of the proceeds being contributed to the bankruptcy estate, with the remaining sixty-four percent ($5,600) divided between Counsel and Debtors. If the court approves Counsel's request for $2,884 in fees, that payment would represent *forty-two* percent of the total proceeds of the settlement.

The court finds that the fee requested is not reasonable in light of the uncomplicated nature of the facts alleged in the motion, and in light of deficiencies in Debtors' petition that contributed to the need for filing the motion for sanctions. First, Debtors failed to list National City Bank in their original schedules, necessitating an amendment to Schedule F that was filed on March 15, 2004. See Dkt. #31. The amendment was filed without the required certification and without a certificate of service attesting that it was properly served. A notice of deficiency was prepared and served on March 16, 2004, but neither deficiency was ever satisfied. Counsel also failed to add National City Bank to the creditor mailing matrix.

Second, a review of the time entries in the billing statement reveals several instances of

time billed for secretarial activities such as typing, filing, mailing, and contacting the court to obtain a hearing date. Examples include the following: 0.3 hours billed for typing a recorded telephone conversation; 0.4 hours billed for filing the motion and mailing copies; 0.3 hours for a call to the bankruptcy court to obtain a hearing date; 0.4 hours to draft the notice of hearing. The law does not require an attorney to maintain secretarial assistance, but one cannot be paid for performing secretarial tasks or for the inefficiency of tasks that could be completed more quickly with secretarial assistance. A professional hourly rate assumes that only professional services are charged. See Disciplinary Counsel v. Hunter, 106 Ohio St.3d 418, 422 (Ohio 2005). Counsel filed the motion on June 17, 2005 without serving a notice that conformed to official Bankrupcty Form 20A. Two weeks later Counsel filed a notice of hearing date, again, without language that conformed to Form 20A, and purportedly after spending twenty-five minutes drafting a single paragraph that announced the hearing date on August 3, 2005.

Third, Counsel billed a total of 5.4 hours preparing for and finally filing the motion for sanctions, including 1.9 hours identified as "researched 362 violation and whether AP or motion is proper format; standard for violation." A quick search on Westlaw using key terms "sanctions, violation, 362, and adversary process" returns only twenty results. A recent case in our district concludes that use of a motion is the proper procedure to seek sanctions for violation of the automatic stay. In re Dunning, 269 B.R. 357, 368 (Bankr. N.D. Ohio 2001) (J. Shea-Stonum). Yet another of those twenty search results notes that case law on the subject is not extensive, but supports the use of a motion to seek sanctions. Phillips v. Lehman Bros. Holdings, Inc. (In re Fas Mart Convenience Stores, Inc.), 318 B.R. 370, 374 (Bankr. E.D. Va. 2004). Even though Counsel purportedly spent nearly two hours of time to determine that the proper procedure for enforcing the automatic stay is by way of a motion, the motion that was ultimately filed did not cite a single case or any jurisdictional basis for seeking relief by way of motion, nor did it set forth the standard that is necessary to prove a violation of the automatic stay. If research efforts do not add value to the finished product they do not provide value to the estate. Counsel purportedly repeated those research efforts again after NCO filed its brief and opposition to dismiss, charging 2.3 hours of time to research an issue for which she had already billed 1.9 hours. Other entries appear similarly inflated, including 4.3 hours to prepare for a hearing on a motion which raised only one routine issue of law.

While Counsel may have achieved the intended result for her clients, a review of the activities in this case reveals her limited experience as a bankruptcy practitioner. Counsel never corrected the deficiency regarding the amended Schedule F which was noticed to her two years ago. Counsel performed excessive research on a comparatively simple issue of law. These facts highlight a lack of knowledge and experience in fundamental principles and procedures. Limited experience is acceptable, but the amount billed should be adjusted to accommodate for the lack of experience. The number of hours worked is only one factor in determining the reasonable value of services. Additional relevant considerations include the recovery sought, the skill demanded for the task, and the attorney-client agreement itself. See Reid, Johnson, Downes, Andrachik & Webster v. Lansberry, 68 Ohio St.3d 570 (Ohio 1994). The Ohio Code of Professional Responsibility, DR 2-106, includes the "experience, reputation, and ability of the lawyer or lawyers performing the services" as a factor to be included in determining the reasonableness of a fee." Therefore, the value of services may be greater or less than that which

would be reflected by a simple multiplication of hours by time expended. See Swanson v. Swanson, 48 Ohio App.2d 85, 91-2 (Ohio App. 1976). An experienced bankruptcy practitioner would have prepared, filed, and negotiated the same settlement as Counsel in ten hours or less at an average rate of $140.00 per hour. Counsel should be paid no more than an experienced practitioner, and her clients should not have to shoulder the cost of inexperience. The reasonable value of services in bankruptcy is not always the price that a Debtor has agreed to pay. In re Geraci, 138 F.3d 314, 320 (7th Cir. 1998).

After considering the quality of work performed, the simplicity of the issue presented by the motion for sanctions, the failure to distribute work among professionals and paraprofessionals, and the lack of billing judgment exercised by Counsel, the court concludes that the amount sought exceeds the reasonable value of the services. Accordingly, Counsel's compensation shall be reduced to $1,400.00. The proceeds of the settlement shall be distributed $2,400 to the Chapter 13 Trustee, $3,200.00 to Debtors, and $1,400.00 to Counsel.

An appropriate order shall enter.

/S/ RUSS KENDIG APR 17 2006

U.S. Bankruptcy Judge
Russ Kendig

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All creditors and parties in interest