

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:)	
)	CHAPTER 7
)	
)	CASE NO. 02-65780
JOHN P. PARSONS,)	
MOLLIE L. PARSONS,)	JUDGE RUSS KENDIG
)	
Debtors.)	MEMORANDUM OPINION
)	(WRITTEN OPINION)

This matter comes before the court upon the Application of Josiah L. Mason, chapter 7 trustee (hereinafter "Trustee"), for Compensation filed in connection with the Final Report and Account of Trustee. The Application for Compensation and Final Report and Account of Trustee were filed simultaneously on June 28, 2006. No party in interest or the United States Trustee has filed an objection to the Final Report and Account or the Application for Compensation. This Memorandum Opinion and corresponding order are issued pursuant to sections 326, 330, and 350 of the Bankruptcy Code that require the court to enter orders on professional compensation requests and enter orders closing estates.

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334, 157, 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)(A). Venue in this district and division is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

FACTS

On November 26, 2002, John and Mollie Parsons (hereinafter "Debtors") filed a petition for liquidation under chapter 7 of the United States Bankruptcy Code. In their schedules, Debtors listed assets in the total amount of \$10,515.00 and liabilities in the total amount of \$59,400.00. Debtors listed \$1,515.00 as their monthly income on Schedule I and, on Schedule J, totaled their monthly expenses at \$1,770.00. Schedule C indicates that Debtors sought to exempt, among other assets, a tax refund pursuant to Ohio Revised Code §§ 2329.66(A)(4)(a) and (a)(18), that was scheduled as having a current market value of \$1,600.00.

Trustee was appointed on November 26, 2002 and on January 16, 2003, he conducted a 341 meeting of creditors. Trustee filed a notice of assets and request for notice to creditors on March 17, 2003, which instructed creditors to file claims by June 19, 2003 if they sought to be included in the distribution of assets. On the same day Trustee submitted his notice of assets, the court entered an order of discharge. Ten claims were filed in this case, the last being registered on May 19, 2003.

Trustee filed his first interim report on March 17, 2003. The report indicates that Trustee collected \$1,867.72 from Debtors, representing the non-exempt portion of a tax refund. Under the heading "major activities affecting case closing," Trustee listed "awaiting bar date." Further, the report provides that the projected date of Trustee's final report was October 15, 2003. Over one and a half years later, Trustee filed a second interim report on May 2, 2005. In this report, Trustee listed the following items as activities affecting case closing: "awaiting bar date; 3/3/04 – claims must be reviewed and final report filed; and 3/31/05 – final report to be filed." The projected date of Trustee's final report is now listed as two years later than the original estimate, October 15, 2005, as opposed to October 15, 2003.

From the information provided in the interim and final reports, the court gleans that Trustee deposited the non-exempt funds (\$1,867.72) from Debtors into an interest-bearing account on March 17, 2003. Though the interest rate varied through the years, in sum, the interest earned on the account totaled \$11.65.

Trustee submitted his final report to the United States Trustee on March 31, 2006 and it was subsequently filed with the court on June 28, 2006. The final report discloses that Trustee collected the sum of \$1,879.37 in the estate, which is comprised of the \$1,867.72 paid by Debtors and the accrual of interest in the total amount of \$11.65. No other assets were administered. Trustee seeks \$469.84 in compensation for administering Debtors' case. The final report details that, after payment to Trustee in the amount requested, there will be a distribution of \$1,409.53 to claimants in the total amount of \$21,782.21. This translates into a dividend of "6.613671" according to the final report.

DISCUSSION

Although no objection has been made to the Application for Compensation filed by Trustee, the court has a fundamental, independent duty to review fee applications for reasonableness. *In re Harris*, 143 B.R. 957, 959 (Bankr. M.D. Fla. 1992). Section 330(a) provides that the court may award a trustee reasonable compensation for actual and necessary services rendered by the trustee and that the award may be based on, among other things, the nature, extent, and value of the services. 11 U.S.C. § 330(a). Section 326(a) imposes a cap on the compensation that may be awarded to the trustee. 11 U.S.C. § 326(a).

Section 704 details the duties of a chapter 7 trustee. 11 U.S.C. § 704(a). While there are

a variety of responsibilities listed in the section, the duty to close an estate expeditiously is a trustee's primary duty. Hutchinson v. McGee, 5 F.3d 750, 753-54 (4th Cir. 1993); See also Frostbaum v. Ochs, 277 B.R. 470 (Bankr. E.D.N.Y. 2002). For a trustee to close an estate expeditiously, he must promptly perform each task required to close the estate, including the marshaling of assets and completing administrative requirements. Hutchinson, 5 F.3d at 753-54. The inherent tension between this duty and other duties of the trustee is recognized in the statute, as section 704 requires that the trustee balance the need for expeditious conduct against the best interests of the parties in interest. Id. If a trustee does not succeed in making this important cost-benefit analysis, he has not successfully fulfilled his duty. In re C. Keffas & Son Florist, Inc., 240 B.R. 466 (Bankr. E.D.N.Y. 1999).

Any unjustified delay in closing an estate prejudices creditors because there are frequently insufficient proceeds to compensate creditors for the costs incurred in waiting an extended period of time for a final distribution. Id. at 473. As one court aptly notes, "this 'lecture' usually ends with the refrain: 'It's not your money; it's the creditors money.'" Id. In order to receive maximum compensation, a trustee must use his best efforts to promptly perform the tasks necessary to close the estate and minimize the prejudice to creditors throughout the process. See In re Blackburn, 171 B.R. 292, 293 (Bankr. S.D. Ohio 1994). Several courts have held that a trustee is not entitled to full compensation in situations where a case is inactive for a stretch of time in which the trustee fails to timely file a final report. See In re C. Keffas & Son, 240 B.R. 466 (reducing trustee compensation because of two and a half years of inactivity before filing final report); In re Williams, 159 B.R. 936 (Bankr. D. Col. 1993) (holding that trustee was not entitled to full compensation where final report not filed until one and a half years after a related lawsuit was settled); In re Kitchen Lady, 144 B.R. 544 (Bankr. M.D. Fla. 1992) (stating that trustee who failed to file final report for three and a half years was not entitled to maximum compensation); In re Harris, 143 B.R. 957 (Bankr. M.D. Fla. 1992) (stating that three and one-half year delay in distribution of estate assets prejudiced creditors and trustee only received half of requested compensation).

A review of the docket in this case discloses that the case was filed on November 26, 2002. Trustee collected the assets of the estate on March 17, 2003. There is no indication that Trustee had difficulty collecting these assets from Debtors. In fact, this was a relatively simple case from Trustee's point of view. Debtors disclosed that they received a tax refund on their schedules and the amount listed by Debtors was within a few hundred dollars of the amount eventually collected by Trustee. The bar date in this case was June 19, 2003, and the last claim in the case was filed on May 13, 2003. Thus, it is clear that some time was spent awaiting the expiration of the bar date. However, nothing happened in this case, other than the submission of Trustee's interim reports, between the bar date and March 31, 2006, the date in which Trustee submitted his final report to the United States Trustee.

The delay in filing the final report in this case cannot be attributed to the United States Trustee. The United States Trustee filed the report with the court three months after receipt from the Trustee. The court does not count this three month period when determining the proper

compensation for Trustee. In addition, while the court is aware that chapter 7 trustees had an increased caseload prior to the implementation of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (hereinafter "BAPCPA:") on October 17, 2005, the delay in this case cannot be attributed to the increased caseload. Trustee had approximately two years and four months prior to the enactment of BAPCPA in which to complete the administrative steps to distribute estate assets. It should also be noted that this case is not an isolated incident.

The two year and nine month delay in the distribution of estate assets constitutes a significant delay to the prejudice of creditors. There is nothing in the record indicating that waiting over two and one-half years to file a final report was in the best interest of the creditors, especially since the sum total of the interest earned in that time was \$11.65. If the funds had been available to creditors, they could have invested at a higher interest rate. Moreover, the creditors are entitled to their money. Delay would not be justified even if a fabulous rate of return was achieved. None of us has the authority or right to retain other people's money on the grounds that we're doing a great job. It is their money and they have a right to have the case proceed with all deliberate speed. This does not imply a mad dash akin to the festival contest in which participants chase a rolling wheel of cheese down what is nearly a cliff. The case must proceed with all *deliberate* speed.

Expeditious administration of an estate results in maximum compensation. Conversely, an extended delay in administration requires examination of the compensation requested by Trustee. As noted above, the docket reflects that Trustee efficiently collected and liquidated the assets of the estate in less than a year. Timeliness and efficiency were lacking in the completion of administrative tasks so that the distributions could be made and this delay reduced the benefit Trustee provided to the creditors. Accordingly, the court will award one-third of the compensation sought in this case, that is, \$156.61.

A separate order is issued herewith.

/s/ Russ Kendig

**Judge Russ Kendig
U.S. Bankruptcy Judge**

OCT 24 2006

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