

IN THE UNITED STATES BANKRUPTCY COURT

DO NOT PUBLISH

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

IN RE:) Chapter 7 Case
) Case No. 01-11989
Golf Augusta Pro Shops, Inc.,) Substantively Consolidated
) Estates
Debtor.)
)
Golf Augusta Pro Shops of) FILED
Pennsylvania, L.L.C.) 2004 FEB 6 P 4:14
)
Debtor.)
_____)

ORDER ON APPLICATION OF KRONISH LIEB WEINER & HELLMAN LLP, LEAD COUNSEL TO OFFICIAL COMMITTEE OF UNSECURED CREDITORS, FOR INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR THE PERIOD AUGUST 10, 2001 THROUGH APRIL 30, 2002

Golf Augusta Pro Shops, Inc. and Golf Augusta Pro Shops of Pennsylvania ("Debtors") filed Chapter 11 petitions on July 3, 2001. On December 14, 2001, both cases were substantively consolidated into one estate. The Chapter 11 case was then converted to a Chapter 7 case on July 30, 2002.

On June 10, 2002, the law firm of Kronish Lieb Weiner & Hellman LLP ("KLWH" or "Applicant"), lead counsel to the Official Committee of Unsecured Creditors in this case, filed an application for interim compensation and reimbursement of expenses ("Fee Application"). The Applicant requests sixty one thousand six hundred seventy four dollars and fifty cents (\$61,674.50) in interim

compensation and ten thousand one hundred forty six dollars and twenty nine cents (\$10,146.29) in expenses for a total of seventy one thousand eight hundred twenty dollars and seventy nine cents (\$71,820.79). The compensation and expenses requested are for the period of August 10, 2001, through April 30, 2002. The Applicant certifies in the Fee Application that the professionals at KLWH worked a total of 290.70 hours on behalf of the Official Committee of Unsecured Creditors. The Second Tier Secured Creditors, the Debtors, and the United States Trustee all filed objections to the Fee Application.

This court has jurisdiction over this proceeding under 28 U.S.C. § 157(b) (2) (A).

I. Fee Standard

A. Statutory Standard

Authorization for compensation for attorneys and others in bankruptcy cases is found in the Bankruptcy Code at Section 330. 11 U.S.C. § 330.¹ "In establishing reasonable compensation for counsel..., this court must base its determination on the nature, the extent, and the value of the legal services rendered, the time

¹11 U.S.C. § 330 provides in part:

(a) (1) After notice to the parties in interest and the United States Trustee and a hearing, ...the court may award to a trustee, an examiner, a professional person...

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

spent by counsel in rendering such services, and the cost of comparable services in other than a bankruptcy proceeding.” In re: Georgia Arms Properties, Ch. 11 Case No. 89-10313 (Bankr. S.D. Ga. Augusta Division, April 20, 1990) (J. Dalis) (citing 11 U.S.C. § 330(a)(3)(A)-(E)) (“Georgia Arms”). In drafting § 330, Congress intended for bankruptcy attorneys to receive payment on par with attorneys in other practice areas. Grant v. George Schumann Tire & Battery Co., 908 F.2d 874, 878 (11th Cir. 1990) (“Grant”). “Attorney’s fees in bankruptcy cases should be no less, and no more, than fees received for comparable non-bankruptcy work.” Id. at 879 (citing In re: Manoa Finance Co., 853 F.2d 687, 690 (9th Cir. 1988)).

B. Lodestar Method

Eleventh Circuit Court of Appeals precedent holds that compensation under 11 U.S.C. § 330 is determined using the “lodestar method.” Grant, 908 F.2d at 878-879; Norman v. Housing Authority of Montgomery, 836 F.2d 1292, 1299 (11th Cir. 1988) (“Norman”). The “lodestar” is “the reasonable time expended by counsel in performing the reasonably required services rendered multiplied by a reasonable hourly rate.” Salvesen v. Hardin (In re: Salvesen), Chapter 13 Case No. 95-12248 (Bankr. S.D. Ga. Augusta Division, September 25, 1996) (J. Dalis). A reasonable rate “is determined by the prevailing market in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience and reputation.” Blum v. Stenson, 465 U.S. 886, 889 n.11 (1984). The burden of proof is on the applicant to show that the requested rate is reasonable.

NAACP v. City of Evergreen, 812 F.2d 1332, 1338 (11th Cir. 1987). One type of proof the applicant can provide is evidence that its rates have been billed and paid in prior cases. Norman, 836 F.2d at 1299.

The applicant has to show that it is entitled to the fees and expenses requested. Norman, 836 F.2d at 1303. Detailed documentation of the Applicant's hours, rates and services rendered is required so that the court can determine reasonableness and apply the lodestar method. Id. The Applicant must exercise billing judgment because excess hours will be excluded by the court. Id. at 1301. Hours excluded by billing judgment are those "that would be unreasonable to bill to a client and therefore to one's adversary." Id. (citing Hensley v. Eckerhart, 461 U.S. 424, 437 (1983)).

The court determines the relevant legal community.² See Georgia Arms. It is the court's duty to draft an order regarding the fee application in such a way as to allow for meaningful review. Norman, 836 F.2d at 1304. The court "must articulate the decisions it made, give principled reasons for those decisions, and show its

²In a hearing in this case on June 27, 2002, I stated that I would be using a national, not local, standard in determining the reasonable hourly rate for fees. The assets and creditors of the Debtors in this case span several states and regions. As in In re: Rusco Industries, the relevant legal community in this bankruptcy is the nation, not the Southern District of Georgia. See In re: Rusco Industries, Ch. 7 Case No. 86-60031 (Bankr. S.D. Ga. Statesboro Division 1986) (J. Dalis). Because the relevant legal community in this case is the nation, not the Southern District of Georgia, the Applicant will not be limited to the reasonable hourly rate as it is defined in Augusta, Georgia, or the Southern District.

calculations.” Id. If the court chooses to disallow certain requested fees or expenses, it has to explain why allowance of these amounts would be improper. Id.

II. Objections

“The fee applicant bears the burden of establishing entitlement and documenting the appropriate hours and hourly rates.” Norman, 836 F.2d at 1303. “Generalized statements that the time spent was reasonable or unreasonable...are not particularly helpful and not entitled to much weight.” Id. at 1301. Just as the court’s decision on a fee application “must be reasonably precise in excluding hours thought to be unreasonable or unnecessary, so should be *the objection and proof from fee opponents.*” Id. (emphasis added). For the court to consider objections to fee and expense requests, the objections must be as reasonably detailed as the fee and expense requests themselves. Id.

Parties to this Chapter 7 case objected to the Fee Application. The Second Tier Secured Creditors filed an objection stating in general that KLWH spent too much time writing briefs regarding the conversion of the case from a Chapter 11 to a Chapter 7, preparing financial exhibits, engaging KLWH’s financial expert, and traveling to and from Augusta, Georgia. The Debtors objected to the request for fees, arguing that the efforts of KLWH were not necessary to the estate. The United States Trustee (“U.S. Trustee”) objected in general to faxing and word processing charges included in the Applicant’s expenses, and also objected specifically to KLWH

including work done by legal assistants as billable time, stating that this was secretarial work to be included in KLWH's overhead.³

The objections of the Second Tier Creditors and the Debtors are overruled because the objections are not reasonably precise. I am unable to tell from the objections exactly which hours, rates, and tasks the parties are objecting to. For the same reason, the U.S. Trustee's objection to the Applicant's faxing and word processing expenses is overruled. The U.S. Trustee did not provide the court with enough information, such as dates the expenses were incurred or alternate appropriate rates, for the court to give a principled reason for disallowing these expenses.

In contrast, the U.S. Trustee's objection to charges for tasks done by legal assistants at KLWH meets the "reasonably precise" standard. The objection included the full billing description that the Applicant put in its Fee Application. The U.S. Trustee did not object to the hourly rate of the legal assistants, only to the tasks that KLWH billed for. The U.S. Trustee argues that these tasks are part of any overhead expense that should not be billed separately in the Applicant's fee request. In essence the

³Not all work done by legal assistants is compensable. However, 11 U.S.C. § 330 states in part: the court may award to...a professional person...reasonable compensation for actual, necessary services rendered by the...attorney and by any paraprofessional person employed by any such person. 11 U.S.C. § 330(a)(1)(A). Whether the work done by a paraprofessional is compensable by the court depends on whether the work "necessitated the exercise of independent paraprofessional judgment." In re: Busy Beaver Building Centers, Inc., 19 F.3d 833, 845 (3d Cir. 1994).

cost of overhead is already taken into account in the professional's hourly rate.

The Applicant included three legal assistants in its statement of professional fee charges, Mr. Fleischer, Ms. Goldstein, and Ms. Petrovski, with hourly billing rates of one hundred eighty dollars (\$180) per hour, one hundred sixty dollars (\$160) per hour, and one hundred sixty four dollars and eleven cents (\$164.11) per hour, respectively. The Fee Application listed that Mr. Fleischer worked 1.3 hours during the application period, Ms. Goldstein 22.1 hours, and Ms. Petrovski 31.6 hours.

I reviewed each entry of legal assistant time to determine which tasks required the use of independent paraprofessional judgment and therefore warranted inclusion in the Applicant's Fee Application. I hold that tasks such as preparing certificates of service and preparing affidavits of service require the use of independent paraprofessional judgment. However, proof reading labels, proof reading service lists, processing notices of hearing, and processing the mail do not require that judgment. Therefore, 1.30 of Mr. Fleischer's hours are disallowed, 18.10 hours of Ms. Goldstein's hours are disallowed, and 30.80 of Ms. Petrovski's hours are disallowed. Labeling these tasks as paralegal time doesn't change the true nature of the task as secretarial and part of KLWH's overhead expense included in the approved hourly rate.

III. Reasonableness of Fees Requested

I find that the hourly rates requested by KLWH are

reasonable. In the Fee Application, the Applicant provided the Court with a number of bankruptcy cases in which it had been awarded its usual billing rates, even when the its rates exceeded the rate commonly awarded. See e.g. In re: Washington Mfg. Co., 101 B.R. 944 (Bankr. M.D. Tenn. 1989). The Applicant provided detailed documentation of the rates charged, hours spent and tasks undertaken during the period for which compensation is sought. Billing statements organized by date and by professional are attached to the Fee Application as required for a reasonableness analysis under the lodestar method. Exhibit E to the Applicant's Fee Application is a "Summary of Professional Fee Charges" that lists the hourly rate of each professional that worked on this case and the hours worked according to KLWH. The hourly rates and hours worked are as follows:

| Professional | Hourly Rate | Hours Worked |
|-----------------------------|-----------------------|---------------------|
| Mr. Fleischer (LegalAsst.) | \$180.00 ⁴ | 1.30 |
| Ms. Goldstein (Legal Asst.) | \$161.00 | 22.10 |
| Mr. Gottlieb (Attorney) | \$553.33 | 2.40 |
| Mr. Hoskins (Law Clerk) | \$195.00 | 2.70 |
| Mr. Jarvinen (Attorney) | \$222.15 | 175.10 |

⁴The Applicant states in the Fee Application that its "blended rate" is two hundred twelve dollars and sixteen cents (\$212.16) per hour. This "blended rate" is calculated by dividing the total amount of fees requested (\$61,674.50) by the total numbers of hours the Applicant claims were worked (290.70). However, I have based my analysis of reasonableness and my calculation of compensation on each attorney's individual rate. I find that this is a more realistic form of analysis than using the "blended rate" which often disguises high hourly rates charged by senior attorneys.

| Professional | Hourly Rate | Hours Worked |
|-----------------------------|--------------------|---------------------|
| Mr. Papir (Attorney) | \$205.00 | 12.90 |
| Ms. Petrovski (Legal Asst.) | \$164.11 | 31.60 |
| Mr. Sussman (Attorney) | \$475.00 | 3.50 |
| Mr. Weisenberg (Attorney) | \$195.31 | 39.10 |

IV. Conclusion

I GRANT the First Application of Kronish Lieb Weiner & Hellman LLP for Interim Compensation and Reimbursement of Expenses. I hold that the time billed has been adequately documented and the services were actual and necessary under §1103, except for the disallowed legal assistant hours as noted above. I award the Applicant fifty three thousand four hundred seventy one dollars and eighty five cents (\$53,471.85)⁵ in interim compensation and ten thousand one hundred forty six dollars and twenty nine cents (\$10,146.29) in expenses for a total of sixty three thousand six hundred eighteen dollars and fourteen cents (\$63,618.14) pursuant to 11 U.S.C. §330 as Chapter 11 administrative expenses.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia

⁵I reached this amount by multiplying each professional's hourly rate by the number of hours he or she worked and then adding those totals together. This amount is less than the requested amount because of the legal assistant hours that were disallowed. While the Applicant noted 290.70 hours worked in the Fee Application, with the disallowed hours, I hold that only 240.50 hours worked were compensable.

this 6th Day of February, 2004.