

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

IN RE:) Chapter 7 Case
) Number 88-10778
GLENDA JOY MARTIN POSS)
)
Debtor) FILED
) at 11 O'clock & 40 min A.M.
) Date: 4-25-91
_____)

ORDER FOR ATTORNEYS FEES

United States Trustee objects to the compensation of Ben Swain McElmurray, Jr., attorney for the debtor and seeks disgorgement of fees paid.

Mr. McElmurray filed a Bankruptcy Rule 2016 compensation statement on June 28, 1988 indicating a total agreed upon compensation to be paid by the debtor of Eight Thousand Nine Hundred Ten and No/100 (\$8,910.00) Dollars.

On November 6, 1990 the United States Trustee filed a motion for disgorgement of attorneys fees against Mr. McElmurray. The United States Trustee stated as grounds that (1) Mr. McElmurray had not filed a detailed fee application with this court, and (2) the amount received by him exceeded the standard fee for a routine Chapter 7 case. On January 3, 1991 hearing was continued to give Mr. McElmurray an opportunity to file a detailed fee application with this court. Mr. McElmurray was required to show any and all

property received as compensation in lieu of cash, the value of said property, and how the valuation was assessed. On January 18, 1991 Mr. McElmurray filed the requested fee application with a detailed analysis of his time expended, property received, and valuation. Mr. McElmurray filed an application for compensation for professional services rendered to the debtor from April 8, 1988 through January 17, 1991, in the amount of Eight Thousand Eight Hundred Ten and No/100 (\$8,810.00) Dollars. Mr. McElmurray contends he extended 88.1 hours at a compensable rate of One Hundred and No/100 (\$100.00) Dollars per hour.

The United States Trustee objects to Forty-Nine and Four Tenths (49.4) hours of Mr. McElmurray's application on three grounds: (1) the legal services performed benefited the debtor personally and not the estate, (2) the hours and charges for initial conferences and preparation of the bankruptcy petition and schedules are unreasonable and (3) services performed and billed by the attorney are within the scope of the Chapter 7 trustee statutory duties and not compensable to debtor's attorney. The continued hearing on the United States Trustee's motion for disgorgement and objection to compensation were held on March 7, 1991. At this hearing the United States Trustee did not object to the value placed upon the real and personal property obtained by Mr. McElmurray as compensation nor to the hourly rate of compensation of One Hundred and No/100 (\$100.00) Dollars. The remaining issue is whether the

Forty-Nine and Four Tenths (49.4) objected to hours expended by the debtor's attorney are reasonable and compensable from the debtor's estate.

An award of reasonable compensation is based upon the nature, the extend, and the value of the legal services, the time spent by counsel in rendering such services and the cost of comparable legal services other than in a bankruptcy proceeding 11 U.S.C. §330. Proper compensation is determined under a lodestar analysis which requires multiplying the reasonable time expended in performance of required legal services by a reasonable hourly rate. Norman v. Housing Authority for the City of Montgomery, 836 F.2d 1292 (11th Cir. 1988). Excessive, redundant or otherwise unnecessary hours should be excluded from the amount claimed. id. at 1301. However, this court must "bear in mind that the measure of reasonable hours is determined by the profession's judgment of the time that may be conscionably billed and not the least time in which it might theoretically have been done." Id. at 1306. In determining Mr. McElmurray fee's this court must determine the nature and extent of the services rendered, the value of those services and consider the factors set forth in Johnson v. Georgia Highway Express Inc., 488 F.2d 714 (5th Cir. 1974). Grant v.

George Schumann Tire and Battery, 908 F.2d 874 (11th Cir. 1990). The estate should not pay for counsel's fees incurred while representing the debtor personally. In re: Jones, 665 F.2d 60 (5th

Cir. 1982). Generally, an attorney may not be compensated for tasks which are properly the responsibility of the trustee. In re: U.S. Golf Corporation, 639 F.2d 1197 (5th Cir. 1981). However, the ultimate goal of this court in considering the fee application is reasonable compensation. Davis v. Federal Land Bank of Columbia, (In re: Davis), Chapter 11 case No. 87-50208, Adv. Pro. No. 88-5006 (Bankr. S.D. Ga. Waycross Division, Davis, B. J. September 8, 1989).

From the evidence presented at hearing the United States Trustee's objection to compensation is sustained as to 37.1 hours requested by Mr. McElmurray. These objected to hours represent time expended by the attorney in representing the debtor rather than the estate and in performing duties required of the trustee. The balance of the objected to hours, 12.3 together with the unobjected to hours, 38.7 results in 51 allowed hours for compensation. The nature and complexity of the case justifies an allowance of 51 hours of time expended in performing reasonable required services. From evidence presented, the value of property received by Mr. McElmurray from the debtor is One Thousand One Hundred Ninety-Four and 48/100 (\$1,194.48) Dollars.

The United States Trustee's objection to the application for attorneys fees and disgorgement of property is ORDERED overruled in part and sustained in part. Mr. McElmurray is awarded the amount of Five Thousand One Hundred and No/100 (\$5,100.00) Dollars as reasonable compensation. Mr. McElmurray's fee is credited Two

Thousand Four Hundred Forty-Four and 48/100 (\$2,444.48) Dollars for cash and property paid by the debtor. The balance of Two Thousand Six Hundred Fifty-Five and 52/100

(\$2,655.52) Dollars, is allowed as attorney's fee compensation to be paid from the estate of Glenda Joy Martin Poss.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia

this 25th day of April, 1991.