



**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA**

In re

HELEN JEANNE BORLAND

Debtor.

CASE NO. SV-99-19803-KL

CHAPTER 7

**MEMORANDUM ON FINAL
APPLICATIONS FOR
COMPENSATION AND OBJECTIONS
TO APPLICATIONS OF CHAPTER 7
TRUSTEE AND TRUSTEE'S COUNSEL,
PACHULSKI, STANG, ZIEHL, YOUNG,
JONES & WEINTRAUB, P.C.**

DATE: June 21, 2005
TIME: 2:00 p.m.
PLACE: Courtroom 301
21041 Burbank Blvd.
Woodland Hills, CA 91367

On June 21, 2005, this court heard objections to the final applications for compensation filed by Byron Moldo, Chapter 7 Trustee ("Trustee") and by the Trustee's counsel, Pachulski, Stang, Ziehl, Young, Jones & Weintraub, P.C. ("Trustee's Counsel"). Separate objections to each application were filed by the United States Trustee ("UST") and by Helen Jeanne Borland, the Chapter 7 debtor in this case ("Debtor").

Trustee's Counsel

Trustee's Counsel's application seeks final compensation in the amount of \$174,639.35, consisting of \$167,034.50 in fees and \$7,604.85 in expenses for the period of September 30, 1999 through May 31, 2004, plus an estimate of 6.5 hours and \$2,600 in anticipated services and \$200.00 in costs relating to the closing of the case. Of this amount, Trustee's Counsel's application divides this request into the following amounts: \$146,570.50 in fees and \$6,096.87 in expenses requested in a prior interim fee application (the "Interim Application") and \$17,864.00

in fees and \$1,307.98 in costs for the period from January 2001 through May 31, 2004 (the “Post Interim Application Period”).

Prior to the hearing on June 21, 2005, Trustee’s Counsel reached a stipulation with the UST to reduce the compensation for the period covered by the Interim Application from \$146,570.00 to \$131,079.50, which is the amount previously awarded by this court by order entered on July 22, 2004. Trustee’s Counsel and the UST further stipulated to a reduction of \$1,943.50 in fees for the Post Interim Application Period ($\$17,864 + \$2,600 = \$20,464.00 - \$1,943.50 = \$18,520.50$.)

The Debtor argues for further reductions in the fees sought by Trustee’s Counsel on the following grounds: (1) the billing rates are too high for the knowledge and skill required; (2) the increase in billing rates over time has been astronomical and is unwarranted; (3) the assignment of four senior attorneys to this case was excessive; (4) the number of interoffice conferences and memos were excessive; and (5) compensation is not allowable for services which should have been performed by the Trustee, not by counsel. The Debtor asks that the court disallow all sums in excess of the fees approved on the Interim Application.

The Court believes that all of the Debtor’s grounds for objection have merit. However, over the course of this case, various reductions in Trustee’s Counsel’s fees have already been effectuated voluntarily, by concession, or by order on the Interim Application. The Interim Application and order thereon resulted in a reduction of fees by \$28,442, from \$162,021.50 to \$131,079.50. The memorandum order on the Interim Application discusses issues of staffing, billing rates and excessive or unwarranted compensation.

The largest single category and amount of legal services which drew criticism then was the provision of services associated with the sale of the Debtor’s residence. That criticism has been renewed by the Debtor on the grounds that little or none is compensable because the Trustee could and should have done this work himself. The Debtor relies on In re Garcia, 317 B.R. 810 (Bankr. S.D. Cal. 2004). In principle, this court agrees with Garcia. However, at the time the services were rendered in this case, practice before this court did not preclude counsel’s assistance in seeking authority for and documenting sales of estate property. Strict application of Garcia would not be fair at this point in the case and the fee detail in this case reveals legal issues involved in the sale which justify legal counsel. Nonetheless, counsel should not be compensated at high rates for routine or non-legal tasks. The court’s prior assessment of these issues made an appropriate reduction for those matters which appeared to be routine.

On final consideration, the court concludes that the Debtor’s issues have been addressed with regard to the period covered by the Interim Application.

The majority of fees incurred during the Post Interim Application Period were related to Trustee’s Counsel’s drafting and defense of their fee application (\$26,219.50 out of \$29,083.50). Trustees’ counsel voluntarily reduced its request in this category by \$11,219.50. Although the Debtor seeks disallowance of all Post Interim Application fees, the court cannot simply deny

compensation because of a general feeling that the fees incurred throughout the case are too high. Instead, the court must identify specific time entries, or tasks, or categories of service for which the compensation sought is unreasonable or unavailable. Fees incurred in the preparation and defense of a fee application are compensable under Ninth Circuit law. The full amount of the time incurred by Trustee's Counsel in this case is not reasonable or compensable. While parties may not agree on whether \$15,000 is a reasonable and necessary expense for application and defense against the cuts made in this case, this court accepts the voluntary reduction for this category of services billed.

In addition to Trustee's voluntary reduction of fees attributable to defending their billing in this case, Trustee's Counsel's stipulation with the UST results in another voluntary reduction of \$1,943.50 for the Post Interim Application Period. This court has independently reviewed the time entries for the Post Interim Application Period and finds that the stipulated amount is within \$20.00 of the amounts by which this court would have reduced their request.

Therefore, based on the foregoing, the Final Application of Trustee's Counsel is approved as follows: fees in the amount of \$149,600.00 and costs in the amount of \$7,604.85.

A separate order on the foregoing awards will be entered.

Trustee's Accountant

A first and final application for compensation and reimbursement of expenses has been filed by Grobstein, Horwath & Company, LLP, accountants to the Trustee. No objection has been filed.

Fees in the amount of \$17,418.50 and expenses of \$298.64 for the period from February 15, 2003, through May 25, 2004, are approved as prayed.

A separate order on the foregoing awards will be entered.

Trustee

The Trustee requests compensation of \$39,446.41 which is the maximum statutory fee available in this case, and reimbursement of expenses in the amount of \$423.09. Objections have been filed by the UST and by the Debtor.

The primary objection of both the UST and the Debtor is that the Trustee inappropriately delegated his duties to investigate, liquidate, and administer the estate to his counsel and, in the case of the sale of the Debtor's residence, to the Debtor. In addition, the Debtor asserts that the Trustee should not have hired counsel whose travel fees would be higher than those of a firm located closer to the court and that the Trustee did not exercise his duty to control his chosen counsel's escalating billing rates or services.

The court has reviewed the Trustee's description of his daily activities in this case.

Although there is merit in the Debtor's assertion that his descriptions more often reflect review of others' work than direct administration by himself, the Debtor's observations are overstated. It is not inappropriate for the Trustee to delegate tasks in his administration of the case or to depend on others in his employ for assistance. Except where professionals are employed by court order, the Trustee is expected to bear the cost of the administration of his duties, however delegated, out of his compensation pursuant to the statutory formula of Section 326.

In order to evaluate the level of compensation that is appropriate under that statutory formula, the court looks at a number of factors including but not limited to the outcome of the case, the efficiency of administration, and the cost to bring the case to completion. In this case, the outcome is excellent in that creditors will be paid in full, with interest. However, the efficiency of administration was impaired by the level of delegation to counsel and the Debtor. The court does not quarrel with the Trustee's decision to let the Debtor have input in the sale of the residence in light of the fact that the Debtor had expertise in the area and had every incentive to maximize a recovery in which the surplus would accrue to her benefit. Similarly, the Trustee may seek assistance with legal issues related to sale of the residence and recovery on the only other significant asset, the Debtor's beneficiary interest in the Waltamath Family Trust. Taking these considerations into account, like the UST and the Debtor, the court is left with the conviction that the Trustee did not take control of the case or the costs incurred in bringing it to a conclusion. The Trustee's failure to invest the requisite care and attention to this case resulted in higher costs which, in this case, will be borne by the Debtor.

The Trustee's response asserts that he did not delegate his duties to his counsel but, instead, utilized their legal service. Analysis of counsel's services related to the sale of the residence clearly shows that the Trustee turned over the sale procedure and process to counsel, completely, apparently on the theory that all procedure and process was at least in some sense related to the legal event of sale, even if it did not require legal expertise to accomplish. This court disagrees with that wholesale abdication, has reduced counsel's fees for this project, and finds that the Trustee should not be rewarded with the maximum statutory fee in light of having done so.

The Trustee also responds to the objection that he should have monitored and objected to the astonishing acceleration of his counsel's billing rates with the suggestion that raising the issue with his counsel would have been irrelevant in light of the fact that billing rates are subject to the approval of the court. This argument is a revealing demonstration of the Trustee's failure to understand the scope of his duties as a trustee. Professionals do not work for the court. Professionals, with the approval of the court, are employed by the estate, of whom the Trustee is the representative and guardian. The Trustee is supposed to review the services rendered, the bills as they are presented, and the costs of those services as they are incurred. The Trustee is supposed to be in control of those professionals and, as a professional himself, to make decisions for the benefit of the estate relating to the quality and cost of their services. The court's final approval of fees is not a substitute for the Trustee's obligations.

Finally, the Trustee's response reminds the court that creditors are going to be paid in full and that the Debtor will receive a substantial payment from the surplus in this estate. The court acknowledges this happy result. The court also notes that while there were stumbling blocks to

realizing distributions under the Waltamath Family Trust, for which compensation has been approved, the surplus in this case is more a function of liquidating ready assets than investigation and pursuit of them. The Debtor, as well as creditors, is entitled to efficient, practical, and cost-effective administration.

Notwithstanding the foregoing, the time spent by the Trustee and the result effected justify an award nearer the top of the statutory limitation than the bottom. **The court approves the following: compensation to the Trustee in the amount of \$34,446.41 and costs in the amount of \$423.09. In addition, the order to be entered in this matter will approve bond premiums in the amount of 1,536.56 and taxes of \$11,222.14.**

A separate order on the foregoing awards will be entered.

Dated: June 22, 2005


_____/s/
Kathleen Thompson Lax
United States Bankruptcy Judge

CERTIFICATE OF MAILING

I hereby certify that copies of the **MEMORANDUM ON FINAL APPLICATIONS FOR COMPENSATION AND OBJECTIONS TO APPLICATIONS OF CHAPTER 7 TRUSTEE AND TRUSTEE'S COUNSEL, PACHULSKI, STANG, ZIEHL, YOUNG, JONES & WEINTRAUB, P.C.** were mailed to the following parties in interest:

DATED: JUN 22 2005

JON D. CERETTO
CLERK OF COURT

By: 
Deputy Clerk

<u>Trustee's Attorney</u> Pachulski, Stang, Ziehl, Young, Jones & Weintraub P.C. Attn.: Jeffrey N. Pomerantz 10100 Santa Monica Blvd., Suite 1100 Los Angeles, CA 90067	<u>U.S. Trustee</u> Office of the U.S. Trustee 21051 Warner Center Lane Woodland Hills, CA 91367
<u>Trustee</u> Dressler, Rein Evans & Sestanovich Attn.: Byron Z. Moldo Anthony Friedman 1925 Century Park East, 16 th Floor Los Angeles, California 90067	<u>Debtor</u> Helen Jeanne Borland 2914 Parkview Dr. Thousand Oaks, CA 91362
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