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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:

Victoria Randall,

Debtor(s).

Case No.: 2:13-bk-30745-NB

CHAPTER 11

**MEMORANDUM DECISION ON FEE
APPLICATION OF DEBTOR'S COUNSEL**

Date: January 14, 2014

Time: 11:00 AM

Courtroom: 1545

This decision concerns an interim application of the Law Offices of Michael Jay Berger ("Applicant") for compensation and reimbursement of expenses (dkt. 82). Ms. Randall, the debtor in this case ("Debtor"), has filed opposition papers (dkt. 93, 95) and Applicant has filed further supporting papers (dkt. 92, 96). Initial hearings were held on December 23, 2013 and January 14, 2014 and, after the matter was fully briefed, it came on for hearing at the above time and place. This court orally overruled some of the debtor's objections, chiefly regarding an alleged arrangement for a flat fee. The remaining issues, concerning the reasonableness of the fees, were taken under submission.

1 **I. LEGAL STANDARDS**

2 The statute provides that this court may award reasonable compensation for
3 actual, necessary services rendered by counsel for the debtor and reimbursement for
4 actual, necessary expenses. In determining the amount of reasonable consideration,
5 the statute directs this court to consider the nature, extent and value of services taking
6 into account, among other things, the time spent on such services, the rates charged,
7 whether the services were necessary or beneficial, and whether they were performed
8 within a reasonable amount of time. 11 U.S.C. § 330(a)(3). *See also, e.g., In re Eliapo*,
9 468 F.3d 592 (9th Cir. 2006).

10 Challenging financial situations tend to require more legal work, and yet by its
11 nature bankruptcy often involves limited funds with which to pay counsel. Bankruptcy
12 counsel must be held to reasonable standards of efficiency and must assess whether
13 the anticipated costs of any course of action are worth the potential outcomes, but they
14 are not to be penalized, such as by imposing a lower hourly rate than nonbankruptcy
15 counsel. *Id.*

16 Interim fee awards are subject to both practical and legal constraints. As a
17 practical matter, it can be difficult to assess the reasonableness of fees charged while
18 matters have yet to be presented to the court: in this case, for example, some of the
19 key issues regarding valuation of property and the amount of debt service have yet to
20 be presented. As a legal matter, all interim awards are subject to being revisited at the
21 time of a final application, recognizing that it is not fair to “second guess” counsel with
22 “20/20 hindsight” and that the perspective must be taken at the time the services were
23 rendered.

24 **II. BACKGROUND**

25 Debtor owns and is employed by a real estate brokerage firm and her earnings
26 are subject to fluctuation. She also owns two rental properties (“Kenway” and
27 “Southridge”) and a timeshare. The liens may exceed the value of the properties, and
28 she has disputes with at least one lender regarding a proper accounting. Among other

financial issues, it is not clear whether the Kenway rental property can be made consistently cash flow positive. A recent monthly operating report (“MOR”) (dkt.111, for the month ended 1/31/14), shows that Debtor is barely keeping her head above water with an ending balance of \$261.97.

III. FEE APPLICATION

This court finds and rules as follows with respect to the categories of time listed in the fee application (dkt. 82, the “Application”):

- **\$308.50** for 1.3 hours on “Asset Disposition” (Application, dkt. 82, at 10:23-11:2) is allowed in full.
- **\$1,611.50** for 8.6 hours on “Business Operations” (Application, dkt. 82, at 11:3-10) is allowed in full. Comments: The fees incurred on monthly operating reports and other matters in this category are reasonable under the circumstances.
- **\$9,742.00** for 47.5 hours on “Case Administration” (Application, dkt. 82, at 11:12-12:8) is allowed in the amount of **\$7,300.00**. Comments: (a) The amount of time spent in response to this court’s order to show cause why the case should not be dismissed (dkt. 20) would have been unnecessary if counsel had calendared the motion to continue the automatic stay in sufficient time. (Debtor previously filed a chapter 13 case, Case No. 2:13-bk-25848-NB, Bankr. C.D. Cal., and because it was dismissed within a year before the petition commencing this case it was necessary in this case to file a motion to continue the automatic stay and to have the hearing on that motion concluded within 30 days after the petition date. 11 U.S.C. § 362(c)(3).) (b) The amount of time spent on other matters in this category are not fully justified on the present record, but in many instances Applicant has listed time with a “No Charge” entry and accordingly only a very small further reduction is warranted.
- **\$327.00** for 0.7 hours on “Claims Administration and Objections” (Application, dkt. 82, at 12:9-14) is allowed in full.

- 1 • \$2,179.00 for 20.6 hours on “Fee/Employment Applications” (Application, dkt. 82,
2 at 12:15-21), or \$5,179.00 according to the daily timesheets (Application, dkt. 82,
3 at PDF p. 42) is allowed in the amount of **\$1,500.00 for employment**
4 **applications only** – allowance of any award for fee applications is deferred until
5 the next fee application, at which time this court can better assess the
6 reasonableness of the fees. Comments: The stated basis for these fees
7 consists of two employment applications (no fee applications) but the daily
8 timesheets reveal that the bill includes time spent on a fee application.
9 Employment applications should be relatively routine tasks, and although in
10 some cases it may be necessary to expend additional time on conflicts checks
11 and other matters that are predicates for employment, those matters are similar
12 to marketing and other general expenses of the legal profession and are not
13 properly billed to the bankruptcy estate. In addition, corrections of declarations
14 and similar matters generally should not be billed.
- 15 • **\$2,358.00** for 11.5 hours on “Financing” (Application, dkt. 82, at 12:22-28),
16 including cash collateral and budget motions and the Stay Motion, all of which is
17 allowed in full. Comments: The budget motion had a service issue that
18 Applicant could have handled better, but that added minimal time and there were
19 other questions about Debtor’s budget that were not attributable to Applicant and
20 that justify the amount of time slightly above what would be expected for an
21 uncontested motion. The cash collateral motion similarly required some
22 additional information at the hearing, but nothing out of the ordinary and the fees
23 incurred appear to be reasonable.
- 24 • **\$159.00** for 0.4 hours on “Litigation” (Application, dkt. 82, at 13:1-6), involving
25 communications with another attorney for Debtor regarding disputes with a
26 creditor, is allowed in full.
- 27 • **\$545.00** for 4.0 hours on “Meeting of Creditors” (Application, dkt. 82, at 13:7-10),
28 is allowed in full.

- **\$907.37** for costs and expenses (Application, dkt. 82, at PDF p. 58) are allowed in full.

IV. CONCLUSION

Fees and expenses are allowed in the total amount of **\$15,016.37**. As noted above, this does not include time spent on the fee application itself – that issue is deferred until the second interim fee application, at which time this court can better assess the reasonableness of the fees. Applicant is directed to lodge a proposed order consistent with this memorandum decision within 7 days of the entry of this decision on the docket. Applicant's request for immediate payment is denied at this time, without prejudice to future requests for immediate payment.

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Date: March 18, 2014



Neil W. Bason
United States Bankruptcy Judge