

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

In re

GARY C. SMITH

Case No. 92-13939 K

Debtor

ORDER AND MEMORANDUM

The Debtor, through new counsel, has opposed his former counsel's application for additional fees. The Debtor paid \$1,000 initially, plus expenses of \$110. Counsel seeks an additional \$2873.33 in fees and \$230.20 in additional expenses.

Counsel's application was filed on May 4, 1993 and heard on June 10. The Court then agreed with the Debtor that counsel's application and time sheets were totally uninformative. On July 8, 1993, counsel filed supplemental time sheets. The Debtor continues to oppose on the grounds that, inter alia, one cannot assess (even from the supplemental time sheets) the necessity for the services or the reasonableness of the time spent.

Indeed, of the 47.70 hours of attorney's time claimed, 13.25 hours (27.8% of the total) consisted of 44 phone calls made by counsel to Ms. Somerhalter (the Debtor's Billing Clerk and Bookkeeper) on matters described only as "concerning bills and obligations, payment of same and financial and office procedures." (These are all "toll calls" for which reimbursement is sought -- hence those were calls by counsel to the Bookkeeper.)

Another 3 hours were spent travelling to visit Ms.

Somerhalter at her office in Attica "to examine billing, banking and bill paying office procedure."

Given the fact that the Debtor had an accountant, Mr. Lindsey, as well as a Bookkeeper, and counsel has charged at least 2.8 hours to consultation with the accountant, the Debtor questions the regards in which an attorney's attention was required as to filing, bookkeeping and other office matters. The Court shares this concern.

Certainly, 2 hours in initial consultations with the Debtor and the Bookkeeper were reasonable, as were 2.5 hours in consultation with Debtor's real estate counsel. Some legal work on the file in the office is surely to be expected -- in this regard counsel claims 2.5 hours on December 22, 1992, 1.5 hours on December 29, 1992, 1 hour on January 11, 1993 and 2 hours on January 20, 1993.

Counsel does not break travel time out separately. Thus, he claims 3 hours to consult with the Debtor's wife in Batavia on December 1, 1992, 3.5 hours for a Batavia Court appearance on February 9, 1993 and 2.5 hours for a conference with the Debtor at Batavia on March 1, 1993.

The Court notes that counsel has billed at \$80 per hour, and the Court finds this to be a reasonable rate.

The Court finds that 16.25 hours of attorney time in communication with the Bookkeeper (as discussed above) has not been adequately explained. Only 4 hours will be allowed for such

communications. 2.8 hours in consultation with Mr. Lindsey are allowed, as are 2.5 hours in consultation with Mr. Hart.

Of 9 hours of Batavia consultation and appearances claimed, only half will be allowed since the application has failed to separately account for travel time.

The 2 hours of initial consultations with the Debtor on November 13, 1992 and November 20, 1992 are allowed as reasonable, as are 2 hours of general legal work in the office.

No further fees will be allowed. Counsel has made it very difficult for his client to find out what he is being charged for. This has increased the burdens on the Court as well. Thus, a total of 17.8 hours at \$80/hr. is allowed, for a total fee of \$1424. of which \$1,000 has been paid.

As to expenses, \$140.00 for a judgment search is allowed as is \$100.00 of miscellaneous postage and toll calls. (The failure to explain the need for the vast majority of the calls that were made warrants disallowance of the balance of expenses claimed, since it is "toll calls" that comprise the bulk of such expenses.) Of the \$240.00 in expenses allowed, \$110.00 was prepaid.

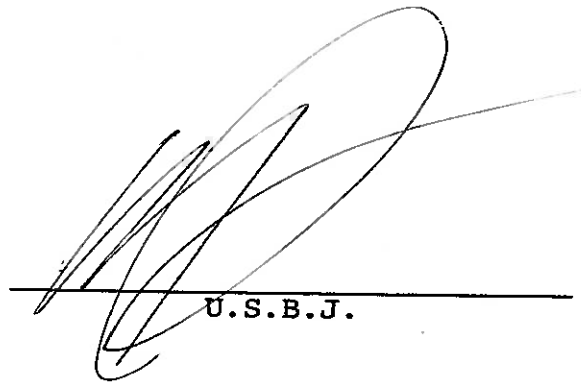
In sum, the Applicant is awarded \$424 in fees and \$130.00 in expenses, over and above what he has already received.

The Debtor argues that this award should be given status only as a "pre-petition general unsecured claim." Such allowances are "administrative expenses" by virtue of 11 U.S.C. §§ 330 and 503(b)(2). 11 U.S.C. § 726(b) uniquely provides for subordination

of pre-conversion administrative expenses when a case has been converted to Chapter 7 from another chapter, but there is no authority for creating "subpriorities" among administrative expenses in a case that is converted from Chapter 13 to Chapter 11, as occurred here. The allowances here are "administrative expenses."

SO ORDERED.

Dated: Buffalo, New York  
July 28, 1993



U.S.B.J.