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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

MARIAN HOUSE, INC. d/b/a
Little People's Center

Case No. 90-10464 K

Debtor

The applicant seeks compensation for 18.75 hours at \$100/hr. as attorney for the Debtor-In-Possession, and 1.75 hours at \$100/hr. as attorney for the Chapter 7 debtor, plus \$20 in expenses.

The United States Trustee has taken the unusual position of objecting to any allowance at all for the applicant.

Their relative positions are set forth in their papers. The Court notes with regret the fact that their dialogue takes the form of personal recriminations and conflicting assertions of fact that could be resolved (if at all) only by means of a lengthy and expensive evidentiary hearing.

The United States Trustee's Objections fail to set forth a basis for denial of all compensation; indeed, the objections fail to articulate any regards in which this matter is any different from the many others in which that office makes similar objections, but seeks only a reduced allowance.

Addressing the objections themselves and the applicant's responses thereto, I do find cause not to approve the application in full.

Firstly, neither the United States Trustee nor any party-in-interest should have to file an objection in order to get sufficient information from a fee applicant to determine whether the fee seems reasonable. Two of this applicant's time entries are totally uninformative, forcing the United States Trustee to object on that basis alone; i.e. the entries for 5/9/90 and "8/29/90-2/1/91." These total 2.5 hours. While these entries are explained in the reply papers, there will be a 1.2 hour reduction for failure to support those entries in the original claim.

Secondly, the applicant asserts entitlement to the same rate of compensation for travel time as for actual attorney work, at least here where he billed at the "discounted" rate of \$100/hr. instead of what he claims to be his "normal" rate of \$125/hr. Thus he does not separately itemize travel time in claiming 2.25 hours for the 4/3/90 appearance in Batavia and 3 hours for the 6/6/90 appearance in Buffalo (and drafting of an order after the latter). In light of the failure to separately itemize travel time even after the objection was made and in light of the fact that the Court does not believe that travel time is compensable at the same rate as actual attorney services, 2.25 hours of the 5.25 hours requested for these two appearances will be disallowed.

The Objection of the United States Trustee to the applicant's request for 1.75 hours at \$100/hr. for work on the Final Report of the Debtor-In-Possession is sustained. To the extent that the exchange of papers here does not tell the whole

story, the case docket provides additional information. On November 1, 1990, the case was converted to Chapter 7. On November 2, 1990 the debtor was ordered to file a Final Report and Accounting by December 30, 1990. On November 20, 1990 the applicant filed a letter saying he no longer represented the debtor. The Clerk's office called the applicant to point out the need for leave of Court to withdraw as counsel, pursuant to Local Rule 3(f). On December 4, 1990 the debtor appeared at the § 341 meeting without counsel. On January 7, 1991 a motion was filed to hold the debtor and applicant in contempt for failure to file the Final Report and Account; this was initially to be heard on February 6, 1991. On February 4, 1991 a Final Report and Account was filed -- two months late and on the eve of the hearing on the contempt motion. On that same day the Clerk's office sent a deficiency letter regarding what had been filed. Consequently, the contempt hearing was not mooted; it was adjourned to February 20, 1991, then to February 27, 1991. On February 27, 1991 an Order was issued after hearing on notice, directing the applicant to comply with the deficiency letter by March 13, 1991 or a \$500 monetary sanction would be imposed on him. On March 12, 1991 he complied.

The applicant now blames these delays on his client, yet he never appeared in response to the contempt motion to explain his problem nor did he seek relief from the sanctions order on the basis of his client's apparent recalcitrance. I will not award compensation at the expense of creditors, to one against whom

contempt processes were invoked in order to compel the work for which compensation is sought.

\$520 of the applicant's request is, thus, disallowed. The application is allowed in the amount of \$1530 in fees and \$20 in expenses.

I would further advise the applicant, for future reference, that the best support for fee requests is contemporaneous time records, not billing statements such as those provided here (which appear to be recapitulations or summaries, without supporting documentation).

\$1550 is allowed.

SO ORDERED.

Dated: Buffalo, New York
July 9, 1992



J.S.B.J.