

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

In re: Case No. 02-514-8G1
Chapter 11

THE ACADEMY, INC.

Debtor.

**ORDER ON DEBTOR'S APPLICATION ON
BEHALF OF JONATHAN STIDHAM, ESQUIRE
FOR COMPENSATION AND UNITED STATES
OF AMERICA'S OBJECTION, IN PART, TO
DEBTOR'S APPLICATION ON BEHALF OF
JONATHAN STIDHAM, ESQUIRE FOR
COMPENSATION**

THIS CASE came before the Court for hearing to consider the Objection of the United States of America, in part, to Debtor's Application on behalf of Jonathan Stidham, Esquire for Compensation as special counsel to the Debtor in this case.

Background

The Debtor, The Academy, Inc., filed its Chapter 11 petition on January 11, 2002. On September 18, 2002, the Court entered an Order Confirming Debtor's Fourth Amended Plan Under Chapter 11 of the United States Bankruptcy Code. On October 23, 2002, the Debtor filed its Application to Employ Stidham & Stidham, P.A. (the "Stidham Firm") as Special Counsel. The purpose of the application was to retain the Stidham Firm as special litigation counsel to prosecute and defend the Debtor's claims with the United States Department of Education. The application specifically requested approval of the representation nunc pro tunc to September 22, 2002.

On December 2, 2002, an order was entered granting the application and approving the employment of the Stidham Firm. The order states: "Finding that the affidavit filed by counsel in support of the application establishes that counsel does not hold or represent an interest adverse to the estate and is disinterested, the court grants the application."¹ There is no mention in the order

¹ The Bankruptcy Judge to whom the Debtor's case was assigned at that time and who signed the one page order has retired, and the case and its related adversary proceedings

that the application is not approved nunc pro tunc, nor is there a mention that the application is approved as of a certain date.

On August 17, 2004, the Stidham Firm filed an initial application for compensation in the amount of \$33,722.50 in fees and \$1,702.09 in expenses for the period September 23, 2002 through June 4, 2004. The United States of America (the "United States") filed an Objection, In Part, to the Debtor's Application for Compensation for the Stidham Firm on September 17, 2004.

Discussion

The Debtor's Fourth Amended Plan of Reorganization, which was confirmed by Order entered on September 18, 2002, provides:

**ARTICLE 11. POST-
CONFIRMATION EMPLOYMENT
AND COMPENSATION OF
PROFESSIONALS**

After the Confirmation Date, the Debtor may employ, with notice, and order of the Court, such attorneys, accountants and other professionals as it may desire to render services on such terms as it deems reasonable. With respect to services rendered by professional persons employed by the Debtor after the Confirmation Date, the Debtor shall be authorized to pay for such services, related costs and expenses only with notice, and order of the Court. The Debtor is not authorized to pay more than \$250,000 in fees and expenses for the anticipated USDE and Qui Tam Claim litigation.

Section 330 of the Bankruptcy Code establishes the standards to be used by the Court in evaluating the compensation of professionals. Section 330(a)(1)(A) provides that the court may award to an attorney "reasonable compensation for actual, necessary services rendered by the...attorney..." and section 330(a)(1)(B) provides "reimbursement for actual, necessary expenses."

have been assigned to the undersigned Bankruptcy Judge.

The United States has made four objections to the fees and expenses enumerated by the Stidham Firm in its application. At the hearing, Mr. Stidham conceded that one of the objections, an objection to expenses totaling \$55.00 (for parking tickets and late fees on parking tickets) should be sustained. (Transcript of the hearing, October 18, 2004, page 10, lines 1 and 2.)

The next objection of United States is to the inclusion of time in the fee application for services rendered prior to seeking approval of the representation, and also to the amount of time involved in those services. This objection should be overruled. The employment application, filed on October 23, 2002, specifically requested approval of the representation nunc pro tunc to September 22, 2002. The order approving the representation provides that "...the Court grants the application." No provision is contained in the order that specifies that the application is approved on any basis other than as requested in the application. Absent any provision expressing or implying a contrary intent, the order approved the application as the application was filed, with nunc pro tunc approval clearly requested.

The United States also objects to the reasonableness of the time expended by the Stidham Firm in the representation prior to the application. However, a review of the time entries, together with consideration of Mr. Stidham's comments at the hearing, shows that the time expended on these items was reasonable considering the complexity, importance, and nature of the litigation.

The next objection of the United States is to the charge for time spent in travel that was billed to the Debtor, and also to the fact that the travel time was not identified separately but was grouped together with other billable activities. These time entries include several trips to Tampa from Bartow, and one trip to Atlanta. At the hearing on the objections, Mr. Stidham stated: "And at the hearing to approve my employment, there was quite a bit made of the fact that I was from Polk County...In any event, my employment was not limited – I believed at the time that I was hired, I should say, Judge, that I would be compensated for the time that I spend driving back and forth to my office..." (Transcript, page 7, lines 8-10, 17-20.) As noted in *In re Cano*, 122 B.R. 812, 814 (Bankr. N.D. Ga. 1991): "Non-bankruptcy attorneys typically bill their travel time at the full hourly rate because it precludes them from engaging in other billable professional work."

In evaluating the travel time, the Court believes that it is appropriate to consider the reasoning of the bankruptcy court in *In re Frontier Airlines, Inc.*, 74 B.R. 973, 979 (Bankr. D. Colo. 1987), and evaluate the question with regard to travel time not as to whether such time was productive,² but whether the it was reasonable and necessary, considering many factors.

The problem with focusing on all of these various factors is that, in the final analysis, while the time spent is a guide, it is only a guide and the fixing of professional fees remains an art and not a science. In the final analysis the Court ... must make a subjective evaluation of the reasonableness of the fees sought...

Id. at 979.

The Court has reviewed the time entries that involve travel. All travel to Tampa was for either conferences with opposing counsel or the client, to obtain information, or to attend hearings. Stidham's practice is in Bartow, and the Court determines that these trips were reasonable and necessary. Because of discovery disputes, the travel to Atlanta was not as productive for the Debtor as anticipated, but the Court nevertheless views the time and the trip as reasonable and necessary. Accordingly, the time entries by Mr. Stidham (even considering the less desirable format of such entries, with other billable activities and travel grouped together) that were objected to by the United States are determined to represent reasonable and necessary time spent on the Debtor's litigation matters.

The final objection by the United States is with regard to the lodging and food expense in Atlanta in the amount of \$420.16. The basis for the objection is that since the Debtor adjourned the depositions scheduled for May 6–7, 2004 in Atlanta, counsel's lodging and food expenses from that trip were not necessary expenses. This matter was undertaken on behalf of the Debtor and the expenses associated with this deposition are determined by the Court to be both reasonable and necessary.

² Of course, work done while traveling is compensable.

This initial fee application of special counsel was filed approximately 23 months after Mr. Stidham began working on the Debtor's litigation matters. Mr. Stidham has appeared before this Court and it is the impression of the Court that he has been diligent in his representation of the Debtor and in his dealings with the Court.

Therefore, the objections of the United States to the three issues that were not conceded by Mr. Stidham at the hearing are overruled. The Court finds that such time entries are reasonable compensation for actual, necessary services pursuant to 11 U.S.C. §330 (a)(1)(A), and that such food and lodging expense should be considered actual, necessary expenses pursuant to 11 U.S.C. §330 (a)(1)(B). By this determination, the Court does not condone either the grouping of multiple, discreet tasks into one time entry, or the routine billing of travel time. In addition, the parameters of nunc pro tunc representation of debtors by counsel should be set forth clearly at the time of approval of employment, and should occur only in rare circumstances. However, considering the circumstances in this case, and the work associated with the representation of the Debtor by the Stidham Firm, the Court approves total compensation of \$35,369.59, including \$33,722.50 in fees for actual, necessary services and \$1,647.09 in actual, necessary expenses.

Conclusion

Upon review of the record, and for the reasons stated above, the Court determines that the fees billed by the Stidham Firm are for actual and necessary services and that the expenses (with the exception of the parking tickets and late fees) are actual and necessary.

Accordingly:

IT IS ORDERED that

1. The United States of America's Objection, in Part, to Debtor's Application on Behalf of Jonathan Stidham, Esquire for Compensation is sustained in part, and overruled in part.

2. The objection to expenses of parking tickets and late fees in the amount of \$55.00 is sustained, and those expenses are disallowed.

3. The remaining objections as to time billed prior to approval of employment, time billed for travel, and food and lodging expenses are overruled.

4. Compensation to Jonathan Stidham and Stidham & Stidham, P.A. in the amount of \$35,369.59, including \$33,722.50 in fees and \$1,647.09 in expenses is hereby approved. Such compensation shall be paid within ten (10) days of the date this order is entered.

DATED this 1st day of April, 2005.

BY THE COURT

/s/ Paul M. Glenn

Paul M. Glenn

Chief Bankruptcy Judge