

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

In re:

Case No. 3:06-bk-2474-PMG  
Chapter 7

EZ PAY SERVICES, INC.,  
a/k/a EZ Pay Health Care,  
a/k/a EZ Pay Dental,  
a/k/a EZ Pay Medical,

Debtor.

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**ORDER ON MOTION FOR RECONSIDERATION,  
AND MOTION TO ALTER OR  
AMEND ORDER ALLOWING TRUSTEE TO PAY  
ADMINISTRATIVE EXPENSE CLAIM**

**THIS CASE** came before the Court for hearing to consider the Motion for Reconsideration, and Motion to Alter or Amend Order Allowing Trustee to Pay Administrative Expense Claim filed by "Debra Distler as CEO of the Debtor E-Z Pay Services, Inc., and individually."

On September 28, 2007, the Court entered an Order on Application by Trustee to be Allowed to Pay Administrative Expense Claim to Christopher L. Smoot dba Computer Information Services. (Doc. 549). In the Order, the Court authorized the Chapter 7 Trustee, Robert Altman, to pay Christopher L. Smoot (Smoot) the sum of \$70,000.00 as compensation for computer forensics services performed for the benefit of the bankruptcy estate.

In the Motion currently before the Court, Debra Distler (Distler) asks the Court to reconsider the Order. Generally, Distler appears to assert that the award of compensation is inappropriate because it is based on allegedly fraudulent transactions discovered by Smoot that have not been established in the record. Second, Distler appears to assert that the award is inappropriate because §503(b) of the Bankruptcy Code only authorizes administrative expense allowances for compensation that is in the nature of wages or salaries.

Distler did not enter an appearance at the hearing on her Motion for Reconsideration.

The Motion should be denied.

**The Order**

In the Order approving the Trustee's Application to Pay Smoot, the Court considered the requirements for allowance of administrative expenses under §503(b)(1) of the Bankruptcy Code. "In order for an expense to be allowed as an administrative claim, it must be actual and necessary to the preservation of the debtor's estate and must have been incurred in an effort to benefit the estate as a whole." Park National Bank v. University Centre Hotel, Inc., 2007 WL 604936, at 5 (N.D. Fla.).

In determining whether the requirements were satisfied in this case, the Court evaluated the services provided by Smoot, as established at an evidentiary hearing conducted on the Trustee's Application.

After considering the evidence, the Court first found that the services performed by Smoot were substantial. (Doc. 549, p. 6). Specifically, Smoot examined fourteen hard drives that had been used by the Debtor, and performed extensive recovery functions to retrieve information that had been deleted from the computers.

Second, the Court found that Smoot's services were necessary for the estate. (Doc. 549, p. 6). In other words, the information that Smoot retrieved from the hard drives was relevant to property of the estate, and enabled the Trustee to understand the Debtor's prepetition transactions.

Third, the Court found that Smoot's services provided a concrete benefit for the estate. (Doc. 549, p. 6). The Trustee testified that he had recovered approximately \$400,000.00 as a result of Smoot's services.

Finally, the Court found that the compensation requested for Smoot's services was reasonable. (Doc. 549, p. 7). In reaching the determination that the award was reasonable, the Court considered the hours devoted to the project by Smoot, the nature of the services, and the cost that would have been incurred to obtain comparable services from another source.

### **The Motion for Reconsideration**

As indicated above, Distler asserts that the award of compensation is inappropriate because it is based on allegedly fraudulent transactions discovered by Smoot that have not been established in the record.

The Order, of course, refers to the Trustee's testimony that Smoot's services had enabled him to trace certain funds that had been transferred from the estate before the bankruptcy petition was filed, and that the Trustee had recovered approximately \$400,000.00 as a result of the services performed by Smoot. (Doc. 549, pp. 3-4). The Trustee's testimony, which was not disputed at trial, was offered to show that Smoot's services had provided a concrete benefit to the estate, as required by §503(b).

The compensation awarded to Smoot, however, was not based on the existence or avoidability of any allegedly fraudulent transfers, and the Order contains no findings that any transfers were actually fraudulent or improper. Instead, as discussed above, the award was based solely on the Court's analysis of the computer forensics services performed by Smoot at the request of the Trustee.

Second, Distler asserts that the award is inappropriate because §503(b)(1) of the Bankruptcy Code only authorizes administrative expense allowances for compensation that is in the nature of wages or salaries.

Section 503(b)(1) provides in part:

**11 USC §503. Allowance of administrative expenses**

...

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including—

(1)(A) the actual, necessary costs and expenses of preserving the estate, including—

(i) wages, salaries, and commissions for services rendered after the commencement of the case.

11 U.S.C. §503(b)(1). For expenses to be allowed under §503(b)(1), they must be actual and necessary, and provide a concrete benefit to the debtor's estate. In re Subscription Television of Greater Atlanta, 789 F.2d 1530 (11<sup>th</sup> Cir. 1986).

Distler suggests that the expenses must also constitute wages or salaries. Pursuant to subsection (i) of §503(b)(1)(A), of course, actual and necessary costs of preserving the estate may include wages, salaries and commissions for services rendered after the commencement of the case. It is a fundamental rule of construction in bankruptcy cases, however, that the term "including" is not limiting. 11 U.S.C. §102(3)<sup>1</sup>; In re Hackney, 351 B.R. 179, 202-03 (Bankr. N.D. Ala. 2006). Consequently, while wages and salaries are illustrative of costs that may constitute actual and necessary expenses of the estate, the illustration is not intended to be exhaustive. Other compensation is also allowable as an administrative expense, as long as it otherwise satisfies the requirements of §503(b)(1).

### **Conclusion**

In conclusion, the Court should not reconsider or amend its award of compensation to Smoot. The award was appropriate based on the evidence presented at trial, and satisfies the requirements for allowance pursuant to §503(b)(1) of the Bankruptcy Code.

Accordingly:

**IT IS ORDERED** that the Motion for Reconsideration, and Motion to Alter or Amend Order Allowing Trustee to Pay Administrative Expense Claim filed by Debra Distler, is denied.

**DATED** this 14<sup>th</sup> day of December, 2007.

### **BY THE COURT**

/s/ Paul M. Glenn  
PAUL M. GLENN  
Chief Bankruptcy Judge

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<sup>1</sup> "(3) 'includes' and 'including' are not limiting;" 11 U.S.C. §102(3).