

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re)
)
PORT ORANGE BAR-B-Q, INC.) Case No. 6:09-bk-01403-KSJ
) Chapter 7
Debtor.)
)
_____)

ORDER PARTIALLY GRANTING TRUSTEE’S APPLICATION FOR COMPENSATION

The Chapter 7 trustee, Marie E. Henkel, has filed an Application for Compensation (Doc. No. 52). One of the unsecured creditors, Sysco Central Florida, Inc., objects (Doc. No. 53). After considering the circumstances and the parties’ argument, the Court will allow the trustee’s Application in the reduced amount of \$21,382 for fees and \$383.52 for expenses.

In the Application, the trustee requests fees totaling \$70,951.02 and expenses totaling \$383.52 relating to work she performed selling a piece of real property owned by the debtor which constituted substantially all of the bankruptcy estate’s assets. The trustee spent a total of 47.94 hours of work to complete the transaction. The trustee calculated her fee based on the maximum commission a bankruptcy court can award a trustee under § 326(a) of the Bankruptcy Code.¹ The trustee sold the property for \$1,542,033.92. After using those proceeds to pay existing mortgages and other liens and costs, the estate derived net proceeds in the amount of \$95,250. The trustee’s requested fee constitutes 74 percent of these net proceeds. Sysco asserts the requested fee is unreasonable and argues the fee should be calculated using the lodestar method instead of the commission method under § 326. This Court agrees.

Sections 326 and 330 of the Bankruptcy Code govern the award of fees to a bankruptcy trustee. Section 326(a) provides a Chapter 7 trustee is to receive “reasonable compensation”

¹ Unless otherwise stated, all references to the Bankruptcy Code refer to Title 11 of the United States Code.
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under § 330, which is not to exceed the commission percentages detailed in the statute.² Sections 330(a)(1)(A) and (B) provide that a bankruptcy court may award a trustee reasonable compensation for actual, necessary services rendered and reimbursement for actual, necessary expenses incurred. Though a court *may* award a Chapter 7 trustee fees in accordance with the commission percentages provided in § 326, such a commission is merely a ceiling and not an entitlement.³ A trustee's fee must be reasonable, though a court is to consider § 326 as part of its reasonableness inquiry.⁴ Accordingly, a court must examine all fees and costs and determine that the services performed and costs incurred are both actual and necessary. The Eleventh Circuit has adopted the lodestar method to determine reasonable fees by multiplying a reasonable hourly rate by the number of hours reasonably expended on the matter.⁵ After calculating the fee according to the lodestar method, a court may consider other factors to adjust the fee award upward or downward.⁶

Sysco has disputed the reasonableness of the trustee's requested fee. When determining the reasonableness, courts are instructed to: (1) determine the nature and extent of the services rendered; (2) determine the value of those services; and (3) consider the 12 factors laid out by the Fifth Circuit in *Johnson v. Georgia Highway Express, Inc.*⁷ The *Johnson* factors are:

- (1) the time and labor required;
- (2) the novelty and difficulty of the questions involved;
- (3) the skill requisite to perform the legal service properly;
- (4) the preclusion of other employment by the attorney due to acceptance of the case;
- (5) the customary fee;
- (6) whether the fee is fixed or contingent;
- (7) time limitations imposed by the client or the circumstances;

² A trustee's fee award is "not to exceed 25 percent on the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in excess of \$50,000, 5 percent on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest ...". 11 U.S.C. § 326(a).

³ *In re Mack Properties, Inc.*, 381 B.R. 793, 797-98 (Bankr. M.D. Fla. 2007).

⁴ *Id.* at 798.

⁵ *Norman v. Housing Authority of City of Montgomery*, 836 F.2d 1292, 1299 (11th Cir. 1988).

⁶ *In re Howell*, 226 B.R. 279, 281 (Bankr. M.D. Fla. 1998).

⁷ 488 F.2d 714 (5th Cir. 1974).

- (8) the amount involved and the results obtained;
- (9) the experience, reputation, and ability of the attorneys;
- (10) the “undesirability” of the case;
- (11) the nature and the length of the professional relationship with the client; and
- (12) awards in similar cases.

An examination of all these factors leads this Court to find the trustee’s requested fee should be granted in part, and her request for expenses should be granted in full. The Court finds it is reasonable to calculate the trustee’s award based on an hourly rate of \$300 and to adjust the fee upwards by \$7,000 because of the positive results the trustee secured for the bankruptcy estate.

The sale for which the trustee seeks compensation was a fairly standard transaction and does not merit the maximum commission under § 326. Granting the requested fee would give the trustee a windfall at the expense of unsecured creditors. The trustee sold a piece of real property containing a Sonny’s Bar-B-Q restaurant. The property was encumbered by two mortgages and several tax liens, but was not a terribly difficult sale to conclude, particularly with an interested purchaser willing to pay more than the outstanding encumbrances. No title problems existed. Nothing indicates the sale involved novel or complex issues, required an inordinate amount of time and labor, or precluded the trustee from doing other work. Indeed, she required less than 50 hours to complete the sale. This standard transaction merits a standard hourly rate for this kind of work. Taking into consideration hourly rates charged for similar work completed in similar cases, a \$300 hourly rate is reasonable for this transaction. According to the lodestar method, having performed 47.94 hours of work, the trustee is entitled to a fee totaling \$14,382.

The trustee, however, is entitled to an upward adjustment because of the favorable results she secured for the bankruptcy estate. When the trustee was first appointed to this case, the property was in foreclosure, and it appeared to be a no-asset case. By negotiating with mortgage holders and other creditors, she was able to avoid a foreclosure sale, which likely averted a significantly lower sales price. Instead, she located a buyer willing to pay cash and

secured a sales price approximating the property's assessed value. The trustee's efforts greatly benefited all creditors, including unsecured creditors like Sysco. She also performed much of the work without the assistance of additional counsel in order to keep fees low. The trustee should receive extra compensation for her efforts in stopping the foreclosure sale and locating a willing buyer. Accordingly, it is reasonable and appropriate to adjust the trustee's fee upwards by \$7,000. In total, the trustee is entitled to a fee in the amount of \$21,382. This fee is actual, necessary, and reasonable. Additionally, the trustee's expenses, which were mostly photocopying, postage, travel, and the cost of a bond, were actual, necessary, and reasonable.

Accordingly, it is

ORDERED:

1. Sysco's Objection (Doc. No. 53) is partially sustained.
2. The Application of Trustee for Compensation (Doc. No. 52) is allowed in the amount of \$21,382 for fees and in the amount of \$383.52 for expenses.

DONE AND ORDERED in Orlando, Florida, this 29th day of December, 2010.

A handwritten signature in black ink, appearing to read "Karen S. Jennemann" with a small "etc" or similar mark at the end.

KAREN S. JENNEMANN
United States Bankruptcy Judge

Copies furnished to:

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Trustee: Marie E. Henkel, 3560 S. Magnolia Ave., Orlando, FL 32806

Attorney for Trustee: Raymond J. Rotella, P.O. Box 113, Orlando, FL 32802

United States Trustee, 135 W. Central Blvd., Suite 620, Orlando, FL 32801

Creditor: Sysco Central Florida, Inc., c/o Stewart Cohen, 1510 E. Colonial Drive, Suite 305,
Orlando, FL 32803

All Creditors and Interested Parties