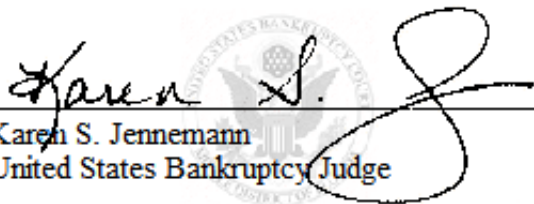


ORDERED.

Dated: November 18, 2021



Karen S. Jennemann
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

| | | |
|------------------------|---|----------------------------------|
| In re |) | |
| |) | |
| Don Karl Juravin, |) | Case No. 6:18-bk-06821-KSJ |
| |) | <i>Jointly Administered with</i> |
| Debtor. |) | Case No. 6:20-bk-01801-KSJ |
| |) | Chapter 7 |
| <hr/> | | |
| Don Karl Juravin, |) | Case No. 6:18-bk-06821-KSJ |
| |) | |
| Must Cure Obesity, Co. |) | Case No. 6:20-bk-01801-KSJ |
| |) | |
| Applicable Debtors. |) | |
| <hr/> | | |

**ORDER PARTIALLY APPROVING AND PARTIALLY DENYING
AMENDED APPLICATION EMPLOYING TRUSTEE’S COUNSEL**

On September 9, 2021, and October 13, 2021, the Trustee’s Counsel argued its Amended Application for Order Authorizing Employment of Winderweedle, Haines, Ward & Woodman, P.A. (“WHWW”) and Ryan Law Group, PLLC (the “Amended

Application”).¹ Later, the Trustee filed a Supplement to the Amended Application further modifying his request.² As explained in this opinion and to clarify the terms on which the Trustee’s lawyers are employed, the Court partially approves and partially denies the Amended Application.

Initial Retention of Professionals

Don Juravin (the “Debtor”) chose this bankruptcy forum when he filed a voluntary Chapter 7 petition on October 31, 2018 (“the Juravin Bankruptcy Case”).³ Dennis Kennedy is the appointed Chapter 7 Trustee (“Trustee Kennedy”). Knowing the Debtor operated a web of interconnected companies through which millions of dollars traveled, Trustee Kennedy initially hired WHWW as his general counsel under his Application for an Order Authorizing Employment of Attorney, *Nunc Pro Tunc*, to December 4, 2018 (the “Original Application”).⁴ WHWW agreed to compensation on an hourly basis at its standard billing rates, knowing the Court later would determine any compensation under § 330 of the Bankruptcy Code.⁵

Trustee Kennedy also hired forensic accountants, Yip Associates, to help him investigate the financial affairs of the Debtor.⁶ The accountants also worked on an

¹ Doc. No. 531. All “Doc. No.” citations refer to pleadings filed in Case No. 6:18-bk-06821-KSJ unless otherwise noted. WHWW also filed a Supplement to the Amended Application on November 5, 2021. Doc. No. 609.

² Doc. No. 609.

³ Doc. No. 1. On September 16, 2019, this case was converted to Chapter 11. Doc. No. 174. However, when the Debtor was unable to confirm a Plan of Reorganization, on March 16, 2020, the Court re-converted the case back to Chapter 7. Doc. No. 323.

⁴ Doc. No. 9.

⁵ Doc. No. 12. All references to the Bankruptcy Code refer to 11 U.S.C. § 101, *et. seq.*

⁶ Doc. No. 50. The Court approved Yip Associates’ retention on February 15, 2019. Doc. No. 53.

hourly basis at its standard billing rates accepting compensation as later determined by the Court under §§ 330 and 331 of the Bankruptcy Code.⁷

Later, in May 2020, Trustee Kennedy hired the Ryan Law Group, PLLC (“RLG”) as his special counsel on a 30% contingency fee basis of net proceeds recovered, plus costs. In the Application for Authority to Employ RLG (the “RLG Application”),⁸ Trustee Kennedy provided he wanted RLG to investigate the Debtor’s complex financial transactions and to recover assets.⁹ Trustee Kennedy opined WHWW would continue to assist him in administering the estate but “WHWW’s efforts will be significantly reduced to involvement in general case administration matters, the anticipated sale of personal property, and limited assistance to RLG in its recovery efforts.”¹⁰ With that understanding, RLG was retained under § 328 of the Bankruptcy Code, but the retention order also stated that compensation would be determined later under § 330.¹¹

As of March 31, 2021, Trustee Kennedy has recovered \$157,884.89.¹² WHWW and Yip Associates have received most of these amounts, \$90,257.19, which represents

⁷ Doc. No. 53.

⁸ Doc. No. 346.

⁹ Doc. No. 346.

¹⁰ Doc. No. 346.

¹¹ Doc. No. 379.

¹² Doc. No. 478.

50% of the amounts due to these professionals as of October 18, 2019.¹³ WHWW states that a balance of \$59,696.36 remains outstanding for fees through October 18, 2019.

Since October 18, 2019, Trustee Kennedy's professionals have incurred substantial additional fees. WHWW estimates approximately \$190,000 in fees and approximately \$1,136 in costs were incurred between October 19, 2019, and June 30, 2021. Likewise, RLG has incurred approximately \$256,000 in fees and \$12,335.70 in costs. RLG has been compensated by DCS Real Estate Investments, LLC ("DCS") on a reduced hourly rate basis. Without doubt, the bankruptcy estate is administratively insolvent unless Trustee Kennedy or his lawyers recover substantial assets.

To encourage these asset recovery efforts, a disgruntled creditor has offered to "front" some monies to Trustee Kennedy's lawyers to keep them going. Bella Collina Property Owners Association ("BCPOA") is a creditor of Juravin. DCS is the developer and owner of Bella Collina. BCPOA's claim includes the right to collect on behalf of DCS. Because DCS stands to benefit if Trustee Kennedy locates assets, it has paid RLG on a reduced hourly basis for its work since May 2020.

¹³ Doc. No. 405 and 432. After the Juravin Bankruptcy Case was converted to a Chapter 11, WHWW filed a Final Application for Compensation seeking an administrative expense claim in the amount of \$125,755.30 for fees and \$3,099.24 for expenses. Doc. No. 192. When the Court entered an Order Denying Confirmation of Debtor's Amended Chapter 11 Plan and Re-Converting this Case to a Chapter 7 Case (Doc. No. 317), that application was abated. WHWW states that a balance of \$59,696.36 remains for fees incurred by WHWW from December 4, 2018, through October 18, 2019. Doc. No. 531 at 4. After the Juravin Bankruptcy Case was converted to a Chapter 11, Yip Associates filed a First and Final Fee Application for Allowance and Payment of Compensation and Reimbursement of Expenses seeking compensation in the amount of \$48,064.50 and expenses in the amount of \$248.05. Doc. No. 201. When the Court entered an Order Denying Confirmation of Debtor's Amended Chapter 11 Plan and Re-Converting this Case to a Chapter 7 Case (Doc. No. 317), that application was abated.

To summarize, Trustee Kennedy has hired two law firms—WHWW to handle general administrative work on an hourly basis and RLG to find and recover assets on a 30% contingency fee basis. The monies collected total around \$150,000, and the outstanding unpaid legal fees exceed \$500,000, although DCS has paid RLG a portion of these fees subject to later reimbursement.

Proposed Modified Retention of Professionals

Under the Amended Application, Trustee Kennedy, WHWW, and RLG ask to modify how Trustee Kennedy’s lawyers are paid.¹⁴ They request approval of an increased 40% contingency fee to be split equally between WHWW and RLG.¹⁵ According to the modified agreement, RLG will continue receiving monthly payments from DCS on a reduced hourly rate basis.¹⁶ If RLG receives fees from this bankruptcy case, RLG shall reimburse DCS.¹⁷

WHWW will take a larger role in the asset recovery efforts and receive payment from DCS: nine monthly payments of \$15,000 for the months of May 2021 through January 2022 (“DCS Period”) totaling \$135,000 (“DCS Amounts”).¹⁸ If WHWW receives a fee award from the estate for fees incurred after May 1, 2021, WHWW will reimburse DCS on a percentage basis up to \$135,000. Otherwise, WHWW can retain any monies DCS paid to the law firm. And WHWW may file a separate application

¹⁴ Doc. No. 531.

¹⁵ Doc. No. 531.

¹⁶ Instead of being paid his hourly rate of \$550 per hour, DCS is paying James D. Ryan \$385 per hour.

¹⁷ If RLG is paid from the bankruptcy estate, it first shall reimburse itself for any unpaid costs, next reimburse DCS for monies it paid to RLG, and then take the balance into RLG’s accounts once DCS has been reimbursed. Doc. No. 531.

¹⁸ Doc. No. 531.

seeking payment of the fees totaling approximately \$250,000 incurred before June 30, 2021.

More recently, and after the hearing on the Amended Application, the Trustee filed a Supplement further explaining and limiting his request.¹⁹ Now, it appears Trustee Kennedy just wants to confirm his two lawyers—WHWW and RLG—are retained in both the Juravin case and in the jointly administered, affiliated case of Must Cure Obesity, Co.,²⁰ and that DCS has agreed to pay WHWW \$135,000 and RLG a reduced hourly rate, both subject to reimbursement later. Otherwise, it appears the parties are agreeable to the terms of the original retention with WHWW working on an hourly basis—albeit more actively than originally anticipated—and RLG working on a 30% contingency fee basis, but with both firms understanding that the Court ultimately will approve all legal fees after application and using the lodestar method.

Legal Standards

Section 327(a) of the Bankruptcy Code provides the procedure through which a trustee retains professionals, including counsel:

Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.²¹

¹⁹ Doc. No. 609.

²⁰ Voluntary Pet. Under Chapter 11, No. 6:20-bk-01801-KSJ (Bankr. M.D. Fla. Jan. 31, 2020) (the "MCO Bankruptcy Case"), Doc. No. 1. The MCO Bankruptcy Case was converted to a Chapter 7 case on May 29, 2020. Doc. No. 37. Trustee Kennedy serves as the Chapter 7 Trustee. Both cases are jointly administered by him. Doc. No. 45.

²¹ 11 U.S.C. § 327(a).

Section 328(a) expressly authorizes a trustee’s employment of a professional on a contingent fee basis.²² This section provides that a trustee, *with the court’s approval*, may employ a professional person under § 327 “on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, *or on a contingent fee basis.*”²³ Section 328(a) also provides that, “after the professional’s employment is concluded, the court may allow a different compensation than the terms of compensation approved in the employment agreement if such terms and conditions ‘prove to have been improvident in light of developments not capable of being anticipated at the time’ that they were fixed.”²⁴

Section 330 provides that the bankruptcy court “may award to . . . a professional person employed under section 327 or 1103—(A) reasonable compensation for actual, necessary services rendered by the . . . professional person, or attorney and by any paraprofessional person employed by any such person; and (B) reimbursement for actual, necessary expenses.”²⁵

The differences between §§ 328 and 330 affect the timing and process of the court’s review of fees. For instance, under § 328, the bankruptcy court reviews the fee at the time of the agreement and departs from the agreed fee only if some unanticipated circumstance makes the terms of that agreement unfair.²⁶

²² 11 U.S.C. § 328(a).

²³ 11 U.S.C. § 328(a) (emphasis added).

²⁴ *In re Fundamental Long Term Care, Inc.*, 626 B.R. 51, 57 (Bankr. M.D. Fla. 2021) (quoting 11 U.S.C. § 328(a)).

²⁵ 11 U.S.C. § 330(a)(1).

²⁶ *Miller Buckfire & Co., LLC v. Citation Corp. (In re Citation Corp.)*, 493 F.3d 1313, 1318 (11th Cir. 2007).

Bankruptcy courts have broad discretion on whether to approve the employment of a professional and to tailor the fees in the applications if the court is dissatisfied with the proposed terms.²⁷ “[A] Bankruptcy Court need not approve or reject an application as presented but may approve an application with modified terms that the Court finds necessary to render the proposed employment reasonable.”²⁸

Professionals representing a Chapter 7 Trustee bear a risk of non-payment whether their agreement calls for a contingency fee or compensation on an hourly basis. If Trustee Kennedy recovers no money, the professionals get nothing. And, even if they succeed, the Court still examines their work to value proper compensation using the lodestar method. And billing hours alone is not enough. The legal work must provide value to the bankruptcy estate. As many bankruptcy lawyers acknowledge, professionals bear all the risk with little hope of an “upside.”

²⁷ See, e.g., *In re Brooke Corp.*, No. 08-22786, 2013 WL 6782877, at *4 (Bankr. D. Kan. Dec. 20, 2013) (quoting *Mkt. Ctr. E. Retail Prop., Inc., v. Lurie (In re Mkt. Ctr. E. Retail Prop., Inc.)*, 730 F.3d 1239, 1249 (10th Cir. 2013)) (“A bankruptcy court has ‘wide discretion to authorize many types of fee arrangements’ for professionals whose employment is approved under § 327.”); *In re Energy Partners, Ltd.*, 409 B.R. 211, 232 (Bankr. S.D. Tex. 2009) (“[U]nder § 328(a), bankruptcy courts have the discretion to tailor the fees in the applications if the court is dissatisfied with the terms proposed in the applications.”); *Comm. of Equity Sec. Holders of Fed.-Mogul Corp. v. Off. Comm. of Unsecured Creditors (In re Fed. Mogul-Glob., Inc.)*, 348 F.3d 390, 397 (3d Cir. 2003) (“This language [of § 328(a)] may easily be interpreted to mean that the Court may approve the employment of a professional on any terms and conditions that the Court finds necessary to satisfy the requirement of reasonableness.”); *In re Red Rock Servs. Co., LLC*, No. 07-21572REF, 2012 WL 2930804, at *3 (Bankr. E.D. Pa. July 18, 2012) (recognizing that bankruptcy judges have “broad latitude . . . in evaluating, calculating, and granting fees for professionals”); see also *In re XO Commc’ns, Inc.*, 323 B.R. 330, 339 (Bankr. S.D.N.Y. 2005) (“A bankruptcy judge is accorded broad discretion when deciding to allow or disallow professional fees.”); *In re Citation Corp.*, 493 F.3d at 1317 (“As for a bankruptcy court’s allowance of professional fees and expenses, this Court reviews the decision for abuse of discretion.”); *Circle K Corp. v. Houlihan, Lokey, Howard & Zukin, Inc. (In re Circle K Corp.)*, 279 F.3d 669, 671 n.2 (9th Cir. 2002) (“[A] bankruptcy court is not compelled to accept a professional’s employment under § 328 merely because the application cites that statutory provision. The bankruptcy court is free to make clear that it is only conditionally approving the professional’s retention, such that § 330 is applicable.”).

²⁸ *In re Fed. Mogul-Glob.*, 348 F.3d at 398.

A year ago, Trustee Kennedy employed RLG on a 30% contingency basis.²⁹ He had negotiated the 30% contingent fee, rather than the traditional 40%, “in recognition of the fact that the estate has already incurred substantial expenses in investigating the Debtor’s financial affairs.”³⁰

He initially asked to increase the contingent fee percentage to 40% and then allow WHWW also to seek payment on an hourly basis for work performed before June 30, 2021. Trustee Kennedy, however, fails to explain a basis for this bifurcated retention proposal, which he acknowledges in his Supplement. He has articulated no reason to alter the basic terms of the retention agreement with WHWW and RLG: RLG is working on a 30% contingency basis; WHWW is working on an hourly basis; and both firms must seek court approval for any payment under § 330 of the Bankruptcy Code. To the extent Trustee Kennedy seeks to alter this arrangement, the Amended Application is denied.

Trustee Kennedy, however, has demonstrated some minor changes in the retention arrangement is justified. WHWW will have a more active role in asset recovery efforts. Given this extra work, DCS may advance WHWW up to \$135,000 for its efforts,³¹ subject to reimbursement if WHWW receives payment from the bankruptcy estate. Further, to correct a prior oversight, both WHWW and RLG may

²⁹ Doc. No. 346.

³⁰ Doc. No. 346.

³¹ WHWW immediately may take any monies paid by DCS into its firm accounts without further order or approval of the Court.

represent Trustee Kennedy in both the Juravin Bankruptcy Case and in the MCO Bankruptcy Case.

And this Court stresses that *ALL* compensation paid to WHWW and RLG is subject to Court approval and does not guarantee payment of any specific contingency percentage under § 328(a), any hourly rate, or any total compensation. The Original Application and the RLG Application were approved with orders providing the Court will determine compensation under § 330.

Accordingly, it is

ORDERED:

1. The Amended Application for Order Authorizing Employment of Winderweedle, Haines, Ward & Woodman, P.A., and Ryan Law Group, PLLC (Doc. No. 531) is **PARTIALLY DENIED** to the extent Trustee Kennedy seeks to increase the contingency fee percentage to 40% or alter the initial compensation arrangement between the bankruptcy estate and WHWW or RLG.

2. The Amended Application for Order Authorizing Employment of Winderweedle, Haines, Ward & Woodman, P.A., and Ryan Law Group, PLLC (Doc. No. 531) is **PARTIALLY GRANTED** to allow:

- a. Both WHWW and RLG are retained to represent Trustee Kennedy in the jointly administered MCO Bankruptcy Case and in the Juravin Bankruptcy Case.

- b. DCS may pay both RLG and WHWW for their recovery efforts subject to the reimbursement agreements if the law firms are paid from either of the bankruptcy estates.

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Attorney Brad Saxton will serve a copy of this order on interested non-CM/ECF users and file a proof of service within three (3) days of entry of this order.