ORDERED.

Dated: September 18, 2020

Karen S. Jennemann
United States Bankruptcy Judge

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

In re	)	
	)	
Andrew Bruce Migell,	)	Case No. 6:15-bk-10569-KSJ
	)	Chapter 7
Debtor.	)	
	)	

ORDER APPROVING TRUSTEE'S AMENDED FINAL FEE APPLICATION, OVERRULING DEBTOR'S OBJECTION, AND DENYING DEBTOR'S REQUEST FOR PRODUCTION OF DOCUMENTS

The law firm of Zimmerman, Kiser & Sutcliffe, P.A. ("ZKS") requests a final award of compensation for services rendered and expenses incurred ("Final Application")[1] as Attorney for the Chapter 7 Trustee, Richard B. Webber II ("Trustee") of $100,031.07.[2] Debtor objects to the Final Application contending ZKS' hourly rates are unreasonable and the number of hours billed is inflated.[3] Debtor's Objection is overruled; ZKS is awarded additional reasonable fees of

[1] Doc. No. 504. ZKS seeks the final award as an administrative priority expense.
[2] The Court previously approved $84,815 in fees and $4,636.34 in costs for services rendered and expenses incurred between August 25, 2016 and October 31, 2018 in the First Interim Fee Application. Doc. No. 460. Of those fees and costs, $36,636.34 have been paid to ZKS leaving a balance of $52,815. ZKS also seeks disbursement of the $52,815 in fees and costs that were held back. So, ZKS seeks final approval and payment of $100,031.07 (fees of $52,815 previously unpaid but approved, fees of $46,682 requested in the Amended Final Application, and costs of $534.07 requested in the Amended Final Application). The Court notes ZKS voluntarily reduced its fees by $1,207.50, as requested by the United States Trustee.
[3] Doc. No. 509. Trustee filed a Response in Opposition to Debtor's Objection. Doc. No. 510.

$46,682, costs of $534.07, and the withheld amount of $52,815 is approved for payment as an administrative claim of $100,031.07.

Section 330(a)(1) of the Bankruptcy Code allows the Court to award "reasonable compensation for actual, necessary services" rendered by attorneys and paraprofessionals employed by a trustee.[4] Bankruptcy Courts determine reasonableness of compensation under § 330 considering the "nature, the extent, and the value of such services, taking into account all relevant factors, including" those listed in § 330(a)(3).[5] These factors weigh into the court's lodestar analysis, which calculates the reasonable fee by multiplying the attorney's reasonable hourly rate by the number of hours reasonably expended.[6] A bankruptcy court can then adjust the lodestar calculation, upward or downward, after considering 12 factors laid out in *Johnson v. Georgia Highway Express, Inc.* and explaining how they affect the award.[7] Professionals, for example, must "exclude any excessive, unnecessary, or redundant hours from their fee applications."[8]

Debtor first argues ZKS' hourly rates are unreasonable and much higher than the market rate in the relevant community. Debtor conducted "personal research" and included a list of six attorneys in the Orlando area that charge hourly rates between $300-$400 to support his Objection. The Court finds ZKS' hourly rates in the Final Application are reasonable according to the market rate in the community. ZKS attorneys billed 113.1 hours at varying rates. Richard B. Webber II

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[4] 11 U.S.C. § 330(a)(1)(A). All references to the Bankruptcy Code refer to 11 U.S.C. § 101, *et. seq*.
[5] 11 U.S.C. § 330(a)(3)(A)-(F).
[6] *Grant v. George Schumann Tire & Battery Co.*, 908 F.2d 874, 879 (11th Cir. 1990).
[7] 488 F.2d 714 (5th Cir. 1974). The Johnson factors are: (1) The time and labor required; (2) the novelty and difficulty of the questions; (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; (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 length of the professional relationship with the client; and (12) awards in similar cases. Johnson, 488 F.2d at 717-19. Some of the Johnson factors overlap with the factors promulgated by § 330(a)(3).
[8] *In re Blue Stone Real Estate*, 487 B.R. 573, 577 (Bankr. M.D. Fla. 2013).

billed 30.5 hours at the highest billing rate ($525). But the other lawyers at ZKS billed at substantially lower hourly rates starting at $225 per hour. The blended hourly rate considering all work performed for all the lawyers at ZKS is $391 per hour. This fits exactly in the $300 - $400 hourly rate offered the Debtor. And, $400 per hour is routinely allowed to bankruptcy attorneys in the Orlando area. ZKS need not provide additional evidence to prove the reasonableness of its rates.

Debtor next argues ZKS billed an unreasonable and unnecessary amount of hours in connection with Trustee's Motion to Order Debtor to Post Bond on Appeal[9] ("Bond Motion") and the Interim[10] and Final Fee Applications of Zimmerman, Kiser & Sutcliffe as Attorney for Chapter 7 Trustee, Richard B. Webber II[11] (collectively the "Fee Applications"). ZKS billed 14.5 hours to perform various tasks related to the Bond Motion. ZKS distributed the work between five members of the law firm with hourly rates ranging between $175 and $525. The Court finds the attorney hours expended on the Bond Motion are reasonable and appropriate. The Trustee appropriately split the work between professionals with different experience levels to promote efficiency and cost effectiveness.

As to the time spent on ZKS' Fee Applications, ZKS billed 10.9 hours.[12] Debtor contends ZKS should get no compensation because the Fee Applications conferred no benefit to the estate. This issue has been squarely confronted by the United States Supreme Court. Section 330(a)(1) of the Bankruptcy Code allows the Court to award "reasonable compensation for actual, necessary services."[13] The term "services" imposes a significant qualification on a court's ability to award

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[9] Doc. No. 475.
[10] Doc. No. 419.
[11] Doc. Nos. 503 and 504.
[12] *See* Doc. No. 504. ZKS spent 5.8 hours preparing the Interim Fee Application, and 5.1 hours preparing the Final Fee Application.
[13] 11 U.S.C. § 330(a)(1)(A).

fees under § 330 only for "work done *in service of* the estate administrator."[14] A professional's preparation of a fee application is a service to the estate.[15] A detailed, itemized bill allows the parties to understand the fees incurred.[16] A professional's *defense* of a fee application, however, provides no similar benefit to the estate and may not be recovered.[17] So, a law firm may recover time spent on explaining its requested fees but not necessarily for defending its fees upon an objection.

Here, the Court finds ZKS's fees for time spent on the Fee Applications both reasonable and directly associated with explaining the work it did representing the Trustee in this litigious case. Every hour is justified. None of the fees involve defending the charges in the Fee Applications.[18] The Fee Applications benefitted the estate and are recoverable as reasonable compensation for services under § 330(a). The requested fees and costs totaling $100,031.07 are reasonable and approved for payment as an administrative expense.

Debtor has requested more documents from ZKS to further explain its fee request (the "Request for Production").[19] Trustee responded with a Motion for Protective Order[20] ("Protective Order") saying "enough is enough" and contending the Request for Production is overly broad, unduly burdensome, and harassing. The Court denies the Debtor's Request for Production and sustains Trustee's Protective Order. The documents and communications sought by the Debtor are irrelevant to any pending issue before the Court and will not assist the Court in determining the reasonableness of the Final Application.

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[14] *Baker Botts L.L.P. v. ASARCO*, 576 U.S. 121, 128 (2015).
[15] *Id.* at 131-32.
[16] *In re Stanton*, 559 B.R. 781, 784 (Bankr. M.D. Fla. 2016).
[17] *Id.*
[18] *See* Doc. No. 510, ¶ 6. ZKS acknowledges it may not be compensated for any additional attorneys' fees or expenses pertaining to the Final Fee Application.
[19] Doc. No. 508.
[20] Doc. No. 511.

The Court also questions the Debtor's standing to object to ZKS' fees.[21] The Trustee collected approximately $817,442.64, and has disbursed approximately $561,000, leaving $256,000 to pay ZKS $100,000 for its remaining fees and to pay unsecured creditors with claims exceeding $2.2 million a *pro rata* share of the $156,000 balance.[22] Debtor will *never* receive a distribution. No creditor has objected to ZKS's fees, and the Court cannot articulate a reasonable basis why ZKS should give the Debtor any additional information. They have worked hard enough, done a good job, and deserve to be paid.

Accordingly, it is

ORDERED:

1. Zimmerman, Kiser & Sutcliffe, P.A.'s Amended Final Application (Doc. No. 504) is **APPROVED** for a total award of $100,031.07.
2. Zimmerman, Kiser & Sutcliffe, P.A. is awarded $46,682 in fees and $534.07 in costs as an administrative priority expense under Section 503(b) and Section 507(a) of the Bankruptcy Code.
3. Zimmerman, Kiser & Sutcliffe, P.A. shall be paid $52,815 remaining from the First Interim Fee Application (Doc. No. 419).
4. The Trustee's Final Report (Doc. No. 505) is **APPROVED**.
5. Debtor's Objection to Amended Final Application (Doc. No. 509) is **OVERRULED.**
6. Debtor's Request for Production of Documents (Doc. No. 508) is **DENIED**.

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[21] The United States Bankruptcy Court for the Southern District of Florida has held that a debtor lacks standing to object to a fee application if it has no interest in the estate. *In re George*, 23 B.R. 686, 686 (Bankr. S.D. Fla. 1982). Further, a debtor may only object to claims of creditors where there will be a surplus after distribution, which provides debtor with a pecuniary interest in the estate. *In re Walker*, 356 B.R. 834, 848 (Bankr. S.D Fla. 2006).
[22] *See* Doc. No. 505.

7. Trustee's Motion for Protective Order (Doc. No. 511) is **SUSTAINED**. Neither the Trustee nor ZKS must supply any further information to the Debtor.

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Attorney, Richard B. Webber II, is directed to serve a copy of this order on interested parties who are non-CM/ECF users and file a proof of service within 3 days of entry of the order.