

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

In re:

IAN A. BUDHAN,

Debtor.

Case No. 6:09-bk-06106-ABB
Chapter 7

ORDER

This matter came before the Court for a status hearing on November 5, 2009 on the bankruptcy filings of the Debtor Ian A. Budhan (“Debtor”). The Chapter 7 Trustee Carla P. Musselman (“Trustee”) appeared at the hearing. An Order was entered on November 3, 2009 (Doc. No. 58) vacating the Discharge Order entered on September 2, 2009 (Doc. No. 33) due to the Debtor’s receipt of a discharge on September 5, 2001 in his previous bankruptcy case In re Ian A. Budhan, Case No. 01-11435-JSD, Chp. 7, filed in the United States Bankruptcy Court for the Southern District of Georgia. The Trustee has expended time and effort in administering the Debtor’s estate and seeks compensation.

The Debtor, *pro se*, filed a Chapter 7 petition on May 4, 2009 (“Petition Date”) and the Trustee was appointed. She conducted the 11 U.S.C. Section 341 meeting of creditors on June 10, 2009 and designated this case an asset case. She filed a Notice of Intent to Sell (Doc. No. 29) seeking to sell the Debtor’s non-exempt 2002 Cadillac Escalade to the Debtor for \$5,000.00. The Debtor filed an Amended Schedule C, an Emergency Motion to Stop the Auction, and a Motion to Convert the case to Chapter 13 (Doc. Nos. 34, 36, 37). The case was converted to Chapter 13 on September 15, 2009 (Doc. No. 40).

The Debtor withdrew the Amended Schedule C and filed a Motion to Reconvert the case to Chapter 7 (Doc. Nos. 49, 50). The case was reconverted to Chapter 7 by the Order entered on October 30, 2009 (Doc. No. 54). The Court reviewed this case *sua sponte* and issued the November 3, 2009 Order vacating the Debtor's discharge pursuant to 11 U.S.C. Section 727(a)(8) because the Debtor had been granted a discharge within eight years of the Petition Date.

The Trustee filed post-hearing an Application for Allowance of Trustee Fee and Reimbursement of Expenses (Doc. No. 64) setting forth she has collected \$840.01. Section 326 of the Bankruptcy Code allows compensation of \$210.00 based upon the statutory percentage calculation (25% of the first \$5,000.00 collected). The Trustee expended approximately 12.95 hours on this case valued at \$1,340.75, based upon her hourly Certified Public Accountant billing rate of \$160.00 and the paralegal rate of \$85.00. She has incurred out-of-pocket costs of \$48.88.

The issue for determination is whether the Court has authority to award the Trustee compensation for the time and effort she expended in administering the Debtor's estate. The Office of the United States Trustee has not appeared in this matter.

Analysis

The Debtor's filing of the Petition created an estate pursuant to 11 U.S.C. Section 541(a) and the Trustee was duly appointed. The Debtor, pursuant to Section 727(a)(8), was ineligible on the Petition Date to receive a discharge, but he was eligible to be a debtor pursuant to Section 109. His filing is not void *ab initio*. No challenge was made to the Debtor's bankruptcy filing pursuant to 11 U.S.C. Section 707(a) and the case proceeded forward. The Trustee carried out her statutory duties pursuant to Section 704. The Court erred in issuing the Discharge Order.

The Court is authorized to award the Trustee reasonable compensation for her services and expenses pursuant to the plain and unambiguous language of 11 U.S.C. Sections 326 and 330. Section 105 provides additional authority for awarding the Trustee compensation. It would be inequitable for the Trustee to remain uncompensated for her efforts. After consideration of the First Colonial and Johnson reasonableness factors¹, the reasonable compensation for services rendered by the Trustee is \$210.00. The actual, necessary costs incurred are \$48.88. The Trustee is due to be awarded \$258.88 pursuant to 11 U.S.C. Sections 326, 330, and 105.

Accordingly, it is

ORDERED, ADJUDGED AND DECREED that the Trustee Carla P. Musselman is hereby awarded compensation in the amount of \$210.00 and costs of \$48.88, for a total award of \$258.88, to be paid from the estate as an allowed administrative expense.

Dated this 21st day of December, 2009.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge

¹ The reasonableness of attorney's fees and costs is determined through an examination of the criteria enunciated by the Fifth Circuit Court of Appeals in In the Matter of First Colonial Corp. of Am., 544 F.2d 1291 (5th Cir. 1977) and Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974). The twelve 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; (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; (12) awards in similar cases. Johnson at 714.