

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:

Case No. 6:03-bk-02131-ABB
Chapter 7

PAUL LEVY and JOAN LEVY,

Debtors.

ORDER

This matter came before the Court on the Application for Allowance of Attorneys' Fees as Attorneys for Trustee and Reimbursement of Expenses (Doc. No. 98) (the "Application") submitted by the firm of Wolff, Hill, McFarlin & Herron, P.A. ("Applicant") counsel for George E. Mills, Jr., the Chapter 7 Trustee herein ("Trustee"). Applicant seeks an award of fees in the amount of \$35,128.50 plus an enhancement of \$70,257.00 and reimbursement of expenses of \$1,401.96. The United States Trustee ("UST") filed an Objection to the Application (Doc. No. 108) objecting to the fee enhancement request. A hearing on the Application was conducted on September 25, 2006 at which counsel for the UST, the Applicant, and the Trustee appeared. The Applicant presented Ladd Fascett, Esquire, as an expert testifying in support of the fee enhancement request. No other parties in interest filed objections to Applicant's fee request.¹ The Trustee supports the fee enhancement request.

Paul and Joan Levy, the Debtors herein (collectively, the "Debtors"), filed a joint voluntary Chapter 7 petition (Doc. No. 1) on March 3, 2003 with the assistance of counsel. Their original Schedules were filed on the petition date (Doc. No. 2) and Amended Schedules F, I, and J were filed on May 19, 2003 (Doc. No. 19). The case appeared to be a no asset case per the Summary of Schedules with total assets of \$574,925.00 and total liabilities of \$1,910,813.42 (Doc. 2). The Debtors' real property located in Indiatlantic, Florida was claimed fully exempt homestead property and

¹ However, creditor Premier Capital, LLC indicated by letter to the UST dated September 28, 2006 it intended to withdraw its Notice of No Objection to the Application (Doc. No. 112). Applicant filed a Notice of Withdrawal of Notice of No Objection on October 2, 2006 (Doc. No. 115).

their Melbourne, Florida property was listed fully encumbered by secured debt. Interests in various life insurance policies were listed with a \$0.00 value. Paul Levy died on February 2, 2004.

The Trustee sought authorization to employ Applicant to assist him with conducting an investigation of the case. The investigation was triggered by the Trustee's discovery of differences in assets listed by the Debtors in a financial statement and in their bankruptcy Schedules. Applicant's employment was authorized on June 4, 2004 (Doc. No. 27). The estate had no funds to pay Applicant for its time and expenses at the time Applicant was engaged and Applicant accepted the engagement with no guarantee it would be paid.

Applicant vigorously carried out an investigation of the Debtors and their family members. Mrs. Levy was not forthright regarding the insurance policies, contending to have little or no knowledge of the available benefits. Applicant discovered Mrs. Levy endorsed the benefits checks totaling more than \$900,000 to AXA Financial, Inc. in order to acquire an annuity contract for her benefit. Applicant successfully opposed the Debtors' attempt to dismiss this case (*see* Doc. No. 69).

Applicant instituted Adversary Proceeding No. 6:05-ap-00085-ABB against Joan Levy and AXA Financial, Inc. seeking revocation of Mrs. Levy's discharge and turnover of the cash values of the life insurance policies. The Adversary Proceeding went to trial and the parties settled the case post-trial. The settlement was approved (Doc. Nos. 83, 86). Applicant was instrumental in objecting to claims and each objection was sustained.² Applicant's efforts contributed to the recovery of \$567,343.04 and transformed a no asset case to an estate from which the unsecured creditors will receive a meaningful dividend.³

Applicant seeks a fee award of \$35,128.50 for approximately 126.5 hours and out-of-pocket costs of \$1,401.96. It seeks a fee enhancement of \$70,257.00. Applicant billed at the hourly rate of \$310.00 for partners, \$175.00 for associates, and \$90.00 for paraprofessionals for a blended hourly rate is \$277.70. The hourly rates were not

² The allowed claims include the IRS' priority unsecured claim of \$89,697.57 and general unsecured claims of \$772,529.91 (which includes the IRS' subordinated \$20,016.01 claim) (Doc. No. 101 at Exhibit C).

³ Trustee's Final Report at Form 1 (Doc. No. 101). Interest of \$1,290.46 was received for total monies received of \$568,637.59. If Applicant's fee request was fully granted, the dividend to unsecured creditors would be approximately 43%.

increased during the pendency of its employment. The total fees requested by Applicant represent 18.6% of the total recovery.

The reasonableness of attorney fees and costs is determined by an examination of the criteria enunciated in In the Matter of First Colonial Corp. of America⁴ and Johnson v. Georgia Highway Express, Inc.⁵ The fees sought by Applicant in the amount of \$35,128.50 are reasonable after consideration of the First Colonial and Johnson factors and all of the facts and circumstances of this case.

A compensation award made pursuant to the First Colonial and Johnson factors may be adjusted upward or downward, in exercise of the court's discretion, where "the fee applicant offers specific evidence to show that the quality of service rendered was superior to that one reasonably should expect in light of the hourly rates charged and that the success was 'exceptional.'" Blum v. Stenson, 465 U.S. 886, 900, 104 S. Ct. 1541, 79 L. Ed. 2d 991 (1984); see also Hensley v. Eckerhart, 461 U.S. 424, 435, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983); Norman v. Housing Auth. of Montgomery, 836 F.2d 1292, 1306 (11th Cir. 1988); In re Gencor Indus., Inc., 286 B.R. 170, 179 (Bankr. M.D. Fla. 2002) (holding "fee enhancements are allowed and should be encouraged where the attorney's

⁴ In the Matter of First Colonial Corp. of America, 544 F.2d 1291 (5th Cir.1977) stating:

In order to establish an objective basis for determining the amount of compensation that is reasonable for an attorney's services, and to make meaningful review of that determination possible on appeal, we held in Johnson v. Georgia Highway Express, Inc., 488 F.2d at 717-19, that a district court must consider the following twelve factors in awarding attorneys' fees

First Colonial at 1299.

⁵ Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974). The twelve 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; (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.

initiative, perseverance, and skill lead to an extraordinary success quickly, efficiently, and effectively." The applicant carries the burden of establishing an upward adjustment is appropriate. Blum v. Stenson, 465 U.S. at 901-02.

This has been a difficult case, particularly for a firm engaged essentially on a contingency basis. The case appeared to be a no asset case and the Applicant had no guarantee of payment of its fees and expenses. The Debtors were not forthcoming with their true financial standing and attempted to conceal substantial assets through convoluted transactions. Applicant took on a difficult case where payment of its fees was highly unlikely. The case involved unique facts and legal issues. Applicant employed a high level of skill and creativity in this case and its efforts produced extraordinary success efficiently and effectively. The quality of Applicant's services was superior and its results were exceptional. An entitlement to a fee enhancement has been established.

Applicant's efforts greatly enhanced the value of the estate and produced a sizable dividend for the unsecured creditors when none was expected. Applicant is entitled to a fee enhancement for the remarkable results it achieved. It is entitled to a fee enhancement award of \$54,000.00, for a total fee award of \$89,128.50 representing 15.7% of the total monies recovered. The costs of \$1,401.96 incurred by Applicant are reasonable.

Accordingly, it is

ORDERED, ADJUDGED AND DECREED that the Objection of the United States Trustee is **OVERRULED**; and it is further

ORDERED, ADJUDGED AND DECREED that Wolff, Hill, McFarlin & Herron, P.A. is awarded fees of \$35,128.50, plus a fee enhancement of \$54,000.00, plus \$1,401.96 in costs, for a total award of \$90,530.46; and it is further

ORDERED, ADJUDGED AND DECREED that the Trustee is authorized and directed to pay the award immediately upon this Order becoming a final order.

Dated this 13th day of November, 2006.

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

