

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

In Re

STEVEN GEORGE IWASA and
SUSAN JANETTE IWASA,

Debtors.

Case No. 02-01795-JDP
Chapter 7

MEMORANDUM OF DECISION

Appearances:

Joseph M. Meier, COSHO, HUMPHREY, Boise, Idaho, Attorney
for Lois Murphy.

Gary Rainsdon, Twin Falls, Idaho, Chapter 7 Trustee.

Dr. Ronald Carroll, Meridian, Idaho, Creditor.

Introduction

The Court must again decide whether a chapter 7 trustee's request for payment of the maximum compensation allowed by the Bankruptcy Code is reasonable.

On November 9, 2007, the Court conducted a hearing concerning the final compensation requests made by the chapter 7¹ trustee Gary Rainsdon, as well as the former chapter 7 trustee Lois Murphy, for their services rendered in the administration of this bankruptcy case. Docket Nos. 190; 198. Ms. Murphy personally appeared at the hearing, along with her counsel, Joseph Meier. Mr. Rainsdon appeared on his own behalf. Janine Reynard appeared as counsel for the U.S. Trustee. Dr. Ronald Carroll, a creditor in this case, also appeared. At his request, Dr. Carroll briefly examined Ms. Murphy. No other evidence or testimony was offered. All parties presented oral arguments. After due consideration of the record in this case, the testimony submitted at the hearing, and the arguments of the parties, the Court issues this Memorandum which constitutes the Court's findings of fact and conclusions of law, and disposes of the issues raised in this matter. Fed. R. Bankr. P. 7052, 9014.

Facts

Debtors Steven and Susan Iwasa filed a voluntary petition for relief under chapter 13 of the Bankruptcy Code on June 5, 2002. Docket No. 1. Because

¹ Unless otherwise indicated, all chapter, section, and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330 and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, in effect prior to the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), Pub. L. 109-8, 119 Stat. 23 (Apr. 20, 2005).

their unsecured debt exceeded the chapter 13 eligibility limits, Debtors moved to convert their case to chapter 11, a motion that was granted on July 24, 2002.

Docket Nos. 7; 17. Debtors' efforts to confirm a reorganization plan were unsuccessful. They attempted to dismiss the bankruptcy case, but several creditors, including Dr. Carroll, objected, and moved to convert the case to chapter 7. Docket No. 76. Debtors' motion to dismiss was denied on October 1, 2003, Docket No. 78, and creditors' motion to convert was granted on October 7, 2003. Docket No. 79. Ms. Murphy was appointed to serve as chapter 7 trustee on October 22, 2003. Her administration of the bankruptcy estate continued until March 23, 2007, at which time the U.S. Trustee appointed Mr. Rainsdon to serve as "successor trustee." Docket No. 179.²

There were only two significant assets in the chapter 7 case to be administered by the trustee: a grand piano, and Debtor's 50% interest in a company operating a care facility, C&I Properties, LLC. Ms. Murphy eventually sold the estate's interest in the piano to Debtors for \$9,000 in May, 2006. Docket

² The record does not reflect whether Ms. Murphy resigned her office in this case, or whether she was, effectively, removed by the U.S. Trustee. At the recent fee hearing, Ms. Murphy's counsel argued that this was "not your standard chapter 7 case." The precise meaning of counsel's statement is unclear, since in the Court's experience, asset chapter 7 cases all seem to vary markedly in the challenges and issues they present to the Court and trustee. However, it is highly unusual in this District for a chapter 7 trustee to be replaced prior to her conclusion of the administration of a case.

No. 111. The task of liquidating Debtors' interest in the closely-held corporation for the benefit of creditors proved more difficult. To assist her in this effort, Ms. Murphy hired accountants and attorneys. Docket Nos. 87; 90.

On June 4, 2004, Ms. Murphy, acting through her counsel, commenced an adversary proceeding against C&I Properties, LLC and various other individuals and entities. Adv. Proc. No. 04-6135. In this action, Ms. Murphy sought to avoid certain alleged transfers made by Debtors to the LLC and to the other individuals and entities listed in the complaint. According to Ms. Murphy, this legal maneuver was necessary to "bring closure to the sale" of Debtor's interest in the LLC to Dr. Carroll, the owner of the other 50% interest in the company. Affidavit of Lois Murphy at p. 4, Docket No. 198.

In April, 2005, after negotiations, and in an attempt to settle the litigation, Dr. Carroll offered to purchase Debtor's interest in the LLC for about \$100,000. Ms. Murphy sought approval of the compromise and sale, Docket No. 93, but Debtors objected. As a result of the objection, and after several hearings, Dr. Carroll and Debtors engaged in competitive bidding for the 50% LLC interest. Dr. Carroll was the high bidder, offering \$350,000 for Debtor's shares, plus an additional sum to cover the estate's tax liability up to \$323,000. See Docket No.

101.³ On June 30, 2006, the amount of the tax liability was fixed at about \$290,000, and the Court approved the final terms of sale to Dr. Carroll. Docket Nos. 134; 135.

Following the sale of Debtor's LLC interest, Ms. Murphy filed several objections to creditor claims. Docket Nos. 126-133. Most of these claims were disallowed without opposition. Docket Nos. 139-143. On March 6, 2007, Ms. Murphy filed her proposed final report and accounting. Docket No. 175. As noted above, on March 23, 2007, the U.S. Trustee appointed Mr. Rainsdon as successor trustee. Docket No. 179.

At the hearing, Mr. Rainsdon explained that when he was appointed to the case, the trustee's responsibilities had essentially been completed. However, given the complexity of this case, he felt compelled to review the case file and proceedings to date, the proofs of claim, and to consider other issues in the case as a matter of due diligence. In addition, during Mr. Rainsdon's tenure as trustee, a question arose regarding additional taxes allegedly due to the state of Oregon, which he addressed and resolved.

³ There was a difference of opinion between the trustee's and Dr. Carroll's accountants concerning the tax liability that would result from this sale. Ms. Murphy's accountants opined that the potential tax liability could be in excess of \$323,000; Dr. Carroll's accountant believed that the sale would generate a tax liability of less than \$135,000. The terms of the order approving the sale addressed the competing concerns.

Upon completing his review, Mr. Rainsdon filed his own final report and accounting on August 20, 2007. Docket No. 190. In it, he reports that all administrative and priority claims (primarily unpaid taxes) will be paid in full.⁴ In addition, unsecured claims will receive about \$.35 on the dollar for allowed claims. Mr. Rainsdon's report lists the total amount received by the estate as \$651,997.24, prior distributions of \$307,019.14, and a balance on hand of \$344,978.10.

In his final report, Mr. Rainsdon proposes to pay a total of \$35,756.83 to the trustees for compensation, which is the maximum amount allowed under § 326(a). Mr. Rainsdon requests only \$1,500. The proposal is to pay Ms. Murphy the balance of the compensation, *i.e.*, \$34,256.83.

⁴ Most of the taxes, of course, resulted from Ms. Murphy's sale of Debtors' interest in the LLC. In addition, several administrative expense claims had been approved by the Court and payments previously distributed, including the fees and expenses requested and approved by the Court for payment to Ms. Murphy's professionals. Her attorneys were paid \$10,426 in fees and \$325.12 in expenses, Docket No. 171; her accountants were awarded and received compensation of \$4,888. Docket No. 166.

After its initial review of Mr. Rainsdon's final accounting,⁵ the Court entered an order on September 19, 2007, directing both trustees to file detailed fee requests, and that those requests be the subject of a hearing before the Court at which evidence and argument could be offered by interested parties. Docket No. 195. As noted above, the hearing occurred on November 9, 2007, Docket No. 202, and the trustees' fee requests were taken under advisement.

Applicable Law

Determining the appropriate amount to be awarded by the Court to a chapter 7 trustee is not a new issue in this Court. Earlier this year, the Court discussed the applicable law in *In re Helsley*, Case No. 03-41411, 2007 WL 1087455 (Bankr. D. Idaho 2007). While the controlling legal rules have not changed, a brief reiteration is appropriate here.

⁵ No objections were filed in response to Mr. Rainsdon's notice to interested parties concerning his final accounting, proposed distributions, and trustee fee requests, although the U.S. Trustee filed a response, Docket No. 201, wherein it expressed concern over Ms. Murphy's request for \$184.40 in expenses. At the hearing, Ms. Murphy's counsel indicated that all expenses were contained within Ms. Murphy's request for fees, and that she was not seeking expenses in addition thereto, which resolved the U.S. Trustee's concern.

That there were no other substantive objections to the trustee's fee requests is of no moment. The Court has an independent obligation to review the reasonableness of any compensation requests even in the absence of objection. *In re Busy Beaver Bldg. Ctrs, Inc.*, 19 F.3d 833, 841 (3d Cir. 1994); *In re Pruitt*, 319 B.R. 636, 638 (Bankr. S.D. Cal. 2004). Dr. Carroll, while filing no written objections, voiced his opposition to Ms. Murphy's compensation requests at the hearing.

Bankruptcy Code §§ 326(a) and 330(a)(1) guide the bankruptcy court's determination of the amount of reasonable compensation to be awarded to a chapter 7 trustee. *Boldt v. United States Trustee (In re Jenkins)*, 130 F.3d 1335, 1337 (9th Cir. 1997); *Roderick v. Levy (In re Roderick Timber Co.)*, 185 B.R. 601, 605 n. 3 (9th Cir. BAP 1995); *In re Andona*, 00.2 I.B.C.R. 105, 105 (Bankr. D. Idaho 2000); *In re Mazon*, Case No. 05-42215, 2006 WL 3106708, (Bankr. D. Idaho 2006); *In re Mason*, Case No. 03-41192, 2006 WL 3714578 (Bankr. D. Idaho 2006).

Section 326(a) fixes the maximum compensation payable to a chapter 7 trustee in any particular case.⁶ The statute establishes a compensation

⁶ § 326 (a) provides: “In a case under chapter 7 or 11, the court may allow *reasonable compensation under section 330 of this title of the trustee for the trustee’s services*, payable after the trustee renders such services, *not to exceed 25 percent of 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, excluding the debtor, but including holders of secured claims.*” (Emphasis added).

§ 330(a)(1) provides: “After notice . . . , the court may award to a trustee . . . - (A) reasonable compensation for actual, necessary services rendered by the trustee . . . ; (B) reimbursement for actual, necessary expenses.

Fed. R. Bankr. P. 2016(a) provides: “An entity seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate shall file an application setting forth *a detailed statement of* (1) the services rendered, *time expended* and expenses incurred, and (2) the amounts requested. . . .” (Emphasis added).

cap, not an entitlement – under § 330(a)(1), the bankruptcy court must decide what amount of compensation is reasonable in each individual case. *Arnold v. Gill (In re Arnold)*, 252 B.R. 778, 788 n. 12 (9th Cir. BAP 2000); *In re Clampitt*, 92 I.B.C.R. 153, 154 (Bankr. D. Idaho 1992); *In re Mazon*, Case No. 05-42215, 2006 WL 3106708; *In re Mason*, Case No. 03-41192, 2006 WL 3714578; *In re Castro*, 320 B.R. 690, 693 (Bankr. S.D. Cal. 2005).⁷

In completing the task of determining a “reasonable” fee in a case, §§ 330(a)(3)(A)–(E) list the criteria the bankruptcy court shall consider. These factors include, among other things, the time spent by the trustee providing services; the necessity of the services; the rate charged for the services; and the complexity, importance and nature of the problems, issues or tasks addressed. Additional factors used in evaluating a trustee’s request for compensation closely resemble those used in evaluating attorney fee applications, which include the time and labor involved, the novelty and difficulty of the questions presented in the

⁷ Under BAPCPA’s new § 330(a)(7), Congress has instructed that “[i]n determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.” There has been considerable legal commentary concerning the impact of this addition to the Code. *See, e.g.,* Thomas R. Phinney, *Section 330(a)(7): B.A.P.C.P.A.’s Half Step Toward Treating Trustee’s Compensation as a Commission*, 28 Cal. Bankr. J. 508, (2006); Samuel K. Crocker and Robert H. Waldschmidt, *Impact of the 2005 Bankruptcy Amendments on Chapter 7 Trustees*, 79 Am. Bankr. L.J. 333, (2005). Because the new provision is inapplicable in this case, the Court expresses no opinion concerning its effect.

bankruptcy case, and the experience, reputation and ability of the professional. *In re Fin. Corp. of Am.*, 114 B.R. 221, 223 (9th Cir. BAP 1990), *aff'd* 945 F.2d 689 (9th Cir. 1991).

A trustee bears the burden of proving the reasonableness of the fees requested under § 330(a). *In re Roderick Timber Co.*, 185 B.R. at 606; *accord In re Evangelize Refining Co.*, 890 F.2d 1312, 1327 (5th Cir. 1989). A trustee's fee applications must conform to the requirements of Rule 2016(a). *In re Roderick Timber Co.*, 185 B.R. at 605; *In re Travel Headquarters, Inc.*, 140 B.R. 260, 261-62 (9th Cir. BAP 1992). In particular, under this Rule, the trustee's request for fees must contain a "detailed statement" of the services rendered and the time expended in doing so. As explained in *Roderick Timber*, "[i]t has long been the rule in this circuit that trustees have a duty to meticulously maintain accurate records of time expended on behalf of the estate." *Id.* at 605 (quoting *Matter of Beverly Crest Convalescent Hosp., Inc.*, 548 F.2d 817, 820 (9th Cir. 1976)).

"In obedience to the statute, in every case, a bankruptcy court should award only those fees that are proven to be actual, necessary and reasonable. Any lesser requirement would make the Trustee's burden of proof a mere shell." *In re Roderick Timber Co.*, 185 B.R. at 606. Because "there is tension between the Trustee's role as the representative of creditors on the one hand and, on the other

hand, his own self-interest in maximizing his compensation, beyond the mere *power* to review this fee application, the Court has a *duty* to scrutinize the application in the interest of protecting the integrity of the bankruptcy system.” *In re Pruitt*, 319 B.R. at 638 (citing *In re Busy Beaver Bldg. Ctrs, Inc.*, 19 F.3d at 841 (emphasis in original)). To effect the Code’s goal of allowing that amount of compensation to a trustee that is reasonable under the facts of each case, the Code provides in § 330(a)(2) that “the court may, on its own motion . . . award compensation that is less than the amount of compensation that is requested.”

Discussion and Analysis

While it was the trustees’ burden to prove the reasonableness of the fees they have requested, little helpful evidence or testimony to support their requests was offered at the hearing. The Court must review those requests based primarily upon the record, including the affidavits and itemizations of time and services presented by the trustees. In addition, the Court has also presided over this bankruptcy case and related adversary proceedings, and as a result, it may call upon its general familiarity with the issues and proceedings involved in disposing of the issues. *In re Coast Investors, Inc.*, 388 F.2d 622, 627 (9th Cir. 1968) (the appellate court gave due consideration to the lower court’s knowledge of the administration of the estate and its familiarity with the course of the proceedings in

fixing fees); *In re Rauch*, 110 B.R. 467, 474 (Bankr. E.D. Cal. 1990) (in deciding a trustee's fee, a bankruptcy court may rely on its review of the nature of the case and its familiarity with the trustee's performance of his fiduciary duties).

1. Mr. Rainsdon's Request

Mr. Rainsdon's affidavit and submissions suggest that he has expended (or will, by the conclusion of the case) a little more than 23 hours of time in rendering services in this case. His itemization shows, generally, those services consisted of reviewing the record and creditor claims, working with the Oregon taxing authority to resolve payment of its claim, and completing and filing his final report and accounting. He also estimates, reasonably in the Court's view, additional time and services will be required to disburse payments to creditors and, eventually, to cause this case to be closed.

While Mr. Rainsdon provides a minimal description of the various tasks performed for which he seeks compensation, as the Court understands this information, all such services would appear to be necessary, and the time spent performing these services appears realistic and reasonable. Based upon this showing, the Court's review of its docket and record, and its general familiarity with the proceedings in this case, the very modest amount of compensation

requested by Mr. Rainsdon (\$1,500.00) has been shown to be reasonable, and it will be approved.

2. Ms. Murphy's Request

Ms. Murphy requests compensation in the amount of \$34,256.83, the balance of the § 326(a) maximum that may be awarded in this case.⁸ Unlike Mr. Rainsdon's request, Ms. Murphy's application is, under the circumstances, by no means a modest one. As a result, the proof necessary to sustain such a significant fee award can not be found merely by looking at the docket, nor by reference to the Court's general familiarity with what took place during the pendency of this case. In short, to be awarded the amount requested, Ms. Murphy is obliged to prove this sum represents reasonable compensation by competent evidence. For the various reasons discussed below, she has not done so.

First, Ms. Murphy's affidavit, including her itemization of time and services, is not adequate to prove she should be paid over \$34,000 in fees in this case. The narrative portion of her affidavit, Docket No. 198, generally recounts the events of this case, but adds little of substance beyond that discussed above.

⁸ Ms. Murphy has discounted her request by the amount sought by Mr. Rainsdon to avoid any suggestion that compensation is being paid for duplicate services, something that is expressly prohibited by § 330(a)(4)(a)(i). No discount in her fee request has been made to compensate for the delay occasioned by her replacement as trustee, which amounted to about five months.

Ms. Murphy emphasizes the complexity of the legal and tax issues involved in this case, but acknowledges that in making her administrative decisions and plotting her course of action, she relied heavily upon the advice of her attorneys and accountants.

The itemization of time and services attached to the affidavit is disappointing. Ms. Murphy concedes in her affidavit that she did not keep complete, contemporaneous records of her activities, something that is apparent from even a cursory review of the time sheet. For the most part, the entries are too cryptic and nondescript to allow the Court to assess in any substantive fashion the nature and complexity of the services she provided. Indeed, the itemization is replete with generic, unenlightening entries, such as “TC with [attorney],” “Email to [attorney],” and “attend hearing.”

Most of the services that are described in the itemization reflect nonprofessional, and in some cases, clerical tasks. For example, Ms. Murphy itemizes time she spent “traveling” from place to place, mailing and filing pleadings, and “preparing” checks to pay her professionals. While all of these services are likely necessary, the simple nature of the tasks influences the Court’s decision regarding the amount of compensation to Ms. Murphy to perform them.

Most of the other services, as described, appear to be routine trustee-type services. For example, Ms. Murphy attended the § 341(a) creditors meeting, reviewed claims, and attended several court hearings (although the extent of her participation at those hearings is unclear). Because her itemization lacks detail, it is impossible for the Court to tell whether her performance of these tasks was complicated, or on the other hand, unremarkable. Ms. Murphy also prepared the applications to employ her professionals, objections to claims, a sale notice (presumably, referring to the date, for the piano), and her final accounting (which, as it turned out, was superceded by the final accounting prepared by Mr. Rainsdon). All these filings were necessary in a bankruptcy case. But it is again difficult to tell from Ms. Murphy's submissions whether these pleadings are any different than the "check-the box/fill-in-the-blank" standard forms used by trustees in most cases. In checking the record, it appears most are forms.

In addition to inadequacies in her description of services, the Court is skeptical that the time assigned in the itemization is accurate for some of the services. For example, in one entry for 9-20-04, Ms. Murphy lists 15 hours spent performing an "Analysis of strategy." The Court is concerned that perhaps this is an error, and she intended to only list 1.5 hours.⁹ Later in the itemization, she lists

⁹ In addition to this concern, the Court noticed several discrepancies between Ms. Murphy's itemization and those of her professionals. When comparing Ms. Murphy's

12 hours expended on “Multiple dates” spent purportedly “Review[ing] numerous estate bank statements during administration,” and another 8 hours (no particular date given) to “Prepare this itemization of time.” Ms. Murphy spent yet another 8 hours on 2-12-04 during which she “Reviewed more loan documents, etc.”

Ms. Murphy’s itemization shows considerable time working with her attorneys and accountants in this case, which she argues enhanced the funds available for the creditors. The Court accepts that Ms. Murphy worked competently with her professionals, and that such was necessary. But as near as the Court can tell, it was largely because of the efforts of those professionals, and not necessarily Ms. Murphy, that she was able to auction Debtors’ interest in the LLC. It would be inappropriate to compensate both Ms. Murphy and her professionals for doing the same thing: “persuading” Dr. Carroll to participate at an auction of the LLC interest.¹⁰

itemization to that of her attorney on events or activities in which both participated, such as telephone conferences, on several occasions, Ms. Murphy’s listed time was greater than that of her attorney. There are also several entries on Ms. Murphy’s sheet that simply do not appear in the time records kept by her attorney. While these and other discrepancies only amount to a 3 - 4 hour difference, they inform the Court in assessing the overall accuracy of Ms. Murphy’s time entries.

¹⁰ Indeed, had Debtors not objected to the sale as initially proposed, and offered to bid against Dr. Carroll, Ms. Murphy was willing to sell him Debtors’ interest in the LLC for about \$100,000, some \$250,000 less than the eventual sale price. Based on this record, the Court would conclude that any enhancement in the return to creditors by this development resulted from market forces, not trustee efforts.

At the hearing, Dr. Carroll reminded the Court that he made an early offer to privately purchase the bankruptcy estate's interest in the company, but that the eventual auction for the sale of that interest was not arranged by Ms. Murphy until years later. He complained about what he felt was a lack of diligence by Ms. Murphy in working to close the estate and pay creditors. While not all the events in the case are attributable to Ms. Murphy's deliberate approach to administering the assets, Dr. Carroll's observation has some validity. And so while Ms. Murphy points to the significant dividend to creditors as evidence she should receive the maximum fee, the return on claims in this case should be tempered by the length of time involved in administering the assets – about four years.

All things considered, Ms. Murphy has simply not submitted sufficient information and evidence to persuade the Court that her request for fees is a reasonable one. Even were the Court to resolve all doubts about the amounts of time she spent working on this case in her favor, and that all of the itemized time should be compensable, Ms. Murphy asks for fees at a rate in excess of \$200 per hour. This is more than double the rate which the Court has employed as an aid to measure and award trustee compensation in other recent cases in this

District. No credible showing has been made why this case deserves a significantly higher rate for the trustee than in those other matters.¹¹

In good conscience, the Court can not approve Ms. Murphy's requested fee. Instead, given the poor effort displayed in the time and services itemization, the lack of other evidence offered by Ms. Murphy to demonstrate this was an extraordinarily difficult case, the Court's independent review of the record, and its familiarity with the proceedings, in the exercise of its discretion, the Court determines that \$13,000 is a reasonable fee for Ms. Murphy's services in this case.

Conclusion

Mr. Rainsdon is directed to submit a proposed order approving his amended final accounting, and approving compensation for the trustees, consistent with this

¹¹ The Court spent considerable time with Ms. Murphy's counsel at the hearing imploring him to provide the Court with some viable alternative to consulting the "blended hourly rate" the Court has employed in other, similar cases, to gauge Ms. Murphy's compensation in this case. While Counsel insisted that applying an hourly rate was inadequate in this case, no reasoned means of calculating compensation in some other fashion was offered. To be sure, the Court has not exclusively relied upon a "lodestar" approach in fixing fees in this case. But Ms. Murphy has not shown why a lodestar computation should be irrelevant, either. The Court recently awarded trustee compensation in other cases at a rate of \$80-100 per hour. If Ms. Murphy spent 169 hours working on this case, these rates would yield a fee of between \$13,520 - \$16,900. Interestingly, if Mr. Rainsdon worked 23 hours in this case, and he seeks \$1,500 in fees, his hourly rate would be \$65.

Memorandum. Mr. Rainsdon's fee request of \$1,500 is approved; Ms. Murphy's request for compensation is approved in part, in the sum of \$13,000. Since these amounts are less than the compensation reflected in the prior notices sent to interested parties, and unsecured creditors will receive a larger distribution than as proposed by Mr. Rainsdon, no further notice to interested parties or hearing will be required prior to entry of the order. The U.S. Trustee and counsel for Ms. Murphy shall approve Mr. Rainsdon's proposed form of the order.

Dated: November 26, 2007



Honorable Jim D. Pappas
United States Bankruptcy Judge