

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

IN RE)	
)	
WBW, LLC)	Case No. 03-02387-TLM
)	
Debtor.)	SUMMARY ORDER
)	
_____)	

Before the Court are § 330 applications for compensation of Ringert Clark Chartered (“Counsel”), Doc. No. 260, and Fred S. Paul, CPA (“Accountant”), Doc. No. 263. These professionals were employed by WBW, LLC, as a chapter 11 debtor in possession. WBW, LLC, is now in a chapter 7 liquidation.

The applications came on for hearing on August 21, 2006. *See* Doc. No. 284 (minute entry). No objections were filed, and no one appeared at hearing in opposition. *Id.* However, the Court has the duty to independently examine the requests under § 330(a) even in the absence of objection. *In re Mahaffey*, 247 B.R. 823, 825 (Bankr. D. Mont. 2000); *Dale's Crane*, 99.1 I.B.C.R. 8 (Bankr. D. Idaho 1999) (citing *Lobel & Opera v. United States Trustee (In re Auto Parts Club, Inc.)*, 211 B.R. 29, 33 (9th Cir. BAP 1997)); *In re Schwandt*, 95 I.B.C.R. 268, 269 (Bankr. D. Idaho 1995).

The burden of establishing entitlement to compensation, and its

reasonableness, is on the applicants. *Dale's Crane*, 99.1 I.B.C.R. at 8; *Schwandt*, 95 I.B.C.R. at 268 (citing *In re Xebec*, 147 B.R. 518, 524 (9th Cir. BAP 1992)).

The Court may reduce or deny the applicants' compensation if the requirements of either the Code or case law are not met. *In re Fairview Med. Clinic*, No. 99-01288, 2000 WL 33712479 at *1; *see also Law Offices of Nicholas A. Franke v. Tiffany (In re Lewis)*, 113 F.3d 1040, 1045 (9th Cir. 1997).

Upon review of Counsel's and Accountant's current § 330 final fee applications (and their § 331 interim requests¹), and given the many errors and inaccuracies found in that initial review, the Court determines the applications will be denied, though without prejudice to correction, supplementation and renewed notice and hearing.

COUNSEL'S FEE APPLICATION

Counsel's applications, interim and final, request total allowance of compensation in the amount of approximately \$73,429.50 and total reimbursement of expenses of \$6,622.81. Counsel's application is inadequate, defective and/or improper for the following reasons.

- (1) The application lacks a chronological listing of services, which must be provided in addition to the "project based" reporting, in order that creditors,

¹ "Interim allowances may be adjusted, if appropriate, at the time the Court passes upon the professional's final application." *Fairview Med.*, 2000 WL 33712479 at *1 (citing *In re Stewart*, 157 B.R. 893, 895 (9th Cir. BAP 1993)).

the United States Trustee and, ultimately, the Court can reasonably review and evaluate it.

- (2) The application lacks a clear and detailed report of all financial transactions through Counsel's trust account, such as an invoice and payment summary, and lacks an accounting of the retainer held in trust and its application.
- (3) The "summary sheet" attached is facially incomplete. Among other things, it references only the second § 331 application, and not the first § 331 application in discussing fees that were previously requested and allowed.
- (4) Counsel includes and seeks compensation for time spent prior to the commencement of the chapter 11 case. This time is included in Counsel's itemized time entries and amounts to \$668.00 in fees. Such fees cannot be included in Counsel's fee request, nor can they be allowed. In fact, that such unpaid prebankruptcy claims exist, and the lack of prior disclosure of the same, raise serious questions about whether any compensation can be allowed because it creates prima facie lack of disinterestedness. *See, e.g., In re Larson*, 04.1 I.B.C.R. 20, 22 (Bankr. D. Idaho 2004).
- (5) The initial review unearthed duplicate expense entries in the § 330 application and the § 331 applications. The duplicate, and thus overstated, expense claims amount to \$2,247.22.
- (6) Services rendered after the conversion of the case to chapter 7 on March 9,

2006, are included in the application. These entries amount to \$3,196.00 in fees and \$1.20 in costs. Under *Lamie v. United States Trustee*, 540 U.S. 526 (2004), debtors' attorneys may not be allowed § 330 compensation in chapter 7 cases unless they are employed by the chapter 7 trustee and estate under § 327. Counsel was not. Such fees and expenses are prima facie disallowable.

There may well be other problems with the application. But these half-dozen are more than sufficient to establish a failure to comply with the Code, Rules and case law, and support summary denial.²

ACCOUNTANT'S FEE APPLICATION

Accountant's applications, interim and final, request total allowance of compensation in the amount of approximately \$26,800.00³ and total reimbursement of costs of \$165.31. Accountant's application is also inadequate for at least the following reasons.

(1) Accountant improperly "lumps" services.⁴ *See In re Haskew*, 01.2 I.B.C.R.

² Whether there are or will be other problems can be addressed at subsequent hearings because the Court will require full notice and hearing on any renewed applications.

³ The Court disallowed \$810.00 of that amount as unpaid pre-bankruptcy services. *See* Doc. No. 86 (minute entry). However, there was a math error in Counsel's proposed order, subtracting the \$810.00 from the \$19,166.19 originally requested results in an allowance of \$18,356.19. The Order, Doc. No. 90, which the Court entered without catching the error, allows \$18,556.19. Such error will need to be corrected in any final order allowing compensation.

⁴ *See, e.g.*, Doc. No. 82 at 8 (12.0 hours for an entry for "Adjust balance sheet accounts - (continued...))

62, 65 (Bankr. D. Idaho 2001); *In re Staggie*, 00.4 I.B.C.R. 203, 205 (Bankr. D. Idaho 2000). The absence of allocation of time to specific tasks makes it difficult to review the reasonableness of the time asserted, especially when such lumped entries consume a half to a full day of Accountant's time.

- (2) The applications include services such as pulling files from storage or retrieving them from elsewhere, copying, assembling, and mailing of documents. Such work is clerical in nature and noncompensable at professional rates. *See In re Castorena*, 270 B.R. 504, 516, 01.4 I.B.C.R. 153, 157-58 (Bankr. D. Idaho 2001).
- (3) The applications contain charges for work performed after the conversion of the case to a chapter 7 liquidation on March 9, 2006. *See* Doc. No. 263 at 8 (a lumped entry on 3/17/06 for 3.9 hours or \$390.00). The Court concludes that, as Accountant was not retained by the chapter 7 trustee or estate as a professional, the post-conversion services are presumptively non-compensable, and their allowance has not been adequately justified.

THEREFORE, IT IS HEREBY ORDERED that the "Final Request for

⁴(...continued)

loans per Pacific Coast documents. Adjust other balance sheet accounts to supporting documents. Conference with Mel [Heide]"); and at 10 (4.1 hours for entry for "Tel[ephone] conferences with Blair [Clark] and Mel [Heide]. Review files. Docs to Blair."). *See also* Doc. No. 263 at 7 (4.5 hours for a similar combined entry); at 8 (4.0 and 3.9 hours on similar combined entries).

Compensation by Attorneys for Debtor,” Doc. No. 260, and the “Request for Final Compensation by Accountants for Debtor,” Doc. No. 263, are DENIED without prejudice to renewal.

DATED: September 7, 2006



A handwritten signature in black ink, appearing to read "Terry L. Myers".

TERRY L. MYERS
CHIEF U. S. BANKRUPTCY JUDGE