

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

IN RE:)
)
JEFFERY J. LINSKY,)
)
)
DEBTOR.)

CASE NO. 00-34050 (LMW)
CHAPTER 7
Re: DOC I.D. NO. 38

**ORDER SCHEDULING SUPPLEMENTAL HEARING ON TRUSTEE'S
FINAL REPORT AND APPLICATION FOR COMPENSATION**

On April 5, 2005, the Trustee's Final Report and Application for Compensation (hereafter, the "Final Report"), Doc. I.D. No. 38, came before the Court for a hearing (hereafter, the "Hearing"). Included as Exhibit F to the Final Report was the Trustee's Application for Compensation and Expenses, dated December 1, 2004 (hereafter, the "Application").

Consistent with its previous written position, see, e.g., United States Trustee Statement to Application for Compensation, Doc. I.D. No. 39, the United States Trustee appeared at the Hearing and expressed support for the Trustee and her Final Report. The Debtor, appearing through counsel, orally interposed a "limited objection" "[taking exception] to one portion of the Final Report contained within Exhibit H, namely, the calculation of interest to the . . . unsecured creditors." (hereafter, the "Limited Objection"). Tr. 4/6/05 at 1:34:00. Counsel for the Debtor articulated no legal basis to support the Limited Objection, which, upon further review, appears to the Court to be without merit.

Nevertheless, upon examination of the Final Report and the files and records of this case it appears to the Court that, *inter alia*:

1. The Application may be based on an erroneous legal standard. Authorization for "compensation" of trustees is founded in Code Section 330; and this Court must first determine such "reasonable compensation" in accordance with the standards of that Code Section. Only after a determination of "reasonable compensation" under Section 330 do the statutory maximums of Code Section 326(a) become relevant. In stark contrast to this statutory mechanism, the Application represents that the compensation sought is "computed" "[p]ursuant to 11 U.S.C. § 326". No discussion of the standards, and/or the relevant factors of Section 330(a)(3), is provided.

2. The Application requests compensation in an amount which may be unreasonable; *e.g.*, the Trustee Time Sheet Report reflects 19.10 hours expended on the case as of December 1, 2004. Compensation in the amount requested (\$20,481.94) would therefore result in payment at a rate of approximately \$1072.35 per hour. At present, the record reflects no basis for compensation at a rate of that magnitude.

3. The Final Report and Application are confusing, and apparently erroneous in several respects. For example, Section I of the Application states that "[t]otal disbursements to parties in interest, *excluding the Debtor* . . . , are \$595,799.37" (emphasis supplied). Nonetheless, it is apparent to the Court that this figure includes a surplus amount proposed to be disbursed to the Debtor. By way of further example, the Notice of Hearing on Applications for Compensation and Expenses and Trustee's Final Report (Doc. I.D. No. 40), allegedly included in the Final Report as Exhibit I, states that "[c]laims of general unsecured creditors totaling \$ 291,628.80 have been allowed and will be paid" This is inconsistent with various other components of the Final Report which state that allowed general unsecured claims total \$32,166.47.

4. The United States Trustee's review may be wanting in this case. At the Hearing, the Assistant United States Trustee for Connecticut stated:

" . . . since we received no written objection I am not prepared to respond because it's the analysts and paralegals in our office who look over the calculations. Obviously, they didn't have a problem with the Final Report and distribution as [the Trustee] set forth. So, based on that I would have to support the Trustee."

Tr. 4/6/05 at 1:37:08. In this case, on the present record, it is difficult not to draw an inference that the Application was not subjected to meaningful supervisory legal review by Office of the United States Trustee, but only checked against the maximum compensation limits of Section 326(a).

The Court is of the view that in order to render a fully informed and proper determination in the instant matter, and to discharge its independent responsibility to review requests for compensation from this bankruptcy estate, it is appropriate to receive additional argument from the parties. Accordingly, upon the Court's own motion pursuant to, *inter alia*, Section 330(a)(2),

IT IS HEREBY ORDERED that a supplemental hearing to consider the Final Report and its Application will be held on Wednesday, April 27, 2005 at 10:00 AM at the United States Bankruptcy Court for the District of Connecticut, Connecticut Financial Center, 157 Church Street (18th Floor), New Haven, Connecticut, and

IT IS FURTHER ORDERED that for reasons of judicial economy and efficiency, the Final Report and its Application will continue to be considered and determined by the undersigned judge.¹

BY THE COURT

DATED: April 11, 2005


Albert S. Dabrowski *4/11/2005*
Chief United States Bankruptcy Judge

¹ The undersigned Judge's consideration, and continued consideration and determination of this matter, is (i) with the knowledge and consent of United States Bankruptcy Judge Lorraine Murphy Weil, who was, and continues to be unavailable to hear this matter, and (ii) by direction of the undersigned as Chief Judge.