UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

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| IN RE: | CHAPTER 7 |
| LADISLAUS P. KOLEJ and CHRISTINE L. KOLEJ, | CASE NO. 05-24287 (ASD) |
| DEBTORS | RE: ECF Nos. 41, 42 & 45[1] |

**BRIEF MEMORANDUM AND ORDER SUSTAINING TRUSTEE'S AND UNITED STATES TRUSTEE'S OBJECTION TO CLAIMS**

In the matter before the Court Thomas C. Boscarino, Esq., the duly appointed successor Chapter 7 Trustee (hereafter, the "Trustee"), and the United States Trustee, object to Proofs of Claim Nos. 6 and 7 (hereafter, collectively, the "POCs") filed by Attorney Stephen Sztaba, counsel for the Debtors, Ladislaus P. Kolej and Christine L. Kolej (hereafter, the "Debtors"). Through the POCs Attorney Sztaba seeks compensation in the amount of $3,187.00, as an administrative expense, for services rendered post-petition to recover $26,576.05 (hereafter, the "Recovery"), which he turned over to the Trustee for the benefit of the estate.

The matter before the Court involves the interplay of Sections 327, 330, and 503 of the Bankruptcy Code, the pertinent provisions of which are set forth hereinafter.

Section 503, "Allowance of administrative expenses," provides, in relevant part:

> (b) After notice and a hearing, there shall be allowed, administrative expenses . . ., including:
>
> . . .

[1] *Trustee's Objection* [*to Proof of Claim No. 6*], ECF No. 41, *Trustee's Objection* [*to Proof of Claim No. 7*], ECF No. 42, and *United States Trustee's Objection* [*to Proof of Claim Nos. 6 & 7], ECF No. 45 (hereafter, collectively, the "Objections").*

(2) compensation and reimbursement awarded under section 330(a) of this title;

Section 330, "Compensation of officers," provides, in relevant part:

(a) (1) After notice to the parties in interest and the United States Trustee and a hearing, . . .the court may award to . . .a professional person employed under section 327 . . . --

(A) reasonable compensation for actual, necessary services rendered by the . . . attorney . . .; and

(B) reimbursement for actual, necessary expenses.

Section 327, "Employment of professional persons," provides in relevant part:

(a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys . . . that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

On August 26, 2000, a hearing was held on the Objections. It is undisputed that the Trustee did not seek to employ, and the Court did not approve, Attorney Sztaba as an attorney to assist the Trustee in connection with the Recovery pursuant to §327(a). Nor does Attorney Sztaba seek an award of compensation pursuant to §330 which, the Supreme Court has held, by its clear language limits such compensation to attorneys or other professionals employed under §327.

[W]e hold that §330(a)(1) does not authorize compensation awards to debtors' attorneys from estate funds, unless they are employed as authorized by §327. If the attorney is to be paid from estate funds under §330(a)(1) in a Chapter 7 case, he must be employed by the trustee and approved by the court.

*Lamie v. U.S. Trustee*, 540 U.S. 526, 538-539, 124 S.Ct. 1023, 1032 (2004).

Accordingly, Attorney Sztaba's claims are not allowable as administrative expenses under §503(b)(2).

The requirements of §§327(a), 330(a)(1) and 503(b)(2) cannot be circumvented simply because Attorney Sztaba's seeks compensation by filing proofs of claim. The case law of the Second Circuit and elsewhere has long held that "11 U.S.C. § 330 establishes the exclusive means of allowing a claim for professional fees in a bankruptcy proceeding." *In re 5900 Associates, Inc.*, 468 F.3d 326, 328 (6th Cir. 2006).

> Moreover, a broker [or attorney] or other professional generally may not avoid the requirements of Sections 327 and 330 by seeking administrative expense allowance under Section 503(b)(1)(A) rather than Section 503(b)(2). *See In re F/S Airlease II, Inc. v. Simon*, 844 F.2d 99, 109 (3d Cir.1988) ("If [a broker] were able to be compensated under Section 503(b)(1)(A), it would render section 327(a) nugatory and would contravene Congress' intent in providing for prior approval [for the retention of professionals].").

*In re Keren Ltd. Partnership*, 189 F.3d 86, 88 (2d Cir. 1999).

Nor is the Court's analysis affected by the services having been provided after the bankruptcy case was closed and prior to its being reopened.

> To be sure, as the Bankruptcy Court correctly noted, compliance with section 327 is not possible while the estate is closed and the trustee discharged - a situation that *Lamie* did not directly address. . . .
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> . . .
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> Bankruptcy Rule 5010 on its face grants a debtor authority to move to reopen a case under section 350(b) "to administer assets, to accord relief to the debtor, or for other cause." [The Debtor], upon believing that his Cause of Action had value, could have applied to the Bankruptcy Court to reopen the case in order to provide the Trustee an opportunity to pursue or abandon the asset and to consider employment of the Debtor's attorney under section 327. For, even after a case is closed, an estate continues to retain its interest in unscheduled property. . . .
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> Instead of seeking to reopen his case, [the Debtor] unilaterally undertook to [proceed] . . . incurring . . . attorneys' fees . . . at a time when he could not have properly asserted the Cause of Action. His course of action necessarily deprived the Trustee of the opportunity to evaluate the Cause of Action to determine whether to ernploy an attorney or expert before expenses were incurred. . . . This course of action also deprived the Bankruptcy Court of its approval authority under section 327. Had [the Debtor] properly moved to reopen the case, the Supreme Court's holding in *Lamie* would have required him to seek Trustee and court approval prior to incurring the expense of his

> attorney and expert before such services could be considered an allowable administrative expense.

*Surrey Inv. Services, Inc. v. Smith*, 418 B.R. 140, 150 -151 (M.D.N.C. 2009) (denying compensation to debtor's attorney for pursuing an unscheduled cause of action after bankruptcy case was closed) (citations and internal quotation marks omitted).

In light of the above,

**IT IS HEREBY ORDERED** that the Objections of the Trustee and the United States Trustee, ECF Nos. 41, 42 & 45, are **SUSTAINED**, and

**IT IS FURTHER ORDERED** that the Proof of Claim Nos. Nos. 6 and 7, of Attorney Stephen Sztaba, are **DISALLOWED** in their entirety.

Dated: August 30, 2010 BY THE COURT

Albert S. Dabrowski
United States Bankruptcy Judge