UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

JOHN GORDON YOUNG and
GERALDINE J. YOUNG,

Debtors.
_____/

Case No. DG 06-06385
Chapter 13
Hon. Scott W. Dales

OPINION AND ORDER REGARDING
FEE APPLICATION

PRESENT: HONORABLE SCOTT W. DALES
United States Bankruptcy Judge

I. INTRODUCTION

From before the inception of this case in December 2006, through its near completion today, Chapter 13 Debtors John and Geraldine Young retained Roger G. Cotner, Esq., as their attorney. On October 1, 2007, the court approved Mr. Cotner's fees and expenses for $11,509.02. Nevertheless, on May 25, 2012, Mr. Cotner filed another Application for Additional Attorney Fees And/Or Recovery of Costs Advanced (the "Second Application," DN 159), through which he seeks allowance of $9,536.24 in additional attorney fees and costs for work performed during the more than four years since his first application. If the court were to approve the Second Application, Mr. Cotner would receive $21,045.44 in the course of this Chapter 13 case. The magnitude of this possible award, coupled with several legitimate criticisms of the Second

Application, prompted the Chapter 13 Trustee to seek disgorgement of fees already awarded[1] and oppose additional fees.

II. JURISDICTION

The court has jurisdiction over the Debtors' Chapter 13 case pursuant to 28 U.S.C. § 1334(a). The case and this contested matter have been referred to the United States Bankruptcy Court pursuant to 28 U.S.C. § 157(a) and LCivR 83.2(a) (W.D. Mich.). This contested matter is a core proceeding because it involves matters affecting the administration of the estate and allowance of an administrative claim against the estate. 28 U.S.C. § 157(b)(2)(A) and (B). The Supreme Court's recent decision in *Stern v. Marshall*, 131 S. Ct. 2594 (2011), involving a bankruptcy court's authority to enter final judgment on a claim by the estate, does not undermine the court's authority to resolve this dispute.

III. ANALYSIS

1. Legal Framework

Under 11 U.S.C. § 330(a)(4)(B), a court can award "reasonable compensation" to a Chapter 13 debtor's attorney for services based on "the benefit and necessity of such services to the debtor." "Reasonable compensation" is determined under the lodestar calculation, which is the product of multiplying an "attorney's reasonable hourly rate by the number of hours reasonably expended." *In re Boddy*, 950 F.2d 334, 337 (6th Cir. 1991). However, the lodestar amount is subject to adjustment. Courts have considered the following twelve factors, among others:

[1] The court denied the disgorgement request in a separate order signed on October 4, 2012.

1) The time and labor required;

2) The novelty and difficulty of the question;

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) The 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 attorney;

10) The "undesirability" of the case;

11) The nature and length of the professional relationship with the client;

12) Awards in similar cases.

Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-19 (5th Cir. 1974); *Reed v. Rhodes*, 179 F.3d 453 (6th Cir. 1999) (*citing Johnson* in non-bankruptcy context); *In re Copeland*, 154 B.R. 693, 698 (Bankr. W.D. Mich. 1993) ("the calculation of a reasonable fee need not be limited to determining a billing rate and number of hours").

In evaluating fee applications, the court is mindful that the bankruptcy process as a whole benefits when there is a "ready, willing and able cadre of professionals to make the system work." *Boyd v. Engman (In re Engman)*, 404 B.R. 467, 480 n.11 (W.D. Mich. 2009). "[P]rofessionals need to be intellectually and emotionally strong, as well as relentlessly practical." *Id.* For their part, bankruptcy courts must temper their vigilance in this area with a "healthy dose of practicality" to properly balance the interests of the parties in a particular case and the system as a whole. *Id.*, 404 B.R. at 487.

With these authorities in mind, the court turns to the fee application presently at issue.

2. The Merits of the Second Application

Mr. Cotner's hourly rate at different times during the covered period was either $180.00 or $200.00. The court regards these rates as reasonable given the marketplace and Mr. Cotner's experience.

With respect to the time spent on the Debtors' case, the court has carefully reviewed the Second Application and has divided the entries into three parts. For convenience, the court will not itemize these entries that it intends to approve, but will identify those entries warranting reduction or disallowance.

First, many entries appear well taken, sufficiently documented, and compensable. They involve routine communications with the clients regarding issues that naturally arise during the course of a Chapter 13 plan, such as those touching on employment, taxes, and controversies with creditors holding long-term claims, such as Wells Fargo. The court sees no need to disturb, or specifically identify, these entries.

Second, some entries reflect work that Mr. Cotner performed, at an attorney's rate, that ought to have been performed by, or at least charged as if it had been performed by, a paralegal at a lower rate. *In re Stover*, 439 B.R. 683 (Bankr. W.D. Mich. 2010). For example, the court does not regard an attorney's rate as reasonable for tasks that amount to simply monitoring the docket and calendaring response dates. The following table summarizes the reductions in this regard:

Slip ID	Description	Fee Billed	Fee Allowed	Reduction
69326	Review, save notice of claim transfer	$18.00	$8.50	$9.50
72146	Review, save notice of claim transfer	$18.00	$8.50	$9.50
87437	Book follow up date for QWR acknowledgment	$18.00	$8.50	$9.50
98157	Book 1/10/11 response date re trustee's motion to dismiss	$20.00	$8.50	$11.50
Total				**$40.00**

Third, given the patent futility of the Motion for Entry of Discharge (the "Discharge Motion," DN 143), the court regards numerous items within the Second Application as not compensable. Whether viewed at the time the services were rendered, when the court entered the order denying the Discharge Motion, or now when reviewing Mr. Cotner's time entries, the court regards the effort to excuse the Debtors from remitting all disposable income (upon payment of the 5% target dividend) as doomed from the start. In short, as the court previously stated, this recent litigation was inconsistent with the binding effect of their Plan and, more generally, the temporal nature of the disposable income requirement. The Discharge Motion promised no realistic benefit to the Debtors or the estate. 11 U.S.C. § 330(a)(3)(C). Mr. Cotner's interpretation of the Debtors' Plan was farfetched, self-serving, not supported by authority, and ultimately burdensome to the Trustee and the estate he represents. The court cannot in good conscience require the creditors, or even the Debtors, to bear the cost of Mr. Cotner's quixotic efforts to obtain a discharge prematurely. Therefore the entries related to the Discharge Motion, as set forth in a footnote,[2] require the court to reduce Mr. Cotner's fees by $4,657.00. In addition, there is one entry for which Mr. Cotner's description is incomplete (98155), which requires an additional reduction of $140.00.

[2] 108315, 108559, 108565, 108566, 109284, 109300, 109123, 109206, 109213, 109216, 109223, 109225, 109677, 109712, 109740, 109747, 109785, 109786, 109787, 109841, 109845, and 109855.

To summarize, the court will allow fees in a reduced amount calculated as follows:

Category	Reduction
Fees Requested	$8,297.00
Inappropriate Staffing	-$40.00
Not Adequately Described	-$140.00
Not necessary or beneficial	-$4,657.00
Total Allowed	**$3,460.00**

3. Expenses

Many of the expenses itemized in Exhibit C to the Second Application appear reasonable and necessary, but the court will disallow the expenses related to the Discharge Motion for the same reason it will not allow the fees. The court determines this reduction to be $120.40. Accordingly, the court will allow expenses in the amount of $318.84.

IV. CONCLUSION

The reductions described in this Opinion and Order will likely visit a hardship upon Mr. Cotner who evidently believed he was serving his clients in seeking a discharge and relieving them of the burden of remitting all of their disposable income during their Plan term. The court normally hesitates to disallow fees incurred in prosecuting unsuccessful motions, since failure is part of the price we pay for progress in the development of the law. However, Mr. Cotner had a duty to advise his clients that they were obligated to remit their disposable income as their Plan plainly required, and he is not at liberty to impose the costs of his contrary advice upon the Debtors or their creditors.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Second Application (DN 159) is GRANTED IN PART AND DENIED IN PART.

IT IS FURTHER ORDERED that the fees in the amount of $3,460.00 and expenses in the amount of $318.84 are APPROVED.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Opinion and Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon John Gordon Young and Geraldine J. Young, Roger G. Cotner, Esq., Brett N. Rodgers, Esq., and all parties listed on the Debtors' mailing matrix.

END OF ORDER

IT IS SO ORDERED.

Dated October 9, 2012

Scott W. Dales
United States Bankruptcy Judge