

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

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In re:

PHILLIP BERKOMPAS,

Debtor.

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Case No. DL 17-01664

Chapter 13

Hon. Scott W. Dales

ORDER

PRESENT: HONORABLE SCOTT W. DALES  
Chief United States Bankruptcy Judge

On February 27, 2019, the court held a hearing to consider the objection of chapter 13 trustee Barbara P. Foley (the “Trustee”) to the Application for Additional Attorney Fees and/or Recovery of Costs Advanced (ECF No. 125, the “Fee Application”), filed by Chase Bylenga Hulst, PLLC. Through the Fee Application debtor’s counsel seeks approval of additional fees of \$6,725.00 and costs of \$181.47, beyond the substantial awards previously approved in this admittedly complicated business case. The Trustee and counsel for the debtor appeared at the hearing in Lansing, Michigan. Neither requested an evidentiary hearing, agreeing to resolve the dispute on the papers and arguments of counsel.

The Trustee raises three arguments. First, she objects to Mr. Hanrahan’s hourly rate (\$250.00), given the presumptive hourly rate applicable under LBR 2016-2 and the court’s Memorandum Regarding Allowance of Compensation and Reimbursement of Expenses for Court-Appointed Professionals (\$220.00 for counsel not certified by the American Bankruptcy Institute). Second, the Trustee objects to the expense that Mr. Hanrahan incurred in travelling to and from Lansing from his office in Grand Rapids, again given the hourly rate. Third, the Trustee insists that any order approving the Fee Application must protect the minimum distribution (\$44,259.00 liquidation value) promised to creditors under the confirmed plan. It is worth noting that the Trustee takes no issue with the hours spent in the debtor’s service, only the rates and issues described above.

For the reasons set forth on the record and in this Order, the court approves the higher hourly rate for Mr. Hanrahan, given his experience and involvement in continuing legal education, which the court has observed extrajudicially. Moreover, the court’s experience with Mr. Hanrahan over the last several years in other cases, as he progressed from associate to partner at his firm and achieved good results for his clients along the way, leaves no doubt that \$250.00 is a reasonable hourly rate for him. In making this decision, the court is particularly

mindful of the statute's admonition that, in evaluating fees of bankruptcy counsel, it must consider "customary compensation charged by comparably skilled practitioners in cases other than cases under this title." 11 U.S.C. § 330(a)(3)(F). The point of this provision is to attract capable attorneys, like Mr. Hanrahan, to serve as counsel in cases under title 11.

On the Trustee's second point, the court agrees that it must make an adjustment for the travel time. Debtors are certainly free to select counsel of their choice, but they are not necessarily at liberty to visit all of the consequences of that choice on their creditors. *Cf. In re Stover*, 439 B.R. 683, 688 (Bankr. W.D. Mich. 2010) ("When, however, the clients' bankruptcy estate and creditors must bear the brunt of the staffing decisions, the court is obligated as a matter of statute to intercede by disallowing the fees or retroactively reducing the rate to reflect appropriate staffing levels, regardless of whether the client might demand to speak only with particular higher-rate attorneys.").

Here, while it is perfectly acceptable for a lawyer from Grand Rapids to represent a debtor from Charlotte with a case in Lansing, it is also acceptable, in the court's view, to mitigate the impact of that representation on creditors under §§ 330(a)(4) and 503(b)(2). Accordingly, the court will reduce the fees requested by one hour (half the travel time on May 3, 2018).

Regarding the Trustee's third point -- that the approval of the Fee Application should not be construed to reduce the distribution below the floor prescribed in the plan -- there is no controversy. The court agreed to include a provision in the order granting the Fee Application.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Fee Application is GRANTED in part and DENIED in part, and counsel may recover under § 330(a)(4) the sum of \$6,475.00 in fees and \$181.47 in costs.

IT IS FURTHER ORDERED that nothing in this Order shall be construed to reduce the funds available to unsecured creditors below the liquidation value prescribed in the plan, even if this means that counsel fees remain unpaid to some extent.

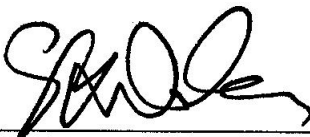
IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Phillip Berkompas, Michael Patrick Hanrahan, Esq., Barbara P. Foley, Esq., and the United States Trustee (by U.S. Mail).

END OF ORDER

**IT IS SO ORDERED.**

Dated March 1, 2019



  
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Scott W. Dales  
United States Bankruptcy Judge