

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:) Chapter 11
)
PENN SPECIALTY CHEMICALS,)
INC.,) Case No. 01-2254 (MFW)
)
Debtor.)
)

MEMORANDUM OPINION¹

This matter is before the Court on the Application of Parente Randolph, LLC ("the Accountants"), for compensation for services rendered and reimbursement of expenses as Consultants and Accountants to Penn Specialty Chemical, Inc. ("the Debtor") for the period from July 9, 2001, through September 30, 2001, and the Objection thereto of the United States Trustee's Office ("the UST"). For the reasons set forth below, we grant the application in a reduced amount.

I. FACTUAL BACKGROUND

The Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code on July 9, 2001. On that same date, the Debtor filed an application to retain the Accountants to perform accounting and consulting services. After notice and a hearing, that application was granted on August 15, 2001. In the interim, the Debtor sought the Accountants' assistance, inter alia, in the

¹ This Opinion constitutes the findings of fact and conclusions of law of the Court pursuant to Federal Rule of Bankruptcy Procedure 7052, made applicable to contested matters by Rule 9014.

negotiation of DIP financing, preparation of and testimony concerning the Debtor's cash collateral budgets, preparation of its Schedules and Statement of Financial Affairs (collectively "the Schedules"), and preparation of the Debtor's tax returns for the fiscal year ended June 30, 2001.

On October 26, 2001, the Accountants filed their first fee application seeking fees in the amount of \$74,324.35 and expenses in the amount of \$2,893.73 for the period from July 9 to September 30, 2001. The UST filed an Objection to that fee application questioning the necessity or reasonableness of the fees requested. Specifically, the UST asserted the fees were excessive because the Accountants spent 280.3 hours and \$48,665.05 in fees in preparing the Debtor's Schedules. Given that the case involved only one debtor and was not complicated, the UST questioned the reasonableness of the fees.

A hearing on the fee application was held on January 10, 2002, at which time Howard Cohen testified in support of the application. Mr. Cohen testified that the Schedules had taken so much of his firm's time in preparation because the Debtor's record keeping system was not compatible with the e-filing requirements of the Court or with the computer software which his firm had and that, consequently, it was necessary for his staff to manually input the data necessary for the Schedules. Because of the deadline for filing the Schedules and the Debtor's

attention to other more pressing matters, his staff performed this function.

After consideration of the testimony and arguments of the parties, we entered an Order on March 6, 2001, sustaining in part the UST objection and allowing the fee application in a reduced amount. Specifically, our Order disallowed fees of \$20,635.05 for preparation of the Schedules because such services were clerical in nature only; we allowed fees for preparation of the Schedules at the rate of \$100/hour for the entire 280.3 hours expended.

The Accountants filed a Motion for reconsideration of the Order to the extent it disallowed fees, asserting that the UST had not objected on the grounds on which the fees were disallowed and, therefore, it had not been prepared to present testimony on this point. It sought reconsideration to permit it to offer expert testimony on the issue of whether the preparation of the Debtor's Schedules was clerical in nature. On April 24, 2002, we granted the Motion for reconsideration and on May 23, 2002, a hearing was held on the fee request.

II. JURISDICTION

This Court has jurisdiction over this matter as a core proceeding pursuant to 28 U.S.C. § 1334 and 157(b)(2)(A), (B), and (O).

III. DISCUSSION

Even in the absence of any objection, the Court has the power, and the duty, to review all fee requests to determine their allowability. See, e.g., In re Busy Beaver Bldg. Ctrs., Inc., 19 F.3d 833, 840-44 (3d Cir. 1994). In this regard, the Third Circuit has stated:

Disagreeable as the chore may be, the bankruptcy court must protect the estate, lest overreaching attorneys or other professionals drain it of wealth which by right should inure to the benefit of unsecured creditors. . . .

That said, we deem it necessary at this juncture to restate in this context what we have stressed in another: that we

do not intend that a district [or bankruptcy] court, in setting an attorney's fee, become enmeshed in a meticulous analysis of every detailed facet of the professional representation. It . . . is not our intention that the inquiry into the adequacy of the fee assume massive proportions, perhaps even dwarfing the case in chief.

. . . Because its time is precious, the reviewing court need only correct reasonably discernible abuses, not pin down to the nearest dollar the precise fee to which the professional is ideally entitled.

Id. at 844-45 (citations omitted).

The Busy Beaver case dealt with an issue similar to the one before this Court. In Busy Beaver, the Bankruptcy Court had disallowed certain fees requested for paralegal time spent on tasks which the Court determined were clerical in nature and did

not involve the exercise of professional judgment. Id. at 839. The Third Circuit rejected a per se rule which would disallow clerical, non-professional services, holding that instead "the statute plainly specifies that the type of service performed by a paralegal (including whether it is clerical) affects the rate of compensation, not compensability vel non." Id. at 849.

It was on that basis that we initially reduced the compensation sought by the Accountants for the preparation of the Debtor's Schedules. We concluded that the input of data for preparation of the Schedules, which Mr. Cohen had testified was the reason for the excessive time spent on that task, was clerical in nature and did not require any exercise of professional judgment.

At the second hearing on consideration of their fee application, the Accountants presented two witnesses, a factual witness and an expert. The UST objected to presentation of a fact witness, asserting that in support of its Motion for reconsideration, the Accountants had requested only the opportunity to present expert testimony in support of its application. We reserved ruling on the Motion until we had an opportunity to review the transcript of that hearing. After such review, we conclude that the Accountants did not restrict themselves to presentation of expert testimony and, consequently, overrule the UST's objection on this point. Further, the Third Circuit has held that fee applicants are entitled to a hearing to

present additional evidence if the Court disallows fees. Busy Beaver, 19 F.3d at 846 ("if the court does disallow fees of a 'good faith applicant,' the Code . . . and perhaps even the dictates of due process . . . mandates that the court allow the fee applicant an opportunity, should it be requested, to present evidence or argument that the fee application meets the prerequisites for compensation").

The Accountants' fact witness, Ms. Craden, testified that she was the one who had done the basic work in preparing the Debtor's Schedules. She testified that their preparation involved extra work for many reasons: (1) few of the records needed for their preparation were located at the Debtor's headquarters and therefore she had to travel to its plant in Tennessee; (2) the Debtor's software prevented closing the Debtor's books mid-month and, therefore, the data from June 30 to the filing date of July 9 had to be added manually; (3) much of the input of the data was done by lower level staff (Ms. Pugh, Mr. Barr and Ms. Lisman); and (4) there was one bank account of the Debtor's that was not kept on its system and its data had to be input manually. Ms. Craden testified that she did the analysis of the data as she input it into the software which she used for preparation of the Schedules. The input of the data itself only took "a couple of hours" and was done while she waited for the Debtor to copy documents (such as AP and executory contract lists) which were attached to the Schedules.

We find this testimony unconvincing for many reasons. First, it differs drastically from the testimony of Mr. Cohen who testified that the large amount of the hours spent on the engagement was the result of the need to input the Debtor's financial data into a format the Accountants' software could use. Second, the total time spent by lower level staff on this task was approximately 10 hours, while Ms. Craden spent almost 100 hours on the routine task of preparation of the Schedules. (See Exh. P-7.) This time was in addition to the time spent by Ms. Craden and Mr. DuFrayne, the senior persons on the engagement, on the task of analyzing that data (in excess of 150 hours combined).

It is not necessary for us to determine, however, which version is correct, because either way the amount of fees sought is excessive. This is a relatively simple case. It involves one debtor (as opposed to joint administration of many related companies). The total assets and liabilities are less than \$100 million each. While the Schedules total 258 pages, a large number of them are merely attachments from the Debtor's records (123 pages of the Statement of Financial Affairs alone). Further, the size of these documents is significantly less than those of other debtors appearing in this Court. The alleged time spent on preparation of these documents (approximately 1 hour per page) is excessive, when the Court considers that more than half

of the pages are attachments from the Debtor's records and the bulk of the rest are mere lists of creditors.

The Accountants' expert witness sought to justify the fees by opining that the amount of time spent in preparing the Schedules was reasonable because of the problems faced by the Accountants in this engagement: the financial records were incomplete, the books were not closed as of the filing date which occurred in the middle of a month, and the Debtor's books did not record information required by the Schedules (such as a list of executory contracts). However, the expert acknowledged that these same factors are encountered by most debtors. They, therefore, do not alone justify the excessive time spent by senior members of the Accountants' staff.

After re-analyzing the time spent in this case, the expert concluded that only 110.3 hours were actually spent on the preparation of the Debtor's Schedules.² We are unable to accept this initial premise, however. The Accountants' fee application stated it took over 280 hours. The analysis of that time done by the expert reclassifies 114.5 of those hours as "accounting/auditing" which according to the descriptions appears to relate nonetheless to the preparation of the Schedules. (See Exh. P-7.) For example, the expert attributed to

² In his initial report, the expert had concluded that only 43.2 hours were spent on this task. However, this was modified upward after further discussions with the Accountants' personnel.

accounting/auditing 20 hours charged by the Accountants for "gathering supporting documents and preparing preliminary statements and schedules." (Id.) We do not agree that these entries should not be considered part of the preparation of the Schedules for purposes of our analysis. Similarly, the expert has reclassified 53 hours as data analysis. We conclude that that cannot be deducted as the expert suggests, because Ms. Craden testified that her work on the Schedules was largely analysis. Therefore, these entries were properly included by the Accountants in its fee application as part of the time spent on the Schedules.

Even if we accepted the expert's premise, however, we cannot agree that the time spent by the Accountants here was reasonable. The expert sought to show reasonableness by comparing the time spent by the Accountants on preparation of the Schedules with time spent by accountants in other cases before the Court: USA Floral Products, Inc., and Webvan, Inc. Specifically, the expert asserted that in the Webvan case the debtor's accountants spent 46.8 hours and in the USA Floral case the debtor's accountant spent 285.5 hours. We are unable to confirm this, however, since we do not have the fee applications of the accountants in those cases in the record before us. However, we note that the accountants in those cases differ from the Accountants in this case, and, therefore, we cannot conclude that they recorded their time as the Accountants did here. Further, those cases involved

numerous related debtors in jointly administered cases as opposed to the single Debtor in this case. The Schedules filed in those cases are also significantly different in mere size alone: those filed in the USA Floral case contained 698 pages and those filed in Webvan contained 1,871 pages compared to the 258 pages in this case.³ We are unable to conclude that the expert was justified in treating those cases as comparable to this case and, therefore, put no stock in his conclusion that the hours spent by the Debtor's Accountants in this case were reasonable.

However, we do find the expert's breakdown of the tasks undertaken in preparation of the Schedules helpful. The time spent in auditing/accounting services (114.50) did entail a higher level of professional skill than the data analysis (53) or the administrative preparation of Schedules work (110.3). Therefore, we will allow compensation for each service at the rate the Accountants' charge for personnel able to perform each task, as follows:

Auditing/Accounting	- 114.5 hours x \$245	= \$28,052.50
Data Analysis	- 53.0 hours x \$143	= \$ 7,579.00
Schedules Preparation	- 110.0 hours x \$ 70	= <u>\$ 7,700.00</u>
		\$43,331.50

Since we previously allowed only \$28,030 for these services, we will allow an additional \$15,301.50 in compensation.

³ Without further investigation, we cannot confirm how many of those pages were simply copies of computer reports of the debtors, as many of the pages of the Debtor's Schedules were in this case.


IV. CONCLUSION

For the foregoing reasons, we will allow the Accountants additional compensation in the amount of \$15,301.50.

An appropriate Order is attached.

BY THE COURT:

Dated: June 28, 2002



Mary F. Walrath
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE


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)
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)
Debtor.)
_____)

O R D E R

AND NOW, this 28TH day of JUNE, 2002, upon consideration of the Application of Parente Randolph, LLC, for compensation for services rendered and reimbursement of expenses as Consultants and Accountants to Penn Specialty Chemical, Inc. for the period from July 9, 2001, through September 30, 2001, for the reasons set forth in the accompanying Memorandum Opinion, it is hereby

ORDERED that the Applicant is hereby **ALLOWED** an additional \$15,301.50 in compensation in addition to those fees already allowed in our March 6, 2001, Order.

BY THE COURT:



Mary F. Walrath
United States Bankruptcy Judge

cc: See attached

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