

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

In the Matter of:	:	Chapter 7
	:	
DAVID L. ARRINGTON,	:	
	:	
Debtor	:	Case No. 02-51468 RFH
	:	
	:	
NEAL WEINBERG OF NEAL	:	
WEINBERG, P.C., and	:	
F. KENNEDY HALL OF HALL,	:	
BLOCH, GARLAND & MEYER, LLP,	:	
	:	
Applicants	:	
	:	
vs.	:	
	:	
MARK ROADARMEL, ASSISTANT	:	
UNITED STATES TRUSTEE,	:	
	:	
Respondent	:	

BEFORE

ROBERT F. HERSHNER, JR.
CHIEF UNITED STATES BANKRUPTCY JUDGE

COUNSEL:

For Neal Weinberg, P.C.:

NEAL WEINBERG
Post Office Drawer 1073
Macon, Georgia 31202-1073

For Hall, Bloch, Garland & Meyer, LLP: F. KENNEDY HALL

Post Office Box 5088
Macon, Georgia 31208-5088

For J. Coleman Tidwell:

ED S. SELL, III
Post Office Box 229
Macon, Georgia 31202-0229

For United States Trustee:

MARK ROADARMEL
Assistant U.S. Trustee
433 Cherry Street, Suite 510
Macon, Georgia 31201-7910

MEMORANDUM OPINION

Neil Weinberg of Neal Weinberg, P.C. and F. Kennedy Hall of Hall, Bloch, Garland & Meyer, LLP, Applicants, filed on July 8, 2002, an Application for Approval of Attorney's Fees and Expenses. Applicants' application came on for a hearing on August 8, 2002. The Court, having considered the application and the arguments of counsel, now publishes this memorandum opinion.

An involuntary Chapter 7 case was commenced against David L. Arrington, Debtor, on April 4, 2002. An order for relief under Chapter 7 was entered by the Court on April 11, 2002.

Debtor, prior to the filing of the involuntary bankruptcy, had entered into a contract to sell certain real property. The sale was a complex transaction. Applicants had assisted Debtor with the pending sale. Applicants contend that, after the bankruptcy filing, they assisted the Chapter 7 trustee with the real estate closing. Applicants also contend that they assisted the trustee in other ways which benefited the estate.

Trustee's counsel states that Applicants were very helpful and saved the trustee "a lot of time." Trustee's counsel notes, however, that Applicants' application fails to show how their services benefited the estate.

Mark Roadarmel, Assistant United States Trustee, Respondent, objects

to Applicants' application. Respondent contends that the application does not address the Johnson¹ factors. Respondent contends that Applicants' services are not adequately itemized.² Respondent notes that some of Applicants' services simply enabled Debtor to fulfill his duties under section 521 of the Bankruptcy Code. Respondent contends that Debtor, rather than the estate, should pay for those services.

The Court notes that, in a Chapter 7 case, an attorney for the debtor is not entitled to an award of compensation from the bankruptcy estate under section 330 of the Bankruptcy Code. Inglesby, Falligant, Horne, Courington & Nash, P.C. v. Moore (In re American Steel Product, Inc.), 197 F.3d 1354 (11th Cir. 1999).

A Chapter 7 trustee, with the court's approval, may employ, for a specified special purpose, an attorney that has represented the debtor, if it is in the best interest of the estate. 11 U.S.C.A. § 327(e) (West 1993).

Simply stated, an attorney who has represented the Chapter 7 debtor is not entitled to compensation from the estate unless the court has approved the attorney's appointment for a specified special purpose under section 327(e).

In the case at bar, the Chapter 7 trustee has not moved the Court to

¹ See Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974).

² See Brake v. Tavormina (In re Beverly Mfg. Co.), 841 F.2d 365 (11th Cir. 1988) (burden is on attorney to establish value of his services; describes three-part process for determining reasonable attorney's fees in bankruptcy cases).

approve the employment of Applicants for a specified special purpose under section 327(e). Respondent urges the Court to deny without prejudice Applicants' application. This would allow Applicants an opportunity to seek special appointment and, if appointed, to file an application for attorney's fees in accordance with applicable standards.³

The Court is persuaded that it must deny without prejudice Applicants' application for attorney's fees and expenses.

An order in accordance with this memorandum opinion will be entered this date.

DATED the 22nd day of August, 2002.

ROBERT F. HERSHNER, JR.
Chief Judge
United States Bankruptcy Court

³ Some of Applicants' services were of benefit to the estate. Applicants, Respondent, and the Chapter 7 trustee should confer to determine if they can agree on the value of Applicants' services.