IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ORIGINAL

IN RE:	§	
	§	
DAVID E. CROUSE and VIRGINIA J. CROUSE,	§	CASE NO. 02-38252-SAF-7
	§	
	§	
DEBTOR(S).	§	

MEMORANDUM OPINION AND ORDER

Patsy A. Pool has applied for the allowance of compensation and the reimbursement of expenses as counsel for David E. Crouse and Virginia J. Crouse while they were debtors in possession. 11 U.S.C. § 330 (2002). Coach Finance Company, L.L.C., objects to the application. The court held a hearing on the application on January 14, 2003. At the hearing, the United States Trustee stated that she did not oppose the application. In prior written comments, the United States Trustee requested that the court direct that, after payment of fees awarded by the court, Pool turnover funds remaining from her retainer to the Chapter 7 trustee.

Coach complains that the debtors used cash collateral without its consent and without a court order. Coach has filed a motion for order to show cause and for sanctions seeking recovery from the debtors and Pool. Coach objects to Pool's compensation until it recovers the cash collateral. The court had set a hearing on Coach's motion for January 27, 2003, and carried Pool's fee application until the January 27 hearing. However, the parties jointly requested that the court continue the January 27 hearing. The court granted the continuance request.

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Pool's hourly rate of $175 and her paralegal's hourly rate of $75 are within the range of rates commonly charged in the community for professionals of similar experience. Missouri v. Jenkins, 491 U.S. 274, 286 (1989).

The court therefore turns to the time spent on the engagement. The court has reviewed Pool's time records. With several minor exceptions, Pool spent a reasonable amount of time pursuing necessary work on behalf of the debtors in possession. For example, Pool spent 3.7 hours at a cost of $647.50 addressing matters pertaining to Coach prior to the debtors' decision on October 29, 2002, to convert the case to Chapter 7. That work included communications with Coach's attorney, work on Coach's motion to lift the automatic stay, and discussions with Coach's attorney regarding conversion of the case. After the conversion of the case, Pool and her paralegal spent time valued at $335 pursuing Coach's collateral.

Pool did charge the estate time valued at $207.50 pertaining to her employment application. Time spent seeking employment is not compensable from the bankruptcy estate. In addition, Pool charged time valued at $157.50 for leaving messages for her client to call her or visiting her clients' office when they were not there. That work must be subsumed in Pool's hourly rate. Finally, Pool charged $157.50 for work representing the debtors on Coach's request for a Rule 2004 examination. That work occurred after the debtors announced their decision to convert the case. Pool's work concerning the Rule 2004 request therefore benefitted her clients as debtors, not as debtors in possession, and cannot be charged to the bankruptcy estate. The court disallows $522.50 for these matters.

The remainder of the hours were reasonably spent for the Chapter 11 work involved.

Coach's objection goes more to what Pool allegedly failed to do, rather than what she did. The objection must be understood in the context of a short-lived Chapter 11 case. The debtors filed their petition for relief under Chapter 11 of the Bankruptcy Code on September 20, 2002. On September 23, 2002, Coach's attorney wrote Pool a letter informing her that Coach did not consent to the use of its cash collateral. On September 26 and September 27, 2002, Pool and Coach's attorney had telephone conversations regarding the cash collateral issue. Consequently, within a week of the filing of the bankruptcy petition, Pool understood that Coach did not consent to the use of cash collateral.

Pool stated that she informed her clients that they could not use the cash collateral. Pool further stated that she instructed her clients to segregate the cash collateral. The debtors nevertheless used the cash collateral.

Pool did not file a motion seeking court authorization for the debtors to use cash collateral. No time entry in Pool's billing records submitted to the court describe a conversation between Pool and the debtors addressing cash collateral prior to the meeting of creditors. Whether Pool advised the debtors may be the subject of the sanctions motion. The record does not establish when Pool learned that her clients were using the cash collateral.

Pool's time records reflect that on October 23, 2002, Pool and the debtors discussed closing the debtors' business. On October 29, 2002, they had further discussions regarding the debtors' assets and converting the case. At the meeting of creditors on October 29, 2002, the debtors announced that they were converting the case to a case under Chapter 7 of the Bankruptcy Code. On October 31, 2002, the court entered an agreed order between the debtors and Coach regarding the automatic stay.

The debtors did not file their motion to convert until November 20, 2002. The court entered an order converting the case on November 26, 2002. The use of cash collateral from the petition date to conversion will be the subject of the sanction motion.

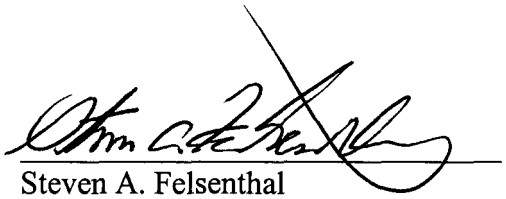
Coach argues that the failure of the Chapter 11 case does not support the award of fees. The court disagrees. With the minor exceptions noted by the court, Pool did not pursue any non-compensable work. She prepared the schedules and statement of financial affairs, tended to United States Trustee procedures, and the insurance needs of the debtors. She prepared the debtors for the meeting of creditors and represented them at the meeting of creditors. As mentioned, she addressed Coach's issues, subject to the cash collateral contest. She counseled the debtors regarding a rather expeditious decision to convert the case, and then performed work to aid the conversion and the Chapter 7 trustee, including amended schedules and notices, all of which advanced the administration of the estate and are compensable. The sole remaining issue concerns the role Pool played regarding cash collateral. Pool has stated to the court that she counseled her clients not to spend the cash collateral and to segregate the cash collateral.

On the fee application record, except for the matters disallowed, Pool's fees are reasonable under the lodestar analysis. The court therefore awards fees of $4,837.50 ($5,360 requested less $522.50 disallowed), subject to and without prejudice to Coach's sanction motion. The court also awards reimbursement of expenses of $865.00, for total compensation and reimbursement of expenses under 11 U.S.C. § 330 of $5,702.50. Unless directed otherwise by an order adjudicating the sanction motion, Pool shall withdraw $5,702.50 from her retainer and

turnover the remainder of the retainer to the Chapter 7 trustee. Unless the court orders otherwise, this order is stayed pending the entry of an order adjudicating the sanction motion.

SO ORDERED.

Signed this 14th day of February, 2003.



Steven A. Felsenthal
United States Bankruptcy Judge