

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE:)
)
Jeffrey and Paulla Craig,) Case No. 22-20042
)
Debtor(s).)

ORDER DENYING APPLICATION FOR COMPENSATION (DOC. 87)
AND RESETTING HEARING ON TRUSTEE’S FINAL REPORT (DOC. 88)
AND COMPENSATION AND EXPENSES WORKSHEET (DOC. 89)

This chapter 7 case is before the court on the application for compensation (doc. 87) filed by Terrie Owens as attorney for herself as the chapter 7 trustee. She requests legal fees for hiring herself as attorney, hiring an auctioneer to sell an estate asset (a 2016 Chevrolet Silverado), getting the vehicle sale approved, and then getting the auctioneer and herself paid.

The court has reviewed the briefs filed by the trustee and the Bankruptcy Administrator and held a hearing on the application. For the reasons below, the court finds that the work for which Ms. Owens seeks legal fees falls within her trustee duties and denies her application for additional compensation as an attorney.

Background

In Ms. Owens’ application to employ (doc. 38), she sought to employ herself “as general counsel for services to be provided at a rate of \$250.00 per hour.” She now requests attorney’s fees of \$1,775 as follows:

Services

Date	Notes	Quantity	Rate	Total
05/18/2022	prep doc: preparation of application to employ TSO; declaration and order; submit to the court	0.50	\$250.00	\$125.00
05/24/2022	prep doc: review /revise proposed auction agreement; preparation of application to employ auctioneer and declaration; file with court.	1.30	\$250.00	\$325.00

06/23/2022	court appear.: court appearance on application to employ auctioneer; preparation of order on the same; submit	1.00	\$250.00	\$250.00
07/28/2022	court appear.: court appearance on application to sell; preparation of order; submit to court	1.00	\$250.00	\$250.00
09/07/2022	prep doc: preparation of application for fees for auctioneer; file with court	0.80	\$250.00	\$200.00
09/29/2022	court appear.: court appearance on application to approve auctioneer fees; preparation of order; submit to court	1.00	\$250.00	\$250.00
03/09/2023	Received and Reviewed: review/revise billable time; preparation for application for fees; anticipated court appearance on the same and preparation of order on the same.	1.50	\$250.00	\$375.00
			Services Subtotal	\$1,775.00

The application also includes \$17 of expenses for copies.

Legal Analysis

Bankruptcy Code § 326(a) provides that in a chapter 7 case, “the court may allow reasonable compensation under [§] 330” for services rendered by the trustee in her capacity as trustee. Code § 330 authorizes the court to award the trustee “reasonable compensation for actual, necessary services rendered . . . and reimbursement for actual, necessary expenses.” But § 326(a) states that trustee compensation is “not to exceed” specified percentages “upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor” As a practical matter, the trustee is generally awarded the maximum commission allowed under Code § 326(a) for performing her duties as a trustee. But when a trustee employs herself (or someone else) as an attorney, compensation for the attorney is governed by Code § 330’s “reasonable compensation for actual, necessary services” and “reimbursement for actual, necessary expenses” and is not subject to § 326.

“[T]he [c]ourt has an independent obligation [T]o review applications for compensation and . . . it may review, reduce, or even disallow an application, even [without] an objection” *See In re*

Watts, No. 09-30663-WRS, 2011 WL 565659, at *1 (Bankr. M.D. Ala. Feb. 8, 2011). Code § 328(b) states that the court “may allow compensation for” a trustee who serves as her own attorney but “only to the extent that the trustee performed services as attorney . . . for the estate and not for performance of any of the trustee’s duties that are generally performed by a trustee without the assistance of an attorney” The United States Department of Justice instructs that “[p]rofessionals may not be compensated for performing work that the trustee can do without professional assistance. Particular care must be taken to avoid ‘double-dipping’ when the trustee also serves as an attorney . . . in a case.” See U.S. Dep’t of Justice, *Handbook for Chapter 7 Trustees* (Oct. 1, 2012).¹ “Trustee duties are just that, the duties entrusted only to the Trustee. They are not to be ignored, nor are they to be delegated, absent well established special circumstances. Therefore, those duties charged to the Trustee cannot be compensable to anyone else, even properly employed professionals of the estate.” *In re Peterson*, 566 B.R. 179, 190 (Bankr. M.D. Tenn. 2017).

Bankruptcy Code § 704 sets out a trustee’s duties. When a trustee employs herself as attorney, “[s]ervices that fall under the categories set forth in § 704 are deemed to be compensable under § 326 as [t]rustee compensation, and are not compensable under § 330 as professional services.” *In re Peterson*, 566 B.R. at 190; see also *In re McConnell*, 641 B.R. 261, 275 (N.D. Ga. 2022) (“Simply put, there is no question that a trustee may serve as the attorney for the trustee . . . , but the attorney for the trustee cannot be compensated for administering the estate under [§] 704.”) (citation, quotation marks, and brackets omitted). “Trustee services are contemplated by the fee scheme as set forth in § 326. Therefore, an attorney-trustee cannot be separately, and therefore doubly, compensated for those services” *In re Peterson*, 566 B.R. at 191. ““The attorney for a

¹ <https://www.justice.gov/ust/page/file/762521/download>

[c]hapter 7 trustee may not be compensated for services that the Bankruptcy Code requires the trustee to perform.” *In re McConnell*, 641 B.R. at 275 (citation omitted).

“If attorneys could be compensated for trustee duties, a trustee could delegate most or all of her duties to an attorney . . . and still receive her § 326(a) commission, while the attorney . . . would also receive their hourly rate for time spent performing the trustee’s duties.” *See id.* at 275-76 (citation, quotation marks, and brackets omitted). “But based on the limitations [of Code §] 328(b), ‘a trustee, as a sophisticated person, cannot conveniently delegate h[er] statutory duties to h[er] own law firm to perform and thereafter allow this firm to charge the estate[.]’” *See id.* at 276 (citation omitted). The trustee “can only obtain legal services chargeable to the estate where unique difficulties arise and resolving such difficulties would require legal expertise[.]” *See id.* (citation and quotation marks omitted). “Although there are many tasks that fall within a . . . trustee’s duties that theoretically *could* be performed by a lawyer, there is a vast breadth of trustee services, the compensation for which has been and will continue to be subject to the § 326(a) statutory limitation.” *See id.* (citation, quotation marks, and brackets omitted) (emphasis in original).

There is a distinction in “the legal expertise required to represent a [c]hapter 7 trustee, who is statutorily required to possess a certain level of business and legal expertise . . . , as opposed to a layperson.” *See In re Yovtcheva*, 590 B.R. 307, 313 (Bankr. E.D. Pa. 2018). As one court has addressed this issue:

[W]hen a lay person employs an attorney to, say, recover an asset, all that accompanies that effort, including the time in investigating, letter writing, phone calling and the hiring of other professionals, such as appraisers or real estate brokers, is compensable to the attorney. Those activities surely fall within the ambit of § 704, the Code’s defined duties of the trustee who obviously has the skill and expertise to perform them by virtue of being a member of the United States Trustee’s panel of

trustees.² The trustee is simply and obviously not a lay person unschooled in the art and science of finding, capturing and obtaining the value of an asset, for example.

In re Lowery, 215 B.R. 140, 141-42 (Bankr. N.D. Ohio 1997); *see also In re King*, 546 B.R. 682, 695-96 (Bankr. S.D. Tex. 2016) (there is “a persuasive argument [for] differentiat[ing] between the services that an attorney provides for a lay person (for which compensation would be allowed) from services provided to a [c]hapter 7 trustee (for which compensation should not be allowed)”).

Ms. Owens is entitled to a trustee’s commission of \$2,620.65 under Bankruptcy Code § 326 (the maximum amount). The question here is whether she is entitled to legal fees in this case on top of her trustee’s commission.

I. In general, the trustee’s time related to an application to employ a professional is not compensable as legal work.

The line between trustee work and attorney work is not always clear, and the courts are not unanimous in their decisions. But this court finds that employing professionals is ordinarily on the trustee side of the line. The Eleventh Circuit has not directly addressed the issue, but “[m]any courts hold that the preparation of an application for the employment of a professional is a duty generally performed by a trustee without the assistance of an attorney.” *See In re McClean Wine Co.*, 463 B.R. 838, 848 (Bankr. E.D. Mich. 2011) (citation and quotation marks omitted); *see also In re Peterson*, 566 B.R. at 189-95 (preparing applications for employment of professionals is a trustee duty contemplated by § 704); *In re Virissimo*, 354 B.R. 284, 295-96 (Bankr. D. Nev. 2006) (“Routine employment applications are generally prepared and presented by a trustee without the assistance of

² This is the Bankruptcy Administrator’s panel in Alabama and North Carolina, but the analysis is the same.

an attorney for the estate.”) (citation omitted); *In re McKenna*, 93 B.R. 238, 241 (Bankr. E.D. Cal. 1988) (“Preparation of the application for employment of a professional is another manifestation of the trustee’s . . . enumerated duties [under § 704] Such applications are generally prepared and presented by a trustee without the assistance of an attorney for the estate.”). This court agrees and will not allow the trustee attorney’s fees (rather than the trustee fees under § 326) related to the employment of professionals such as herself as attorney and the auctioneer.

A. The trustee’s time related to employing herself as attorney

The time spent by the trustee in employing herself “as general counsel for services” (using a one-page form application, one-page form declaration, and her standard form order) is not compensable as legal work. Such employment is a routine matter (using standard forms that this trustee always uses) included in her duties as trustee. *See, e.g., In re McClean Wine*, 426 B.R. at 848 (“If a trustee requires the services of an attorney to hire an attorney . . . , it is difficult to imagine many other activities the trustee can accomplish without the aid of a professional.”) (citation and quotation marks omitted). The court will thus disallow attorney compensation for the 30 minutes of time identified as “prep doc: preparation of application to employ TSO [the trustee]; declaration and order; submit to the court.”

The Bankruptcy Administrator argues that the court should follow *In re McConnell*, 641 B.R. 261, and allow the trustee additional attorney’s fees at least for her time in employing herself. The court finds *McConnell* persuasive in many respects, although not on this point. However, the *McConnell* court allowed legal fees for the trustee’s application to employ his law firm because it held that some of the law firm’s time was spent doing legal work, not trustee duties. *See id.* at 281.

That is not the case here. As discussed below, none of the trustee's time for which she seeks attorney's fees is compensable as legal work.

B. The trustee's time related to employing the auctioneer

The time spent in employing the auctioneer to sell an estate asset (the Chevrolet Silverado) is also not compensable as legal work. *See In re McConnell*, 641 B.R. at 275. Employing an auctioneer to sell a vehicle is akin to employing a real estate agent to sell a house; as in *In re McConnell*, this court finds that filing such applications are routine and can be handled without a lawyer because they do "not entail any legal work." *See id.* (affirming bankruptcy court's disallowance of fees related to a law firm's application to employ a real estate broker to sell estate property).

Again, a chapter 7 trustee is not a typical lay person but is a sophisticated individual who regularly employs real estate agents, auctioneers, and accountants to carry out her enumerated duty in § 704 to "collect and reduce to money the property of the estate" Ms. Owens is the only chapter 7 trustee of the three in this district who always hires herself as attorney to employ such professionals.

Ms. Owens' telephonic court appearance on the application to employ the auctioneer was part of her trustee duties. *See, e.g., In re Virissimo*, 354 B.R. at 296 ("The presentation of a simple motion that relates to a trustee duty and that requires no complex legal analysis or argument is generally performed by a trustee without the aid of counsel."); *In re McKenna*, 93 B.R. at 241 ("The presentation of such a simple motion in which there is no need for complex legal analysis or intricate argument is a duty that is generally performed by a trustee without the assistance of an attorney for the estate."). The court granted the application without objection in a brief telephonic hearing on

June 23, 2022. While there may be cases in which an application to employ a professional might be contested or involve “unique difficulties” requiring legal assistance, those cases are rare in this court’s experience and this case is not one of them.

The fact that the court normally sets applications to employ professionals for hearing does not turn a trustee duty into a lawyer duty.³ A trustee can appear himself or herself in court (and non-attorney trustees routinely do so). If the trustee is surprised by unknown opposition at the hearing, the solution is easy: the court will continue the hearing if the trustee wants to hire an attorney (herself or otherwise). But here, the court finds that the following time is not compensable as attorney (versus trustee) time: 1.3 hours for “prep doc: review/revise proposed auction agreement [more on this entry below]; preparation of application to employ auctioneer and declaration; file with court[;]” and 1 hour for “court appear.: court appearance on application to employ auctioneer; preparation of order on the same; submit.”

A chapter 7 trustee should absolutely employ a professional when necessary. But in most cases, employing a professional is a trustee duty and is not separately compensable as legal work. Going forward, the court will not allow attorney’s fees to the trustee for the routine hiring of professionals such as auctioneers, real estate agents, attorneys, or accountants. *See, e.g., In re Jay*, No. 16-22038, 2018 WL 2176082, at *12 (Bankr. D. Utah May 9, 2018) (“Indeed, in simple cases, trustees should prepare applications to employ realtors or accountants as they are seldom contested and routinely granted.”).

³ By local administrative order the court regularly allows chapter 7 trustees and other parties to participate by phone if they have only one or two cases on the docket, which happens often.

II. Reviewing professional contracts and matters related to an uncontested sale motion are normally part of a trustee's routine duties.

The trustee contends that she employed herself because this is the first time she had retained this particular auctioneer and she had to review the contract, which included legal terms and conditions. As discussed above, the trustee is charged under § 704 to “collect and reduce to money the property of the estate” Also as discussed, a trustee is not someone lacking in skill related to the recovery of assets. Her work here is similar to the trustee's negotiating the terms of a listing agreement with a real estate broker in *In re McConnell*, 641 B.R. 261, which the court found were part of trustee duties and not “compensable as legal services.” *See id.* at 274-75. Just because a duty (here, contract review) could be performed by a lawyer does not automatically make the duty one that must be performed by a lawyer. *See id.* at 276. The court will not allow attorney compensation for the trustee's time spent “reviewing and revising proposed auction agreement” (and included in the time entry the court has already disallowed).

Appearing in court and preparing and submitting an order on an uncontested sale motion are likewise part of the trustee's duty to “collect and reduce to money the property of the estate” *See, e.g., In re King*, 546 B.R. at 699-700 (selling or disposing of assets is a trustee duty that is “presumptively non-compensable”); *In re McKenna*, 93 B.R. at 241 (unopposed motion to sell is a trustee duty). This is not a case in which a motion to sell was contested and presented “unique difficulties” requiring an attorney to argue the merits of the motion. The July 28, 2022 hearing on the motion to sell was telephonic and only lasted a couple of minutes. The court thus disallows the 1 hour of time identified as: “court appear.: court appearance on application to sell; preparation of order; submit to court.”

III. The fee applications for the trustee as attorney and for the auctioneer are not compensable legal tasks in this case.

Bankruptcy Code § 330(a)(6) states that “[a]ny compensation awarded for the preparation of a fee application shall be based on the level and skill reasonably required to prepare the application” As an initial matter, by its terms, § 330(a)(6) does not mandate that the court award compensation for preparation of a fee application, only that any compensation awarded must be reasonable.

Regardless, the court may award fees to an attorney for a trustee for preparation of a fee application if the attorney has rendered legal services. See *In re Virissimo*, 354 B.R. at 300. Here, the trustee did not perform any non-trustee duties in her capacity as an attorney. She is thus not entitled to compensation as an attorney for the trustee for the 3.3 hours of preparation and court appearances related to fee applications for herself and the auctioneer. This does not mean that a trustee is not compensated for routine preparation of fee applications, such as for the auctioneer.⁴ But such compensation is the form of the trustee’s commission under Code §§ 326 and 330, not legal fees.

Conclusion

To the extent the court has not specifically addressed any of the parties’ arguments, it has considered them and determined that they would not alter the result. For the reasons set out above, the court denies the application for compensation (including the related expenses of \$17 for copies, although they may be allowable to Ms. Owens as trustee). The court resets the hearing on the

⁴ Again, there may be cases that present unique challenges in which the trustee does need to employ herself as attorney and would be compensated for fee applications. This order does not preclude an award of attorney’s fees in an appropriate case.

trustee's final report and account and her compensation and expenses worksheet to the court's telephonic docket on June 29, 2023, at 8:30 a.m. If the trustee needs to amend either document based on this order, she should do so before the hearing.

Dated: June 12, 2023


HENRY A. CALLAWAY
U.S. BANKRUPTCY JUDGE