

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

IN RE:)
)
 ELLA LUE HALL,) Case No. 20-20132
)
 Debtor.)

ORDER GRANTING APPLICATION FOR ADMINISTRATIVE EXPENSES IN PART
AND RESETTING HEARING ON APPLICATION

This case was filed as a chapter 7 case on May 13, 2020, and Terrie Owens was appointed as the chapter 7 trustee. The debtor filed a motion to convert the case to a chapter 13 case on July 14, 2020, which the court granted on August 21, 2020. Ms. Owens then filed an application for administrative expenses (doc. 58) in the chapter 13 case.

The court ordered the chapter 13 trustee to file a brief on the application and address what standard the court should apply in determining whether Ms. Owens is entitled to an administrative expense claim in a case converted from chapter 7 to chapter 13 and in what amount. Ms. Owens and the bankruptcy administrator also filed briefs. The court held a hearing on the application on December 10, 2020. Having considered the briefs, the argument at the hearing, and the applicable law, the court grants the motion in part as discussed in more detail herein.

The Bankruptcy Code is unclear regarding how a chapter 7 trustee should be compensated when a case is converted. Code § 326(a) provides that in a chapter 7 case, “the court may allow reasonable compensation under section 330 . . . for the trustee’s services.” This compensation is “payable after the trustee renders such services” *See* 11 U.S.C. § 326(a). Code § 330 authorizes the court to award the trustee “reasonable compensation for actual, necessary services rendered . . . and reimbursement for actual, necessary expenses.” However, § 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” The Code offers no guidance

on how to calculate this compensation when a case has been converted, as opposed to a fully administered chapter 7 case.

As another bankruptcy court in this circuit has recognized, “[t]his silence has led to a variety of irreconcilable reported court decisions” *See In re Philips*, 507 B.R. 2, 5 (Bankr. N.D. Ga. 2014). “[T]hese cases tend to fall into three main categories: some cases hold that the amount payable is zero when the trustee has made no disbursements” *See id.* Some “hold that the cap [in § 326(a)] applies but it is calculated based on funds distributed by *any* trustee after conversion to [c]hapter 13.” *See id.* And “others hold that the cap simply does not apply to a case that is no longer a case under [c]hapter 7” *See id.*

Awarding no compensation in this situation punishes a chapter 7 trustee who has uncovered assets or otherwise performed work to benefit the bankruptcy estate. Such a holding may also deter chapter 7 trustees from aggressively working to uncover assets for fear that their work will not be compensated. *See, e.g., id.* at 6 (“It is difficult to believe Congress intended zero compensation to be reasonable where the trustee has expended significant effort and rendered valuable services marshaling assets on behalf of the estate[,] only to be frustrated by a conversion to [c]hapter 13.”). On the other hand, in cases such as this one where the case is converted to chapter 13 relatively early, it is hard to determine what amounts will ultimately be collected and paid to creditors. And it does not seem fair to the debtor and unsecured creditors (who are also paying a chapter 13 trustee’s commission) to compensate the chapter 7 trustee based on a percentage of assets she never finished collecting or administering.

Instead, this court agrees with those courts that find that the percentage formula of § 326(a) should not apply in this situation and that a chapter 7 trustee in a case converted to chapter 13 is “entitled to compensation for services rendered which benefit the bankruptcy estate, if those services are reasonable and necessary.” *See In re Washington*, 232 B.R. 814, 816 (Bankr. S.D. Fla. 1999).

The fee limitation set forth in [Code] § 326 should not preclude [a chapter 7] trustee . . . from receiving compensation on a quantum meruit basis. Courts have reasoned that . . . § 326 applies to fully administered cases; but, in cases which are not fully administered, through no fault of the [t]rustee, compensation should still be awarded to the [t]rustee who performs substantial services, but does not disburse any money. Allowing [c]hapter 7 trustees fees and expense awards in cases converted to [c]hapter 13 further prevents unfair treatment of [c]hapter 7 trustees where the conversion to [c]hapter 13 was for the purpose of avoiding the consequences of a trustee's action in locating, identifying[,] and administering assets of the estate.

Id. at 817 (citations and quotation marks omitted).

The court will thus award the former chapter 7 trustee a quantum meruit administrative expense based on a lodestar time and hourly rate analysis. *See, e.g., In re Port Orange Bar-B-Q, Inc.*, No. 6:09-bk-01403-KSJ, 2010 WL 5553672, at *1 (Bankr. M.D. Fla. Dec. 29, 2010). Here, Ms. Owens expended significant time uncovering assets in the chapter 7 case which benefitted the estate and may have prompted the debtor to move to convert the case to chapter 13. However, Ms. Owens has not submitted any records of the time she spent on the chapter 7 case. The court thus resets the application for a hearing on February 2, 2021, Courtroom 2 West, 113 St. Joseph Street, Mobile, AL 36602. Ms. Owens should submit supplement her application with her time records by January 15, 2021. Any objection to the amended application must be filed by January 29, 2021.

Dated: December 22, 2020


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE