

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

IN RE: )  
)  
JACQUELINE LYNN WELDY, ) Case No. 21-10325  
)  
Debtor. )

ORDER GRANTING IN PART APPLICATION FOR  
ADMINISTRATIVE EXPENSES (DOC. 52)

This case is before the court on the chapter 7 trustee's application for administrative expenses. For the reasons discussed below, the court grants the application in part in the amount of \$1,006.50.

This case was filed as a chapter 7 case in February 2021, and Terrie Owens was appointed as the chapter 7 trustee. In her schedules, the debtor listed real property in Theodore, Alabama which is her homestead. The Theodore property is property of the bankruptcy estate, subject to the debtor's available state law homestead exemption of \$15,500.

The debtor was unhappy when Ms. Owens tried to market her house; the debtor thus filed a motion to determine value. The court denied that motion because the Bankruptcy Code and Rules do not provide for the court to interfere with the chapter 7 liquidation process by determining a hypothetical value for estate property and then barring the trustee from testing the market. (*See* order, doc. 26); *see also In re Stuart*, No. 02-43724, 2003 WL 26099304, at \*3 (Bankr. S.D. Ga. May 2, 2003) ("In any sale of real property, the market value is ultimately the price that an interested buyer in a competitive environment is willing to pay."); *In re Meill*, 441 B.R. 610, 615 (B.A.P. 8th Cir. Dec. 30, 2010) ("[T]he market value of the [p]roperty [i]s the price that the market w[ill] bear at the time.").

The debtor promptly filed a motion to convert the case to a chapter 13 case, which the court granted on June 22, 2021. Ms. Owens then filed an application for administrative expenses (doc. 52) in the chapter 13 case. She seeks an administrative expense claim for herself in the amount of \$1,281.50 and for realtor Lydia Franz for \$300.00. The debtor opposes the application. (*See* doc. 56).

The debtor discusses the “stress involved with having her homestead placed on the open market indefinitely . . . “ (*See id.* at p.2). The court is sympathetic to the debtor but notes that chapter 7 “allows a debtor to make a clean break from h[er] financial past, but at a steep price: prompt liquidation of the debtor’s assets.” *Harris v. Viegelahn*, 575 U.S. 510, 513 (2015). In any event, if the debtor had chosen to remain in her chapter 7 case and if Ms. Owens had not found a buyer for the Theodore property at a suitable price within a reasonable time, the debtor could have moved to compel abandonment under Bankruptcy Code § 554(b). The debtor also could have reached an agreement to purchase from the estate any potential non-exempt equity (either before or after a buyer was found).

The chapter 13 trustee has now hired an appraiser to appraise the Theodore property to determine whether there is any equity for the benefit of unsecured creditors. The debtor contends that the court should wait for the appraisal before ruling on Ms. Owens’ application. But the court is of the opinion that a trustee’s compensation in a converted case should not be based on the existence or nonexistence of any equity in property. As discussed in the court’s order (doc. 111) in *In re Hall*, case no. 20-20132, 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. But it also does not seem fair to the chapter 7 trustee to deny any compensation in cases such as this one where the debtor converted the case before the trustee even had a chance to market the property.

A chapter 7 debtor converting a case to chapter 13 – usually when the chapter 7 trustee tries to market the debtor’s homestead – is a recurring situation in this court. As discussed in *In re Hall*, the Bankruptcy Code is unclear about how a chapter 7 trustee should be compensated when a case is converted and offers no guidance on how to calculate such compensation when a case has been converted, rather than fully administered. The court realizes that a bright-line rule would be preferable and is willing to discuss this issue with the local bankruptcy bar. But for purposes of this case, the court follows its analysis in *In re Hall* and will award Ms. Owens a quantum meruit administrative expense based on a lodestar time and hourly rate analysis. *See, e.g., In re Washington*, 232 B.R. 814, 817 (Bankr. S.D. Fla. 1999) (“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”) (citations and quotation marks omitted).

Ms. Owens expended time uncovering potential assets in the chapter 7 case which benefitted the estate and prompted the debtor to move to convert the case to chapter 13.<sup>1</sup> While not raised in *In re Hall*, the court agrees with the debtor that some fees requested are for normal chapter 7 trustee work, rather than specific work toward liquidation of potential assets. The court will deduct \$575 from the fees sought: \$250 for review of the bankruptcy petition and

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<sup>1</sup> Indeed, as already discussed, the chapter 13 trustee has now hired an appraiser with respect to the Theodore property to determine whether there is equity for the benefit of unsecured creditors.

preparation on 2/17/21; \$75 for conducting the 341 meeting of creditors on 2/22/21; and \$250 associated with reviewing and appearance at the hearing on the debtor's motion to convert on 5/21/21 and 6/22/21. The court otherwise finds that the fees sought are reasonable and directly related to liquidating the chapter 7 estate.

As part of her administrative expenses, Ms. Owens also requests \$300 for her realtor who "spent time valuing the property including but not limited to preparation and compilation of a comparable market analysis for the benefit of the estate." (*See* doc. 52 at ¶3.). The court finds that this is a reasonable and actual and necessary expense incurred by the trustee in uncovering potential assets. *See* 11 U.S.C. § 330(a).<sup>2</sup> The court therefore awards Ms. Owens an administrative claim in the amount of \$1,006.50 (\$675 fees and \$331.50 expenses) to be paid by the chapter 13 trustee.

Dated: November 1, 2021

  
HENRY A. CALLAWAY  
CHIEF U.S. BANKRUPTCY JUDGE

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<sup>2</sup> Although the realtor was never approved as a professional under Bankruptcy Code § 327, the court finds that the work she did – a relatively low-cost informal valuation – did not constitute professional services that would require employment approval and that requiring such approval would unnecessarily multiply the costs to the estate.