

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

IN RE:

LYLE FREDERICK WOLF Jr.
SHERRI HENRY WOLF

CASE NO. 11-51327

DEBTORS

MEMORANDUM OPINION AND ORDER

Stephen Barnes, Esq. and the law firm in which he is a partner, Walther Roark & Gay, PLC (“WRG”), Special Counsel for the Chapter 7 Trustee, seek attorney fees in the amount of \$3,280.50 plus expenses in the amount of \$131.31 as an administrative expense priority [Docs. 87, 88]. The Fee Application and the case record as a whole show that all services rendered and fees sought relate to the Trustee’s efforts to distribute Debtors’ exempt funds to the Internal Revenue Service (“IRS”).

A hearing was held on the Fee Application on August 16, 2012. At the hearing, the Court questioned Mr. Barnes regarding how WRG’s services to the Trustee were contemplated to benefit the estate where all services were directed at disbursing exempt funds to the IRS. Mr. Barnes responded that the estate did benefit because the exempt funds paid to the IRS resulted in a reduction of the estate’s liability on the IRS’ claim. Following the hearing, the Trustee filed a “Notice Regarding Projected Distribution to Priority Tax Creditors” [Doc. 106] which provided generally that as a result of the distribution of exempt funds to the IRS, another priority claimant, the Kentucky Revenue Cabinet, would receive a greater dividend on its allowed claim.

Some background is necessary to the Court’s analysis. The Trustee originally requested leave of the Court to distribute Debtors’ exempt funds to the IRS based on an “informal request” from the IRS [Doc. 44]. At the hearing held on December 15, 2011, the Trustee advised that he would not seek a commission on the proposed distribution because the distribution was of

exempt funds. On January 6, 2012, the Court entered its Memorandum Opinion denying the requested relief and reasoning:

Merely because exempt property may be liable for priority tax claims does not negate other protections or rules which applicable non-bankruptcy law may provide. Just as it is improper for a trustee to administer an asset unless it will produce a return for the estate (see generally Covington, supra at 40-41), it is improper for the Trustee to thrust himself into the two-party dispute between the Debtors and the IRS regarding the extent of the IRS' claim to the Debtor's exempt property (in which the estate has no interest), a controversy that essentially has the Trustee standing in the shoes of the creditor. [Doc. 61].

Three weeks later, the IRS filed a Motion [Doc. 62] requesting the same relief (i.e., an order allowing the Trustee to distribute the Debtor's exempt proceeds to the IRS) to which the Trustee, through Mr. Barnes, responded and which was denied by order entered March 15, 2012 [Doc. 70]. Thereafter, the IRS served the Trustee with a federal tax levy and the Trustee filed a Motion and Amended Motion to Pay Federal Tax Levy [Docs. 71, 73]. These latter Motions were filed by the Trustee without WRG's assistance although Mr. Barnes appeared at the hearing. The Court ruled that the Trustee must comply with the tax levy as the stay was no longer in effect as to the exempt funds [Doc. 85].

Analysis

Section 330(a)(1)(A) of the Bankruptcy Code provides for reasonable compensation for actual, necessary services rendered by a professional person employed by the a trustee. 11 U.S.C. § 330(a)(1)(A).

Section 330(a)(3)(C) of the Bankruptcy Code provides that in determining the amount of reasonable compensation to be awarded to a professional person employed by a trustee that the Court should take into account whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of a case. 11 U.S.C. § 330(a)(3)(C).

Section 330(a)(4)(A) of the Bankruptcy Code provides that a professional person employed

by a trustee shall not be allowed compensation for services that were not “(I) reasonably likely to benefit the debtor’s estate; or (II) necessary to the administration of the case.” 11 U.S.C. § 330(a)(4)(A).

The concept of benefit to the estate is elastic—a benefit may be economic or non-economic depending on the circumstances and/or procedural posture of a particular case. See e.g., In re Holder, 207 B.R. 574 (Bankr. M.D. Tenn 1992) (collecting cases and cited with approval in In re Veltri Metal Products, Inc., 189 Fed. Appx. 385, 389-390 (6th Cir. 2006) (unpublished table decision)). In evaluating an alleged non-economic benefit,

One important consideration is whether the services rendered “promoted the bankruptcy process or administration of the estate in accordance with the practice and procedures provided under the Bankruptcy Code and Rules for the orderly and prompt disposition of the bankruptcy cases and related adversary proceedings.” Holder, 207 B.R. at 584 (citations omitted).

As reviewed above, the services for which compensation is sought all relate to the Trustee's efforts to distribute non-estate (exempt) property to a creditor. There is no contention that the services rendered by WRG protected the integrity of or promoted the bankruptcy process. Here, the proposed distribution was not necessary to the administration of the case and was not reasonably likely to benefit the estate. The services rendered were only reasonably likely to benefit a creditor—the IRS. That the distribution may have resulted in an increase in distribution to another creditor (Kentucky Revenue Cabinet) is of no import.

[B]y looking first to “the time at which the service was rendered” and then to whether such services were “reasonably likely” to benefit the estate, the pertinent question is not whether the services performed by the professional conferred an actual benefit upon the estate; but whether, when viewed under the circumstances in existence at the time, the services were reasonably calculated to benefit the estate. In re Kennedy Manufacturing, 331 B.R. 744, 748 (Bankr. N.D. Ohio 2005) (citations omitted).

The IRS was the beneficiary of the Trustee and his attorney’s services, not the estate, a conclusion buttressed by the Trustee’s concession that he will not seek a commission based on

the distribution of exempt funds to the IRS. As previously ruled, a Chapter 7 Trustee does not have the authority to pursue exempt assets for the benefit of a creditor or to thrust himself into the two-party dispute between the Debtors and the IRS [Doc. 61]. The work of the Chapter 7 Trustee's Special Counsel described in the fee application was a benefit to the IRS, not the estate, and was not necessary to the administration of or completion of the case.

IT IS HEREBY ORDERED that WRG's Fee Application [Doc. 87] is DENIED.

Copy to:

Debtors
Ryan R. Atkinson, Esq.
Stephen Barnes, Esq.

~~~~~  
***The affixing of this Court's electronic seal below is proof this document has been signed by the Judge and electronically entered by the Clerk in the official record of this case.***



**Signed By:**  
***Tracey N. Wise***  
**Bankruptcy Judge**  
**Dated: Monday, September 10, 2012**  
**(tnw)**