11 USC §503(b)(3)
503(b)(4)
504(b)(2)

In re Randolph Case No. 390-32378-S7

7/22/91 DDS unpublished

The court awarded attorney fees and expenses to each of four petitioning creditors and granted them administrative expense status under §503(b)(4). However, the fees were substantially reduced for all firms except the lead counsel so the award was only for the necessary and reasonable services rendered to further the involuntary petition. Fees and expenses that were only to benefit the individual creditor, or which did not appear reasonable and necessary from the itemization and affidavits provided, were not allowed.

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In Re:	)	Bankruptcy Case No.
	)	390-32378-S7
ERIC H. RANDOLPH, aka	)	
Eric A. Randolph, fka	)	MEMORANDUM REGARDING AWARD
Hartmut Presterl,	)	OF ATTORNEYS' FEES FOR
	)	PETITIONING CREDITORS
Debtor,	)	

After an exhaustive review of the fee applications, memoranda, supplemental affidavits in support of fees, and the history of this case, I will award the full amount of the fees and expenses requested by Lindsay Hart, and a portion of the fees requested by the firms of Schwabe Williamson ($3,476.00), Lane Powell ($2,026.00) and Black Helterline ($4,041.50) for the following reasons.

A little over a year ago, attorneys from the Lindsay Hart firm led the petitioning creditors in a flurry of activity which resulted in the appointment of a trustee, an order for relief on their involuntary bankruptcy petition against Eric Randolph, recovery of over one million in assets despite the debtor's insistence that he had nothing, and a

prison sentence for Eric Randolph. The attorneys for the petitioning creditors have requested this court to approve their fees and expenses of approximately $150,000 and to require the trustee to pay the award from the estate. The only objection to the fees was voiced by Eric Randolph.

While the fees and expenses in this case are extremely high, I will approve the payment of a great deal of the request from the assets in the estate. However, I cannot in good conscience approve the total amount requested because there is simply too much duplication in the legal services provided and some of the fees appear to benefit only one creditor rather than to prosecute the involuntary petition.

I have reviewed the law concerning an award of attorney fees for petitioning creditors under the Act and the Code. Under the Act, §64(a)(1) granted administrative priority to "one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases." The courts would not increase the amount of the fee to reimburse all fees accrued on behalf of petitioning creditors. In re Coney Island Lumber Co, 199 F. 197 (E.D. N.Y. 1912). In some cases the court would apportion the fees between the attorneys (Coney Island) and in others the courts required the parties to apportion the fees. Hall v. Reynolds, 231 F. 946 (8th Cir. 1916) and In re McCracken & McLeod, 129 F. 621 (W.D. Tn. 1904).

The Code sections which govern payment of fees to the attorney for the petitioning creditors are 11 USC §503(b)(4) and §504(b)(2). §503(b)(4) grants administrative expense priority for "reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under paragraph (3) (which includes a creditor that files an involuntary petition) based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney." This language tracks the language of §330, which governs the allowance of compensation for the professionals hired by a debtor-in-possession or creditors' committee.

Section 504(b)(2) provides an exception to the prohibition against fee sharing. "An attorney for a creditor that files a petition under section 303 of this title may share compensation and reimbursement received under §503(b)(4) of this title with any other attorney contributing to the services rendered or expenses incurred by such creditor's attorney." Neither section contains the "one fee no matter how many attorneys" language that was found in §64(b).

The cases in the past decade have generally awarded reasonable fees to more than one firm on behalf of petitioning creditors. They have, however, not been shy about reducing the fees for services which appear duplicative, were not

incurred to prosecute the involuntary proceeding, or that were not itemized properly. In re Crazy Eddie, Inc., 120 Bankr. 273 (Bankr. S.D. N.Y. 1990), In re Hanson Industries, Inc., 90 Bankr. 405, 409-412 (Bankr. D. Minn. 1988) and In re Baldwin-United Corp., 79 Bankr. 321, 336-338 (Bankr. S.D. Oh. 1987).

The applicants have the burden of establishing their entitlement to an award of administrative expense by a preponderance of the evidence. Baldwin-United Corp. 79 Bankr. at 336. Most courts considering the issue have decided that counsel for a petitioning creditor are entitled to all reasonable fees incurred in pursuing the order for relief and responding to the debtor's defenses and counterclaims for a bad faith filing. The fees are not just limited to the time spent in preparing and filing the involuntary petition. Crazy Eddie, 120 Bankr. at 276, Baldwin-United, 79 Bankr. at 337.

Therefore, the fees of $73,415.50 and expenses of $25,903.23 incurred by Lindsay Hart are awarded in the full amount requested. Although these fees are high, so are the amounts at issue in this case. The petitioning creditors are owed $10,000,000 and the trustee has recovered over $1,495,000 to date. The Lindsay firm obtained the appointment of an interim trustee within one week of the date the involuntary petition was filed. The debtor vigorously defended every issue through counsel by raising possible defenses to the millions of dollars loaned to him by the petitioning

creditors, and then asserting his privilege under the Fifth Amendment to avoid testifying. At the May 9, 1990 hearing on the appointment of a trustee, Lindsay Hart presented evidence which indicated that the debtor had disposed of almost 30 million dollars worth of assets in the year before the petition was filed and that he was moving any remaining assets beyond the creditors' reach. Because of the debtor's complete lack of cooperation, Lindsay Hart was required to seek information concerning the debtor's assets and his payment of debts through outside sources.

It appeared that the involuntary petition would be heavily contested until the morning of the trial when the debtor withdrew his answer and allowed the order for relief to be entered. The parties filed memoranda and exhibits and appeared at the final pretrial conference just two days before the trial. The debtor indicated he would proceed with the trial and put the creditors to their proof while he intended to assert the Fifth Amendment in response to any questions concerning the amount and repayment of his debts and the location and description of his assets.

I cannot fault the members of the Lindsay Hart firm for being thorough in their investigation and trial preparation. The debtor had admitted that he disposed of most of his liquid assets during a deposition which attorneys from Lindsay Hart were conducting on behalf of First Interstate Bank. At the

conclusion of one day of the deposition, Eric Randolph withdrew large sums of cash from banks and left suddenly for Europe. After the creditors filed the involuntary petition, he refused to answer every question posed to him in reliance on the Fifth Amendment.

While the fees of the other three firms are much less than those of Lindsay Hart, I cannot award them in full. The creditors agreed that the Lindsay firm would be lead counsel and the other attorneys would simply advise their own clients and prepare the exhibits and witnesses for trial as to their client's debt. I will award the reimbursement of fees incurred in connection with the trial preparation, but not the charges that are duplicative of the services provided by Lindsay, Hart. I have attached copies of the fee itemizations of the other three firms and underlined the entries which I am allowing. Some of the allowable entries are lumped with nonallowable services. I have attempted to award a reasonable fee for the allowable service despite the applicant's failure to itemize each service separately.

I have allowed some fees for calls between the other three firms and the Lindsay firm, and corresponding calls to the respective clients, but not all of them. My rationale for these awards is that these calls saved time for the Lindsay firm because they did not have to contact each petitioning creditor to gather evidence for the involuntary trial or keep them

apprised of the status of the case. I will not award the fees for meetings between all the creditors' lawyers and for the lawyers from the other three firms to attend the 2004 examinations, depositions, or court hearings such as the motion to appoint the trustee, for a temporary restraining order, or to compel the debtor's testimony. There is no indication that the Lindsay firm could not adequately depose the witnesses or advocate the creditors' position on the issues before the Bankruptcy Court. Part of my reason for allowing many of the calls between the lawyers was so that the Lindsay firm could be kept apprised of any information which the other petitioning creditors might have that would assist in prosecuting the involuntary petition. It is duplicative for the other firms to review documents prepared by the Lindsay firm, so I will not allow fees of that nature. It was not necessary for the other three firms to attend the involuntary trial after they were informed that morning that the debtor had withdrawn his answer.

Some of the services provided by the other three firms benefitted only their particular client. For example, Lane Powell filed a motion for relief from stay and sought adequate protection payments on its lease. They spent time analyzing their client's claim against Safeguard Security System and prepared a demand letter to the guarantor on May 2. They researched, drafted and filed a complaint with the state court as shown by the time entries on May 7, and by the expenses for

a filing fee of $238.00 and a service fee of $52.04. These services clearly were only to benefit First Portland Leasing.

The Bank of California did not join the involuntary petition until May 22. While it is fine for a creditor to explore other alternatives to collect its debt, the bankruptcy estate should not pay for these efforts. The Black Helterline firm billed for time investigating a suit against the accountant that signed the false tax returns presented by Eric Randolph in support of his loan. They also spent excessive time researching simple or unnecessary matters such as the amount of witness and mileage fees, shortening the time for responding to discovery and whether fraud was a basis to enter an order for relief on the involuntary petition. The Lindsay Hart firm had already accomplished the first two matters, and it would have been appropriate for the Black Helterline firm to rely on their efforts. It is not apparent why a review of a state court file and the district court file concerning MCI v. Safeguard was helpful in prosecuting the involuntary petition. While the services which are disallowed are logical and beneficial services to perform for a client, the fees are simply not compensable from the bankruptcy estate under §503(b)(4).

I will not allow the costs requested by the other three law firms. The applicants have not established that they were necessary in light of the finding that most of the services provided are not compensable from the estate. The filing and

service fees in a different suit by First Portland Leasing should not be paid from this estate. The witness fees listed by the Bank of California appear duplicative of fees reimbursed to First Interstate Bank. Bank of California includes a cost of $430.40 for "limited liability reports" with no explanation of what such a report contains or how it was used to prosecute the involuntary petition. The copy costs in connection with these kind of services should not be paid from the estate. I cannot sort the compensable costs from the noncompensable costs, so it is appropriate to disallow them in full. See, In re Puget Sound Plywood, Inc., 924.F.2d 955, 961 (9th Cir. 1991).

A separate order allowing fees and directing payment will be entered.

DATED this _____ day of July, 1991.

_____
DONAL D. SULLIVAN
Bankruptcy Judge

cc: Eric H. Randolph
Leon Simson
John Mitchell
U. S. Trustee
James Lancaster
Ronald T. Adams
Katherine J. Schroeder
John H. Durkheimer

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In Re:	)	Bankruptcy Case No.
	)	390-32378-S7
ERIC H. RANDOLPH, aka	)	
Eric A. Randolph, fka	)	ORDER ALLOWING FEES AND
Hartmut Presterl,	)	COSTS TO COUNSEL FOR THE
	)	PETITIONING CREDITORS
Debtor,	)	

Based on a memorandum entered separately,

IT IS ORDERED that:

(1) Lindsay Hart Neil & Weigler is awarded fees in the amount of $73,415.50 and reimbursement of $25,903.23 for expenses.

(2) Lane Powell Spears Lubersky is awarded fees in the amount of $2,026.00 and $0.00 for expenses.

(3) Black Helterline is awarded fees in the amount of $4,041.50 and $0.00 for expenses.

(4) Schwabe Williamson & Wyatt is awarded fees in the amount of $3,476.00 and $0.00 for expenses.

(5) These are final awards for compensation from the estate under 11 U.S.C. §503(b)(4), and the trustee is directed to pay them in full if he determines there are sufficient

funds in the estate to pay all administrative expenses of equal priority.

DATED this _____ day of July, 1991.

_____
DONAL D. SULLIVAN
Bankruptcy Judge

cc: Eric H. Randolph
Leon Simson
John Mitchell
U. S. Trustee
James Lancaster
Ronald T. Adams
Katherine J. Schroeder
John H. Durkheimer