

11 U.S.C. § 326
11 U.S.C. § 330
Administrative expenses
Trustee's fee

In re Donald Vernon Berry, Case No 693-60988-aer13

5/11/94

Radcliffe, J.
Published at 1994 WL 190244

The debtor commenced this case by filing a Chapter 7 petition. Based upon the debtor's schedules it appeared to be a no-asset case. However, the Chapter 7 trustee filed its inventory and report of assets and claimed an interest in certain assets including the debtor's residence, a state tax refund and a gift to a church. The debtor then converted the case to one under chapter 13.

The trustee filed a proof of claim in the chapter 13 for services rendered prior to conversion for administrative expenses of \$2,031.26: \$205 in expenses and fees of \$1,826.26. The fees were computed upon the statutory maximum fees under § 326(a) as if \$54,875.36 of non-exempt assets had been fully administered in the Chapter 7. The debtor objected to the claim, indicating that the trustee should be allowed only \$205 (expenses) because the balance exceeded reasonable compensation under § 330.

Noting that the efforts of the Chapter 7 trustee in pursuing assets which the debtor had originally claimed as fully exempt resulted in the debtor proposing a Chapter 13 plan under which unsecured creditors would receive a 30% distribution, the court allowed the Chapter 7 trustee its administrative expense claim for the reasonable value of its services in the amount of \$720. This was arrived at by computing the percentage formula set forth in § 326(a) on the total amount of funds to be paid by the debtor to the Chapter 13 trustee. The court also allowed the trustee its reasonable expenses in the sum of \$205.

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8 UNITED STATES BANKRUPTCY COURT
9 FOR THE DISTRICT OF OREGON
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11 IN RE)
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13 DONALD VERNON BERRY,) Case No. 693-60988-aer13
14)
15) MEMORANDUM OPINION
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Debtor.)

27 The former Chapter 7 trustee in this case, Michael A.
28 Grassmueck, Inc. has filed proof of claim #7 in this case in the
29 amount of \$2,031.26 as an administrative expense claim. This
30 matter comes before the court upon the debtor's objection to that
31 claim.

32 **BACKGROUND**

33 The facts are, essentially, undisputed. The debtor commenced
34 this case by filing a voluntary Chapter 7 petition with this court
35 on March 12, 1993. Based upon the schedules filed by the debtor,
36 it appeared that this would be a no-asset case.¹ Michael A.

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1 Grassmueck, Inc., was appointed as the Chapter 7 trustee, herein
2 (the trustee). On May 17, 1993 the trustee filed its Inventory and
3 Report of Assets in the Chapter 7 proceeding. In this report, the
4 trustee claimed an interest in certain assets, for the benefit of
5 the estate, including the debtor's residence, a state tax refund
6 (which the debtor had claimed as exempt) and a gift to a church
7 valued at \$1,020.²

8 After the filing of the Inventory, the trustee filed a motion
9 for an order requiring the debtor to turnover certain personal
10 property, including the state tax refund, on May 22, 1993. In
11 apparent response to the trustee's action, the debtor gave notice
12

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15 ¹(...continued)
16 Claim Of Chapter 7 Trustee, the debtor indicates that the schedules
17 clearly disclose non-exempt assets for trustee distribution.
18 Technically, that is correct. In schedule A, the debtor has listed
19 his residence as having a value of \$50,000, subject to a secured
20 claim in the amount of \$28,420.13. The debtor claimed the
21 allowable homestead exemption in this property of \$15,000.
22 Assuming costs of sale of approximately 10% of the sales price, a
23 sale at \$50,000 would net the estate \$1,579.87. In addition, in
24 schedule B, the debtor has scheduled wages due and owing as of the
25 date of filing in the amount of \$972.60. The debtor has claimed an
26 exemption in these funds of \$720.45, leaving non-exempt wages due
the estate of \$252.15. Assuming that a Chapter 7 trustee would
administer this estate on a cost-effective basis for the benefit of
unsecured creditors, it is likely that the trustee would not
attempt to sell the debtor's home, at the value scheduled by the
debtor and would probably report this case as a no-asset estate.

²The trustee decided that the debtor's residence was worth
substantially more than the \$50,000 scheduled by the debtor and
listed this property for sale at \$74,000. In addition, the trustee
indicates that, for purposes of computing his fees, this property
should be valued at \$69,000. See Memorandum In Support of
Administrative Claim of Chapter 7 Trustee, filed December 15, 1993.

1 of conversion of this case to a Chapter 13 proceeding on June 7,
2 1993.³

3 The debtor proposed a Chapter 13 plan, dated June 15, 1993,
4 providing for payments to the Chapter 13 trustee in the sum of \$400
5 monthly for the first 24 months, then \$700 monthly for 12 months.
6 The plan proposes a distribution to general unsecured creditors in
7 the approximate amount of 30%. This plan was confirmed by an order
8 entered, herein, on December 3, 1993.

9 The trustee has filed proof of claim #7 for services rendered
10 prior to conversion as an administrative expense claim in the
11 amount of \$2,031.26. The trustee seeks reimbursement of expenses
12 in the amount of \$205 and fees in the amount of \$1,826.26. The
13 trustee has computed the fees based upon the statutory maximum fee
14 allowed by 11 U.S.C. § 326. The trustee indicates that had this
15 case been fully administered in Chapter 7, non-exempt assets of
16 \$54,875.36 would have been disbursed. The trustee computes the
17 percentages set forth in 11 U.S.C. § 326 to that sum to arrive at
18 the fees. The trustee has also filed proof of claim #15 which
19 appears to duplicate claim #7.
20

21 The debtor has objected to the allowance of the trustee's
22 claim for administrative expenses as set forth above indicating, in
23 the debtor's objection, that the claim should be allowed in the
24

25
26 ³It is noteworthy, that after conversion to Chapter 13, the
debtor filed schedules showing the debtor's residence as having a
value of \$60,000.

1 amount of \$205 (reimbursement of trustee's expenses) as the balance
2 exceeds reasonable compensation as set forth in 11 U.S.C. §330.

3 **ISSUE**

4 This court must decide how a Chapter 7 trustee should be
5 compensated when the case has been converted to Chapter 13 and no
6 monies were actually disbursed by the Chapter 7 trustee.

7 **DISCUSSION**

8 All statutory references are to the Bankruptcy Code, Title 11
9 United States Code, unless otherwise indicated.

10 Section 330 provides in pertinent part:

11 (a) [T]he court may award to a trustee,. . . -

12 (1) reasonable compensation for actual, necessary
13 services rendered by such trustee,. . .based on the
14 nature, the extent and the value of such services,
15 the time spent on such services and the cost of
16 comparable services other than in a case under this
title; and

17 (2) reimbursement for actual, necessary expenses.

18 (b) There shall be paid from the filing fee in a case
19 under Chapter 7 of this title, \$45 to the trustee serving
in such case, after such trustee's services are rendered.

20 Section 326 provides in pertinent part:

21 (a) In a case under chapter 7 or 11, the court may allow
22 reasonable compensation under section 330 of this title
23 of the trustee for the trustee's services, payable after
the trustee renders such services, not to exceed fifteen
24 percent on the first \$1,000 or less, six percent on any
amount in excess of \$1,000 but not in excess of \$3,000,
25 and three percent on any amount in excess of \$3,000, upon
all moneys disbursed or turned over in the case by the
trustee to parties in interest, excluding the debtor, but
26 including holders of secured claims.

1 The Ninth Circuit Bankruptcy Appellate Panel has concluded
2 that trustees should be compensated for the reasonable value of
3 services rendered notwithstanding the conversion of the case to
4 another chapter. Gill v. Wittenburg, (In re Financial Corporation
5 of America), 114 B.R. 221 (9th Cir. BAP 1990). There, the case had
6 commenced as a Chapter 11 proceeding and had later converted to a
7 Chapter 7 case. A Chapter 11 trustee had been appointed. The same
8 trustee continued as Chapter 7 trustee, after conversion. The
9 trustee, as Chapter 11 trustee, disbursed a large sum of money to
10 himself, as Chapter 7 trustee after conversion. The court was
11 confronted with the question of how §§ 326(a) and (c) should be
12 applied to determine the compensation of the Chapter 11 trustee.
13 The court noted:
14

15 A trustee under Chapter 11 of the Code is
16 compensated for work performed in carrying on the
17 business of the estate; in contrast the Chapter 7 trustee
18 is compensated for tasks pursuant to liquidation.
19 Although the nature of their services differ, both are
20 valuable to the estate. 114 B.R. at 225.

21 The court further observed:

22 [C]riteria for setting trustee fees have closely
23 resembled the factors used for awarding attorney
24 fees. . . .Classically, those factors include the time
25 and labor involved; the novelty and difficulty of the
26 questions presented by the case; and the experience,
27 reputation and ability of the professional. . . .

28 Once reasonable fees are determined according to
29 the above criteria, a trustee's fees are cut down, if
30 required, to the statutory maximum stated in Section
31 326(a). 114 B.R. at 223.

1 Trustee fees should be set according to the section 330
2 criteria, not merely according to the amount of monies
disbursed. 114 B.R. at 224.

3 This case differs from In re Financial Corporation of America,
4 in that here the trustee did not actually disburse funds to the
5 Chapter 13 trustee. A literal application of § 326 would seem to
6 indicate that since no funds were disbursed to creditors by the
7 trustee, that the trustee's compensation should be limited to the
8 \$45 provided in § 330(b) as there are no funds to which the
9 percentage formula provided in § 326(a) may be applied.
10

11 That was the result reached by the court in In re Woodworth,
12 70 B.R. 361 (Bankr. N.D. N.Y. 1987). There, the case commenced as
13 a Chapter 7 proceeding. While the case was in Chapter 7, the
14 trustee discovered an automobile having an approximate value to the
15 estate of \$10,000. When the trustee demanded turnover, the debtors
16 converted the case to one under Chapter 13. The court held:

17 The Court cannot compensate the Trustee merely because a
18 valuable, non-exempt asset was removed from what
19 presumably would have been swift liquidation efforts by
20 debtors' utilization of the Code's liberal conversion
21 provisions. . . .the Court must deny that portion of the
motion which seeks compensation for trustee's fees based
upon Code § 326(a) beyond allowing the trustee the
minimum compensation authorized by Code § 330(b).

22 In re Woodworth, 70 B.R. at 363.

23 Even the Woodworth court noted, however, that:

24 The Court's research has revealed that other
25 bankruptcy courts have generally refused to apply a
26 literal reading of Code § 326(a), restricting the
section's application to fully administered cases only.
Where a case is either converted or dismissed, courts

1 have seen fit to compensate the trustee even where no
2 money has been disbursed to creditors, upon a showing
3 that the trustee has performed substantial services on
the estate's behalf. 70 B.R. at 362.

4 Indeed, it appears that the court in Woodworth was concerned that:
5 ". . .the trustee's activities have been minimal. The trustee did
6 not prepare any Inventory; was not required to collect any tangible
7 assets of the estate;. . ." Id. "Additionally, a review of the
8 records submitted by the trustee reveal that almost all matters
9 concerning the status of the automobile were handled by his
10 attorney." 70 B.R. at 363.

12 "The Courts, however, have generally reasoned that
13 a literal reading of § 326(a) should apply only in fully
14 administered cases and that in cases which were not fully
15 administered, through no fault of the Trustee,
16 compensation should be awarded to the Trustee on a
17 quantum meruit basis when the Trustee performs
substantial services, but did not disburse any moneys.
This is especially true when the case is either dismissed
or converted." In re Stabler, 75 B.R. 135, 136 (Bankr.
M.D. Fla. 1987), See also, In re Rennison, 13 B.R. 951
(Bankr. W.D. Ky. 1981).

18 Here, the parties apparently agree that the trustee's
19 compensation should be set on a quantum meruit basis. In his
20 Memorandum In Opposition To Administrative Claim of Chapter 7
21 Trustee, filed January 10, 1994, the debtor concedes: "In light of
22 the Chapter 7 Trustee's efforts, he should certainly be awarded
23 some reasonable compensation for his services. It is the debtor's
24 position that \$500 is satisfactory to compensate the Chapter 7
25 Trustee for the work incurred in the Chapter 7 proceeding."
26

1 Debtor's Memorandum in Opposition to Administrative Claim of
2 Chapter 7 Trustee, p.3, lines 9-13.

3 The trustee contends that it should be awarded reasonable
4 compensation in the amount of the maximum allowable compensation
5 set under § 326(a) on the total sums which the trustee calculates
6 would have been disbursed had the estate been fully administered in
7 Chapter 7. The trustee notes that it engaged in considerable
8 efforts while this case was in Chapter 7. The trustee conducted
9 the § 341(a) meeting in this case. It retained Chuck Fischer and
10 Associates, Inc. as realtors to sell the debtor's residence. The
11 trustee was actively involved in dealing with the debtor's lack of
12 cooperation with the trustee's realtors. It also filed an
13 inventory and motion for turnover of assets.
14

15 The debtor does not dispute the services rendered by the
16 trustee (although the debtor does not admit that the debtor was
17 uncooperative).

18 It is clear that the trustee's services have not been minimal
19 as was the case in In re Woodworth. A Chapter 13 plan has been
20 confirmed in this case which, if performed by the debtor, will
21 result in an approximate payment to general unsecured creditors of
22 30% of their claims. The trustee must be given a large portion of
23 the credit for this favorable result. Even the debtor admits that
24 he decided to convert his case to a Chapter 13 proceeding ". .
25 .upon learning that his real property was worth more than he had
26

1 anticipated. . ." Debtor's Memorandum in Opposition to
2 Administrative Claim of Chapter 7 Trustee, p.3, lines 5 and 6.

3 Without the vigorous efforts of the trustee, this case would
4 probably have been administered as a no-asset Chapter 7 proceeding.
5 Pursuant to the terms of the confirmed Chapter 13 plan, the total
6 sum of \$18,000 will be paid by the debtor to the Chapter 13
7 trustee. Chapter 7 trustees must be encouraged to undertake the
8 type of efforts in which the trustee engaged in this case.

9 This court agrees with other courts that have considered
10 this issue, the trustee is entitled to compensation based upon the
11 reasonable value of the actual and necessary services which were
12 rendered by the trustee on a quantum meruit basis. Accordingly,
13 each case must be determined upon its own facts.

14 Based upon the facts presented in this case, the court
15 concludes that reasonable compensation for the trustee may be
16 arrived at by computing the percentage formula set forth in §
17 326(a) on the total amount of funds to be paid by the debtor to the
18 Chapter 13 trustee in this case. Such a computation yields a
19 trustee's fee of \$720. In addition, the trustee should be
20 reimbursed for its reasonable expenses in the sum of \$205.

21 **CONCLUSION**

22 Based upon the foregoing, this court concludes that claim #7
23 on behalf of Michael A. Grassmueck, Inc., the former Chapter 7
24 trustee herein, should be allowed in the sum of \$925, the balance
25 of the claim should be disallowed. Claim #15 should be disallowed
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1 as duplicative of claim #7, an order consistent herewith shall be
2 entered.
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5 ALBERT E. RADCLIFFE
6 Bankruptcy Judge
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