

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)
)
FLASH PRO TECHSPERTS, INC.,) CASE NO. 11-30225 HCD
) CHAPTER 7
)
DEBTOR.)

Appearances:

J. Richard Ransel, Esq., Chapter 7 Trustee, Thorne Grodnik, LLP, 228 West High Street, Elkhart, Indiana 46516; and

Trevor Gasper, Esq., and Jeffery A. Johnson, Esq., counsel for claimant First Source Bank, May Oberfell Lorber, 4100 Edison Lakes Parkway, Suite 100, Mishawaka, Indiana 46545.

MEMORANDUM OF DECISION

At South Bend, Indiana, on September 28, 2012.

Before the court are two issues brought by J. Richard Ransel, Trustee (“Trustee”) of the chapter 7 debtor Flash Pro Techsperts, Inc. (“Flash Pro” or “debtor”). The Trustee has filed Objections to Claims Number 2 and 3 of 1st Source Bank (“Bank”) and Applications for Compensation of the Trustee and Counsel for Trustee. The Bank has responded to each matter. For the reasons that follow, the court overrules the Trustee’s Objections to the Bank’s Claims and allows the claims as fully secured. It grants the Trustee’s Application for Compensation in the amount of \$787.56 for reasonable services rendered and \$23.20 for expenses incurred. It denies the Application for Compensation of Trustee’s Counsel.¹

¹ The court has jurisdiction to decide the matter before it pursuant to 28 U.S.C. § 1334 and § 157 and the Northern District of Indiana Local Rule 200.1. The court has determined that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B).

BACKGROUND

The debtor Flash Pro Techsperts, Inc., filed its chapter 7 petition in bankruptcy on January 31, 2011. The Trustee appointed in the case was J. Richard Ransel. On February 11, 2011, 1st Source Bank filed Claim Number 2, a secured claim in the amount of \$7,061.29, and Claim Number 3, a secured claim in the amount of \$49,041.58. The parties stipulated that 1st Source Bank was a secured creditor of the debtor, holding a mortgage on real estate and a security interest in the debtor's assets.

Approximately a month before Flash Pro filed its chapter 7 petition, it executed a Bill of Sale and Promissory Note with Computer Pros MC, LLC ("Computer Pros"), agreeing to sell all its assets to Computer Pros for \$40,000.00. When the Trustee learned of the sale of the debtor's property (including cash, cash accounts, accounts receivable, inventory and equipment) to Computer Pros, he demanded that Computer Pros make its monthly payments to him rather than to the debtor on the ground that the Promissory Note was an asset to be administered as property of the Flash Pro bankruptcy estate. Computer Pros complied with the demand, turning over \$630.05 in monthly payments to the Trustee, and the Trustee deposited the collected moneys into his account for this debtor.

On June 23, 2011, the Trustee received an email correspondence from the Bank's attorney concerning the debtor's transfer of assets, the Bank's secured interest in those assets, and its claim to them. On August 11, 2011, he received another letter from counsel for the Bank stating its claim to the debtor's collateral and asserting a lien on that collateral and the proceeds from the sale of the collateral. He received another correspondence from the Bank's attorney on August 22, 2011, with loan documentation attached.

In a letter responding to the Bank dated August 22, 2011, the Trustee acknowledged the Bank's security interest in the debtor's collateral and stated that he was holding, as of that date, \$3,150.30 of proceeds from the collateral. However, he declined to release the proceeds to the Bank.

On September 1, 2011, the Trustee filed an Objection to each of the Bank's two claims, asserting that the claims should be disallowed in full because "the security claimed was never administered as an asset

of the bankruptcy estate.” R. 15, 18. The Bank responded to the Objection, documenting its perfected first priority security interest in the debtor’s collateral and the Trustee’s recognition, in his letter of August 22, 2011, of the Bank’s secured status. The Bank contended that the Trustee was holding the sale proceeds in which the Bank held a valid, perfected, secured claim. It asked the court to overrule the Trustee’s objections and to direct the Trustee to make payment of the proceeds to the Bank. R. 26, 27.

On December 20, 2011, the court held a hearing on the Trustee’s Objections to the Bank’s claims. It continued the hearing pending resolution of an ongoing related adversary proceeding.

The Bank commenced an adversary proceeding three weeks after the Trustee sought to disallow the Bank’s claims and refused to release the proceeds from the collateral in which the Bank claimed a first priority security interest. On September 22, 2011, the Bank filed a two-count Complaint against the Trustee, alleging that it held a secured interest in collateral collected by the Trustee and was entitled to immediate possession of all proceeds from the sale of that collateral, including the proceeds held by the Trustee. It also alleged that the Trustee, by refusing to return the proceeds from the sale of the collateral to the Bank, exerted unauthorized control over the collateral. It further claimed entitlement to an award of damages.

The court, in its Memorandum of Decision of March 29, 2012, found that the Bank held a perfected first priority security interest in the debtor’s collateral, and in any sale proceeds, that was superior to the Trustee’s interest acquired upon commencement of the case. It declared that those proceeds from the sale of the debtor’s collateral belonged to the Bank. *See* R. 18 (Adv. Proc. No. 11-3057) (“The Bank undisputedly has a right to Computer Pros’ payments to Flash Pro that are being collected by the Trustee.”). Concluding that the Bank succeeded in its burden of proving that the Trustee wrongfully held the payments being made by Computer Pros, the court granted to the Bank the relief sought in Count I, the replevin count of the Complaint. *See* R. 18, 19 (Adv. Proc. No. 11-3057). However, it denied the relief sought in Count II, the criminal conversion count, on the ground that the Bank did not demonstrate by a preponderance of

evidence that the Trustee knowingly or intentionally exerted unauthorized control over those payments. It denied an award of damages, as well.

On June 5, 2012, the court held a hearing on the continued issue of the Trustee's Objections to Claims and on the Applications for Compensation filed by the Trustee and Counsel for the Trustee. The Trustee and the Bank's attorney Trevor Gasper, Esq., were in attendance and presented their positions on each issue. The court then took both matters under advisement.

DISCUSSION

A. Trustee's Objections to the Bank's Claims 2 and 3

The court turns first to the Trustee's Objections to the Bank's two claims. Eleven days after the debtor filed its chapter 7 petition, the Bank filed two proofs of claim, Claims 2 and 3. Each claim was secured by real estate and other property, and the Bank attached the documents supporting the claims.

Each proof of claim constituted "prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f). Under § 502 of the Bankruptcy Code, once a proof of claim is filed, the claim is deemed to be allowed unless the Trustee or another party in interest files an objection to it pursuant to 11 U.S.C. § 502(a). Section 502(b) sets forth the statutory considerations for allowing or disallowing a claim. "To the extent a claim falls within any of the nine paragraphs of § 502(b), the claim is not allowable." *In re Sentinel Mgmt. Group, Inc.*, 417 B.R. 542, 550 (Bankr. N.D. Ill. 2009). The Trustee, as the party objecting to a claim, bears "the initial burden to produce some evidence to overcome the rebuttable presumption of validity," and that evidence "must be of a probative force equal to that of the allegations asserted in the claim." *Id.* (citing cases); *see also* N.D. Ind. L.B.R. B-3007-1(b) ("An objection to a proof of claim shall . . . state with specificity the basis for disallowance"). The claimant then has the burden of offering sufficient evidence to meet the objection and to prove its entitlement to the claim. *See In re Sentinel Mgmt. Group*, 417 B.R. at 550.

The Trustee sought to disallow the Bank's two claims on the ground that "the security claimed was never administered as an asset of the bankruptcy estate." R. 15, 18. The reasons listed in § 502(b) for disallowing a claim do not include that ground. The court finds, as well, that the Objections did not "allege facts which, if accepted as true, would trigger one of the statutory reasons for denying a claim." *In re Taylor*, 289 B.R. 379, 384 (Bankr. N.D. Ind. 2003). In fact, the Bank's documentary evidence that proved its perfected, first priority security interest made clear that the Bank's interest in the debtor's collateral was superior to the Trustee's interest. In the adversary proceeding brought by the Bank, the court concluded that the proceeds from the sale of the debtor's collateral belonged to the Bank and that the Bank had the right to all payments from the purchaser Computer Pros, including those payments being collected by the Trustee.

At the court hearing on June 5, 2012, the Trustee acknowledged the court's determination, in its Memorandum of Decision, that the Bank was entitled to the funds he had collected and to the remaining payments from Computer Pros. He then stated that, in his view, no issue remained concerning his objections to the Bank's claims. The court finds that the Trustee's Objections were not based upon any of the reasons for disallowance found in the paragraphs of § 502(b). *See id.* at 385 (concluding that the trustee's objections implicated none of the statutory reasons for denying a claim). In light of the Trustee's concession in open court, as well, the court determines that the Trustee failed in his burden of proving that the claims were not allowable. It therefore holds that the Trustee's objections to the Bank's Claims No. 2 and 3 are overruled.

B. *Trustee Application for Compensation*

Also before the court are the Applications for Compensation filed by the Trustee and Counsel for Trustee in this bankruptcy case. It begins with consideration of the Trustee's Application.

In its Memorandum of Decision of March 29, 2012, the court gave the Trustee the opportunity to submit his application for "reasonable compensation for actual, necessary services rendered by the trustee" pursuant to 11 U.S.C. § 330(a)(1)(A). It noted that the Trustee was a longstanding chapter 7 trustee who has served as the statutory representative of the estate and owed fiduciary duties to all interested parties,

including the debtor and creditors. It recognized that a trustee's duties included the marshaling and distributing of a debtor's property for the benefit of the creditors. It then stated:

Nevertheless, it appears that the Trustee collected these payments without considering that a secured creditor might hold a lien on the debtor's assets. In this regard, the Trustee did not carry out his obligations with the care and diligence expected of a trustee. However, the Bank has not demonstrated by a preponderance of the evidence that the Trustee knowingly or intentionally exerted unauthorized control over those payments.

R. 18 (Adv. Proc. No. 11-3057) at 12. It found that the Trustee was entitled to request reasonable compensation in his role as Trustee of this case, but commented further:

In evaluating an award, however, the court will take into consideration the underlying facts concerning his representation in this adversary proceeding and may, in its discretion, limit the trustee's compensation.

Id. at 13.

The Trustee submitted an Application for Compensation under 11 U.S.C. § 330 and § 326 in his capacity as chapter 7 Trustee. *See* R. 36. He reported total disbursements of \$9,451.05 and calculated the statutory compensation for those disbursements in the total amount of \$1,695.11. The Trustee also requested \$23.20 in expenses.

The Bank objected to the Application. *See* R. 43. It alleged that \$9,368.66 of the total disbursements related to amounts collected from Computer Pros, funds which the court determined were the Bank's proceeds. It pointed out that a trustee's compensation should be given only for actual and necessary services, § 330(a)(1), and for services reasonably likely to benefit the debtor's estate or reasonably necessary to the administration of the case, § 330(a)(4). Referring to the court's statement in its March 29, 2012, Memorandum of Decision that the Trustee failed to act carefully or diligently, the Bank argued that the Trustee's actions did not benefit the debtor's estate or any of the debtor's creditors. It further charged that his administration of those funds was unnecessary and even caused the Bank to incur time, costs, and attorney's fees to collect what rightfully belonged to the Bank and should not have been administered by the Trustee. It asked the court to deny the Trustee's application.

The Trustee, in response, reported that the Bank neither attended the 341 meeting nor contacted him until June 23, 2011, when the Bank's attorney sent him an email. *See* R. 46. He asserted that the funds he received from Computer Pros would not exist if he had not diligently demanded and protected them. He also pointed out that he defended the adversary proceeding in good faith, believing that the Bank's security interest did not extend to the Promissory Note at issue and that the court would determine that the funds should be distributed for the benefit of the unsecured creditors. Finally, the Trustee claimed that he was entitled to compensation under § 506(c), which provides:

The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim.

Id. at p. 3. The Trustee asked the court to grant his Application.

A court has broad discretion when reviewing fee applications. *See In re Phillips*, 392 B.R. 378, 383 (Bankr. N.D. Ill. 2008). A chapter 7 trustee's compensation is governed by 11 U.S.C. § 330 and § 326. Section 330(a)(1) allows a trustee "reasonable compensation for actual and necessary services rendered," but § 330(a)(7), the provision added under the Bankruptcy Abuse Prevention and Consumer Protection Act, further provides that, "[i]n determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326." § 330(a)(1), (7). Section 326 establishes a commission formula based upon the amounts a trustee disburses or turns over "to parties in interest, excluding the debtor, but including holders of secured claims."² § 326(a).

Since the enactment of § 330(a)(7), courts awarding trustee fees have wrestled to balance properly the relationship between § 330 and § 326. Most have determined that, under § 326, a trustee's

² Section 326(a) establishes the following calculation for computing a trustee's compensation:
25% of the first \$5,000 or less of total disbursements
10% on any disbursed amount between \$5,000 and \$50,000
5% on any disbursed amount between \$50,000 and \$1,000,000
3% on any disbursed amount in excess of \$1,000,000.

reasonable compensation is capped by the percentage of funds distributed by the trustee, but under § 330(a)(1) the court still is required to consider the reasonableness of that compensation.³ *See, e.g., In re Healy*, 440 B.R. 834, 836 (Bankr. D. Idaho 2010); *In re Coyote Ranch Contractors, LLC*, 400 B.R. 84, 95 (Bankr. N.D. Tex. 2009). Other courts find that § 330(a)(7) “creates a presumption that the statutory maximum is reasonable compensation” but that a court should review the trustee’s time records and other facts and circumstances to determine if that award should be reduced. *See In re McKinney*, 383 B.R. 490, 494 (Bankr. N.D. Calif. 2008). Recently, however, the Bankruptcy Appellate Panel for the Ninth Circuit took a much narrower view for awarding compensation to trustees; it held that, “absent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant review.” *In re Salgado-Nava*, 473 B.R. 911, 921 (9th Cir. BAP 2012).

Two bankruptcy courts in the Seventh Circuit have weighed this issue. In *In re Phillips*, 392 B.R. 378 (Bankr. N.D. Ill. 2008), the court reviewed the statutes and announced its determination:

[T]he Court holds that § 330(a)(7) requires the Court to determine reasonable compensation as a commission with § 326(a) establishing a maximum cap thereon, but such cap is not an entitlement, nor is the Trustee entitled to a statutory presumption of the appropriate allowable compensation for such services rendered under any of the relevant statutory provisions. Federal Rule of Bankruptcy Procedure 2016(a) mandates Chapter 7 trustees and other professional persons seeking interim or final compensation to set forth in their applications detailed statements of the services rendered, time expended, and expenses incurred for the amounts requested.

Id. at 380. In *In re Luedtke*, 2011 WL 806003 (Bankr. C.D. Ill. Feb. 28, 2011), the court noted that after BAPCPA, § 330(a)(3) no longer includes chapter 7 trustees. *See id.* at *3. For chapter 7 trustees, therefore, the court must treat reasonable compensation as a commission, based upon § 326, but it can limit that compensation based upon “actual, necessary services rendered” under § 330(a)(1)(A) and upon services not “reasonably likely to benefit the estate” or not “necessary to the administration of the case” under

³ Section 330(a)(3) was amended to eliminate chapter 7 trustees from the professionals covered in the subsection. It now provides: In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, . . . , the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors

§ 330(a)(4). It stated that “[c]ourts retain the discretion to award compensation in amounts less than requested.” *Id.* The *Luedtke* court then found:

[A]lthough the calculation of a Chapter 7 trustee fee must now be treated as a commission, the calculation is not firmly fixed by the maximum percentages set forth in § 326 but remains a subjective determination based on reasonableness.

Id. After considering what services the trustee actually provided, the court calculated the percentage commission by reducing the 5% calculation (for funds over \$50,000 up to \$1 million) to 2.5% in recognition that “a significant portion of the funds [the Trustee] will be distributing required no work on his part to collect.” *Id.* at *5.

It is clear to this court, as it was in *Luedtke*, that compensation for a chapter 7 trustee remains subject to review for reasonableness, that the determination of reasonableness is based upon what the trustee actually did, and that the trustee has the burden of proving that he is entitled to the fees he requested. *See id.* at *4. Having reviewed the Trustee’s Application and the parties’ arguments, and having weighed the positions of the parties as presented at the hearing, the court determines that the compensation requested by the Trustee is disproportionate to the services he rendered. *See id.* at *5; *see also In re Robert Plan Corp.*, 2012 WL 3597564 at *7 (Bankr. E.D.N.Y. Aug. 20, 2012) (finding that the maximum statutory compensation of § 326 was substantially disproportionate to the value of the trustee’s services).

In the court’s view, the Trustee first should have seen that the only secured creditor listed on Schedule D of the debtor’s schedules was 1st Source Bank and that its proofs of claim and appended documents validated its first priority security interest. In addition, the Bank’s June 23, 2011 email notification should have led the Trustee to a diligent inquiry of the Bank’s claimed position and assertions. In response to the judge’s question during the June 5, 2012 hearing, the Trustee stated that he first learned that the Bank held a secured claim on the debtor’s assets when he received the June 23, 2011 email from the Bank’s lawyer. According to the Trustee’s written Response and his statements in open court at the hearing, the Bank notified the Trustee on June 23, 2011, that it claimed a right to the debtor’s transferred assets and/or

to the payments being received and held by the Trustee. If the Trustee had been unaware or unsure of his duty to investigate the secured creditor's right to those funds before that date, he was put on notice on June 23, 2011.

The Trustee asserted that he was not certain that the Bank's security interest covered the proceeds of the Promissory Note between the debtor and Computer Pros, and he argued that the monthly payments could not be identified as proceeds of the Bank's collateral. In its Memorandum of Decision, however, the court addressed the Trustee's argument and called his position "disingenuous and hard to comprehend." R. 18 (Adv. Proc. 11-3057) at 8. It found that "the Trustee's receipt of a monthly \$630.05 payment . . . certainly included proceeds from the sale of the Bank's collateral." *Id.* at 9. It then held that the Bank undisputedly had a right to those payments. *Id.* at 11.

The court finds that after June 23, 2011, the Trustee refused to turn over the payments from Computer Pros to the Bank, filed an Objection to the Bank's claims, and put on a defense in the adversary proceeding. Such activities, without some evidence provided to this court that the Trustee's beliefs and actions were justified, simply cannot qualify as services reasonably likely to benefit the debtor's estate. *See Maxwell v. KPMG LLP*, 520 F.3d 713, 718 (7th Cir. 2008) ("The Bankruptcy Code forbids reimbursing trustees for expenses incurred in actions not 'reasonably likely to benefit the debtor's estate,' 11 U.S.C. § 330(a)(4)(A)(ii)(I), and authorizes an 'appropriate sanction' against parties who file such a claim."). The payments from Computer Pros should have gone straight to the Bank, not to the Trustee, and it is difficult for the court to understand why the Trustee thought that, by receiving the payments, he was protecting the funds. It was not necessary to the administration of the case for the Trustee to receive payments due to be paid directly to the secured creditor in the first place.

Nevertheless, the statute on trustee compensation provides that the disbursement amount includes "all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims." § 326(a). Therefore the commission calculation in this case

includes the disbursement either turned over or to be turned over by the Trustee to the secured claimant, the Bank. *See In re Robert Plan Corp.*, 2012 WL 3597564 at *8 (“Whatever moneys the trustee disburses, whether estate property or not, is included in the formula.”).

The Trustee raised one other argument before the court. He contended that he was entitled to “the reasonable, necessary costs and expenses of preserving, or disposing of,” the property that secured an allowed secured claim under § 506(c) of the Bankruptcy Code. However, that statute provides that a trustee’s recovery is allowed only “to the extent of any benefit to the holder of such claim.” The Trustee has not carried his burden of proving that the costs and expenses he seeks were reasonable, necessary, and beneficial to the secured creditor Bank and in fact specifically benefitted the Bank. *See In re Gluth Bros. Constr., Inc.*, 424 B.R. 379, 399 (Bankr. N.D. Ill. 2009). The Bank insisted it in no way benefitted, and in fact has had to bear large expenses to defend its secured status and to require the Trustee to turn over to the Bank the proceeds he collected from the debtor’s sold assets, proceeds in which the Bank has a secured interest. The court finds that the Trustee cannot succeed under § 506(c).

The Trustee, with the burden of proving that he is entitled to the fees he requested, has informed the court that, as of April 5, 2012, he as Trustee had disbursed \$9,451.05 in payments. He did not suggest a method by which the court should calculate his fee if the court declined to grant the maximum allowed under § 326. *See Luedtke*, 2011 WL 806003 at *5. The court first finds that the Trustee failed in his burden of proving entitlement to the total fees. In the court’s view, the Trustee has a valid claim for compensation for actual and necessary services rendered in the performance of his duties as trustee prior to June 23, 2011, but not after that date. *See In re McKinney*, 383 B.R. 490, 496 (Bankr. N.D. Cal. 2008) (§ 326 statutory compensation bears little relationship to reasonable compensation for services actually rendered and cannot be allowed). In considering the actual and necessary services the Trustee performed between January 31, 2011, when the debtor’s bankruptcy was filed, and June 23, 2011, when the Bank claimed its right to the debtor’s transferred assets, the court finds that he performed the traditional duties required of a trustee: he

sought the turnover of funds from creditors, information on the status of the debtor's assets from debtor's counsel, and information about the debtor's financial affairs, for example. He also collected the monthly payments of \$630.05 from Computer Pros pursuant to the Promissory Note between the debtor and its purchaser Computer Pros. The funds proven by the Trustee to be available for disbursement as of June 23, 2011, therefore, were the five months of payments between January and June 2011, a total amount of \$3,150.25. Following the commission schedule's formula in § 326, the Trustee's fee for those five months is 25% of \$3,150.25, which is \$787.56. Because the Bank did not object to the Trustee's expenses and the court finds that they were actual and necessary expenses, the court also allows reimbursement of those expenses.

Accordingly, the court finds that the Trustee's requested fees are disproportionate to the actual services rendered and cannot be allowed in the amount requested. It determines that the chapter 7 Trustee should be awarded \$787.56 for his services and \$23.20 for his expenses pursuant to § 326 and § 330.

C. Counsel for Trustee Application for Compensation

Also before the court is the Application for Compensation as Counsel for the Trustee. *See* R. 38. He requested compensation for services rendered in the amount of \$8,436.00 and reimbursement of expenses incurred in the amount of \$20.00 from February 1, 2011 through February 23, 2012. He attached to the Application an exhibit which provided a detailed explanation and itemization of the services rendered and expenses incurred.

The Bank objected to the Application. *See* R. 42. It argued that the Trustee's request for fees and expenses was unreasonable, in light of his retention of the sale proceeds from the collateral in which the Bank held a secured interest. It noted the court's findings in its Memorandum of Decision that the Trustee had "collected these payments without considering that a secured creditor might hold a lien on the debtor's assets" and "did not carry out his obligation with the care and diligence expected of a trustee." R. 18 (Adv.

Proc. No. 11-3057). Based on the court's determinations in the adversary proceeding, the Bank asserted that the fees and expenses requested by Counsel for the Trustee are unreasonable and did not benefit the debtor's estate or creditors.

The Bank further urged the court, if it were to find that a portion of the fees were necessary and/or reasonable, to determine that the fees of Trustee's Counsel are allowed only as an administrative expense by this court and should not be deducted or paid from the proceeds that the court has determined belong to the Bank.

The Trustee responded that he employed his attorneys to defend the Trustee's position in the adversary proceeding, believing that the Bank's security interest did not extend to the Promissory Note in question. *See* R. 47. He asserted that he and his Counsel had a duty to the debtor's estate's unsecured creditors to protect their interests, and that they acted in good faith.

Compensation for a trustee's attorney, like the compensation for a trustee, is governed by § 330 of the Code. A trustee's attorney is allowed "reasonable compensation for actual and necessary services rendered," for services "reasonably likely to benefit the estate" and "necessary to the administration of the case." § 330(a)(1), (4). When a trustee's law firm has been retained as counsel to the trustee, however, the trustee has the burden of proving that those services provided by the attorneys were legal in nature and could not have been accomplished without the counsel's legal assistance. *See In re Stevens*, 407 B.R. 303, 308 (Bankr. N.D. 2009). Moreover, counsel to a trustee is not entitled to fees for services that are among the trustee's duties, including those described in § 704, and a trustee may not delegate those duties to others. *See id.*; *see also* § 328 (limitation on compensation).

The Trustee stated, in his Response and at the hearing, that he employed counsel to defend his position in the adversary proceeding.⁴ The court examined the exhibit attached to the Application for

⁴ On February 1, 2011, the Trustee filed an Application to Employ Attorney, and the court granted his request on February 3, 2011. However, the Trustee stated that he did not use the services of an attorney until the adversary proceeding was commenced.

Compensation filed by the Trustee, on behalf of himself and his law firm, to determine which services related to those that ordinarily would be performed by a trustee and which were legal in nature and were done with the assistance of counsel. It found that the services performed between February and September of 2011 were clearly related to the services of a trustee: for example, letters to creditors requesting turnovers of funds, letters to debtor's counsel concerning the status of debtor's assets, the reviewing of information concerning the financial affairs of the debtor, and the reviewing of the debtor's amended schedules. The first appearance of the Trustee's counsel occurred on September 23, 2011, the date the Bank's Complaint was filed, when a member of the Trustee's law firm reviewed that Complaint.

In the court's view, the Trustee clearly demonstrated that the Application before the court reflected services only by the Trustee, services rendered pursuant to § 704, from the date of his appointment as Trustee until the adversary proceeding was commenced. However, the court concluded earlier in this Memorandum of Decision that the Trustee's own compensation request was compensable under § 326 for the actual and necessary services rendered prior to June 23, 2011, but not after that date. The court allowed the Trustee's compensation for his services between January 31, 2011, when the debtor's bankruptcy was filed, and June 23, 2011, when the Bank claimed its right to the debtor's transferred assets. The Trustee told the court that, as of June 23, 2011, he was clearly aware of the Bank's secured status and its claim to the payments he held as Trustee. The court concluded that the Trustee was not entitled to compensation for services rendered after June 23, 2011, because it was reasonably obvious at that point that the Trustee's wrongful holding of those payments was not reasonably likely to benefit the debtor's estate or the unsecured creditors. *See In re Stevens*, 407 B.R. at 309.

Now, when considering compensation for Counsel for the Trustee, the court finds that, after June 23, 2011, it became reasonably and increasingly obvious that further litigation would cost more than it was likely to bring into the estate, and therefore that the services of counsel for the Trustee would not be "reasonably likely to benefit the estate." Because the Trustee did not utilize his attorneys until September 22,

2011, three months after the June 23, 2011 email, the court finds that counsel for the Trustee are not entitled to compensation for any services provided. The court determines that their services were neither necessary nor beneficial to the estate. Accordingly, the Application for Compensation of Trustee's Counsel is denied.

CONCLUSION

For the reasons presented in this Memorandum of Decision, the court overrules the Trustee's Objections to Claims 2 and 3 filed by 1st Source Bank and allows the claims as fully secured pursuant to 11 U.S.C. § 502. The court grants the Application for Compensation of the chapter 7 Trustee J. Richard Ransel in the amount of \$787.56 for services rendered and \$23.20 for expenses incurred pursuant to 11 U.S.C. § 326 and 330. The court denies the Application for Compensation of the Counsel for the Trustee.

SO ORDERED.

/s/ HARRY C. DEES, JR.
Harry C. Dees, Jr., Judge
United States Bankruptcy Court