

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)	
)	
THOMAS JOSEPH CAHILLANE)	CASE NO. 04-65210
)	
Debtor)	

DECISION ON MOTION FOR SUMMARY JUDGMENT

At Fort Wayne, Indiana, on September 25, 2013

The debtor, who is proceeding pro se, has objected to an application for compensation filed by the trustee’s attorney, Catherine Molnar-Boncela. Following hearings held on the application and objection, the court established a schedule for the litigation, including a deadline for the trustee to file a motion for summary judgment and for the debtor to file any response. See, Order of Feb. 20, 2013 and Order of June 12, 2013. Counsel for the trustee timely filed such a motion together with a brief and various materials in support thereof.

Despite the court’s notice of August 5, advising the debtor of the significance of a motion for summary judgment and how to respond to it, the debtor has not filed any response to the motion. Consequently, the court may decide it based upon the proposition that “the facts as claimed and supported by admissible evidence . . . exist without controversy . . .” N.D. Ind. L.B.R. B-7056-1. This does not mean, however, that the motion should be granted merely because it is unopposed. “[T]he party moving for summary judgment has the burden to show that he is entitled to judgment under established principles; and, if he does not discharge that burden, he is not entitled to judgment.” Adickes v. S.H. Kress and Co., 398 U.S. 144, 161, 90 S. Ct. 1598, 1610 (1970). Thus, an unopposed motion cannot be granted automatically. Instead, the court is required to go beyond

the lack of opposition and make the further finding that, given the undisputed facts, summary judgment is proper as a matter of law. Weinco, Inc. v. Katahn Associates, Inc., 965 F.2d at 565, 568 (7th Cir. 1992).

The court has previously discussed the responsibilities of both applicants and objectors in the fee process. See, In re Hunt's Health Care, 161 B.R. 971, 980 (Bankr. N.D. Ind. 1993). To begin with, the applicant bears

[t]he burden of proof in proceedings concerning attorney fees It has the responsibility for submitting an application from which the amount of its fees can be determined with reasonable dispatch and the failure to do so may warrant denial of the application. Matter of Central Ice Cream Co., 836 F.2d 1068, 1074 (7th Cir. 1987). To be proper, the application and its supporting documentation should be complete and self contained and include all of the relevant information the applicant would initially like the court to consider concerning the nature and the value of the services it provided. This requires the applicant to separately itemize and describe any expenses, the services for which compensation has been sought and the amount of time devoted to them; it must also identify each attorney or paraprofessional involved and their applicable hourly rates. Depending upon the size and complexity of the application and the range of services covered by it, this may require the applicant to separately categorize the time involved in order to ensure that the application does not become an incomprehensible mass of undifferentiated chronological data. It is not enough, however, to simply identify in detail what it is that was done; the court should also be apprised of the results obtained – in other words, what was actually accomplished with all this time and effort. If the applicant has reduced or eliminated time otherwise devoted to the matter or adjusted hourly rates in order to compensate for excessive or unproductive activity or less than satisfactory results, the court should be apprised of this fact.

In the ultimate analysis, an applicant seeking payment of its fees from a bankruptcy estate or out of the assets of a bankruptcy estate is expected to provide the court and creditors with the same type of descriptive detail and to exercise the same degree of billing judgment that it would give to its most valued client. Provided that it does so, the fee produced by the resulting lodestar calculation will, presumptively, be a reasonable one. Absent evidence to the contrary, the presumption of reasonableness should be respected and the fee generated by the lodestar calculation should be the fee awarded. Hunt's Health Care, 161 B.R. at 980.

As for the objector:

It is with regard to the facts contained in the application that those who . . . object to the fees sought play a critical role. If the facts bearing on the court's decision should be something other than what has been set forth in a proper fee application, it is they who must bring those facts to the court's attention. Thus, if certain services are not generally compensated as requested, if counsel's hourly rate or billing practices are not consistent with the appropriate market, or if the market would place a different value on those services from that produced by the loadstar calculation, an objection should be filed and, if necessary, evidence presented. Of course, objectors are not limited to questioning the facts set forth in the application. They may also challenge the legal sufficiency of the application itself, in terms of whether it contains the information and detail needed to allow them to intelligently review it or establish the applicant's prima facie case of proving what a reasonable fee would be.

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A party objecting to a fee application may not do so based upon the general proposition that the fee sought is simply too much. It should go beyond [that] assertion to articulate a reason why and, if necessary, present evidence in support thereof. . . . The objector must, at some point, identify any allegedly improper, insufficient, or excessive entries and direct the court's attention to them. The objector should also be able to identify a reason why the hourly rates involved and the time charged are not reasonable or why the market would place a lower value on counsel's labors and offer evidence supporting its position. Hunt's Health Care, 161 B.R. at 981-82.

Ms. Molnar-Boncela has provided all of the information anyone could want with regard to a fee application. There has been no response to the motion for summary judgment, the debtor has not identified any deficiencies in the information she has provided, or come forward with evidence controverting the facts supporting the requested fees. Under these circumstances, the court sees no reason to do anything other than grant the motion for summary judgment and approve the application. The court finds that there are no genuine issues of material fact and counsel for the trustee is entitled to the entry of judgment in its favor as a matter of law.

Judgment will be entered accordingly.

/s/ Robert E. Grant
Chief Judge, United States Bankruptcy Court