

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re:

REGINALD JONES,

Case No. 1-03-21741-dem  
Chapter 7

Debtor.

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**DECISION ON APPLICATION FOR FINAL COMPENSATION**

Appearances:

Mark E. Bruh, Esq.  
Law Offices of Robert L. Geltzer  
Attorneys for the Chapter 7 Trustee  
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New York, New York 10128

Jacqueline Frome, Esq.  
Trial Attorney  
Office of the United States Trustee  
271 Cadman Plaza East  
Brooklyn, New York 11201

DENNIS E. MILTON  
United States Bankruptcy Judge

On September 9, 2003, Reginald Jones (the “debtor”) filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code. Robert L. Geltzer (the “trustee”) was appointed interim trustee and thereafter qualified as a permanent chapter 7 trustee.

On or about April 5, 2007, the trustee filed the Final Report and Request for Commissions (the “Final Report”). In it, the trustee requested compensation in the maximum amount allowed under Bankruptcy Code Section 326, compensation for his law firm for 22.4

hours of legal services at the blended hourly rate of \$374.38 and reimbursement of expenses.<sup>1</sup>

The gross receipts of this estate are \$1,402,924.34. Disbursements in the amount of \$891,354.64<sup>2</sup> have been made and the balance on hand is \$511,569.71. The trustee is requesting \$50,708.71 in commissions. If the trustee's and counsel's applications were granted in full, the unsecured creditors would receive a distribution of approximately one hundred (100) per cent.

The amounts requested for compensation and reimbursement of expenses are as follows:

<u><b>APPLICANT</b></u>	<u><b>FEES AND COMMISSION</b></u>	<u><b>EXPENSES</b></u>
Robert L. Geltzer, Trustee	\$50,708.71	\$74.38
Law Offices of Robert L. Geltzer, Attorney for the Trustee	\$8,386.00 - \$800.00 \$7,586.00	\$121.05

On April 12, 2007, the United States Trustee filed a statement of no objection to the requested compensation or the reimbursement of expenses to the trustee or counsel for the trustee.

On May 10, 2007, the Court conducted the Final Meeting of Creditors. The Court reserved decision on the applications for compensation.

#### **AWARD OF COMPENSATION TO THE TRUSTEE**

At the outset, the Court notes that in this case the trustee has performed his duties in a timely, efficient and professional manner. The sole issue before the Court is whether the

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<sup>1</sup> After a discussion with the United States Trustee, counsel for the trustee agreed to reduce its request for compensation from \$8,386.00 to \$7,586.00, a reduction of \$800.00.

<sup>2</sup> Pursuant to Court Order dated October 10, 2006: (1) \$7,500.00 was paid to the debtor for his personal injury exemption; (2) \$288,377.53 in fees and \$3,472.41 in expenses was paid to Special Counsel; (3) \$432,566.30 in fees and \$33,674.46 in expenses was paid to Special Trial Counsel; and (4) \$125,763.93 was paid to HRS, Division of Liens and Recovery.

statutory maximum compensation requested under Bankruptcy Code Section 326(a) exceeds reasonable compensation for such services, as defined in Code Section 330(a).

Section 326 of the Bankruptcy Code governs the award of compensation to the trustee. Section 326(a) provides:

In a case under chapter 7 or 11, the court may allow reasonable compensation under Section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in excess of \$50,000, 5 percent on any amount in excess of \$50,000 but not in excess of \$1,000,000.00, and reasonable compensation not to exceed 3 percent of such moneys in excess of \$1,000,000, upon 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.

It is well settled that Section 326 "sets the maximum compensation payable to the trustee; it does not establish a presumptive or minimum compensation." In re Pilon, 300 B.R. 559,562 (Bankr. D. Conn. 2003) quoting Connolly v. Harris Trust Co. Of California (In re Miniscribe Corp.), 309 F.3d 1234, 1241 (10th Cir. 2002); In re Butts, 281 B.R. 176,179 (Bankr. W.D.N.Y. 2002).

Any commissions awarded must be reasonable and a trustee is not automatically entitled to the maximum amount of commission established under §326(a). In re Guido, 237 B.R. 562,564-65 (Bankr. E.D.N.Y. 1999); In Roderick Timber Co., 185 B.R. 601, 605 (9th Cir. BAP 1995); In re McNar, Inc., 120 B.R. 149,150 (Bankr. S.D. Cal. 1990); In re Stoecker, 118 B.R. 596, 601 (Bankr. N.D. Ill. 1990); In re Baraban, 106 B.R. 745, 746 (Bankr. S.D. Fla. 1989); In re Orthopaedic Technology, Inc., 997 B.R. 596, 601 (Bankr. D. Colo. 1989). See also, S. Rep No.

989, 95th Cong., 2nd Sess. 37 (1978); and H.R. Rep. No. 959, 95th Cong. 1st Sess. 327 (1977).

In cases under chapter 7, this Court has generally assumed the reasonableness of any trustee commission that does not exceed the limits of Section 326(a). In some cases, the calculation of commissions may result in a greater hourly rate of return to the trustee than in others, but, in general, in applying this standard, the Court has found such an award of compensation to be fair.

However, Section 330 requires the Court to “consider the nature, the extent and the value of such services” in determining the compensation to be awarded to a chapter 7 trustee. In applying this standard of measurement, the Court concludes that the trustee’s services rendered in this case do not support an award of maximum compensation to the trustee. The trustee anticipated that as of the Final Meeting he will have spent 22.6 hours in case administration. Therefore if the trustee’s compensation were awarded as requested, the trustee would be paid at the rate of \$2,243.75 per hour for this case. This rate of compensation is clearly excessive, particularly when the circumstances are considered. The sole asset of the estate are the proceeds from the debtor’s personal injury action in the amount of \$1,400,000.00<sup>3</sup>. The trustee has spent approximately 19.5 hours in connection with general case administration, 2 hours corresponding with debtor’s personal injury attorney regarding the status of the personal injury case and 1.1 hours reviewing the settlement order of the personal injury action and preparing disbursements to personal injury counsel. None of these activities are unusual tasks for a trustee to perform and granting the maximum amount of commission would be

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<sup>3</sup> Pursuant to the Court’s Order dated October 10, 2006, the personal injury claim of the estate was settled for \$2,200,00.00 of which \$1,400,000.00 was paid to the estate and the remaining \$800,000 was used to purchase an annuity for the debtor.

unreasonable.

In determining the amount of an award of trustee's fees where the trustee has served as counsel to the debtor in the same or other cases, courts have considered the trustee's hourly rate as an attorney to be reasonable compensation for the trustee. One such court has stated:

“While a trustee's standard rate per hour as an attorney is not necessarily the measure that should be applied in all cases to determine the value of a trustee's services as a trustee, it is one fact which indicates what the time of a trustee may be worth when he is employed upon tasks which would require commensurate skill with that which he would be required to employ as an attorney.”

In re Pilon, 300 B.R. 559,562-63 (Bankr. D. Conn. 2003) quoting In re Biskup, 236 B.R 332, 337 (Bankr. W.D. Pa. 1999). The Court finds this reasoning persuasive in this case. The Court concludes that under the circumstances of this case, an award of trustee's fees equal to the total number of hours the trustee expended in administering the estate, multiplied by his hourly rate as an experienced, competent attorney meets Code Section 330(a)'s “reasonable compensation” requirement. Here, the application for compensation for the law firm to the trustee establishes for purpose of this calculation that the trustee's hourly rate as an attorney ranged from \$275 to \$535 per hour. Applying the above standard, the reasonable compensation for the trustee in this case is 22.6 (hours) times \$374.38 (combined hourly rate), or \$8,460.99. Accordingly, on the trustee's application for compensation, the Court awards the trustee the sum of \$8,460.99.

The Court grants the trustee's application for reimbursement of expenses in the full amount requested, \$74.38. The Court awards compensation to counsel for the trustee for professional services rendered in the amount of \$7,586.00 and reimbursement of expenses in

the full amount requested, \$121.05. In summary, the Court awards compensation and reimbursement as follows:

<u>APPLICANT</u>	<u>FEES AND COMMISSION</u>	<u>EXPENSES</u>
Robert L. Geltzer, Trustee	\$8,460.99	\$74.38
Law Offices of Robert L. Geltzer, Attorney for the Trustee	\$7,586.00	\$121.05

**CONCLUSION**

The Court awards compensation to the trustee and counsel for the trustee as noted above.

IT IS SO ORDERED.

Dated: Brooklyn, New York  
May 16, 2007

s/Dennis E. Milton  
DENNIS E. MILTON  
United States Bankruptcy Judge

