

So Ordered.

Dated: September 24, 2024



*Katherine M. Perhach*  
Katherine Maloney Perhach  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

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In re:

Randall Kerry Goff and  
Dionida P. Goff,

Debtors.

Case No. 23-21549-kmp  
Chapter 13

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**ORDER ON FORMER CHAPTER 7 TRUSTEE'S REQUEST FOR COMPENSATION**

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This case converted from Chapter 7 to Chapter 13. The former Chapter 7 Trustee has filed a request for payment of an administrative expense, seeking compensation in the amount of \$10,775.17 for the services that he provided while this case was pending as a Chapter 7. The Debtors have objected to the claim. Pursuant to 11 U.S.C. § 330, the Court will allow “reasonable” compensation to the former Chapter 7 Trustee for “actual, necessary services” and “reimbursement for actual, necessary expenses” and will disallow the fees that “were not reasonably likely to benefit the Debtors’ estate” or “necessary to the administration of the case.”

The Debtors filed a Chapter 7 bankruptcy case on April 10, 2023. The Chapter 7 Trustee identified an asset that was potentially available for creditors, the interest of one of the Debtors in a self-settled spendthrift trust, and a Notice of Recovery of Assets was issued on May 16, 2023. On May 31, 2023, the Debtors filed a motion to convert the case to Chapter 13. The Chapter 7 Trustee objected to conversion of the case. While the motion to convert the case was pending, the Chapter 7 Trustee filed an application to employ an attorney to “Represent Trustee and pursue, settle or litigate pursuit of the trust assets of Debtor” and for “Legal assistance to recover assets.” Docket No. 27 ¶ 9. On September 20, 2023, the Court held an evidentiary hearing on the motion to convert the case and granted the motion to convert the case over the Chapter 7 Trustee’s objection.

After the Court converted the case to Chapter 13, the former Chapter 7 Trustee filed a “Notice of Filing of Claim for Administrative Fees and Expenses.” Docket No. 68. He also filed a proof of claim in the amount of \$10,775.17 for “Chapter 7 Trustee Administrative Fees and

Expenses.” Claim No. 11. The former Chapter 7 Trustee seeks compensation on an hourly basis for the services he provided in the Chapter 7 case. He has filed a chronological record of his time spent on the case that describes each service and states the time spent in tenths of an hour. In total, the billing statement shows that the former Chapter 7 Trustee spent 34.2 hours working on the case. He seeks fees at a rate of \$300 per hour, for a total of \$10,260.00. He also seeks \$515.17 in expenses. He asserts that he is entitled to compensation that constitutes an administrative expense pursuant to 11 U.S.C. § 503(b)(2) that is entitled to priority under § 507(a)(2).

The Debtors objected to the Chapter 7 Trustee’s proof of claim. The Debtors assert that the former Chapter 7 Trustee’s claim should be disallowed because: (1) the services related to contacting the trust administrator were speculative at best and yielded no benefit to the Debtors’ estate; (2) the services related to interviewing potential attorneys for the estate were premature and yielded no benefit to the Debtors’ estate; (3) the services related to the filing of the Trustee’s Asset Report were premature and yielded no benefit to the Debtors’ estate; and (4) the services related to any activity after the motion to convert was filed on May 31, 2023 yielded no benefit to the Debtors’ estate.

The Court can allow an administrative expense for “compensation and reimbursement awarded under section 330(a) [of the Bankruptcy Code].” 11 U.S.C. § 503(b). Section 330(a) provides that “the court may award to a trustee” “reasonable compensation for actual, necessary services rendered by the trustee” and “reimbursement for actual, necessary expenses.”

The ability to award compensation under § 330(a)(1) is “subject to § 326.” Section 326(a) limits an award of compensation to a trustee in a case under Chapter 7 or Chapter 11 to a percentage of the monies “disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor.” Section § 326(a) states in full as follows:

In a case under chapter 7 or 11, other than a case under subchapter V of chapter 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, 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.

“Courts disagree about whether compensation is available to a chapter 7 trustee after a case has been converted to chapter 13.” *In re Scott*, No. 05-B-10001, 2006 WL 566441, \*2

(Bankr. N.D. Ill. Mar. 7, 2006). Some courts refuse to award any compensation to a Chapter 7 trustee for a case that converts to Chapter 13, even if the trustee expends significant time and resources pursuing an estate asset and requests reasonable compensation for these services. These courts rely on the plain language of § 326(a) and note that under that section, Chapter 7 trustee compensation is limited to a percentage based “upon all moneys disbursed or turned over in the case by the trustee” to parties in interest other than the debtor. These courts conclude that if the Chapter 7 trustee does not distribute any funds before the case is converted to Chapter 13, the Court cannot award any compensation to the Chapter 7 trustee. While recognizing that this is a harsh result, these courts reason that the risk that “the debtor will convert the case to chapter 13 or obtain dismissal of the case short of final administration” is simply “one of the risks that trustees take.” *In re Fischer*, 210 B.R. 467, 469 (Bankr. D. Minn. 1997).

Most courts allow reasonable compensation to a Chapter 7 trustee after a case has been converted to Chapter 13. Many of these courts also rely on the plain language of § 326 and § 330, noting that (1) § 330 states that the court may award to a trustee reasonable compensation for actual, necessary services and reimbursement for actual, necessary expenses; (2) § 330 further states that an award of reasonable compensation is subject to § 326; and (3) § 326 sets forth a percentage-based formula for calculating compensation to be awarded to a trustee “in a case under chapter 7.” These courts conclude that once the Chapter 7 case is converted to Chapter 13, the case is no longer “a case under chapter 7,” so the percentage-based compensation set forth in § 326 no longer applies. *See Scott*, 2006 WL 566441, \*2; *see also In re Bartlett*, 590 B.R. 175 (Bankr. D. Mass. 2018). These courts award “reasonable compensation for actual, necessary services” and “reimbursement for actual, necessary expenses” as provided by § 330(a)(1) and disallow compensation for “services that were not reasonably likely to benefit the debtor’s estate; or necessary to the administration of the case” as provided in § 330(a)(4)(A).

This Court agrees with the majority of the courts that have looked at this issue. The Court holds that in a case converted to Chapter 13, it can allow reasonable compensation to a Chapter 7 trustee under § 330(a)(1) for actual, necessary services and reimbursement for actual, necessary expenses, but must disallow compensation for “services that were not reasonably likely to benefit the debtor’s estate” or “necessary to the administration of the case” as provided in § 330(a)(4)(A).

The Chapter 7 Trustee has filed a request for payment of an administrative expense in this case, seeking compensation in the amount of \$10,775.17 for the services that he provided while this case was pending as a Chapter 7 case and for his expenses. The majority of the services described in the Chapter 7 Trustee’s invoice can be categorized as follows: (1) services related to discovering and investigating the self-settled spendthrift trust; (2) services related to retaining an attorney to represent the Chapter 7 Trustee in the pursuit of the trust as an asset of the estate; and (3) services related to opposing the Debtors’ motion to convert this case from Chapter 7 to Chapter 13.

The Court holds that the Chapter 7 Trustee is entitled to reasonable compensation for the services that he provided and the expenses that he incurred related to discovering and investigating the self-settled spendthrift trust and for the time he spent seeking to employ an attorney to represent him in the pursuit of that asset before the Debtors filed the motion to convert their case to Chapter 13. Those services were reasonably likely to benefit the Debtors' estate and necessary to the administration of this case. The Court has held that Mr. Goff's interest in the trust is an asset of the estate and that to satisfy the best-interests-of-creditors test, the holders of allowed unsecured claims in this case must be paid no less than what they would have received if Mr. Goff's interest in the trust had been liquidated under Chapter 7. *See* Docket No. 116.

The Court holds that the Chapter 7 Trustee is not entitled to compensation for the time he spent seeking to employ an attorney to represent him in the pursuit of the self-settled spendthrift trust as an asset of the estate after the Debtors filed the motion to convert their case to Chapter 13. Chapter 7 debtors have an extremely broad right to convert a case to Chapter 13 and conversion may be denied only in extraordinary cases involving bad faith. 11 U.S.C. § 706(a) (Chapter 7 debtors may convert to Chapter 13 "at any time" if the case was not previously converted); *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365 (2007). Once the Debtors filed their motion to convert the case, it was possible that the Court would convert the case, terminating the Chapter 7 Trustee's services and obviating the need for the Chapter 7 Trustee to have an attorney to pursue and liquidate the asset. Actively seeking to employ an attorney to pursue the trust asset while the motion to convert was pending was premature and not "reasonably likely to benefit the debtor's estate" or "necessary to the administration of the case." The Court will disallow fees for the services related to seeking to employ an attorney while the motion to convert the case to Chapter 13 was pending. *See* Appendix A.

The Court holds that the Chapter 7 Trustee is not entitled to compensation for services related to opposing the Debtors' motion to convert this case to Chapter 13 because those services "were not reasonably likely to benefit the debtor's estate" and were not "necessary to the administration of the case." The Chapter 7 Trustee opposed the Debtors' motion to convert because he was concerned that the Debtors' unsecured creditors would receive much less through a Chapter 13 plan than in a Chapter 7 liquidation. *See* Docket No. 35 ¶ 6 ("Since courts are sometimes approving 0% plans to unsecured creditors, if Debtors have taxes owed or secured creditors, the Debtors could return zero to unsecured creditors. In a Chapter 7 status, Debtors would have substantially all or close to 100% return to all creditors."); ¶¶ 11-13 (estimating that unsecured creditors would receive a total of \$1,917 to \$3,195 in a Chapter 13 case, as opposed to a total of \$34,995 to \$58,325 in a Chapter 7 case). These concerns were unwarranted. Holders of allowed unsecured claims must be paid as much through a Chapter 13 plan as they would receive if the Debtors' estate were liquidated under Chapter 7. *See* 11 U.S.C. § 1325(a)(4). It is simply not possible for the Court to approve a Chapter 13 plan providing for no payments to the Debtors' unsecured creditors if those creditors would have been entitled to receive full payment in a Chapter 7 case. It was thus unnecessary for the Chapter 7 Trustee to oppose conversion and these services were not reasonably likely to benefit the Debtors' unsecured creditors or necessary

to the administration of this case. The Court will disallow fees for the services related to opposing conversion of the case to Chapter 13. *See* Appendix B.

The Court is also responsible for reviewing the amount of time spent on certain tasks and for determining that the amount of compensation sought by the Chapter 7 Trustee is “reasonable.” Clerical work is part of office overhead that should be built into an attorney’s hourly rate and is not separately compensable from the bankruptcy estate. *See In re Nelson*, No. 16-22089, 2017 WL 449581, \*2 (Bankr. E.D. Wis. Feb. 1, 2017); *In re Hendon*, No. 19-25529 (Bankr. E.D. Wis. May 26, 2020). The Court will also reduce or disallow fees that do not meet these standards. *See* Appendix C.

The Court will allow the remaining fees and costs the former Chapter 7 Trustee has requested as outlined on the invoice attached to the Chapter 7 Trustee’s administrative expense claim. Those fees and costs are reasonable and were for actual, necessary services, or are for reimbursement of actual, necessary expenses as provided in § 330(a)(1). Those fees were also reasonably likely to benefit the Debtors’ estate and were necessary to the administration of the case as provided in § 330(a)(4)(A). Accordingly,

IT IS THEREFORE ORDERED: the Court approves and allows compensation for Douglas F. Mann in the amount of \$2,135.17, consisting of \$1,620.00 in fees and \$515.17 in expenses, as an administrative expense pursuant to 11 U.S.C. § 503(b)(2) entitled to priority under § 507(a)(2).

IT IS FURTHER ORDERED: the Clerk of Court is directed to make a notation on the Claims Register for Claim No. 11 that the claim has been allowed as an administrative expense in the amount of \$2,135.17.

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**APPENDIX A**

Fees disallowed for services related to seeking to employ an attorney while the motion to convert the case to Chapter 13 was pending:

<b>Date</b>	<b>Time Requested</b>	<b>Time Allowed</b>	<b>Reduction</b>	<b>Description</b>
5/31/2023 <i>(after review of motion to convert)</i>	0.4	0	\$120.00	Telephone conferences and correspondence to potential attorney for trustee
6/1/2023	1.5	0	\$450.00	Initial draft of application to employ Attorney Jared Potter as attorney for the Trustee and Affidavit of the Disinterest; correspondence to Jared Potter for review
6/13/2023	1.5	0	\$450.00	Revise application to employ Attorney Jared Potter as attorney for the Trustee and Affidavit of the Disinterest; correspondence to Attorney Potter for review
6/13/2023	0.5	0	\$150.00	Finalize and file of application to employ, Affidavit of Disinterest and Notice of Application
6/20/2023	0.2	0	\$60.00	Review of objection to employment of Attorney Jared Potter as attorney for Trustee
6/21/2023	0.2	0.1	\$30.00	Review of notice of hearing set for July 19 regarding objection to motion extend time, Debtors' application, Trustees application to employ Attorney Jared Potter
<b><u>Subtotal</u></b>	<b>4.3</b>	<b>0.1</b>	<b>\$1,260.00</b>	

**APPENDIX B**

Fees disallowed for services related to opposing conversion of the case to Chapter 13:

<b>Date</b>	<b>Time Requested</b>	<b>Time Allowed</b>	<b>Reduction</b>	<b>Description</b>
5/31/2023	1.0	0.4	\$180.00	Review of motion to convert to Chapter 13; initial draft of motion points objecting to conversion of case, to request turnover of assets and documents, and to delay discharge
6/5/2023	0.7	0.2	\$150.00	Draft of motion objecting to conversion of case, to request turnover of assets and documents, and to object and delay discharge and related relief
6/8/2023	0.2	0	\$60.00	Review of Notice of rescheduled hearing regarding Trustee's objection to conversion of case
6/20/2023	0.7	0.2	\$150.00	Submission of proposed Order granting relief sought by Trustee, including delay of discharge, turnover of information and documents, and turnover of assets
6/20/2023	0.5	0	\$150.00	Review of response by Debtors to objection
7/1/2023 to 7/6/2023	3.5	0	\$1,050.00	Draft of response to Debtors' objection to motions of Trustee regarding discharge, turnover of information and in support of objection of conversion to Chapter 13
7/7/2023	1.5	0	\$450.00	Finalize and file response to Debtors' motions and in support of Trustee's objection to conversion
7/14/2023	1.5	0	\$450.00	Review of 21-page second response from Debtors regarding Trustees motion and objection
7/19/2023	1.00	0	\$300.00	Participation in hearing on objection conversion motion to extend time and application to employ Attorney Jared Potter
7/19/2023	0.5	0	\$150.00	Review of Court entry rate curing set on evidentiary hearing being set
7/21/2023	0.5	0	\$150.00	Review of Court order setting evidentiary hearing
8/9/2023	0.5	0	\$150.00	Review of witness list filed by Turner Attorney Brenner
8/9/2023	0.5	0	\$150.00	exhibits filed by attorney Brenner

<b>Date</b>	<b>Time Requested</b>	<b>Time Allowed</b>	<b>Reduction</b>	<b>Description</b>
8/1/2023 to 8/9/2023	6.00	0	\$1,800.00	Preparation of exhibits by Trustee consisting of 266 pages of exhibits
8/9/2023	1.00	0	\$300.00	final preparation of witness list by Trustee
8/14/2023	0.5	0	\$150.00	Emergency motion to continue hearing due to hospital treatment by Trustee
8/14/2023	0.2	0	\$60.00	Review of Court order resetting hearing for September 20, 2023
8/23/2023	0.2	0	\$60.00	Review of Correspondence by attorney Brenner requesting hearing be started at 10:00 a.m. rather than 9:30 a.m.
9/20/2023	3.5	0	\$1,050.00	Participation in evidentiary hearings hearing regarding Trustees motions conversion to chapter 13 and related
<b><u>Subtotal</u></b>	<b>24</b>	<b>0.8</b>	<b>\$6,960.00</b>	



**APPENDIX C**

The Court will also reduce or disallow the following fees for the following reasons:

<b>Date</b>	<b>Time Requested</b>	<b>Time Allowed</b>	<b>Reduction</b>	<b>Description</b>	<b>Reason for Disallowance</b>
4/25/2023	0.5	0.2	\$90.00	Review of reaffirmation agreement filed with Court regarding Ford Motor Credit	Unreasonable amount of time spent
5/16/2023	0.4	0.2	\$60.00	Filing of Trustee's Asset Report	Clerical; unreasonable amount of time spent
5/18/2023	0.2	0.1	\$30.00	Continuation of Section 341 meeting	Clerical; unreasonable amount of time spent
6/15/2023	0.2	0	\$60.00	File continuation of meeting of creditors	Clerical
6/20/2023	0.5	0.2	\$90.00	Review of objection filed by Debtors to motion to extend time	Unreasonable amount of time spent
7/12/2023	0.2	0.1	\$30.00	Continuation of Section 341 meeting	Clerical; unreasonable amount of time spent
8/01/2023	0.2	0.1	\$30.00	Continuation of Section 341 meeting	Clerical; unreasonable amount of time spent
9/5/2023	0.2	0.1	\$30.00	Continuation of Section 341 meeting	Clerical; unreasonable amount of time spent
<b><u>Subtotal</u></b>	<b>2.4</b>	<b>1.0</b>	<b>\$420.00</b>		