

1 **FOR PUBLICATION**

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8 **UNITED STATES BANKRUPTCY COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 In re:) CASE NO. 03-06041-H7
11)
11 DEAN A. GARCIA and KAREN M.) MEMORANDUM DECISION
12 JENCKS GARCIA a/k/a KAREN)
12 JENCKS,)
13)
13 Debtors.)
14 _____)

15 The chapter 7 trustee's attorneys, Ferrette & Slater
16 ("the firm") applied for compensation under § 330(a)(1). At
17 issue is whether the firm should be denied some, or all, of the
18 requested compensation because 1) it performed services that fell
19 within the ambit of the trustee's duties under § 704 and 2) it
20 performed services that were unnecessary to the administration
21 of the estate and that offered no benefit to the estate under
22 § 330(a)(3)(C).

23 The chapter 7 trustee, Richard M. Kipperman ("the trustee"),
24 also applied for compensation in the amount of \$3,050, the
25 statutory cap allowed under § 326(a). At issue is whether the
26 trustee's request for the statutory cap exceeds the amount of
27 reasonable compensation as defined in § 330(a)(3).

28 This Court has jurisdiction to determine this matter

1 pursuant to 28 U.S.C. §§ 1334 and 157(b)(1) and General Order
2 No. 312-D of the United States District Court for the Southern
3 District of California. This is a core proceeding pursuant to
4 28 U.S.C. § 157(b)(2)(A).

5 I.

6 FACTS

7 A. THE PETITION AND STATUS OF THE CASE

8 Debtors filed their chapter 7 petition on June 26, 2003.
9 Richard M. Kipperman was appointed trustee. The schedules show
10 that debtors owned real property that they valued at \$255,000.
11 Debtors indicated a \$175,000 first deed of trust against the
12 property and claimed a \$59,600 homestead exemption. Debtors also
13 listed a 2001 Toyota Camry Solara valued at \$13,544 and a leased
14 2002 Volkswagen Jetta valued at \$12,982. Liabilities were listed
15 as approximately \$60,000 in miscellaneous unsecured credit card
16 debt.

17 Early in the case, the trustee questioned the debtors'
18 valuation of their real property. The trustee subsequently had
19 his broker do a valuation which came in at \$310,000. The trustee
20 calculated that the net equity to the estate could be \$38,000, if
21 the listing price was obtained upon a sale. Eventually, the
22 debtors agreed to pay the estate the sum of \$28,000, in exchange
23 for the trustee's abandonment of the estate's interest in their
24 real property. See Application for Interim Compensation for
25 Richard M. Kipperman, Trustee Chapter 7 [hereinafter Kipperman
26 Fee App.] 2:20-28; 3:1-6 [Docket #39].

27 The docket shows that the firm submitted its employment
28 application on behalf of the trustee, that the firm also

1 submitted the application to hire a real estate broker on behalf
2 of the trustee to sell the debtors' real property, and that the
3 trustee hired Dean Johnson ("Johnson"), an accountant. The
4 docket also shows that the firm filed a notice of intended action
5 regarding the debtors' purchase of equity in their home for
6 \$28,000. Subsequently, the firm submitted the stipulation
7 between the trustee and the debtors regarding the sale. The
8 trustee also set a claims bar date. The remaining entries on the
9 docket all relate to the various fee applications of the firm,
10 Johnson, and the trustee.

11 The trustee has approximately \$28,000 on hand as a result of
12 the settlement with the debtors. Administrative fees, if allowed
13 in full, will total approximately \$16,078.73 (including the \$750
14 "clean-up" fee requested by the firm), or 57% of the total
15 recovery from the sale of debtors' equity in their residence.
16 The trustee was unable to inform the Court at the time of the
17 hearing what the estimated payout would be to those creditors who
18 had filed claims.

19 **B. THE FIRM'S EMPLOYMENT AND COMPENSATION REQUEST**

20 On October 21, 2003, an *ex parte* order was entered by this
21 Court authorizing the trustee to retain the firm. [Docket #13].
22 The firm's *ex parte* application for "Approval of Ferrette and
23 Slater as General Counsel to the Trustee" simply states that the
24 trustee investigated the assets, believed that a sale of the
25 debtors' home would be a source of recovery for creditors, and
26 that he "selected Ferrette & Slater for the reason that it is
27 familiar with the relevant facts and applicable law and is well-
28 prepared to undertake the legal services required in this matter

1 that may be necessary." See Ex Parte Application ¶¶ 2, 5
2 [Docket #11]. There was no explanation regarding what legal
3 services "may be necessary" and no further detail regarding the
4 scope of the firm's employment set forth in the application.
5 In Gary E. Slater's declaration accompanying the ex parte
6 application, Mr. Slater states "Ferrette and Slater has been
7 engaged by the Trustee to represent him as general counsel to
8 assist with the sale and other matters related to the Debtors'
9 interest in real property....and to analyze estate claims where
10 legal issue[s] exist...."¹ See Declaration of Gary E. Slater of
11 Ferrette & Slater in Support of Application for Employment of
12 General Counsel to the Trustee [hereinafter Slater Decl.] 2:16-20
13 [Docket #12].

14 The firm seeks compensation for professional services in the
15 sum of \$10,679.50 and reimbursement of expenses in the sum of
16 \$273.15. The firm seeks an additional \$750 as a "clean-up" fee
17 for any miscellaneous legal work and costs incurred after the
18 submission of its application. The firm spent a total of 58.2
19 hours at an average hourly rate of \$183.50.

20 The hearing on the firm's fee application was held on
21 July 16, 2004. The Court questioned the firm about many of its
22 services and heard oral argument of counsel. The Court gave the

23
24 ¹ The firm argued in its supplemental brief that the Court should address
25 any specific aspects of legal representation at the employment stage rather than
26 deny compensation after the work has been done. See Supplemental Brief in
27 Support of First and Final Fee Application for Order Authorizing Payment of
28 Attorney's Fees and Reimbursement of Costs to Attorneys for Chapter 7 Trustee
[hereinafter Supp. Br.] 2:17-27. However, as this Court noted at the hearing on
this matter, an experienced bankruptcy firm such as Ferrette and Slater is
charged with knowing the law when it comes into Court seeking employment. See In
re EZ Feed Cube Co., Ltd., 123 B.R. 69, 73 (Bankr. D. Or. 1991) ("[A]ttorneys
practicing in bankruptcy court are presumed to know the applicable law.").

1 firm time to submit a supplemental brief and declaration
2 addressing *inter alia* 1) whether some of the work performed by
3 the firm should have been performed by the trustee; and 2)
4 whether the time spent on the fee application was excessive.²
5 The hearing on the firm's fee application was continued to
6 September 30, 2004, and the Court requested that the trustee's
7 fee application be noticed for that same date.

8 C. THE TRUSTEE'S FEE REQUEST

9 The Trustee seeks the statutory cap of \$3,050. The
10 trustee's time sheets reflected 16.10 hours which includes 3.5
11 hours of estimated time to conclude the case.

12 Both the firm's and the trustee's fee applications came on
13 for hearing September 30, 2004. After hearing oral argument, the
14 Court took both matters under submission.

15 II.

16 DISCUSSION

17 A. THE COURT HAS AN INDEPENDENT DUTY TO EXAMINE FEE
18 APPLICATIONS

19 The Court has an independent duty to investigate the
20 reasonableness of compensation sought under Federal Rule
21 Bankruptcy Procedure 2016(a). The Court may, "on its own
22 motion...award compensation that is less than the amount of
23 compensation requested." See 11 U.S.C. § 330(a)(2).

24 "Beyond possessing the power, we think the bankruptcy court
25

26 ² One court noted that "[t]o make the hearing meaningful, the court should
27 first apprise the applicant of the particular questions and objections it
28 harbors, a role which the adversary in a statutory fee case would typically
play." In re Busy Beaver Bldg. Ctrs., Inc., 19 F.3d 833, 846 (3rd Cir. 1994)
(citation omitted).

1 has a *duty* to review fee applications, notwithstanding the
2 absence of objections by the United States trustee ("UST"),
3 creditors, or any other interested party, a duty which the Code
4 does not expressly lay out but which we believe derives from the
5 court's inherent obligation to monitor the debtor's estate and to
6 serve the public interest." Busy Beaver, 19 F.3d at 841;³ see
7 also In re Maruko, Inc., 160 B.R. 633, 637-638 (Bankr. S.D. Cal.
8 1993).

9 B. PROPERLY COMPENSABLE LEGAL SERVICES FOR A TRUSTEE'S ATTORNEY

10 "Only when unique difficulties arise may compensation be
11 provided for services which coincide or overlap with the
12 trustee's duties...." In re United States Trustee, 32 F.3d 1370,
13 1373 (9th Cir. 1994) (citations omitted). It is well established
14 that "[a]n attorney is never entitled to professional
15 compensation for performing duties which the statute imposes upon
16 the trustee." In re Shades of Beauty, Inc., 56 B.R. 946, 949
17 (Bankr. E.D.N.Y. 1986), *aff'd in part*, 95 B.R. 17 (E.D.N.Y. 1988)
18 (citations omitted). "The function of an attorney for a trustee
19 is to render to the estate those services which cannot and should

21 ³ The Third Circuit went on to state:

22 [T]he integrity of the bankruptcy system ... is at stake in the
23 issue of a bankruptcy judge's performance of the duty to review fee
24 applications *sua sponte*. The public expects, and has a right to
25 expect, that an order of a court is a judge's certification that the
26 result is proper and justified under the law... Nothing better
27 serves to allay [public perceptions that high professional fees
28 unduly drive up bankruptcy costs] than the recognition that a
bankruptcy judge, before a fee application is approved, is obliged
to [review it carefully] and find it personally acceptable,
irrespective of the (always welcomed) observation of the [United
States trustee] or other interested parties. Busy Beaver, 19 F.3d
at 841 (citations omitted).

1 not properly be performed by one who does not have a license to
2 practice law." Shades of Beauty, 56 B.R. at 949 (citations
3 omitted). "[T]he threshold question should be whether the
4 services performed were those which one not licensed to practice
5 law could properly perform for another for compensation." Id.;
6 see also Handbook for Chapter 7 Trustees, U.S. Dept. of Justice,
7 Executive Office for the United States Trustees [hereinafter
8 Handbook for Chapter 7 Trustees], Chapter 8, ¶ M (5) at p. 8-25
9 (March 1, 2001) ("Attorneys and accountants may not be
10 compensated for performing the statutory duties of the trustee.")
11 citing § 704 and Fed. R. Bankr. P. 2015(a).⁴

12 C. THE EXTENT OF THE COMPENSATION: SECTION 330(a)

13 "Once it has been established to the Court's satisfaction
14 that the services for which compensation is to be awarded were
15 properly compensable, the Court should next determine whether or
16 not the services for which compensation is sought were 'actual
17 and necessary.'" Shades of Beauty, 56 B.R. at 950 (citations
18 omitted).

19 Section 330(a)(1) provides that "[a]fter notice...and a
20 hearing...the court may award to a...professional
21 person...employed under section 327...

23 ⁴ The Court notes that generally the following are considered trustee
24 duties for which attorney's fees are not allowed: "Services relating to the sale
25 of the debtor's assets; Collection of accounts due; Examination of the debtor's
26 papers; Preparation of notices and advertisements for the sales of the debtor's
27 assets, and license renewals; Routine telephone calls and correspondence with
28 information seekers; Reduction of the estate to money; Payment of routine bills,
including taxes; Arranging insurance coverage; Arranging for appraisals of the
estate; Corresponding with creditors re documentation of claims; Reviewing title
reports; Preparing and filing objections to claims; Preparing application for
employment of professional; Acting as liaison with special counsel." In re
McKenna, 93 B.R. 238, 241 (Bankr. E.D. Cal. 1988) (citation omitted).

- 1 A) reasonable compensation for actual, necessary
2 services rendered by the...professional person...; and
3 B) reimbursement for actual, necessary expenses."

4 Section 330 (a)(3) further instructs the Court that "[i]n
5 determining the amount of reasonable compensation to be awarded,
6 the Court shall consider the nature, the extent, and the value of
7 such services, taking into account all relevant factors,
8 including -

- 9 A) the time spent on such services;
10 B) the rates charged for such services;
11 C) whether such services were necessary to the
12 administration of, or beneficial at the time at which
13 the service was rendered toward the completion of a
14 case under this title;
15 D) whether the services were performed within a
16 reasonable amount of time commensurate with the
17 complexity, importance, and nature of the problem,
18 issue, or task addressed; and
19 E) whether the compensation is reasonable based on
20 customary compensation charged by comparably skilled
21 practitioners in cases other than cases under this
22 title."

23 The only possible way for the Court to examine the standards
24 set forth in § 330(a) is through the review of an attorney's
25 detailed application and time sheets. Attorneys need to be
26 specific.

27 [I]n order to permit the court to evaluate the
28 application properly, it should contain the following:
a statement explaining the significance of each item of
professional service for which compensation is sought,
as well as an explanation of the purpose, necessity and
appropriateness of each such service; a statement of
the effectiveness of each such item; a statement of
what alternatives were considered by the attorney
together with the method of analysis relied upon for
choosing the action taken; a statement of any difficult
or unusual problems which arose in the case and the

1 manner in which they were addressed and if the attorney
2 believes his services were worth more than their mere
3 time value, a statement setting forth the reason[s]
therefore. Shades of Beauty, 56 B.R. at 950 (citation
omitted).

4 In short, the Court cannot award compensation where the fee
5 application and time entries lack specificity.

6 THE FIRM'S COMPENSATION REQUEST

7 D. ENTRIES NOT INVOLVING LEGAL ANALYSIS OR SKILL

8 The first step in the Court's analysis is to examine whether
9 the services performed by the firm involved legal skills which
10 would make them compensable. The Court has examined the time
11 sheets of the firm at length. There are many entries that either
12 do not involve the legal skills of an attorney or do not contain
13 enough specificity in order for the Court to determine that the
14 services involved legal skills.

15 1. STANDARD BANKRUPTCY ADMINISTRATION "CATEGORY A"

16 The need for the firm's services must be apparent from the
17 description of the services set forth in the fee application.
18 Services described simply as "review debtors' schedules and
19 statement of affairs" or "review bankruptcy court docket" do not
20 tell the Court anything about what legal analysis or issues were
21 involved in the review. "In addition, if an otherwise generally
22 noncompensable service is deemed compensable by the professional
23 and included in the fee application because of the complexity of
24 the matter involved, the professional must describe the service
25 and the complexity in sufficient detail so the court can see on
26 the face of the application that the service indeed requires the
27 use of the professional." In re Holub, 129 B.R. 293, 296 (Bankr.
28 M.D. Fla. 1991).

1 There is no satisfactory explanation why both Gary E.
2 Slater, the attorney in this case, and Charlotte Seltzer, his
3 paralegal, conducted reviews of the schedules and statement of
4 affairs. The firm argues that a "review of the schedules often
5 reveals legal issues such as exemption disputes, co-ownership
6 issues, tax issues, secured creditor issues, and lien avoidance
7 issues. Any counsel representing a Chapter 7 Trustee that does
8 not review the schedules and Statement of Financial Affairs takes
9 the chance that significant legal issues will be missed." Supp.
10 Br. ¶ 5. However, the firm overlooks that it is the trustee's
11 duty, not his attorneys, to review schedules and the statement of
12 financial affairs to ascertain whether issues exist that would
13 require professional legal skills. Id. at 295 (noting that a
14 preliminary review of the schedules and attending the 341(a)
15 meeting fall within the scope of the trustee's duties).

16 The Handbook for Chapter 7 Trustees, Chapter 8, ¶ M (5) at
17 p. 8-25 (March 1, 2001) also provides:

18 The following list includes examples of services
19 considered to fall within the duties of a trustee:

- 20 a. preparing for and examining the debtor at the
21 § 341(a) meeting in order to verify factual
22 matters;....

22 A trustee must be competent to perform a review of the schedules
23 and statement of financial affairs in order to carry out his or
24 her duties set forth in § 704. The firm's argument would require
25 a trustee to hire an attorney in every case to conduct a review
26 of the schedules and the statement of the financial affairs to
27 determine whether legal issues exist. Interestingly, none of the
28 legal issues mentioned by the firm presented themselves in this

1 case.

2 Moreover, the firm's paralegal billed time for file
3 organization. See entry for 9/30/04. Without any explanation as
4 to the complexity of the task which would require a paralegal's
5 services, organization of files would appear to be routine
6 secretarial work for which the firm's paralegal bills \$125 per
7 hour. See Busy Beaver, 19 F.3d at 851 (noting that "the
8 classification of services as clerical or non-clerical does not
9 decide the question of compensability under § 330; clerical
10 services may be compensated in the proper context.") (citations
11 omitted); Missouri v. Jenkins, 491 U.S. 274, 288 at n. 10, 109
12 S.Ct. 2463, 105 L.Ed.2d 229 (1989) (stating that, "purely
13 clerical or secretarial tasks should not be billed at a paralegal
14 rate, regardless of who performs them"); see also United States
15 Trustee Guidelines For Reviewing Applications For Compensation
16 and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, Sec.
17 II, (E)(7) at p. 7 (Jan. 30, 1996).

18 Finally, ascertaining the tax consequences of the settlement
19 between the debtors and the trustee constituted performance of
20 the trustee's duties especially in light of the fact that the
21 trustee had hired another professional, Dean Johnson, a CPA, as
22 his accountant. The trustee attempted to justify the services by
23 the firm by stating that "if Mr. Slater calls Mr. Johnson
24 directly to get the answer or I call Mr. Johnson to get the
25 answer and then I call Mr. Slater to give him the answer, the
26 time's going to be the same...." See Tr. dated 9/30/04 44:21-25.
27 Nonetheless, as further explained below, what the trustee fails
28 to recognize is that there was no need for the firm to get

1 involved in the sale of debtors' equity.

2 The Court finds therefore that the following time is not
3 compensable.

Date	Description	Biller	Amount Disallowed
9/29/03	REVIEW E-MAIL FROM TRUSTEE WITH LISTING AGREEMENT FOR SALE OF RESIDENCE AND REVIEW BANKRUPTCY COURT DOCKET SEARCH (PACER) DOCKET ON GARCIA CASE	GES	1.00 x \$275 = \$275
9/30/03	FILE ORGANIZATION	CS	.70 x \$125 = \$87.50
9/30/03	RESEARCH BANKRUPTCY FILING AND EXTENSIVE REVIEW OF BANKRUPTCY PLEADINGS	CS	.80 x \$125 = \$100
10/1/03	REVIEW DEBTOR'S SCHEDULES AND STATEMENT OF AFFAIRS	GES	.30 x \$275 = \$82.50
11/3/03	REVIEW BANKRUPTCY COURT DOCKET SEARCH (PACER) REGARDING STATUS OF DEBTORS' DISCHARGE	GES	.20 x \$275 = \$55
1/28/04	TELEPHONE CONFERENCE WITH D. JOHNSON REGARDING TAX CONSEQUENCES OF SETTLEMENT	GES	.20 x \$275 = \$55
2/12/04	REVIEW FILE REGARDING STATUS OF ADMINISTRATION	GES	.10 x \$300 = \$30
5/10/04	MEMO TO TRUSTEE REGARDING ACCOUNTANT	CS	.20 x \$125 = \$25
	TOTAL		\$710

20
21 2. EMPLOYMENT APPLICATIONS "CATEGORY B"

22 One court noted that "[p]reparation of the application for
23 employment of a professional is another manifestation of the
24 trustee's first, second, and fourth enumerated duties, all of
25 which imply a duty to administer the estate." McKenna, 93 B.R. at
26 241 citing 11 U.S.C. § 704 (1),(2), and (4). The Court reviewed
27 the firm's services in this category regarding its employment of
28 the real estate broker.

1 The Court examined the application to employ the real estate
2 broker, which is two and one-half pages, the accompanying
3 declaration, which is three paragraphs, and the order which is
4 less than a page. The employment of the real estate broker was
5 straightforward and this Court could discern no legal analysis
6 that was involved in any of the documents submitted.

7 Even assuming that somehow the legal services of the firm
8 were needed in this case to employ the real estate broker as the
9 firm contends, neither the time sheets nor the firm's
10 supplemental brief demonstrates that the broker's employment in
11 this case involved legal issues. At the hearing on this matter,
12 Mr. Slater stated that "our application to employ a broker was
13 the cutting edge application in the district, which people now
14 follow...so our application to employ a broker requires - the
15 exhibits require adjustments to the broker's listing agreement,
16 an addendum, and it's basically contract services." See Tr.
17 dated 9/30/04 29:14-25; 30:1-2. But this explanation doesn't
18 support the notion that legal services were involved with respect
19 to the employment of the broker in this case.

20 Interestingly, the trustee employed a broker by himself in
21 In re Real-Baeza, Southern District of California Bankruptcy Case
22 No. 04-02263-A7, without the assistance of counsel. The Court
23 takes judicial notice of the pleadings in In re Real-Baeza
24 pursuant to Federal Rule Evidence 201. The trustee's action in
25 Real-Baeza clearly shows he is capable of doing this simple
26 administrative task without the assistance of counsel. Preparing
27 the application for employment of professionals is generally
28 considered trustee work. McKenna, 93 B.R. at 241 (Bankr. E.D.

1 Cal. 1988) (citations omitted). The Court finds that none of the
2 time spent for employing the real estate broker is compensable.

3 3. ASSET DISPOSITION: SALE OF SAN MARCOS PROPERTY
4 CATEGORY "C"

5 The firm expended 29.7 hours in this category and requests
6 \$5,676 for its services. The firm's services in this category
7 can be summarized as follows: reviewing the listing agreement;
8 communicating with the broker; negotiating with debtors' attorney
9 regarding the sale of equity to the debtors; reviewing the title
10 report; and preparing the stipulation and mutual releases between
11 the debtors and the trustee.

12 With respect to the sale of real property in a bankruptcy
13 proceeding, the firm contends that real estate brokers are not
14 qualified to handle the legal aspects of sales of real estate in
15 bankruptcy court and that most trustees are unwilling to accept
16 the risks associated with such transactions without legal
17 counsel. Supp. Br. at p. 3. The firm contends that several
18 factors make counsel necessary for sales of real property in the
19 bankruptcy context: "1) the debtor is an unwilling seller; 2) the
20 disclosure requirements for bankruptcy trustees significantly
21 diverge from the disclosure requirements for non-bankruptcy
22 transactions; 3) the contractual arrangement with the proposed
23 buyer is affected by the contingencies related to Court approval
24 and overbids; and 4) the treatment of liens on the property is
25 obviously significantly different." Supp. Br. at p. 3. The firm
26 goes on to state that "in the bankruptcy sales context, attorneys
27 are not only needed to complete the required procedural steps,
28 but also to analyze and prevent possible roadblocks to the

1 completion of the transaction, to limit liability to the Trustee
2 and the estate, and to handle and resolve the problems which do
3 arise." Supp. Br. at p. 3-4. Unfortunately, the firm's
4 supplemental brief speaks only in generalities and tells the
5 Court nothing about what unique difficulties were involved in
6 this case that required the services of an attorney.

7 There is also no satisfactory explanation as to why both
8 Gary E. Slater and his paralegal needed to review the listing
9 agreement and no description regarding the legal analysis of the
10 issues involved. "Services relating to the sale of the debtors'
11 assets" are generally considered to fall within the scope of the
12 trustee's duties. McKenna, 93 B.R. at 242 (citations omitted).
13 Routine telephone calls with the broker are likewise not
14 compensable as legal work. Id.

15 Moreover, as early as October 20, 2003, the firm's time
16 sheets reflect that the debtors had inquired about buying the
17 equity in the house. The time sheets show that from that point
18 on, the firm conducted all the negotiations with the debtors'
19 attorney regarding the "buy-out" of the equity and simply acted
20 as a conduit between the trustee and the debtors' attorney.
21 There is no explanation as to why the firm had to be constantly
22 involved in the exchange of e-mails between the debtors' attorney
23 and the trustee. The time entry on 10/21/03 is illustrative.
24 The firm's activity as a "middleman" only added unnecessarily to
25 the layer of administrative expense in this case.

26 The firm argues that the "negotiations with the Debtors'
27 attorney primarily involved the market value of the Debtors'
28 residence, and ultimately, the price which would be paid by the

1 Debtors for the net equity in the property." Supp. Br. 4:26-28.
2 The firm's explanation supports the Court's conclusion that no
3 legal work was involved in the negotiations regarding the buy-out
4 price the debtors would pay for their equity. By the firm's own
5 admission, the only issue involved simple mathematics and did not
6 involve any legal analysis.

7 The firm also argues that "in the absence of trustee's
8 counsel, it is questionable whether the sale of the debtors' real
9 property, or the equity purchase transaction, would have
10 ultimately been consummated." Supp. Br. 3:5-6. Yet, the firm
11 never explains why.

12 Interestingly, the firm contends that prior to its
13 involvement, "the Trustee made attempts to negotiate with
14 Debtors' attorney regarding either a sale of the Debtors'
15 residence, or Debtors' purchase of the net equity in the
16 residence. These attempts were unsuccessful, and therefore the
17 Trustee sought to employ ... Slater to assist with resolution of
18 certain legal issues...." Supp. Br. 4:18-22. Yet, the word
19 "negotiation" is never even mentioned in the trustee's time
20 sheets prior to the firm's involvement.

21 The trustee made an offer of proof at the hearing on this
22 matter that he did attempt to resolve the matter with the
23 debtors' attorney despite the fact that his time sheets did not
24 reflect he did so. However, when he was unsuccessful, "it became
25 necessary" for him to hire counsel. See Tr. dated 9/30/04 25:5-
26 6. It is unclear to the Court why the trustee had to hire
27 counsel when the negotiations broke down because Mr. Slater
28 stated at the hearing "when the application [to hire the real

1 estate broker] was served,...on October 9, so [debtors' attorney]
2 got it, and that is what actually got him off the dime." See Tr.
3 dated 9/30/04 25:19-21. Although this Court could find no proof
4 of service on the docket regarding the service of the broker's
5 application on the debtors' attorney, it appears that all the
6 trustee had to do was to get the broker employed (which fell
7 within the scope of his duties) in order to get debtors' counsel
8 to resume negotiations. In sum, the Court finds that all the
9 services relating to the negotiations fall within the scope of
10 the trustee's duties -- the duty to collect and reduce to money
11 the property of the estate under § 704(1). The negotiations were
12 simply about the amount the debtors would pay.

13 With respect to the firm's review of the title report, the
14 only explanation offered by the firm is that its "preliminary
15 assessment indicated that the property might be subject to a
16 'wild' deed of trust." Supp. Br. 5:22:25. The firm, however,
17 provides no additional facts regarding the so-called wild deed.
18 Further, no sale of the property ever took place and the debtors
19 simply bought the equity. With no apparent legal issues present,
20 reviewing the title report is part of the trustee's duties.
21 McKenna, 93 B.R. at 241 (citation omitted).

22 Finally, the Court notes that the firm spent approximately
23 16.4 hours for a total of \$3,155.50 on preparing the stipulation
24 and mutual releases between the debtors and the trustee.⁵ The
25 stipulation and order is a mere five pages, with one page
26

27
28 ⁵ These services are indicated on the following dates: 12/1/03; 12/2/03;
12/5/03; 12/30/03; 12/31/03; 1/5/04; 1/6/04; 1/13/04; 1/14/04; 1/15/04; 1/25/04;.

1 consisting of signatures. See Stipulation and Order [Docket #27].
2 The stipulation was quite simple and no releases were indicated
3 within the stipulation. The Court accepted Mr. Slater's offer of
4 proof at the September 30, 2004, hearing that the releases were
5 prepared and signed. But, the releases were not included in the
6 record, so the Court did not have the opportunity to examine how
7 complex they might have been.⁶ The declaration of Gary E. Slater
8 accompanying the order approving the stipulation consisted of one
9 and one-half pages. See Declaration of Gary E. Slater in Support
10 of Seeking Entry of Order Approving Stipulation Re Compromise and
11 Liquidation of Debtors' Residence [Docket #28]. Lastly, the
12 Notice of Intended Action was simply a form with a few paragraphs
13 typed in regarding the agreement between the trustee and the
14 debtors. See Notice of Intended Action re Trustee and Debtors
15 [Docket #23].

16 In light of the simplicity of the documents noted above, and
17 the lack of evidence regarding the releases, the Court finds that
18 the services relating to the stipulation and mutual releases are
19 not compensable as legal work. Again, usually in these
20 situations where a debtor purchases the equity in his or her
21 residence in order to avoid losing it to a sale, the debtors'
22 attorney would prepare the stipulation. Perhaps the trustee may
23 hire an attorney to review the stipulation for legal issues, but
24 that is not the situation in this case since the firm again
25 simply took over all the work in the case.

27
28 ⁶ Despite the Court giving the firm several months to supplement his fee application.

1 Accordingly, the Court finds that \$5,676 for the 29.7 hours
2 of work associated with the sale of the debtors' property is not
3 compensable.

4 4. CLAIMS ADMINISTRATION AND OBJECTIONS

5 Examining claims and objecting to the allowance of any claim
6 that is improper clearly falls within the scope of the trustee's
7 duties under § 704(5). McKenna, 93 B.R. at 242 (citation
8 omitted). Again, the firm's time sheets, its supplemental brief,
9 and the narrative portion of its fee application, all fail to
10 identify the legal issues that were involved with the claims in
11 this case. On the first entry under this category on 12/30/03,
12 the firm sent a memo to the trustee to set the claims bar date.
13 The trustee should have been reminded of this most basic duty by
14 his secretary and not an attorney billing at \$300 per hour. The
15 firm then charges the estate to review the order setting the
16 claims bar date, but it is unclear why it was necessary for it to
17 do so.

18 Also of note is that in Gary E. Slater's declaration in
19 support of his firm's *ex parte* application for employment, Mr.
20 Slater discusses his firm's conflict with Bank of America and in
21 connection with that disclosure states "Bank of America has been
22 informed that should the occasion arise that the Trustee needs
23 assistance from counsel to deal with the Bank of America's claim,
24 the Trustee shall employ special counsel for that purpose or
25 handle the matter on his own. . . In a chapter 7 case of this
26 kind, the Trustee typically handles the review and objections to
27 claims, if any, on his own, without counsel." Slater Decl. 2:7-
28 15 [Docket #12] (emphasis added).

1 None of the entries associated with the firm's services in
2 the Claims Administration and Objections category are
3 compensable. The Court therefore finds that \$475 is disallowed.

4 With respect to the matters discussed above, the Court finds
5 that this case was routine and there were no unusual difficulties
6 that required the skills of counsel in connection with 1) the
7 reviewing of schedules; 2) the employment of the real estate
8 broker; 3) the review of the title report; 4) the negotiations
9 with the debtors' attorney regarding the sale of equity to the
10 debtor; or 5) the review of claims. There was one asset -- the
11 equity in the debtors' home -- to administer and it was the
12 trustee's duty to administer that asset.

13 Both counsel for trustees, and trustees themselves, should
14 be fully aware that counsel can be compensated only for services
15 that require the exercise of professional legal skills and
16 expertise beyond the ordinary knowledge and skill of the trustee.
17 "The reasons proffered [sic] for the above rules are first that
18 the duplication of the trustee's and attorney's services would
19 result in the unnecessary depletion of the debtor's estate, and
20 second that the attorney's assumption of the trustee's duties
21 would be a derogation of the statutory scheme." In re King, 88
22 B.R. 768, 770 (Bankr. E.D. Va. 1988) (citation omitted); see also
23 3 Collier on Bankruptcy ¶ 330.03[2][b], at 330-21 (15th ed. rev.
24 2004) ("disallowing compensation for trustee duties delegated to
25 a professional avoids the risk that the estate will be depleted
26 through separate charges for duplicative services"). The
27 Handbook for Chapter 7 Trustees, Chapter 8, ¶ M (4) at p. 8-24
28 states:

1 The trustee is a fiduciary and representative of the
2 estate. Trustees cannot avoid or abdicate their
3 responsibilities by employing professionals and
4 delegating to them certain tasks. It is critical that
5 the trustee oversees the work performed by
6 professionals and exercises appropriate business
7 judgment on all key decisions.

8 The Handbook for Chapter 7 Trustees, Chapter 8, ¶ M (2) at
9 p. 8-22 further states:

10 The threshold question for the employment of any
11 professional is the necessity of employment. . . .
12 Conversely, professionals are not to do ministerial
13 work or perform the duties of a trustee.

14 ...

15 The trustee must determine whether the services of a
16 professional are needed and whether the cost is
17 warranted. Further, the trustee should determine at
18 the outset the level of professional work required and
19 the estimated costs and benefits associated with the
20 work.

21 At the hearing, Mr. Slater argued that "reasonable minds can
22 differ" as to what constitutes a legal service. See Tr. dated
23 9/30/04 11:12-17; 12:9-11; 14:4-7. Several courts have provided
24 guidance in this regard. One court described compensable legal
25 services:

26 [Where] [t]here were unusual difficulties relating to
27 various real and personal property sales that required
28 legal expertise, involving tax loss carryovers, lien
status determinations (perfection and priority), and
problems relating to mortgage interest rates and
moratoria, as well as activities requiring legal
expertise such as negotiations for postpetition payment
and indemnity arrangements, and moratoria, and
negotiating and arranging postpetition loans and
certificates of indebtedness such services were
compensable as legal services....In those instances
where insufficient explanatory information did not
enable a determination of the precise nature of the
services rendered...the services were not compensable
as legal services. See In re McAuley Textile Corp., 11
B.R. 646, 648 (Bankr. D. Maine 1981) (citations
omitted).

1 Another court noted:

2 [P]rofessional time is limited to those tasks performed
3 while representing the trustee in the prosecution of
4 contested matters and adversary proceedings, attendance
5 at court hearings in the capacity of attorney or other
6 professional when the trustee has an interest, the
7 preparation of professional related applications, and
8 the performance of other specialized services that
9 cannot be performed practically or lawfully by the
10 trustee without engaging the services of a
11 professional. Holub, 129 B.R. at 296.

12 To avoid problems in the future, it would behoove trustees
13 and their counsel to

14 [S]et procedures whereby trustee duties are performed
15 by the trustee, and not the attorney, so that each is
16 performing the job that he or she was appointed to
17 perform. For example, at the start of a case, the
18 trustee should implement a system whereby routine calls
19 from creditors, employees, and other parties seeking
20 information should be routed through the trustee, not
21 the attorney. The trustee is generally expected to
22 perform the preparatory work to collect receivables,
23 analyze preferences, hire professionals, liquidate
24 assets, and answer inquiries from creditors, employees,
25 and professionals related to the administration of the
26 estate. In re Columbia Plastics, Inc., 251 B.R. 580,586
27 (Bankr. W. D. Wash. 2000)

28 The need for such coordination is evident in this case.

18 E. ENTRIES FOR SERVICES WHICH WERE UNNECESSARY AND DID
19 NOT BENEFIT THE ESTATE UNDER SECTION 330(a)(3)(C)

20 Although the following services do not fall within the ambit
21 of the trustee's duties under § 704, the services are not
22 compensable since they were neither necessary nor beneficial to
23 the administration of the estate under § 330(a)(3)(C).

24 1. THE FIRM'S CONFLICT WITH BANK OF AMERICA

25 The firm's services in connection with its conflict with the
26 Bank of America were listed under Category "B", Employment
27 Applications.

28 The firm acknowledged in its declaration in support of

1 employment application that it represented Bank of America who
 2 also was a creditor of this estate. See Slater Decl. ¶¶ 4- 5
 3 [Docket #12]. Nonetheless, the Court fails to discern how
 4 services rendered in connection with the firm's conflict were
 5 necessary to the administration of, or beneficial to this estate.
 6 The rest of the unsecured creditor body should not have to pay
 7 the firm for its work in connection with its conflict. Mr.
 8 Slater conceded as much at the hearing on September 30, 2004, and
 9 stated "we won't do it again." See Tr. dated 9/30/04 36:18-20.
 10 Even so, what is disturbing to this Court is that Mr. Slater, an
 11 experienced attorney, should have known that such services could
 12 not be compensated from the estate. Moreover, neither the
 13 trustee nor the United States Trustee Office objected to the
 14 entries which clearly did not benefit this chapter 7 estate.

15 The Court finds the following time is not compensable.

DATE	DESCRIPTION	BILLER	AMOUNT
10/3/03	REVIEW LETTER TO C. BUTLER REGARDING WAIVER OF CONFLICT BY BANK OF AMERICA.	TJT	.20 x \$240 = \$48
10/3/03	PREPARE BANK OF AMERICA CONFLICT LETTER.	CS	.70 x \$125 =\$87.50
10/14/03	REVIEW MEMO FROM R. KIPPERMAN AND APPROVED CONFLICT WAIVER	TJT	.10 x \$240 =\$24.00
10/24/03	REVIEW LETTER FROM C. BUTLER REGARDING WAIVER OF POTENTIAL CONFLICT	TJT	.10 x \$240 = \$24.00
	TOTAL		\$183.50

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1 2. SECRETARIAL OVERHEAD

2 The firm billed D. Chambers, a legal assistant, at \$80 per
3 hour. Although it may be customary to bill for a legal assistant
4 outside the bankruptcy arena, the Court has no evidence before it
5 in this regard.

6 An examination of Ms. Chambers services indicate that she is
7 performing secretarial services. For example on 11/14/03, she
8 prepared a letter to Richard Kipperman, trustee sending attorney
9 Gary E. Slater's letter to attorney Burton (.20); on 11/25/03 she
10 prepared a letter to attorney Burton sending letter and
11 stipulation regarding compromise and litigation of debtors
12 residences (.20); on 1/16/04 she prepared an e-mail to attorney
13 Burton and R. Kipperman sending attorney Gary E. Slater's letter
14 dated 1/6/03 along with Mutual Release of All Claims (.40); on
15 1/26/04 she had a telephone call with attorney Burton regarding
16 check regarding sale of San Marcos property (.20); on 2/2/04 she
17 prepared a letter to Mr. Kipperman sending copy of check from
18 attorney Burton (.20); and on 2/19/04 she prepared a letter to R.
19 Kipperman sending check regarding Stipulation and Order regarding
20 Compromise and liquidation of Debtors' Residence (.30).

21 There is no explanation regarding the complexity of these
22 tasks which would require a "legal assistant" to do them at \$80
23 per hour. These services are secretarial in nature and not
24 compensable. See Missouri v. Jenkins, 491 U.S. at 288 at n. 10
25 (stating that, "purely clerical or secretarial tasks should not
26 be billed at a paralegal rate, regardless of who performs them");
27 see also United States Trustee Guidelines For Reviewing
28 Applications For Compensation and Reimbursement of Expenses Filed

1 Under 11 U.S.C. § 330, Sec. II, (E)(7) at p. 7 (Jan. 30, 1996).

2 3. FINAL ADJUSTMENTS

3 Unfortunately, after extensively reviewing the time sheets,
4 and making the adjustments noted above, the Court finds that the
5 remaining services relate to routine case administration services
6 in Category "A" for Standard Bankruptcy Administration
7 (approximately \$128 remaining after taking deductions for
8 disallowed time above); the firm's employment application which
9 is listed under Category "B" Employment Applications; and its
10 services related to the preparation of fee applications in
11 Category "E" Fee Applications (\$2,425). Since the vast majority
12 of the firm's services were disallowed because they constituted
13 the work of the trustee, the Court cannot justify allowing
14 compensation for the remaining time under Standard Bankruptcy
15 Administration, nor can the Court justify allowing compensation
16 for services related to the firm's employment application and
17 preparation of the fee application.

18 With respect to the preparation of the fee application, the
19 firm spent 13.80 hours. The amount requested is approximately
20 29.37% of the total fees ($\$8454 \div \2425). The Court finds that
21 even without the deductions taken above for noncompensable
22 services, the firm's request for preparation of the fee
23 application is unreasonable and warrants comment from the Court.

24 The firm contends that 10% allocated to fee application
25 preparation is unrealistic because of the mandatory procedural
26 steps which must be taken in the preparation of fee applications
27 to comply with the U.S. Trustee Guidelines. Supp. Br. 6:6-15.
28 According to the firm, it must spend the time, regardless of the

1 total fees spent, and it seeks to "get it right" the first time.
2 Supp. Br. 6:16-23. Therefore, the firm contends that the primary
3 determination should be how many hours should it reasonably take
4 to prepare an application for compensation which complies with
5 the U.S. Trustee's Guidelines. The firm submits that 13.8 hours
6 is reasonable for this case particularly where 75% of the time
7 was spent by a paralegal. Supp. Br. 7:2-4.

8 The firm's paralegal spent approximately 9.5 hours in
9 preparing the fee application. No information is provided
10 regarding the educational background or experience of the
11 paralegal, but this was a simple fee application consisting of
12 nine pages of narrative, time records totaling forty-eight
13 pages,⁷ and ten pages of exhibits. Nine and one-half hours of
14 paralegal time for the preparation of this pleading is
15 unreasonable particularly in an experienced bankruptcy law firm.

16 This Court will not impose a per se rule regarding the
17 amount of time attorneys should take to prepare fee applications.
18 Nonetheless, the Court will always examine whether the
19 preparation of the fee application is disproportionate to the
20 total fees requested. Even if the Court found that the firm's
21 services were appropriate legal services and reasonable under the
22 standards set forth in 330(a), the firm's request for preparation
23 of its fee application is disproportionate in this case.
24 Considering the firm's experience in representing trustees,
25 neither Mr. Slater nor his paralegal should have to reinvent the
26 wheel for each and every fee application.

27 ⁷ Less than half of those pages had actual time entries; many pages
28 contain only one entry.

1 In sum, the Court first considered whether the work
2 performed was for compensable legal services rather than work
3 that should have been performed by the trustee. As noted above,
4 the bulk of the firm's time entries showed that the work it
5 performed should have been performed by the trustee because no
6 unique difficulties requiring legal expertise arose in this case.
7 Next, the Court examined the relevant factors under § 330(a) to
8 determine whether the remaining requested compensation was
9 reasonable. The Court is bound to allow compensation only for
10 services that were necessary and benefit the estate. Having
11 found none, the Court disallows the firm's request for
12 compensation in its entirety, including costs under
13 § 330(a)(1)(B). In short, the trustee did not need to employ an
14 attorney in this case.

15 THE TRUSTEE'S FEE REQUEST

16 F. STANDARDS FOR TRUSTEE COMPENSATION

17 Section 326(a) sets forth the maximum compensation available
18 to a trustee as a commission (the "statutory cap"). The trustee
19 requests as interim compensation, the maximum allowed under the
20 statute or \$3,050. The trustee documented 16.10 hours of time on
21 this case, which includes an estimated 3.5 hours he will spend
22 concluding the case. It does not include, however, the estimated
23 10.0 hours of staff time that will be spent in case closing and
24 compliance with the Office of the United States Trustee. See
25 Kipperman Fee App. 4:3 [Docket #39].

26 "The trustee has the burden of establishing that he is
27 entitled to the fees requested." In re Roderick Timber Co., 185
28 B.R. 601, 606 (B.A.P. 9th Cir. 1995) (citation omitted); Columbia

1 Plastics, 251 B.R. at 584. “In order to receive compensation
2 for services rendered and reimbursement of expenses, the trustee
3 must file an application with the court.” Roderick Timber, 185
4 B.R. at 606 (citations omitted). “The court must evaluate the
5 sufficiency of the evidence provided by the trustee in support of
6 the fee application and take into consideration whether the
7 overall fee is reasonable under 11 U.S.C. § 330(a).” Columbia
8 Plastics, 251 B.R. at 584.

9 However, the court’s allowance of reasonable compensation
10 pursuant to § 330(a) is subject to the maximum commission
11 calculated according to the formula set forth in § 326. This
12 Court must therefore first examine the factors set forth in
13 § 330(a)(3) to determine whether the trustee is entitled to the
14 statutory cap in this case.

15 1. Lack of Detailed Time Records

16 First, the Court notes that it is difficult to
17 determine the reasonableness of the trustee’s fee request because
18 he documented only 16.10 hours of time.⁸ The trustee states in
19 his application that “it should be noted that given the nature of
20 a trustee’s duties, it is often difficult to maintain detailed
21 time records.” See Kipperman Fee App. 3:25-26 [Docket #39].
22 Yet, the United States Trustee Manual for Chapter 7 Case
23 Administration requires under section 2-2.81 that “the trustee
24 should keep time records in every asset case as evidence of the
25 services performed.” See also Roderick Timber, 185 B.R. at 606.

26
27 ⁸ The time sheets show a total of 16.10 hours with 3.50 hours estimated to
28 attend the fee hearing, review and object to claims, prepare reports for the UST,
distribute funds and close the case.

1 Further, as noted in Roderick Timber, if the "trustee was
2 operating an ongoing business and attempting to reorganize the
3 debtor, it [may] 'not be realistic to expect the trustee to
4 prepare a time slip on each function that he perform[ed] during
5 the day.'" Id. at 606 (citation omitted). But the trustee was
6 not running a business in this case and, therefore, the Court
7 finds that his argument regarding the lack of detail and his
8 failure to record time is unpersuasive. "It has long been the
9 rule in this circuit that trustees have a duty to meticulously
10 maintain accurate records of time expended on behalf of the
11 estate." Id. at 605 citing Matter of Beverly Crest Convalescent
12 Hosp., Inc. 548 F.2d 817, 820 (9th Cir. 1976).

13 2. Analysis of Section 330(a)(3) Factors

14 Section 330(a)(3) requests a court awarding trustee's fees
15 to consider "the nature, the extent, and the value of such
16 services, taking into account all relevant factors, including -

17 (A) the time spent on such services;

18 (B) the rates charged for such services;

19 (C) whether the services were necessary to the
20 administration of, or beneficial at the time the
21 service was rendered toward the completion of, a case
22 under this title;

23 (D) whether the services were performed within a
24 reasonable amount of time commensurate with the
25 complexity, importance, and nature of the problem,
26 issue, or task addressed; and

27 (E) whether the compensation is reasonable based on
28 the customary compensation charged by comparably
skilled practitioners in cases other than cases under
this title."

One court noted:

[A]s implemented, these criteria for setting trustee

1 fees have closely resembled the factors used for
2 awarding attorney fees. In turn, those factors include
3 the time and labor involved; the novelty and difficulty
of the questions presented by the case; and the
experience, reputation and ability of the professional.

4 In re Borrego Springs Dev. Corp., 253 B.R. 271, 275 (S.D. Cal.
5 2000) (citations omitted).

6 It is difficult to analyze some of the factors under
7 § 330(a)(3) because the trustee kept minimal time records in this
8 case. For example, under § 330(a)(3)(A) and (D) the Court can
9 only look at the 16.10 hours documented by the trustee and find
10 that his services were performed within a reasonable amount of
11 time.

12 There is also no question that some of the trustee's
13 services were necessary and benefitted the estate under (C). The
14 Court must conclude, however, that the services relating to the
15 review of the firm's employment application (.50), reviewing and
16 signing the conflict waiver (.20); review of the firm's invoices
17 (1.5 hours), and telephone calls to Mr. Slater (.30) were neither
18 necessary nor benefitted the estate because the trustee did not
19 need to hire an attorney in this case. The Court calculates that
20 time in total to be 2.5 hours.

21 Problems also arise under subsections (B) and (E). The
22 trustee billed his time at \$375 per hour. See Tr. dated 9/30/04
23 50:3-4. Although the trustee may charge \$375 an hour for his
24 services in a non-bankruptcy setting, in evaluating the nature
25 and extent of his services in this case, an hourly fee of \$375 is
26 unreasonable. The Court finds that an adjustment to the
27 trustee's hourly rate is therefore appropriate.

28 The Court is aware that adjustments can work both ways. For

1 example, one court noted:

2 A chapter 7 trustee does perform a variety of functions
3 in his role, including investigating, liquidating, and
4 distributing estate assets. Where the trustee has
5 performed work that differs in complexity, a solution
6 is to adjust his fee as a whole, to arrive at a
'blended" rate.' We agree that the appropriate
approach here was a unified rate for all of the
trustee's services." In re Miniscribe Corp., 309 F.3d
1234, 1244 (10th Cir. 2002) (citation omitted).

7 In Miniscribe, the trustee, as an attorney, charged \$200 per
8 hour. However, the trustee was awarded a rate of \$400 per hour
9 for his services because he had brought the highest levels of
10 skill to the estate's administration and achieved outstanding
11 results. The court noted that it was not evaluating the skill
12 required of the attorney, but of the trustee, the fiduciary in
13 the case. See In re Miniscribe Corp., 257 B.R. 56, 62 (Bankr. D.
14 Colo. 2000); See also Borrego Springs, 253 B.R. at 277
15 (recognizing that the role of the trustee is different from that
16 of the attorney and may be compensated differently).

17 The bankruptcy court in Miniscribe Corp., upon remand from
18 the district court regarding the trustee's hourly rate, aptly
19 explained: "[The role] of the trustee is more difficult and more
20 stressful than the role of legal counsel because it carries with
21 it the burden of deciding how much is enough. The buck stops at
22 the trustee's desk, not at the desk of legal counsel. He is
23 entitled to some recognition for the nature of the position and
24 the services provided in the role of trustee." Miniscribe Corp.,
25 257 B.R. at 62. The bankruptcy court also considered the fees
26 charged by investment bankers, consultants, accountants and other
27 professionals in the case to arrive at the hourly rate of \$400
28 per hour for the trustee. Id.

1 Keeping these principles in mind, the trustee's time sheets
2 show that most of the work he has documented was simple
3 administrative trustee work, although he did spend approximately
4 1.4 hours participating in the firm's negotiations with the
5 debtors' attorney and reviewing the title report.⁹ As already
6 observed, there was nothing complex about this case. The only
7 asset was the debtors' home which was undervalued on the
8 schedules. The trustee's services involved neither complex
9 analysis regarding the investigation of assets nor multiparty
10 negotiations which were required by the trustee in Miniscribe.
11 He did not run a business as a going-concern in order to sell it
12 within a very short time frame such as the trustee in Borrego
13 Springs.¹⁰ With the exception of Dean Johnson, the trustee's
14 accountant, there should not have been any other professionals
15 involved in this case. Even so, the trustee requests an hourly
16 rate much higher than Mr. Johnson, whose average billing rate was
17 \$80.45 per hour, and much higher than his attorneys whose average
18 billing rate was \$183.50 per hour.

19 Also bothersome to the Court is that the trustee's time
20 sheets show at least seven entries in which the trustee reviewed
21 the firm's invoices. Yet, the trustee never objected to the
22 firm's billing of time for services related to its conflict with
23 the Bank of America, nor did the trustee evidently recognize that
24

25 ⁹ See entries on 10/28/03; 11/5/03; 11/7/03; 11/13/03; and 11/24/03.

26 ¹⁰ In Borrego Springs, 253 B.R. at 271, the debtor's principal asset was
27 an 18-hole golf course and a residential estate totaling 3,140 acres. At the
28 time of the bankruptcy filing, the estate had enough assets to sustain operations
for only two more months. The trustee was able to maintain the value of the
property and sell it for \$12.2 million without using a broker.

1 the firm was performing most of the trustee's work.

2 Given the lack of novel or difficult issues in this case,
3 the lack of detail in the trustee's time sheets and his failure
4 to keep track of his services, and that the trustee's attorneys
5 performed most of the trustee's duties, the Court finds a rate
6 for the trustee's administrative services in this case should be
7 \$100 per hour, while a rate of \$250 per hour is appropriate for
8 his negotiations and review of the title report.¹¹ Although
9 generally a court would use a unified blended hourly rate for all
10 services, this is an easier case in which to identify the
11 services which command a high hourly rate and those which command
12 a more modest rate. See Miniscribe, 257 B.R. at 61. The Court
13 also determines these rates based on its experience with fee
14 petitions brought before this Court. Compare Busy Beaver, 19
15 F.3d at 853 (noting that a bankruptcy judge's experience with
16 fee petitions and his or her expert judgment pertaining to
17 appropriate billing practices will be the starting point for any
18 analysis). Lastly, the Busy Beaver court noted: "[a]
19 Michelangelo should not charge Sistine Chapel rates for painting
20 a farmer's barn.'" Id. at 855 at n. 34 (citations omitted).

21 The trustee is therefore allowed \$1570 (14.7 hours - 2.5
22 hours (related to the firm and disallowed as unnecessary) = 12.2
23 hours x \$100 = \$1220 for administrative trustee work; 1.4 hours x
24 \$250 = \$350 for negotiating and title review) as reasonable
25 compensation pursuant to the standards set forth in § 330(a)(3).

26
27 ¹¹ The Court wants to make perfectly clear that it is not establishing a
28 *per se* rule regarding the hourly rates for Chapter 7 trustees in this District.
Rather, as explained above, the hourly rates identified herein are unique to this
case.

1 The statutory cap under § 326 is irrelevant.

2 IV.

3 CONCLUSION

4 For the reasons noted above, the Court finds that the firm's
5 request for compensation under § 330(a)(1) is denied in its
6 entirety. The trustee is awarded compensation of \$1570.

7 This Memorandum Decision constitutes findings of fact and
8 conclusions of law pursuant to Federal Rule of Bankruptcy
9 Procedure 7052. The Court has prepared an order in conformance
10 with this Memorandum Decision.

11

12 Dated: November 22, 2004

13

14

JOHN J. HARGROVE
UNITED STATES BANKRUPTCY JUDGE

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