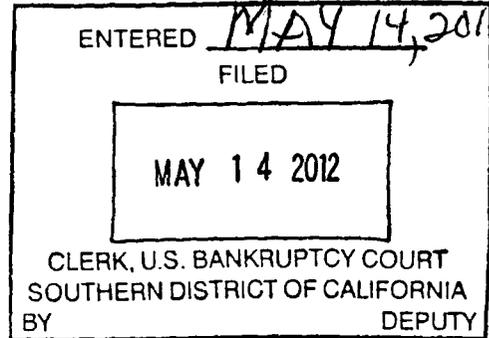


1 **WRITTEN DECISION - NOT FOR PUBLICATION**



9 UNITED STATES BANKRUPTCY COURT

10 SOUTHERN DISTRICT OF CALIFORNIA

11 In re) Case No. 10-07683-PB13

12 JOSEPH MICHAEL LIVOLSI and) MEMORANDUM DECISION

13 CARLA MARLENA LIVOLSI,)

14 Debtors.)

15

16 On June 16, 2011, Chang & Diamond APC, attorneys for the

17 debtors ("Chang & Diamond" or "Applicant") filed an Application

18 for Award of Compensation of Attorney's Fees (the "Application")

19 in which they asked this Court to approve an additional fee award

20 of \$3,358 for services rendered to the debtors in the above-

21 captioned chapter 13 case ("Debtors"). Chang & Diamond has

22 already been awarded \$3,750 in compensation for their services,

23 including \$3,300 for the "basic" chapter 13 case and an

24 additional \$450 for their work on the Debtors' lien strip motion

25 per the Court's Guidelines Regarding Chapter 13 Attorney Fees

26 (the "Guidelines"). Nevertheless, Chang & Diamond argues that

1 the additional fees sought in their Application are justified
2 because they spent 25.9 firm hours working on the Debtors'
3 chapter 13 case; an amount of time that they allege is "in excess
4 of the normal amount of time" a chapter 13 requires for
5 confirmation.

6 On July 5, 2011, Thomas H. Billingslea, the Chapter 13
7 Trustee assigned to the Debtors' case (the "Trustee") filed the
8 Chapter 13 Trustee's Objection to Application for Compensation
9 (the "Trustee's Objection"), arguing that the hourly rates that
10 Applicant proposes to charge are excessive. The Trustee urges
11 this Court to reduce the hourly rates and the number of hours
12 billed for "excessive and unwarranted work." The Trustee
13 contends that the total additional compensation permitted in this
14 case should not exceed \$1350 plus an additional \$812.50 for the
15 lien strip motion that the Applicant filled on the Debtors'
16 behalf, for a total of \$2,162.50 in additional fees. In support
17 of his argument, the Trustee submitted an exhibit which details
18 hourly rates charged by other consumer bankruptcy attorneys in
19 this jurisdiction, showing the rates for attorneys range from
20 \$200 to \$425 per hour and the hourly rates for paralegals/legal
21 assistants range from \$120 to \$185 per hour.

22 On July 22, 2011, Chang & Diamond filed their Response to
23 Trustee's Opposition to Application for compensation (the
24 "Response"), pursuant to which they agreed to reduce the hourly
25 rate at which they were billing (i) seven "case administrators"
26 from \$185 to \$100 an hour and (ii) one case administrator from

1 \$180 to \$100 per hour. Accordingly, Chang & Diamond reduced
2 the total amount of additional fees that they are seeking from
3 \$3,358 to \$2,510.50, or \$348 more than the Trustee would agree
4 to.

5 11 U.S.C. § 330 governs compensation of attorneys who
6 prepare and file Chapter 13 bankruptcy cases.¹ Section 330
7 subsection 3 provides in relevant part:

8 (3) In determining the amount of reasonable
9 compensation to be awarded to an examiner, trustee
10 under chapter 11, or professional person, the
11 court shall consider the nature, the extent, and
12 the value of such services, taking into account
13 all relevant factors, including -

14 (A) the time spent on such services;

15 (B) the rates charged for such services;

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

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

25 (E) with respect to a professional person,
26 whether the person is board certified or
otherwise has demonstrated skill and
experience in the bankruptcy field; and

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

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¹Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 At the same time, section 330(a)(4) mandates that ". . . the
2 court shall not allow compensation for . . . (ii) services that
3 were not (I) reasonably likely to benefit the debtor's estate;
4 or (II) necessary to the administration of the case."
5 11 U.S.C. § 330(a)(4). The Bankruptcy Appellate Panel for the
6 Ninth Circuit has interpreted this to require only that the
7 services were "reasonably likely" to benefit the estate at the
8 time the services were rendered but does not require proof of an
9 actual material benefit to the estate from the services rendered.
10 *In re Mednet*, 251 B.R. 103, 108 (9th Cir. BAP 2000). The Panel
11 pointed out, however, that a professional must exercise
12 "reasonable billing judgment." *Id.* at 108-109 (quoting *In re*
13 *Riverside-Linden Investment Co.*, 925 F.2d 320, 321 (9th Cir.
14 1991).

15 The Ninth Circuit Court of Appeals has upheld this Court's
16 reliance upon the Guideline fees for routine services in chapter
17 13 cases as consistent with § 330. *Eliapo v. Devin Durham-Burk*;
18 *U.S. Trustee (In re Eliapo)*, 468 F.3d 592, 598-600 (9th Cir.
19 2006). Accordingly, in order to obtain approval of Chapter 13
20 attorneys fees in excess of those contemplated by the Guidelines,
21 an attorney in this district must demonstrate that the problems
22 faced by him/her in preparing the subject motion were "more
23 difficult than those faced by Chapter 13 practitioners on a
24 regular basis." See *Eliapo v. Devin Durham-Burk; U.S. Trustee*
25 *(In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006) citing *In re Eliapo*,
26 2002 WL 31185824, at *1 (Bankr. N.D.Cal. Aug. 2, 2002). If the

1 problems that arose in preparing a subject motion are "typical"
2 of those encountered in a Chapter 13 case, the attorney may be
3 authorized no more than the presumptive fee. *Eliapo*, 468 F.3d
4 at 601.

5 Thus, this Court must determine (i) whether the problems
6 faced by Chang & Diamond in the Debtors' chapter 13 case were
7 atypical, or extraordinary; (ii) if that is the case, whether the
8 services provided by Chang & Diamond were reasonably likely to
9 benefit the estate; and (iii) whether Applicant exercised
10 reasonable billing judgment in rendering the services provided.

11 In support of their Application, Chang & Diamond has
12 argued that in representing the Debtors, they were required to
13 (a) appear at two 341 meetings of creditors, instead of one,
14 (b) appear at three confirmation hearings instead of one and,
15 most importantly, (c) complete a business analysis of the
16 Debtors' post-petition business and provide the Trustee with
17 diligence documents related to the Debtors' business. Applicant
18 contends that during the pendency of the Debtors' chapter 13
19 case, Mr. Livolsi's employer went out of business and he decided
20 that it was in his best interest to form a company so that he
21 could continue to run the automobile body shop where he had been
22 working. Applicant maintains that the formation of this post-
23 petition business delayed confirmation of the case because they
24 needed to work with the Trustee to complete a business analysis
25 and determine the continued feasibility of the Debtors'
26 bankruptcy.

1 A run-of-the-mill chapter 13 case does not involve the
2 formation of a new corporation so that the debtor can take over
3 his previous employer's automotive shop. Thus, there were indeed
4 events that occurred in this case that were atypical and may
5 indeed be compensable above and beyond the fees already approved
6 by this Court. Moreover, the services performed by Applicant
7 were indeed reasonably likely to benefit the Debtors' estate
8 because they provided the Trustee and the Court with a clear
9 picture of what was going on in the life of the Debtors and
10 helped determine the progression of the Chapter 13 case.

11 Because it is the creditors of chapter 13 debtors who bear
12 the burden of paying debtors' attorney fees - the funds come from
13 the disposable income debtors are required to commit to pay
14 creditors through their plan - bankruptcy attorneys are obliged
15 to exercise careful billing judgment in both what work is
16 undertaken and whether the work calls for the skill of a high-
17 billing attorney or whether it can be competently done by a
18 relatively less-experienced attorney billing at a lower hourly
19 rate. A thorough review of the time records Applicant submitted
20 contemporaneously with this application reveals that Applicant
21 spent between one and two hours, postpetition, learning about
22 the debtors' newly formed corporation and another couple of hours
23 providing documents to the Trustee. Applicant also drafted a
24 declaration that was submitted to the Court that explained the
25 situation relating to the new corporation and the fact that the
26 corporation was currently operating at a loss.

1 Based upon the evidence submitted, the Court finds that this
2 case first presented as a routine consumer case. However,
3 postpetition it became a business case, which required separate
4 and additional documentation and explanation. Those
5 circumstances made this case an "atypical" one in the teachings
6 of *Eliapo*.

7 The Chapter 13 Trustee has invited this Court to wade into
8 the proverbial thicket of maximum hourly rates debtors' attorneys
9 may charge. This Court declines the invitation given the
10 circumstances of this case. As already noted, the issue more
11 accurately is the allocation of work among staff, recognizing the
12 experience level of the particular staff members to perform the
13 specific task, which is one of the important forms of billing
14 judgment. It appears that much of the attorney work done on the
15 case was by the attorney with the lower billing rate. Moreover,
16 the firm has reduced the rates it is billing for work of its non-
17 attorney case administrators.

18 For the reasons stated herein, Chang & Diamond's
19 application, as revised by the firm, is granted. Fees in the
20 amount of \$2,510.50, in addition to those previously awarded
21 upon confirmation, are approved.

22 IT IS SO ORDERED.

23 DATED: MAY 14 2012

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26 PETER W. BOWIE, Chief Judge
 United States Bankruptcy Court