

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI**

**IN RE:**

**COLON BRANTLEY BAZOR,  
  
DEBTOR.**

**CASE NO. 08-50412-NPO  
  
CHAPTER 7**

**MEMORANDUM OPINION AND ORDER  
DENYING CHAPTER 12 STANDING TRUSTEE'S  
APPLICATION FOR REIMBURSEMENT OF EXPENSE**

On May 12, 2009, this matter came on for hearing (the "Hearing") on the Trustee's Application for Reimbursement of Expense (the "Application")(Dkt. No. 173) filed by the chapter 12 standing trustee, Harold Barkley, Jr. (the "Trustee"), and the United States Trustee's Objection to Application for Reimbursement of Expense (the "Objection")(Dkt. No. 176). The Court, having considered the Application and the Objection, together with the evidence presented at the Hearing, finds that 28 U.S.C. § 586(e) and 11 U.S.C. § 326(b)<sup>1</sup> prohibit the Court<sup>2</sup> from awarding administrative expenses to the Trustee.<sup>3</sup>

---

<sup>1</sup> Hereinafter all code sections refer to the United States Bankruptcy Code located at Title 11 of the United States Code unless otherwise noted.

<sup>2</sup> For ease of reference "Court or court" refers to the bankruptcy court when speaking of the court's authority to award or not to award compensation and/or expenses unless otherwise indicated. This distinction is important because the district court at limited times has the authority to review the percentage fee of a standing trustee, whereas the bankruptcy court does not. *See* 28 U.S.C. § 586(e)(3).

<sup>3</sup> The following constitutes the findings of fact and conclusions of law of the Court pursuant to Federal Rules of Bankruptcy Procedure 7052 and 9014.

## **Jurisdiction**

This Court has jurisdiction over the parties and the subject matter of this proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157 (b)(2)(A) and (O). Notice of the Application was proper under the circumstances.

## **Facts**

1. On March 5, 2008, the debtor, Colon Brantley Bazor (the “Debtor”), filed a voluntary petition (Dkt. No. 1) pursuant to chapter 12 of the Bankruptcy Code. As the chapter 12 standing trustee, the Trustee was assigned to the Debtor’s case.

2. On November 21, 2008, First State Bank (“First Bank”) filed its Motion to Convert or Dismiss (“Conversion Motion”)(Dkt. No. 108).<sup>4</sup> The Trustee filed his Joinder in the Conversion Motion (Dkt. No. 114) on December 2, 2008. The Conversion Motion alleged, among other complaints, that the Debtor “[f]ailed to schedule and disclose substantial interest in real property located in Wayne and Clark County (sic), Mississippi.” Id. at IV-VI. Additionally, First Bank asserted its position as the holder of a partially secured claim on property owned by the Debtor. Id. at III. In the Debtor’s Answer and Response to First State Bank’s Motion to Convert or Dismiss (Dkt. No.126), the Debtor admitted that First Bank was the holder of a secured claim in real property owned by the Debtor. Id. at III.

3. Before the Hearing on the Conversion Motion, the Debtor filed a Motion for an Order Pursuant to 11 U.S.C. § 363 to Sell Real Property of Debtor, Outside the Ordinary Course of Business, Free and Clear of Liens, Claims and Interests, With Liens Attaching to Sale Proceeds, and

---

<sup>4</sup> The Court heard the Conversion Motion on February 13, 2009. After conversion, the Trustee was removed as trustee, and Eileen N. Shaffer was added to the case as the chapter 7 trustee on February 25, 2009 (Dkt. No. 168).

for Other Relief (the “Sale Motion”)(Dkt. No. 135) in which he requested court authority to sell his interest in 339 acres of real property (the “Land”) on which First Bank held a lien. Pursuant to the Sale Motion, the Debtor agreed to pay the sale proceeds directly to First Bank. First Bank filed its Response to the Motion to Sell Property Under § 363 (Dkt. No. 140) in which it requested that the Court grant the Sale Motion. The Trustee filed the Trustee’s Objection to Motion to Sell Real Property (Dkt. No. 148) on January 26, 2009. The Court entered the Agreed Order Granting Motion for an Order Pursuant to 11 U.S.C. § 363 to Sell Real Property of Debtor, Outside the Ordinary Course of Business, Free and Clear of Liens, Claims and Interests, with Liens Attaching to Sale Proceeds and For Other Relief (“Sale Order”) (Dkt. No. 156) granting the Sale Motion on February 13, 2009.

4. During the hearing on the Sale Motion held on February 13, 2009, the issue of potential reimbursement in the amount of \$5,000.00 to the Trustee arose among the Trustee, First Bank, and the United States Trustee (the “UST”). The Court entered the Sale Order after the Trustee, First Bank, and the UST agreed that the reimbursement issue would be heard by the Court at a later date. The Court also entered an Agreed Order (the “Agreed Order”)(Dkt. No. 170) requiring First Bank to hold the \$5,000.00 in a separate account until the Trustee filed an application and the Court considered same.

5. On March 3, 2009, the Trustee filed the Application and listed numerous activities that he averred typically result in expenses such as travel to conduct a § 341(a) meeting, filing pleadings, attending hearings, and preparing and submitting a Trustee’s investigative report. The Trustee did not indicate the actual cost incurred with any of the activities he listed, but he did “estimate” that he spent \$3,210.00 in connection with this case. The Trustee testified at the Hearing

that he was currently administering a total of thirty-five (35) chapter 12 cases. He further testified that he received payments in only eleven (11) of those cases, and that he received no payments in the other twenty-four (24) of the chapter 12 cases. The Trustee calculated his expenses for this case by dividing his total yearly chapter 12 estimated expenses of \$35,515.00 by eleven (11), the number of paying chapter 12 cases he was administering. The Application seeks to establish that \$3,210.00 is the pro-rata share of the yearly expenses that this case should have generated. The Court notes that the Trustee did not calculate his expenses by adding the *actual* costs he expended and incurred engaging in his trustee capacity in this case.

6. Working under the assumption that the Trustee was applying for administrative expenses under § 503(b),<sup>5</sup> the UST filed the Objection. In the Objection and at the Hearing as well, the UST asserted that the Trustee had not demonstrated the expenses presented were “actual” and “necessary” as required under § 503(b); that the application inadequately explained the reliability of the calculation used to determine the amount of expenses; and that the Trustee was not entitled the funds under 28 U.S.C. § 586.<sup>6</sup>

## **Discussion**

### **1. Standing Trustee Compensation**

To ease the burden of case administration, Congress delegated authority to the Attorney General under 28 U.S.C. § 586(b) to appoint chapter 12 and 13 standing trustees in regions when the

---

<sup>5</sup> The Trustee clarified at the Hearing that he was, in fact, applying for administrative expenses under 11 U.S.C. § 503(b).

<sup>6</sup> Because this case is decided on different grounds, the Court need not reach what constitutes “actual, necessary” in the context of § 503(b).

number of cases warrants the appointment of a standing trustee.<sup>7</sup> Standing trustees are supervised by the United States Trustee of that region.<sup>8</sup> *Id.* In addition to appointing standing trustees, the Attorney General also fixes the compensation of standing trustees. *See* 28 U.S.C. § 586(e)(1)-(2).

Pursuant to 28 U.S.C. § 586(e), a standing trustee is compensated by collecting a percentage fee from all payments made under plans administered by the standing trustee. The percentage fee collected by a standing trustee is “fixed” by the Attorney General and subject to statutory limitations. 28 U.S.C. § 586(e)(1)-(3). “Aside from [a] standing trustee’s salary, the percentage fee pays for the ‘actual, necessary’ expenses of the trustee.” 1 COLLIER ON BANKRUPTCY, ¶ 6.10[1][C] (Alan N. Resnick & Henry J. Sommer eds., 15th ed. rev).

By vesting the executive branch with the authority to appoint, supervise, and compensate chapter 12 and 13 standing trustees, Congress has virtually “eliminated the judiciary’s role in overseeing compensation for such trustees.” *In re Marriot*, 156 B.R. 803, 805 (S.D. Ill. 1993) (holding the bankruptcy court had no authority to review the standing trustee’s percentage fee). To reinforce its position that the court had been divested of authority to compensate a standing trustee, Congress implemented § 326(b) which states in pertinent part:

In a case under chapter 12 or 13 of this title, the court may not allow compensation for services or *reimbursement of expenses of* . . . of a standing trustee appointed under section 586(b) of title 28 . . . .”

11 U.S.C. § 326(b)(emphasis added).<sup>9</sup> As the Sixth Circuit noted in *In re Beard*, the bankruptcy

---

<sup>7</sup> Mississippi currently has only one chapter 12 standing trustee.

<sup>8</sup> *See also* 28 C.F.R. § 58.4, Qualifications for appointment as standing trustee and fiduciary standards.

<sup>9</sup> In contrast, the latter half of § 326(b) permits the bankruptcy court to compensate reasonably private chapter 12 and 13 trustees that are appointed on a case-by-case basis. The

code's statutory framework allows the court broad discretion in granting compensation and fees, but "Congress expressly denied such judicial discretion in a chapter 12 reorganization." 45 F.3d 113 (6th Cir. 1995)(speaking of the standing trustee in the chapter 12 context).

This Court's lack of authority to award compensation or expenses applies to chapter 12 and 13 standing trustees alike. In this case, the Trustee is similarly situated to the chapter 13 standing trustee in the case of In re Ward, 132 B.R. 417 (D. Neb. 1991). In Ward, the standing trustee applied for administrative expenses under § 503(b) after the case was converted to a chapter 7 case. Ward, 132 B.R. at 418. The court held that § 326(b) is clear: the court may not award compensation or expenses to the standing trustee, and the only compensation that a standing trustee may receive is the percentage fee provided under 28 U.S.C. § 586(e). Id. See also In re Lindsey, 1995 WL 357849 (Bankr. D. Idaho)(denying chapter 12 standing trustee's application for fees and expenses in light of § 326(b)). In the instant case, to the Court's knowledge, the Trustee collected no money in this chapter 12 case that would entitle him to a percentage fee under 28 U.S.C. § 586, before it was converted to a chapter 7 case. Having received no percentage fee, the Trustee applied for administrative expenses under §503(b) to obtain money that was carved out for him in the order approving the sale of the Land.<sup>10</sup> The Trustee, however, is a standing trustee appointed under 28 U.S.C. 586(b), and therefore pursuant to § 326(b), the Court must deny the Trustee's claim for administrative expenses.

---

latter half of § 326(b) provides: "[the court] may allow reasonable compensation under section 330 of this title of a trustee appointed under section 1202(a) or 1302(a) of this title for the trustee's services, payable after the trustee renders such services, not to exceed five percent upon all payments under the plan."

<sup>10</sup> It is not clear where the idea originated to compensate the Trustee with proceeds from the sale of the land. Regardless, the statutory language is clear that Congress intended the standing trustee only to collect a percentage fee pursuant to 28 U.S.C. 586(e), and not compensation or reimbursement of expenses through other agreements.

## 2. Bankruptcy Court's Equitable Powers

As to the Trustee's appeal to the Court's equitable powers, § 105 provides no authority for the Court to award expenses to the Trustee. Section 105(a) provides, "The court may issue orders, process, or judgment that is necessary or appropriate to carry out the provisions of this *title*." 11 U.S.C. § 105(a) (emphasis added). As the court held in In re Cross, "[t]he court may not utilize section 105 as general authority to issue any order which contradicts or circumvents § 326(b)." 195 B.R. 440, 442 ( D. Neb. 1996). Simply stated, the Court's equitable power may not grant what the bankruptcy code strictly prohibits.

### Conclusion

Based on the foregoing, the Application should be denied. The Trustee as a standing trustee is not entitled to expenses under § 503(b) pursuant to § 326(b) and 28 U.S.C. § 586(e). Furthermore, in light of § 326(b)'s strict and clear prohibition against awarding such expenses, this Court is also unable to award the Trustee his expenses under § 105. A separate final judgment will be entered in accordance with Federal Rule of Bankruptcy Procedure 9021.

IT IS, THEREFORE, ORDERED that the Application hereby is denied, and the \$5,000.00 currently being held by First Bank pursuant to the Agreed Order shall be applied by First Bank to the Debtor's outstanding indebtedness.

SO ORDERED.



---

Neil P. Olack  
United States Bankruptcy Judge

Dated: June 19, 2009