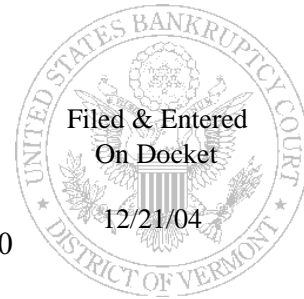


UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT



In re:

**GDS Manufacturing Company,
A Corporation**
Debtor-in-Possession

Chapter 11
Case # 03-11380

Appearances: *George T. Faris, Esq.*
 Law Offices of George T. Faris, IV, P.A.,
 Counsel for the Debtor-in-Possession

Jennifer Emend-Butler, Esq.
Obuchowski & Emend-Butler
Counsel for Northeastern

MEMORANDUM OF DECISION

On September 23, 2004, George T. Faris, IV, P.C., as the attorney for the Debtor-in-Possession (the “Applicant”), filed an Application for First and Final Allowance for Compensation and Reimbursement of Expenses of the Law Offices of George T. Faris, IV, P.A., for the period from September 9, 2003 to September 20, 2004 (doc. #132) (the “Application”). The United States Trustee filed an objection to the Application, claiming that certain fees (1) were not compensable because the description provided made the services appear to be clerical in nature; and (2) were not demonstrated to be beneficial to the estate (doc. # 146). Creditor Northeastern Heating Ventilating Air Conditioning Corporation (“Northeastern”) also objected to the Application on the following bases: (1) the time records submitted with the Application were not clear; (2) the time billed on various matters was excessive; and (3) the Application sought compensation for fees for work done on matters that did not benefit the estate and was primarily for the benefit of various shareholders (doc. # 148). After considering the arguments of counsel on the Application and the corresponding objections at an oral hearing on November 2, 2004, the Court allowed the Applicant the opportunity to supplement the Application to provide a more thorough description of the disputed fees to enable this Court to evaluate whether the requested fees are compensable (doc. # 156).

On November 12, 2004, Mr. Faris filed a supplement to the Application (the “Supplement”) (doc. # 162). The Supplement provided a more thorough description of the services rendered and responded to many of the initial objections raised by Northeastern and the United States Trustee. Additionally, the Supplement reduces the amount of attorneys’ fees requested from \$40,550 to \$38,920.¹ Northeastern filed a response to the Supplement (“Northeastern’s Response”) (doc. # 169) and the United States Trustee filed a supplemental

¹ This reduction is voluntary and in response to an objection raised by Northeastern that 1.45 hours of the Applicant’s time “exceeds” that spent by other attorneys on the same task. See Supplement, p. 5, ¶ 6.

objection to the Supplement (the “UST Supplemental Objection”)(doc. # 170). Northeastern’s Response and the UST Supplemental Objection raise many of the same objections raised initially.

There is an inherent public interest that must be considered in awarding fees in a bankruptcy case. Senate Report No. 95-989, 95th Congress, 2d Session 40 (1978). U.S. Code Cong. & Admin. News 1978, p. 5787. Accordingly, the Bankruptcy Code imposes upon this Court a supervisory obligation not only to approve counsel’s employment, but also to ensure that the fees sought by counsel in a bankruptcy case are reasonable, and that the services and expenses were actually and necessarily incurred. 11 U.S.C. §§ 327 - 330. This Court has an independent judicial responsibility to evaluate the appropriateness of the fees and expenses requested. 11 U.S.C. § 330 (a)(3) and Bankruptcy Rules 2016 and 2017; STN Enterprises, Inc., 70 B.R. at 831; In re ACT Mfg., Inc., 281 B.R. 468, 474 (Bankr. D. Mass. 2002). Moreover, a bankruptcy judge’s duty is to conduct a discrete inquiry into every request for attorney fees and that duty cannot be delegated. See In re Zamora, 251 B.R. 591, 596 (D.Colo.2000). This responsibility is especially acute when the attorneys seek compensation out of a bankruptcy estate. STN Enterprises, Inc., 70 B.R. at 832. The rationale for the bankruptcy court’s independent duty to review fee applications has been described as “a duty to protect the estate ‘lest overreaching...professionals drain it of wealth which by right should inure to the benefit of unsecured creditors.’” In re Keene Corp., 205 B.R. 690, 695 (Bankr. S.D. N.Y.1997).

After considering the Application, the Supplement and their respective objections in light of the standards set forth in In re S.T.N. Enterprises, Inc., 70 B.R. 823 (Bankr. D. Vt. 1987), the Court grants the application for payment of the attorneys’ fees in part and approves reimbursement of expenses in full.

I. ATTORNEYS’ FEES

The Court finds certain of the attorneys’ fees earned during the application period are not compensable. Therefore, attorneys’ fees are allowed only to the extent of \$36,030.00. The remaining \$1,682.50 sought in attorneys’ fees incurred during the application period are disallowed in accordance with S.T.N. Enterprises. 70 B.R. at 838.

Time devoted to administrative activities such as mailing or delivering papers, photocopying, word processing, and organizing files constitutes overhead expenses and is not compensable from the debtor’s estate. See id. Specifically, the Court finds the following tasks to be administrative activities, and accordingly denies the application to the extent it seeks compensation for the following tasks:

| | | | |
|---------|--|------------|---------|
| 12/1/03 | Arranged for execution of questionnaire by Ms. Koss required by Court and US Trustee’s Office to accompany financial information | 0.90 hours | \$90.00 |
| 1/13/04 | Prepare for evidentiary hearing; make copies of documents to be offered as evidence. | 0.60 | \$60.00 |

Additionally, the Court disallows an attorney's time entry from September 14, 2003, for 2.2 hours, that is described as "Work with George Faris on Bankruptcy file." Under S.T.N. Enterprises, an attorney applying for legal fees in a bankruptcy case bears the burden of proving the reasonableness of the fees. In order to sustain this burden, the applicant must present a carefully detailed application and supporting documentation. Id. at 832 (internal citations omitted). At the very least, every application must include a specific *analysis* of each task for which compensation is sought. Id. (emphasis added). Based upon the description, or lack thereof, supplied for this particular entry, the Court is unable to determine whether the 2.2 hours is reasonable or necessary. Consequently, the \$220.00 of fees sought for this entry is disallowed.

Northeastern and the UST object to certain of the Applicant's fees incurred for a motion to obtain court approval of certain shareholder loans that were made post-petition to the debtor in possession, a motion that was made seven months after the subject loan transactions took place. Northeastern and the UST object on the basis that the services rendered did not benefit the estate. The Applicant seeks compensation for 17.2 hours of services on this issue, or \$2,580. This Court may reduce or disallow a request for fees if the underlying services conferred no real benefit on the estate. See, e.g., Vining v. Ward (In re Ward), 894 F.2d 771, 777 (5th Cir.1990) (court may reevaluate prior award to attorneys where judgment they obtained for estate turned out to be uncollectible). However, the court should not apply this test through hindsight, 3 Collier ¶ 330.04[1][b][iii], at 330-32, as a decision that appears entirely reasonable at first may turn out wrong in the end. Rather, the test is an objective one, and considers "what services a reasonable lawyer or legal firm would have performed in the same circumstances." In re Ames Dep't Stores, Inc., 76 F.3d 66, 72 (2d Cir.1996) (citing In re Taxman Clothing Co., 49 F.3d 310, 315 (7th Cir.1995) (Posner, C.J.)); accord In re Drexel Burnham Lambert Group, Inc., 133 B.R. 13, 23 (Bankr.S.D.N.Y.1991). The objecting parties are correct that if one were to employ 20/20 hindsight, one might well conclude that the Applicant's efforts to obtain court approval of the shareholder loans did not directly benefit the estate. However, the Court finds that (1) a reasonable lawyer would have performed the same services as the Applicant, but (2) he or she would have made the application earlier in the case and more promptly after the transactions occurred. Consequently, the Court finds that half of the fees sought in connection with the approval of the shareholder loans is a reasonable fee for the services Applicant rendered, and accordingly, allows \$1,290 for those services.

Northeastern objects to the Applicant's request for compensation of 56.2 hours for preparation of the disclosure statement and plan, alleging that it was "strung along" by both the Debtor and the Applicant. The Court overrules this objection. This case involved competing plans and the Debtor-in-Possession had a fiduciary obligation to obtain the most beneficial outcome for its creditors. The Court finds that the fees requested in connection with the disclosure statement and plan were reasonable and of benefit to the estate.

Accordingly, these fees are allowed in their entirety.

The Court finds the remaining services rendered by the Applicant as detailed in the Application and the Supplement to be reasonable, necessary and of benefit to the estate. 11 U.S.C. § 330(a); In re JLM, Inc., 210 B.R. 19, 24 (2d Cir. BAP 1997). Accordingly, the Court approves and allows a total fee in the amount of \$36,030.

II. REIMBURSEMENT OF EXPENSES

The Application and the Supplement seek reimbursement for \$1,656.17 in expenses. The Court finds that the expenses presented were properly itemized and were reasonable and necessary. Consequently, the expenses are approved and allowed in full.

III. CONCLUSION

Therefore, for the reasons set forth above, IT IS HEREBY ORDERED that

1. The Application and the Supplement are allowed in part and disallowed in part.
2. The following fees and expenses as set forth in the Application and the Supplement are approved and allowed:
 - (A) \$ 36,030.00 for attorneys' fees; *and*
 - (B) \$ 1,656.17 for reimbursement of expenses.
3. The Applicant is authorized to immediately apply the remaining balance of the initial retainer in the amount of \$8,000.
4. The Debtor is hereby authorized and directed to pay the Law Offices of George T. Faris, IV, P.C. (to the extent not previously paid) the sum of \$29,686.17, representing allowed fees and expenses, within thirty (30) days of the entry of this order.

SO ORDERED.

December 21, 2004
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge