

OCT 24 2006

**HAROLD S. MARENUS, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT**

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

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In re:)	BAP No. CC-06-1034-PaLB
)	
PETER GREENBERG and)	Bk. No. 03-16028
LINDA DESCHENE GREENBERG,)	
)	
Debtors.)	
_____)	
KARL T. ANDERSON,)	M E M O R A N D U M¹
Chapter 7 Trustee,)	
)	
Appellant.)	
_____)	

Argued and submitted on September 22, 2006
at Pasadena, California

Filed - October 24, 2006

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Mitchel R. Goldberg, Bankruptcy Judge, Presiding.

Before: PAPPAS, LEE² and BRANDT, Bankruptcy Judges.

¹ This disposition is not appropriate for publication and may not be cited except when relevant under the doctrines of law of the case or the rules of res judicata, including issue and claim preclusion. See 9th Cir. BAP Rule 8013-1.

² Hon. W. Richard Lee, United States Bankruptcy Judge for the Eastern District of California, sitting by designation.

1 A chapter 7 trustee asked the bankruptcy court for over
2 \$44,000 in compensation based upon over \$900,000 in receipts
3 generated during his administration of the bankruptcy estate. But
4 after payments to secured creditors, to the debtors for
5 exemptions, and to trustee's professionals, only \$12,000 would
6 remain available for the unsecured creditors. The bankruptcy
7 court denied the trustee's request and instead awarded him \$5,000
8 in fees. The trustee appealed.

9 Because the bankruptcy court did not abuse its discretion in
10 fixing the trustee's compensation, we AFFIRM.

11
12 **FACTS**³

13 Debtors Peter Greenberg and Linda Deschene Greenberg filed a
14 bankruptcy petition under chapter 7⁴ of the Bankruptcy Code on
15 April 21, 2003. Appellant Karl T. Anderson ("Trustee") was
16 appointed to serve as trustee to administer the bankruptcy estate.

17 During the case, the bankruptcy court approved Trustee's
18 requests to employ several professionals to assist him in
19 performing his duties, including: (1) Polis & Associates, his
20 bankruptcy counsel; (2) Richard Halderman ("Realtor"), a realtor,

21
22 ³ No parties other than the chapter 7 trustee have
23 participated in this appeal. We therefore lack the assurance the
24 presence of an adversary lends to determining the accuracy of the
25 facts. We have accepted the trustee's representations about those
facts and, where appropriate, we have consulted the transcript of
hearings and the bankruptcy court docket of this case.

26 ⁴ Unless otherwise indicated, all chapter, section and rule
27 references are to the Bankruptcy Code, 11 U.S.C. § 101-1330 and to
28 the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as in
force prior to the effective date (October 17, 2005) of the
Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,
Pub. L. 109-8, Apr. 20, 2005, 119 Stat. 23 ("BAPCPA").

1 to evaluate and market certain real estate; and (3) Karl T.
2 Anderson CPA, Inc., a firm in which Trustee is a principal, as his
3 accountant.

4 The significant assets of the bankruptcy estate were: (1)
5 debtors' residential real estate with an approximate market value
6 of \$815,000, subject to liens totaling approximately \$640,000; and
7 (2) their retirement and securities accounts with a total value of
8 approximately \$300,000.⁵

9 Our review of the record shows the Trustee's administration
10 of this bankruptcy estate was, for the most part, unremarkable.
11 While Trustee engaged in litigation with the debtors, the
12 practical or legal issues he encountered during his administration
13 of the estate do not seem unusual or particularly challenging. An
14 informative account of the major events occurring in this case can
15 be gleaned from a review of Trustee's Final Fee Application, and
16 an attachment to that application entitled "Trustee's Statement of
17 Significant Activities" (the "Trustee's Statement"). The Final
18 Fee Application contains a brief narrative description of
19 Trustee's administrative efforts, and the Trustee's Statement
20 contains a more detailed itemization of services. From these
21 records, it appears Trustee devoted the bulk of his time in this
22 case to dealing with the following major tasks:

23

24

25

26 ⁵ Debtors also apparently held membership interests in two
27 health clubs. We are unable to determine from the record whether
28 these memberships were equity or ownership interests in the health
club business or simply rights to use health club facilities. In
any event, these membership interests do not appear to have
generated any significant value for the creditors in this case.

1 1. Matters related to the sale of debtors' residence,
2 including valuation, marketing and sale of the property. Trustee
3 retained Realtor, who after listing the property, located a buyer,
4 and managed the closing of the sale to that buyer. While Trustee
5 acted with Realtor in selling this property, as may be expected
6 with a professional on board, Trustee played only a supporting
7 role.

8 2. Matters related to the administration of the debtors'
9 retirement accounts. Trustee retained counsel to challenge the
10 debtors' claimed exemption and, through his attorney, pursued an
11 adversary proceeding against the debtors concerning these
12 accounts. Apparently, a global settlement agreement between
13 debtors and Trustee was eventually negotiated through their
14 respective counsel, which Trustee and the bankruptcy court
15 approved, as a result of which debtors paid Trustee \$85,000 in
16 exchange for Trustee's abandonment of any claims in the retirement
17 accounts.

18 3. Matters related to an adversary proceeding initiated by
19 Amresco Financial. This creditor held of a writ of attachment on
20 the debtors' residence. It initiated an adversary proceeding
21 against the debtors objecting to their right to a discharge. This
22 action was also resolved via the global settlement agreement
23 discussed above, in which debtors agreed to reaffirm a portion of
24 the Amresco debt.

25 While Trustee played a role in settling the issues in the
26 adversary proceedings, Trustee acknowledges that his counsel was
27 responsible for "handling the legal aspects of the global
28 settlement."

1 As noted above, Trustee's Final Fee Application contains a
2 brief narrative description of Trustee's services in this case.
3 It is, however, the Trustee's Statement attached to the Final Fee
4 Application that chronicles in detail the time spent by Trustee
5 and his staff and provides more specific service descriptions.
6 Trustee's Statement itemizes a total of 117.30 hours of work
7 performed by Trustee and members of his staff on the bankruptcy
8 case. In the itemization, Trustee assigns a value of \$350 per
9 hour for his time, and from \$25 to \$135 per hour for his support
10 staff. There is no information provided in these pleadings or the
11 record to demonstrate how or why these hourly rates were selected
12 by Trustee, or to support that they are reasonable in measuring
13 compensation under the circumstances. Using the time assigned to
14 each task in Trustee's Statement, and the hourly rates proposed
15 therein, Trustee alleges the reasonable value of these services is
16 \$26,120.50.

17 Trustee's Final Fee Application reports total receipts of
18 approximately \$900,000 generated primarily from the sale of
19 debtors' house and the securities account settlement funds. Most
20 of these funds were paid out to secured creditors holding liens on
21 the house and for sale closing costs (about \$650,000), and to the
22 debtors for their homestead exemption (\$75,000). Of the remaining
23 money, Trustee paid \$49,050 to Realtor, about \$58,000 to his
24 attorney, and \$5,000 to his accounting firm. That left Trustee
25 with about \$62,500 in the estate bank account as of the date of
26 filing of the Final Fee Application. From this sum, Trustee
27 proposed disbursements of \$44,714.33 to himself as his
28 compensation, along with \$349.47 as reimbursement of expenses. He

1 proposed to pay \$988.16 to Polis & Associates for the balance due
2 for legal fees, \$4,355.70 to Karl T. Anderson CPA, Inc., for the
3 balance of accounting fees, and \$150.00 in miscellaneous court
4 costs and fees. If these fee and expense payments were to be
5 approved by the bankruptcy court, Trustee would be left with about
6 \$12,000 to distribute to the IRS as a partial payment on its
7 priority tax claim. Nonpriority unsecured creditors holding
8 claims totaling more than \$250,000 would receive no distribution.

9 The bankruptcy court conducted a hearing on Trustee's Final
10 Fee Application on January 18, 2006. The court expressed concern
11 regarding the large amount of professional fees generated in the
12 case relative to the issues encountered, assets administered and
13 apparent simplicity of the case. The court characterized the
14 total professional fees as "outrageous." Tr. Hr'g 7:16 (January
15 18, 2006). "There is nothing big that happened in this case with
16 one exception, they negotiated a resolution for the distribution
17 from the IRA accounts." Tr. Hr'g 6:22-24. From the bankruptcy
18 judge's comments, it appears the court's principal concern was
19 that the professional fees consumed the lion's share of the net
20 assets of the estate:

21 [Y]ou have sought between fees and costs
22 forty-five thousand dollars (\$45,000) as a
23 trustee's fee and by the time we get done with
24 paying all the professionals the entire estate
25 that would be available to creditors of this
26 nine hundred thousand dollars (\$900,000) would
27 be - twelve thousand dollars (\$12,000). That
28 is unacceptable to the court, period. And is
unreasonable.

Tr. Hr'g 3:25 -4:6.

. . . .

I've got a hundred and forty-five thousand
dollars (\$145,000) net cash in. That gives me

1 less than ten cents (\$0.10) on the dollar to
2 creditors and this case did not justify that
3 kind of expense, doesn't even come close.

4 Tr. Hr'g 8:22-25. Indeed, from the figures in the Final Fee
5 Application, it seems the total professional compensation and
6 expenses in this case amounted to over \$117,000, a large sum
7 indeed when compared to the \$12,000 eventual distribution to the
8 IRS and no distribution to nonpriority unsecured creditors.

9 The bankruptcy court determined that the high fees generated
10 by the professionals in this case were the result of Trustee's
11 decision to delegate much of his work in administering the assets
12 of the bankruptcy estate to the professionals:

13 You [abdicated]⁶ to yourself as accountant,
14 you [abdicated] to the professionals for what
15 they did. You've [abdicated] - basically you
16 looked at paperwork a second time after
17 everyone else looked at the paperwork except
18 at the initial go around. So I've got to
19 compensate you for your initial go around -
20 sir. But that's all you're going to get in
21 this case.

22 Tr. Hr'g 8:4-9

23

24 In this case every service deed that you could
25 have done [in your Trustee's capacity] you
26 [abdicated]. Everything that you could have
27 done was [abdicated]. So I got to deal with
28 that as a reality.

29 Tr. Hr'g 10:13-15.

30 In addition to its concerns with Trustee's apparent
31 propensity to rely excessively on his professionals, the
32 bankruptcy court also concluded that the compensation sought for
33

34 ⁶ Where indicated in this excerpt from the transcript, and
35 in the others that follow, we have substituted "abdicated" for the
36 word "advocated," which we believe is a transcription error.

1 the services in fact performed by Trustee and his staff was not
2 reasonable in amount. As a result, the court reduced the
3 Trustee's requested fees:

4 For the trustee's fees, the court will allow
5 as trustee's fees five thousand dollars
6 (\$5,000) of the forty-four seven fourteen
7 (\$44,714) requested as reasonable and
8 necessary based on what I've stated on the
9 record.

8 Tr. Hr'g 11: 2-5.⁷

9 An order allowing Trustee's fees in the reduced amount was
10 entered on January 18, 2006. Trustee filed a timely notice of
11 appeal of that order on January 26, 2006.

12

13 JURISDICTION

14 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
15 §§ 1334 and 157(b) (2) (A). This Panel has jurisdiction pursuant to
16 28 U.S.C. § 158(b).

17

18 ISSUE ON APPEAL

19 Whether the bankruptcy court abused its discretion in
20 approving total compensation of \$5,000 for Trustee, who had
21 requested a fee award of \$44,714.33.

22

23 STANDARDS OF REVIEW

24 A bankruptcy court's findings of fact are reviewed for clear
25 error. Its conclusions of law are reviewed de novo. Leichty v.

26

27 ⁷ The bankruptcy court did approve the additional amounts
28 requested in the Final Fee Application for Trustee's accounting
firm, and his expenses. Tr. Hr'g 11:6-9.

1 Neary (In re Strand), 375 F.3d 854, 857 (9th Cir. 2004); Ferrette
2 & Slater v. U.S. Trustee (In re Garcia), 335 B.R. 717, 722 (9th
3 Cir. BAP 2005). We will not disturb a bankruptcy court's award of
4 § 330 professional compensation unless the court abused its
5 discretion or erroneously applied the law. Id. A bankruptcy
6 court's determination whether professional fees in bankruptcy
7 proceedings are reasonable, actual and necessary is reviewed for
8 abuse of discretion. Unsecured Creditor's Comm. v. Puget Sound
9 Plywood, 924 F.2d 955, 957 (9th Cir. 1991). Under the abuse of
10 discretion standard, we will not reverse unless we have a definite
11 and firm conviction that the bankruptcy court committed a clear
12 error of judgment in the conclusion it reached upon a weighing of
13 the relevant factors. Smith v. Jackson, 84 F.3d 1213, 1221 (9th
14 Cir. 1996) (applying abuse of discretion standard to an examination
15 of the amount of professional fees).

16
17 **DISCUSSION**

18 I.

19 Bankruptcy Code §§ 330(a)(1) and 326(a) govern the bankruptcy
20 court's determination of the amount of reasonable compensation to
21 be awarded to a chapter 7 trustee. In re Jenkins, 130 F.3d 1335,
22 1337 (9th Cir. 1997); Roderick v. Levy (In re Roderick Timber
23 Co.), 185 B.R. 601, 605 n. 3 (9th Cir. BAP 1995). Trustee fee
24 applications must conform to the requirements of Fed. R. Bankr. P.
25 2016. Id. at 605; In re Travel Headquarters, Inc., 140 B.R. 260,
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1 261-62 (9th Cir. BAP 1992).⁸

2 Section 326(a) sets forth the maximum compensation payable to
3 a chapter 7 trustee. It establishes a compensation cap, not an
4 entitlement; the bankruptcy court must decide the proper amount of
5 the trustee's compensation. Arnold v. Gill (In re Arnold), 252
6 B.R. 778, 788 n.12 (9th Cir. BAP 2000); In re Castro, 320 B.R.
7 690, 693 (Bankr. S.D. Cal. 2005).⁹

8 Sections 330(a)(3)(A)-(E) list the criteria the bankruptcy
9 court shall consider in determining the amount of reasonable
10 compensation to be awarded under § 330(a). These Code provisions
11 instruct the bankruptcy court to consider, among other things, the
12 time spent by the trustee providing services; the necessity of the
13

14 ⁸ § 326(a) provides: "In a case under chapter 7 or 11, the
15 court may allow reasonable compensation under section 330 of this
16 title of the trustee for the trustee's services, payable after the
17 trustee renders such services, not to exceed 25 percent of the
18 first \$5,000 or less, 10 percent on any amount in excess of \$5,000
19 but not in excess of \$50,000, 5 percent on any amount in excess of
20 \$50,000 but not in excess of \$1,000,000, and reasonable
21 compensation not to exceed 3 percent of such moneys in excess of
22 \$1,000,000, upon all moneys disbursed or turned over in the case
23 by the trustee to parties in interest, excluding the debtor, but
24 including holders of secured claims." (Emphasis added).

20 § 330(a)(1) provides: "After notice . . ., the court may
21 award to a trustee . . . - (A) reasonable compensation for actual,
22 necessary services rendered by the trustee . . .; (B)
23 reimbursement for actual, necessary expenses. (Emphasis added).
24 Fed. R. Bankr. P. 2016(a) provides: "An entity seeking
25 interim or final compensation for services, or reimbursement of
26 necessary expenses, from the estate shall file an application
27 setting forth a detailed statement of (1) the services rendered,
28 time expended and expenses incurred, and (2) the amounts
requested. . . ." (Emphasis added.)

26 ⁹ Under BAPCPA's new § 330(a)(7), Congress has instructed
27 that "In determining the amount of reasonable compensation to be
28 awarded to a trustee, the court shall treat such compensation as a
commission, based on section 326." The new provision is
inapplicable in this case, and we express no opinion concerning
its effect.

1 services; the rate charged for the services; and the complexity,
2 importance and nature of the problems, issues or tasks addressed.
3 Additional factors used in evaluating a trustee's request for
4 compensation closely resemble those used in evaluating attorney
5 fee applications, which include the time and labor involved,
6 novelty and difficulty of the questions presented in the
7 bankruptcy case, and experience, reputation and ability of the
8 professional. In re Fin. Corp. of Am., 114 B.R. 221, 223 (9th
9 Cir. BAP 1990), aff'd 945 F.2d 689 (9th Cir. 1991).

10 Trustee bears the burden of proof to show the reasonableness
11 of the fees requested under § 330. In re Roderick Timber Co., 185
12 B.R. at 606; accord, In re Evangeline Refining Co., 890 F.2d 1312,
13 1327 (5th Cir. 1989). As stated in Roderick Timber, "[i]t has
14 long been the rule in this circuit that trustees have a duty to
15 meticulously maintain accurate records of time expended on behalf
16 of the estate." Id. at 605 (quoting Matter of Beverly Crest
17 Convalescent Hosp., Inc., 548 F.2d 817, 820 (9th Cir. 1976)). "In
18 obedience to the statute, in every case, a bankruptcy court should
19 award only those fees that are proven to be actual, necessary and
20 reasonable. Any lesser requirement would make the Trustee's
21 burden of proof a mere shell." In re Roderick Timber, 185 B.R. at
22 606.

23 In this case there was no objection made by any interested
24 party or by the U.S. Trustee to Trustee's fee request. But
25 "[w]here, as here, there is a tension between the Trustee's role
26 as the representative of creditors on the one hand and, on the
27 other hand, his own self-interest in maximizing his compensation,
28 beyond the mere power to review this fee application, the Court

1 has a duty to scrutinize the application in the interest of
2 protecting the integrity of the bankruptcy system." In re Pruitt,
3 319 B.R. 636, 638 (Bankr. S.D. Cal. 2004) citing In re Busy Beaver
4 Bldg. Ctrs, Inc., 19 F.3d 833, 841 (3rd Cir. 1994) (emphasis in
5 original). Under appropriate circumstances, "the court may, on
6 its own motion . . . award compensation that is less than the
7 amount of compensation that is requested." § 330(a)(2).

8
9 II.

10 We believe the bankruptcy court did not abuse its discretion
11 in reducing the Trustee's requested fees. The bankruptcy court
12 encountered what it perceived as "outrageous" professional costs
13 incurred in administering a prosaic chapter 7 bankruptcy case.
14 The court determined that Trustee was responsible for the high
15 professional costs because of his excessive delegation of tasks to
16 the professionals. The bankruptcy court also found that the value
17 of the services actually rendered by Trustee was not commensurate
18 with the amount of fees requested. Based upon these concerns,
19 the bankruptcy court declined to award Trustee the more than
20 \$44,000 he requested, and instead, awarded Trustee a reduced fee
21 of \$5,000. We examine each of the bankruptcy court's conclusions
22 in turn.

23 A.

24 The Panel has recently examined the ramifications of
25 excessive delegation of a trustee's duties to professionals, but
26 in connection with a request for compensation by the professional
27 instead of the trustee. In In re Garcia, we held that an attorney
28 employed by a trustee must be mindful that professional services

1 must be limited to those tasks not routinely performed by a
2 trustee. In that case, the trustee's attorney stepped into the
3 shoes of his client in performing several routine aspects of a
4 real estate sale and in the preparation of employment
5 applications, among other trustee duties. We held that the law
6 firm's activities in those two areas, as demonstrated in their
7 time records, were more properly a duty of the trustee, and
8 affirmed the bankruptcy court's decision to deny compensation to
9 the attorney for such services. In re Garcia, 335 B.R. at 722.

10 This appeal presents the mirror image of the problem examined
11 in Garcia. Here, we examine the propriety of a trustee's
12 abdication of duty to perform certain tasks in administering a
13 bankruptcy estate in favor of assigning those duties to his
14 professionals while still claiming a high fee for himself for
15 those services.

16 Both of these approaches run afoul of the Ninth Circuit's
17 warnings about improper delegation of a trustee's duties. In
18 Boldt v. U.S. Trustee (In re Jenkins), 130 F.3d 1335, 1342 (9th
19 Cir. 1997), the Court of Appeals wrote, "The Trustee cannot
20 effectively expand the maximum limits of Section 326(a) by hiring
21 other people to perform his duties for him, whether they are
22 paralegals, attorneys, accountants or other professional persons,
23 and utilize the potentially unlimited scope of Section 330 as a
24 basis for award of reasonable compensation", citing In re Prairie
25 v. Cent. Ry. Co., 87 B.R. 952, 959 (N.D. Ill. 1988).

26 Here, the bankruptcy court found that Trustee abdicated his
27 responsibilities and, instead, those duties were performed by his
28 broker, his attorneys and himself in his capacity as accountant to

1 the bankruptcy estate. The court focused particularly on the many
2 professionals involved in the sale of the debtor's residence.

3 I've got a broker getting a full commission, I
4 got a lawyer babysitting I guess the broker
5 getting a full commission, and I've got the
6 trustee basically sitting there with his son
7 filing papers and looking at the paperwork
8 that everyone else is doing the work on.

9 Tr. Hr'g 4:16-20.

10 When Trustee's Final Fee Application came before the
11 bankruptcy court, the bankruptcy court had already approved
12 payment of a sales commission to Realtor of over \$49,000.¹⁰ As
13 evidence of the Trustee's limited efforts in connection with the
14 real estate marketing and sale, the court had access to the time
15 entries in the Trustee's Statement. In that statement, there are
16 approximately 35 entries¹¹ related to the property requiring a
17 total of 13 hours of the Trustee's time ($\$350 \times 13 = \$4,550$). Of
18 those entries, most dealt with meetings or telephone calls with
19 Realtor or Polis or with review of documents created by them.
20 There is only one entry that unequivocally concerns a meeting
21 between Trustee and a prospective buyer.¹²

22 ¹⁰ As noted below, there were also multiple entries in the
23 Trustee's Statement that Trustee consulted with Polis, his
24 counsel, regarding real estate issues.

25 ¹¹ Our estimate is necessarily approximate because many of
26 Trustee's time entries were incomplete or otherwise inadequate,
27 and did not always identify the parties involved or the projects
28 considered.

29 ¹² This entry appears for November 13, 2003. "Travel to/from
30 Rancho Mirage re: meeting with prospective buyer of property. 2.2
31 hours [@] \$350 [=] \$770.00." The prospective buyer is not
32 identified, nor is there any indication of the length of the
33 actual meeting. In addition, Trustee apparently charged his full
34 billing rate of \$350 per hour for travel time.

1 As we observed in In re Garcia, "routine negotiations
2 regarding sale of real property are properly within the trustee's
3 province." 335 B.R. at 727, also citing to In re McKenna, 93 B.R.
4 238, 242 (Bankr. E.D. Cal. 1988). In this case, it was not an
5 abuse of discretion for the bankruptcy court to have concluded
6 that Trustee was only involved in the sale negotiations, if at
7 all, through his professionals.¹³ Those professionals were
8 compensated over \$50,000. Given Trustee's limited role in the
9 sale process, and the large amounts paid to Trustee's
10 professionals, the bankruptcy court was justifiably concerned with
11 allowing Trustee significant additional compensation for the sale
12 process. Tr. Hr'g 8:21.

13 The only other significant income to the estate came from the
14 global settlement agreement, through which the debtors paid
15 \$85,000 into the bankruptcy estate in exchange for a release of
16 any claims by Trustee against their securities accounts. The
17 bankruptcy court found that "a professional was needed" for those
18 negotiations, but the court observed that the estate had
19 "handsomely" compensated the attorney, Polis, for the services he
20 provided to effect the settlement. Tr. Hr'g 6:25 - 7:1. Again,
21 it appears Trustee's role in this project consisted of consulting
22 with counsel and ratifying his actions. Since counsel received
23 substantial fees for this endeavor, the bankruptcy court was
24 properly concerned about also paying significant fees to Trustee
25 under these circumstances.

26
27 ¹³ We do not have access to the trustee's attorney's fee
28 application, so we do not know how much compensation he received
for his work on the sale of the real property. We are confident,
however, that some of the compensation paid to counsel was for
activities in connection with that sale.

1 We believe that the bankruptcy court did not abuse its
2 discretion in deciding that, given Trustee's limited activities,
3 and the extent to which he delegated his duties to his
4 professionals, the compensation he requested in this case was
5 excessive. As a result, the bankruptcy court did not abuse its
6 discretion in reducing Trustee's requested fee award.

7
8 B.

9 We think the bankruptcy court's decision to reduce the fees
10 requested by Trustee to \$5,000 was also justified in this case
11 because Trustee failed to prove that the higher amount he sought
12 for compensation was reasonable when measured against the services
13 he actually provided.

14 As an initial matter, Trustee presumably did not document all
15 the time he expended in providing services in this case. A lack
16 of complete time records is a problem for Trustee since detailed
17 information describing the services provided by a chapter 7
18 trustee is critical to the bankruptcy court's ability to assess
19 the reasonableness of the compensation requested. See
20 § 330(a)(3)(A) (requiring bankruptcy court to consider "the time
21 spent on such services" in setting an appropriate fee).

22 Trustee's Final Fee Application of Trustee does not contain a
23 breakdown of hours by project or activity. Instead, it provides a
24 brief narrative "summary of the major actions taken by the Trustee
25 and the relevant justification of these actions." This general
26 list of the major events in the bankruptcy case does not reference
27 the amount of time expended by Trustee or his staff to perform any
28 of the tasks involved. Nor, in describing the administration of

1 this estate, does the Final Fee Application clearly distinguish
2 between services provided by Trustee, and those provided by his
3 counsel, Realtor, or by Trustee in his capacity as the estate's
4 accountant.

5 Apparently, Trustee relies upon the Trustee's Statement to
6 specifically document his time. This attachment lists the time
7 billing entries for Trustee and his staff. Using the hours and
8 rates reflected in the Trustee's Statement, the total amount
9 "billed" is \$26,120.50 for 117.30 hours of work. Obviously, this
10 sum is far short of the over \$44,000 Trustee requested for fees.

11 In his brief, Trustee argues that he voluntarily reduced his
12 fee request below the maximum allowed fee to his "actual billed
13 time":

14 In this case it is undisputed that the Chapter
15 7 Trustee-Appellant disbursed a net total of
16 \$827,673.83 (\$902,673.83 less the Debtors'
17 \$75,000 homestead exemption). Consequently,
18 utilizing the straight mathematical
19 calculation of section 326 of the Bankruptcy
20 Code, the Chapter 7 Trustee would have been
entitled to \$44,883.00 (\$824,673.83, plugged
into the lock step calculation of Section
326). The Chapter 7 Trustee-Appellant instead
requested the lesser amount of his actual
billed time of \$44,713.44.

21 Trustee's Br. at p.9 (emphasis added). But this contention is
22 problematic.

23 First, contrary to the statement in the brief, Trustee is not
24 "entitled" to the maximum fee. As noted above, § 326(a) sets a
25 ceiling on fees payable to a trustee. Section 330(a), however,
26 limits the actual compensation awarded in any case to a reasonable
27 sum. Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswick Drug Co.
28 (In re MEDNET Corp.), 251 B.R. 103, 106 (9th Cir. BAP 2000).

1 Second, there is a striking inconsistency between the \$26,150
2 in documented "billings" in the Trustee's Statement, and the
3 assertion in Trustee's brief that the amount he requested for
4 compensation in the Final Fee Application of \$44,713.44 was for
5 "actual billed time." We have examined the docket to assure that
6 there were no other billing statements submitted by Trustee in
7 support of his fee request. We have also compared the billing
8 statements attached to the Final Fee Application, with the actual
9 billing statements reviewed by the bankruptcy court (appearing at
10 Docket no. 113 of the bankruptcy case), and they appear identical.
11 We must therefore conclude that either Trustee understated the
12 amount of billed time by over \$18,000 in the Trustee's Statement,
13 and thus did not provide a "detailed statement of time expended"
14 in his Final Fee Application as required by Rule 2016(a), or that
15 the contention in Trustee's brief that the \$44,713.44 requested
16 was based upon Trustee's "actual billed time" is incorrect.¹⁴

17 Section 330(a) and Rule 2016(a) require a trustee to maintain
18 some form of records to adequately demonstrate the time expended
19 in performing services on behalf of the estate. We acknowledge
20 that there is no clear rule in this circuit that would require a
21 trustee who is also accountant to the estate to maintain the
22 thorough, detailed time records as trustee that we demand from him
23 as accountant employed under § 327. As we noted in In re Roderick
24 Timber, it is not "realistic to expect the Trustee to prepare a
25 time slip on each function that he performed during the day." 185

27 ¹⁴ In response to the Panel's question at oral argument,
28 counsel for Trustee was unable to explain this inconsistency and
apologized to the Panel for the "mistake."

1 B.R. at 606. However, there must be a minimum level of adequacy
2 of time records to assure that the court only "award[s] fees to
3 the level that has been proven to be actual, necessary and
4 reasonable. Any lesser requirement would make the applicant's
5 burden of proof a mere shell." Evangeline Refining, 890 F.2d at
6 1327.

7 Here, the Final Fee Application contains only a summary of
8 tasks performed without information about the time spent in
9 completing these projects. And Trustee's Statement, which does
10 contain an itemization of time spent performing services,
11 presumably does not document all the time spent to justify the
12 amount sought by Trustee. Simply put, Trustee failed to offer
13 sufficient time records or other evidence to justify compensation
14 in the amount requested.

15 Moreover, a review of the itemization of time in Trustee's
16 Statement reveals other reasons for concern.

17 First, in order for the bankruptcy court or this Panel to
18 conclude that the time and services described in Trustee's
19 Statement warrants payment of compensation even in the reduced sum
20 of \$26,150 documented therein, we must accept that the value of
21 those services is commensurate with the hourly rates assigned to
22 those services. There was no evidence submitted to the bankruptcy
23 court to show that Trustee's time ought to be worth \$350 per
24 hour,¹⁵ and that his various assistants' services ought to be

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26 ¹⁵ During oral argument, counsel for Trustee argued that
27 Trustee's \$350 per hour rate was comparable to his billing rate
28 for accounting services provided to the bankruptcy estate. It was
not explained why we should expect that accountant and trustee
compensation should be the same. Even so, we have examined the
(continued...)

1 valued at \$135, \$85, or even \$25 per hour. We seriously doubt
2 proof exists to justify payment of \$135 per hour for a trustee's
3 assistant's time spent "reviewing" and "forwarding to trustee"
4 correspondence and other materials received in the mail. So, too,
5 we are skeptical that a factual showing could be made to
6 corroborate that other office assistants are worth \$85 per hour
7 for opening and sorting mail or entering data into Trustee's
8 computer system, or \$25 per hour for "filing." Finally, while
9 Trustee is apparently an experienced chapter 7 panel trustee, it
10 is doubtful that all his time spent on this case should be valued
11 at \$350 per hour for performing such tasks as driving to and from
12 meetings, or reading the correspondence, pleadings and other
13 documents forwarded to him by others (who also charge for their
14 services).¹⁶

15 We therefore find no abuse of discretion in the bankruptcy
16 court's refusal to approve Trustee's fee request under these
17 facts. Trustee did not provide the bankruptcy court with
18 sufficient detailed information about his services to justify the
19 fees sought. In addition, Trustee's fee request appears excessive
20 for those services he and his staff did perform.¹⁷

21 _____
22 ¹⁵(...continued)
23 bankruptcy court's "Order Approving Trustee's Application to
24 Employ Accounting Firm of Which Trustee is a Member," entered on
25 November 6, 2003. In paragraph 8 of that order, the court
26 approved a billing rate of \$260 per hour for Mr. Anderson in his
27 capacity as accountant to the estate.

28 ¹⁶ Lacking proof that this hourly rate was reasonable, the
29 bankruptcy court expressed concern about the rate: "Your fees are
30 the highest I see, both as CPA and trustee." Tr. Hr'g 11:21-22.

31 ¹⁷ We do disagree with the bankruptcy court as to one aspect
32 of its analysis of Trustee's fee application. The court was
33 concerned about the number of entries dealing with filing and
34 (continued...)

1 C.

2 Since Trustee did not prove that he was entitled to
3 compensation in the amount requested, the only other issue for our
4 review is whether the bankruptcy court abused its discretion in
5 determining that \$5,000 was an appropriate and reasonable amount
6 for compensation for the services documented by Trustee.

7 "[A] bankruptcy judge's experience with fee petitions and his
8 or her expert judgment pertaining to appropriate billing
9 practices. . . will be the starting point for any analysis" of an
10 order concerning a fee application. In re Busy Beaver Bldg. Ctre,
11 Inc., 19 F.3d 833, 841 (3d Cir. 1994); accord, Beck v. N. Natural
12 Gas Co., Inc., 170 F.3d 1018 (10th Cir. 1999) (trial judge is an
13 expert in determining the value of professional fees and in doing
14 so may draw on his own knowledge and experience); see also In re
15 Yuba Consol. Indus., Inc., 260 F. Supp. 930 (N.D. Cal. 1966) (court
16 may consider its own knowledge and experience concerning
17 reasonable and proper fees); In re Staggie, 255 B.R. 48, 56

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19 _____
20 ¹⁷(...continued)

21 secretarial time. "Don't tell me about people who are putting
22 papers in the file. I don't want to hear about that time, that's
23 overhead." Tr. Hr'g 6:3-6. To the extent that the bankruptcy
24 court may have reduced Trustee' fees because the time entries
25 included what should be his overhead costs, the court committed
26 harmless error. Unlike fee applications for professionals, such
27 as attorneys, who are presumed to include overhead charges in the
28 billing rates of their professionals, a trustee may include
compensable overhead costs directly related to the bankruptcy case
in his trustee fee. Sousa v. Miguel, 32 F.3d 1370, 1376-77 (9th
Cir. 1994). However, we consider the court's observation harmless
in this case because there is an alternative reason for
questioning the nonprofessional entries in the Trustee's
Statement. It includes over 90 entries by Deborah Beverly for
purely clerical tasks (filing, opening mail, time-stamping
documents, etc.) with a billing rate of \$85 to \$95 per hour.
Absent an explanation and proof from Trustee why his clerical
costs are so high, we consider such an hourly rate unreasonable.

1 (Bankr. D. Id. 2000) (bankruptcy court relies on its own knowledge
2 and experience to determine how much time professional tasks
3 require).

4 In the absence of other evidence, the bankruptcy judge was
5 correct to rely upon his knowledge and experience in setting the
6 appropriate trustee compensation. The court noted that most
7 trustees in his experience make an effort to negotiate resolutions
8 of disputes and file pleadings on their own without the need to
9 engage an attorney. Tr. Hr'g 4:12-15. Here the court found that
10 the Trustee engaged a broker who received a full commission, a
11 lawyer ("babysitting the broker getting a full commission and the
12 Trustee looking at paperwork generated by the other professionals"
13 Tr. Hr'g 16-21), and an accountant. The court observed that:
14 "What the BAP has said very clearly is day to day routine asset
15 stuff can be done by the trustee directly, and the overwhelming
16 majority of my trustees do just that. You are a major exception
17 to the rule, Mr. Anderson." Tr. Hr'g 5:5-8. The bankruptcy court
18 went on to observe that Trustee abdicated his duties to the
19 broker, his attorney and to himself in his capacity as accountant
20 for the estate. According to the bankruptcy court, the only
21 compensable time was his "initial go around." Tr. Hr'g 8:8.

22 You [abdicated] to yourself as accountant, you
23 [abdicated] to the professionals for what they
24 did. You've [abdicated]-basically you looked
25 at paperwork a second time after everyone else
26 looked at the paperwork except at the initial
27 go around. So I got to compensate you for
28 your initial go around - sir. But that's all
29 you're going to get in this case." Tr. Hr'g
30 8:4-10.

31 The bankruptcy court then determined that the value of the
32 Trustee's services was \$5,000.00.

1 While other bankruptcy judges could conceivably differ in
2 their opinions about the adequacy of \$5,000 as Trustee's
3 compensation in this case, we do not have a definite and firm
4 conviction that the bankruptcy court committed a clear error of
5 judgment in selecting this amount. Because our role is limited to
6 deciding whether the bankruptcy court abused its discretion, and
7 because we conclude it did not, we will not disturb the bankruptcy
8 court's decision establishing a reasonable fee in this case.

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CONCLUSION

The bankruptcy court concluded that Trustee delegated performance of most his duties to professionals in this case, which resulted in high administrative costs. It also decided that Trustee did not prove that the services he provided justified compensation in the amount he requested. As a result, the bankruptcy court reduced Trustee's compensation to \$5,000. The bankruptcy court did not abuse its discretion in making these decisions. We AFFIRM the decision of the bankruptcy court.