UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	CASE NO. 04-78994
Montell D. Jordan and Kristen Jordan,	
	CHAPTER 7
Debtors.	JUDGE MASSEY

ORDER GRANTING IN PART AND DENYING IN PART
FEE APPLICATION OF DAVID L. MILLER

As counsel to Debtors in possession in this case while it was pending under Chapter 11 of the Bankruptcy Code, David L. Miller seeks court approval of his application for fees in the amount of $22,264.20 and reimbursement of expenses of $17.18. Mr. Miller based his fee request on an hourly rate of $285.00 per hour. He is holding a retainer of $10,000.00, paid to him by Debtors prior to the filing of this case.

The Court held a hearing on the application on June 13, 2006. Mr. Miller made brief comments at the hearing but presented no evidence to support his application other than referring to the application itself. On July 7, 2006, Mr. Miller filed a supplemental application in which he explained in more detail the thinking behind filing a Chapter 11 case and what he thinks he accomplished. The Court will treat the supplemental application, as well as the initial application, as statements made by Mr. Miller in his place as if he had been sworn. No party in interest has opposed the application.

Debtors filed this case under Chapter 11 on November 12, 2004. Mr. Jordan is a "recording artist" and has performed in many venues. Supplemental application ("SA"), p. 1. Levies by the Internal Revenue Service deprived Debtors of sufficient cash to live on, prompting them to file this case. SA, p.1. The aggregate amount of their debts to taxing authorities exceeds $1,000,000. Debtors were ineligible to file a Chapter 13 case because the amount of unsecured debt exceeded the limits imposed by 11 U.S.C. § 109(e). Debtors choose to file under Chapter 11 instead of Chapter 7 because the "did not want to lose control of their situation as long as it appeared their financial situation could be salvaged." SA, p. 2.

Where there is no trustee, a Chapter 11 debtor remains in possession of estate property and has most of the duties of a trustee. 11 U.S.C. § 1107. The attorney for a debtor in possession owes his or her allegiance not to the debtor but rather to the debtor in possession as the representative of the estate.

Mr. Miller concurred with Debtors' judgment that their financial condition was salvageable and with their purpose of staying in "control" of their financial affairs. Unfortunately, however, he failed to come to grips with the fact that his clients lacked the ability to manage their financial affairs properly and therefore the ability to perform the duties of a trustee. As the belatedly filed and incomplete operating reports filed by Debtors show, they carried on their lives as if they had never heard of bankruptcy. There is no evidence that he ever had any inkling about how much after-tax income would be required to fund a plan. The tasks Mr. Miller performed and his omissions as counsel to the Debtors in possession show clearly that he focused almost exclusively on what he thought would benefit the Debtors personally, that he

gave little thought to his proper role as counsel to the estate representative, and that he was oblivious himself to the proper financial management of a Chapter 11 estate.

As he practically boasts in his application, Mr. Miller saw his primary task to be converting what he understood to be secured claims of the taxing authorities to unsecured claims, which he seems to have imagined was the key to reorganizing Debtors' financial affairs. Yet, he completely appears to have misunderstood the applicable law concerning the classification and dischargeability of tax. Either he failed to realize the magnitude of Debtors' nondischargeable tax liabilities, which made financial reorganization in a Chapter 11 case impossible given their income and expenses, or he disregarded that fact. For a number of reasons, Chapter 7 would have been a better alternative, if one thinks that these Debtors were well advised to be in bankruptcy at all, which is questionable.[1]

After a thorough review of the record in this case, the Court concludes that most of the compensation sought by Mr. Miller is unreasonable and may not be allowed.

Section 330(a) of the Bankruptcy Code, 11 U.S.C. § 330, governs compensation of officers of the court, including trustees and professionals employed by the trustee. It provides in relevant part:

> (a)(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103—

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[1] If Debtors receive a discharge in this case, they will not be eligible for a second discharge for 8 years. Hence, unless they can increase their net after-tax income dramatically or are able to negotiate a favorable compromise with the taxing authorities, the taxing authorities will be able to continue their collection efforts for the next eight years, once this case is closed. In that event, this bankruptcy would have amount to little more than a temporary postponement of the collection efforts.

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

(2) The court may, on its own motion or on the motion of the United States Trustee, the United States Trustee for the District or Region, the trustee for the estate, or any other party in interest, award compensation that is less than the amount of compensation that is requested.

(3) (A) In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

(4)(A) Except as provided in subparagraph (B), the court shall not allow compensation for—

(I) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate; or

(II) necessary to the administration of the case.

In evaluating a fee application under section 330(a), a court must determine whether the requested compensation is reasonable, based on the factors set forth in that section. Whether

requested compensation is reasonable or not depends on the facts of the case. In finding the facts here, the Court takes judicial notice of all of the documents filed in this case.

The easiest way to analyze Mr. Miller's fee application is to divide the work described into the categories. The application could be parsed in a variety of ways, but the categories the Court has chosen are: Taxes, Initial Services (interviews, petition, schedule preparation, 341), Real Estate (sale effort and Washington Mutual), Plan, and Case Administration (employment of professionals, meeting with the U.S. Trustee's analyst, filing operating reports, preparing a motion for a bar order and a motion to convert, and other miscellaneous time entries).

TAXES

The time expended by Mr. Miller and the fees he seeks in this category are as follows:

Category	Hours	Fees
Taxes - IRS	16.52	$4,651
Taxes - Cal. Franch. Bd.	9.68	$2,759
Taxes - Ga. Dept. of Rev.	4.25	$1,211
Taxes - General	3.61	$1,029
Taxes - Totals	34.06	$9,650

As Mr. Miller stated, there is little doubt that Debtors' tax problems were severe. Here is how Mr. Miller explained his preliminary analysis of how those tax problems might be solved in this case.

> Debtors had equity in their house and were receiving earnings from royalties on Mr. Jordan's copyrights which they could not afford to lose at the time. . . . The initial plan was that Applicant would work on converting a large amount of secured tax and priority tax to general unsecured which would be paid a small percentage in a Chapter 11 plan with no interest and no payments to allowed claimants during the first year after the effective date of the plan. The balance would be paid pro rata monthly over a period of eight years. The secured claimants on their residence (a first and second mortgage) would

be brought current over six months at contract interest rate and then paid on a current basis.

SA, p. 2.

In fact, Debtors had no equity in their residence. They said so on Schedule A, where they valued their residence at $158,000 and stated that the debt secured by their residence was $158,000. On Schedule D, they listed a claim of Washington Mutual Bank in the amount of $93,000, secured by the residence. They valued personal property listed on Schedule B at less than $10,000. On Schedule D, Debtors listed tax debts excess of $769,000. Both the I.R.S. and the Georgia Department of Revenue hold tax liens covering at least $100,000 of the total tax debt. Hence, Debtors had no equity in their residence or other property, based on their valuations. (In the Chapter 7 case, the residence was recently sold for $174,985; the Chapter 7 Trustee negotiated a deal with those creditors that paid them $5,000 each and permitted the Trustee to retain $10,000 for the estate.)

Mr. Miller's statement that his work would involve "converting a large amount of secured tax and priority tax to general unsecured" debt is nonsense. A secured claim cannot be "converted" to an unsecured claim. "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property . . . ." 11 U.S.C. § 506(a). The I.R.S. and Georgia Department of Revenue asserted secured claims as to which Debtors have not prosecuted any objection. Each of those claims is secured to the extent that there is any equity in Debtors' properties above liens senior to that tax lien. Otherwise, that claim is and was unsecured. A claim is entitled to priority treatment if that meets one of the requirements for priority set out in section 507(a), which prioritizes payments from estate assets not subject to lien

claims. Hence, all priority claims, if paid from estate property, will be paid as unsecured claims. Priority claims are not "converted" to unsecured claims.

The "initial plan" to deal with tax debt could not have worked because, as discussed below, (1) a prerequisite to confirmation of a plan is payment of priority claims in full, (2) the taxing authorities hold in excess of $244,000 in priority claims, and (3) Debtors lacked sufficient income to pay those priority tax claims in a timely manner. The fact that Mr. Miller did not recognize early in the case this that Debtors could not propose a confirmable plan is appalling.

Mr. Miller described what he thinks he has accomplished with respect to taxes as follows:

> As a result of the negotiations and settlements, the secured claims of each tax entity were changed to dischargeable, general unsecured claims as follows:

	Initial Secured Claim	**Settled Secured**	**Settled Unsecured**
California Franchise Tax Board	$ 76,760.67	0	$ 76,760.67
Department of Treasury/IRS	$761,964.92	$72,730.00	$496,052.24
Georgia Department of Revenue	$ 79,019.78	$46,431.00	$ 28,221.39
Totals:	$917,745.37	$118,161.00	$601,034.30

> As a result, $601,034.30 of previously secured debts (2/3 of all secured tax claims) is now dischargeable, general unsecured claims which will be discharged in the Chapter 7. The resulting balance of secured tax claims was to be handled within the plan over an agreed upon period of time. In Chapter 7, there will be either a post discharge arrangement or an offer in compromise will be made. There are additional unsecured priority tax claims.

SA, p. 5.

Mr. Miller misstates what he accomplished. First, secured debt did not become unsecured debt as a result of negotiation or anything else that Mr. Miller did. The tax authorities have in fact retained their liens against property of the estate and are secured to "the extent of the value of

such creditor's interest in the estate's interest" in any particular item of estate property. The creditors filed amended proofs of claims that changed the amounts of claims in the categories of secured, priority and unsecured, but those amendments merely restated how those creditors understood their rights under the Bankruptcy Code based on the values of Debtor's properties. The amendments were not forced by Mr. Miller and did not constitute concessions that made reorganization possible but were in the nature of reshuffling deck chairs on the Titanic.

Second, income tax debts of $601,034 did not become dischargeable because they became unsecured. Dischargeability has nothing to do with whether a debt is secured or unsecured. A large portion of the tax debt was dischargeable because Debtors had filed tax returns for the tax years prior to 2001 more than three years before they filed this case on November 12, 2004, which meant that those debts could not be excepted from discharge under sections 523(a)(1) and 507(a)(8). The taxing authorities have acknowledged that these taxes are dischargeable, and he has not shown that they ever contended otherwise.

Third, the statement that Debtors will negotiate compromises of the remaining nondischargeable priority claims is mere speculation, having nothing to do with Mr. Miller's fee application.

Finally, the observation that there remain "additional unsecured priority tax claims" is the understatement of the year. More about this below.

The California Franchise Tax Board ("CFTB") filed claim no. 9 on May 5, 2005, asserting a claim secured by "Other" in the amount of $76,760.67. It is unlikely that in fact CFBT had a secured claim – Debtors listed various components of the claim as unsecured priority claims in

Schedule E. The CFTB did not assert it had a priority claim, and there is no basis to think that Schedule E, prepared by Mr. Miller, was accurate in this regard.

Mr. Miller filed on Debtors' behalf adversary proceeding no. 05-6420 against the CFTB, but his purpose was to determine the dischargeability of the debt, not to determine whether a valid tax lien had attached to property of the estate that had any value. He never served the summons and complaint properly. Nonetheless, the CFTB stipulated with Debtors that the debt was dischargeable. Mr. Miller filed a motion to approve the stipulation, and the Court entered an order granting that motion and approved the stipulation. Contrary to Mr. Miller's statement, neither the stipulation nor the order approving it stated that CFTB's claim was unsecured (though its claim could be secured only if it filed its lien in Georgia prior to those of the other taxing authorities – there is no contention that it did so – or unless it has a lien that has attached to property of the estate that Debtors have not disclosed.) The record does not reflect any basis on which the CFTB could contend that the taxes in question were not dischargeable.

On March 16, 2005, the Georgia Department of Revenue ("GaDR)" filed claim no. 8, asserting a priority claim for a little more than $79,000 with respect to taxes for the years 2000-2004. Mr. Miller filed a complaint against the GaDR in adversary proceeding no. 05-6421, asserting, incorrectly, that all of these tax debts were dischargeable. Service was defective, but the GaDR answered the complaint. Ultimately, the parties agreed in a consent order that the 2000 taxes were dischargeable but that the tax lien with respect to the 2000 taxes would survive the bankruptcy case, and that the 2001 taxes were not dischargeable. The consent order did not address taxes for years after 2001, but those taxes are plainly not dischargeable.

The GaDR filed an amended proof of claim on March 13, 2006, asserting a secured claim of more than $46,000, an unsecured claim of more than 28,000 and a priority claim of a little more than $2,000. Most of this claim is probably unsecured because the value of Debtors' disclosed properties is too small to make it secured, not because of anything that Mr. Miller did. Only the 2000 taxes, amounting to about $28,000, are dischargeable. The balance of the debt of approximately $51,000 is not dischargeable and is entitled to priority.

The I.R.S. filed a proof of claim in January 2005 asserting a secured claim of more than $760,000. Mr. Miller points out that the claim was filed as fully secured, but he omitted to state that the I.R.S. amended that claim in March 2005, without any apparent input from Mr. Miller. It then asserted that more than $72,000 of its claim was secured, more than $496,000 was unsecured and more than $193,000 was entitled to priority.

On July 23, 2005, Mr. Miller filed an objection to the I.R.S.'s claim for priority taxes. For filing that objection, which was not prosecuted, Mr. Miller seeks compensation of $598.50 for 2.1 hours for drafting the two-page objection. On September 13, 2005, Mr. Miller filed a withdrawal of that objection, for which he seeks compensation of $142.50 for a half hour of work. Below the style and title of that document and above Mr. Miller's signature line appear 45 words stating nothing more than the objection is withdrawn. In the objection, Mr. Miller revealed that he does not understand the basic Bankruptcy Code provision concerning priority income tax claims. The objection states:

> The petition was filed on November 12, 2004. The tax was assessed May 6, 2002 which was more than 240 days before the date of the petition. The Debtors returns were filed more than two years before the chapter 11 petition was filed. Consequently, the taxes are "stale" and they cannot be excepted from the discharge under 11 U.S.C.§ 523(a)(1)(A), which incorporates 11 U.S.C.§ 507(a)(8).

Objection to Claim (Motion to Disallow Claim) of Creditor Department of the Treasury/Internal Revenue Service, Document No. 34, p. 2.

Section 507(a)(8)(A) provides for the priority of income taxes and contains three subparagraphs, which are in the alternative because the section 507(a)(8)(A)(ii) ends with the word "or." Section 507(a)(8)(A)(i) provides:

> (a) The following expenses and claims have priority in the following order:
>
> . . .
> (8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for—
>
> (A) a tax on or measured by income or gross receipts—
>
> (i) for a taxable year ending on or before the date of the filing of the petition for which a return, if required, is last due, including extensions, after *three* years before the date of the filing of the petition[.]

Emphasis added. Thus, the relevant date is the one on which a return was last due, not the date on which a return is filed, as Mr. Miller claimed, and the time frame measured back from the petition date is three years, not two. Debtors' tax return for 2001 was due as early as April 15, 2002. The date that is three years before the petition date of November 12, 2004 is November 12, 2001. Because the due date for filing the 2001 tax return was after November 12, 2001, the debt in question is plainly entitled to priority under section 507(a)(8)(A)(i) and is therefore excepted from discharge under section 523(a)(1) of the Bankruptcy Code.

It is stunning that Mr. Miller would have the temerity to attempt to charge for filing an objection lacking even the slightest merit and then to attempt to charge for withdrawing his shoddy work.

Shortly after withdrawing the objection to the I.R.S.'s claim, Mr. Miller filed on behalf of Debtors a complaint initiating adversary proceeding no. 05-6422, in which Debtors asserted that taxes for the years 1999 and 2000 were dischargeable. Mr. Miller did not serve the complaint properly, but the parties resolved the dispute by agreeing that taxes owed by Debtors for 1999 and 2000 were dischargeable but that taxes owed for 2001, 2002 and 2003 were not. The nondischargeable claims for the years 2001-2003 are priority claims totaling $193,182.68 as of the petition date.

So much for Mr. Miller's contention at the June 13 hearing that he "knocked about $1 million off that debt to make it totally unsecured." Most of the claims are indeed unsecured, but not because Mr. Miller pulled a rabbit out of a hat. The fact that they are unsecured does not make them dischargeable. Mr. Miller's sly acknowledgment that "there are additional unsecured priority tax claims," SA p. 2, omits to state that the I.R.S. and GaDR hold nondischargeable priority claims totaling over $244,000!

To be confirmable, a Chapter 11 plan must provide that the holder of priority tax debt specified in section 507(a)(8) "will receive on account of such claim deferred cash payments, over a period not exceeding six years after the date of assessment of such claim, of a value, as of the effective date of the plan, equal to the allowed amount of such claim." 11 U.S.C. § 1129(a)(9)(C). Mr. Miller has not contended or provided any proof that the I.R.S. and the GaDR would consent to terms different from those stated in section 1129(a)(9)(C). This means that the Chapter 11 case was a fantasy unless Debtors could pay to the I.R.S. and GaDR deferred cash payments over six years with a present value of $244,000. At the modest rate of 6% per annum, it would take a payment of about $4,000 per month to amortize $244,000 over six years.

Debtors projected that they would earn $10,000 per month in Schedule I. They projected in Schedule J that would spend $9,330. Between December 2004 and July 2005, Debtors earned on average less than $8,500 per month and spent almost every dime. They did not pay taxes on those earnings. Needless to say, the idea, even as of November 12, 2004, that Debtors could generate $4,000 per month after taxes and after all personal and business expenses was a pipe dream.

The work performed by Mr. Miller with respect to taxes did not benefit the estate, was not reasonably likely to benefit the debtor's estate and was not necessary to the administration of the case. Hence, he is not entitled to any compensation for that work.

FILING SERVICES

The time expended by Mr. Miller and the fees he seeks in this category are as follows:

Category	Hours	Fee Requested
Filing - Initial Case Evaluation	4.2	$1,197
Filing - Petition	1.3	$371
Filing - Schedules, Statement of Fin. Affairs	8.73	$2,488
Filing - Application To Employ	.75	$214
Filing - Totals	14.98	$4,270

The Court has no doubt that the time expended in evaluating the case was necessary. Unfortunately, it was time not well spent, because a duly diligent approach to taking on a case like this one should have revealed the impossibility of paying the nondischargeable tax debt based on the projected gross income. Mr. Miller produced no evidence to show that he and Debtors evaluated the income and expenses that Debtors were likely to have or what amount of net, after-

tax income would be needed to fund a plan. Debtors' alleged "belief that increased live performances and the possibility of a new album coupled with the income from royalties," SA, p. 2, would enable them to fund a plan is not proof they had a reasonable probability of earning enough after-tax income to fund a plan.

Mr. Miller prepared the schedules. He says he spent over eight hours to complete the schedules and statement of financial affairs, for which he seeks almost $2,500, which is the amount of a standard fee in this District for handling a Chapter 13 case that might last five years. That amount of time was excessive. Inexpensive software programs exist that enable bankruptcy attorneys to prepare petitions and schedules with relative ease. The number of data items were not so numerous or complicated that it would have taken a competent paralegal more than one hour to input the data. Attorneys may not be compensated at attorney rates for clerical tasks.

The schedules were riddled with errors that Mr. Miller should have caught. He never corrected those errors. Debtors failed to list in Schedule B the vehicle mentioned in Schedule D. Debtors valued as worthless the "copyrights" that presumably were producing the royalties the I.R.S. had attached and were supposed to be the source of income to fund the plan.

In his supplemental application, Mr. Miller referred to a second mortgage on the residence, but that appears to be an error. Debtors did not list a second mortgage debt in Schedule D, and the Chapter 7 Trustee did not pay a second mortgage when he sold the residence in July 2006. See Trustee's Report of Sale of 5784 Belmont Ridge Circle, Document No. 113. On Schedule J, Debtors listed among their expenses, mortgage payments of $3,562,80, not including taxes and insurance. But Washington Mutual's proof of claim shows that the balance of the loan was $108,927.45, the interest rate was 5.167% and the loan was made for a term of 30

years, ending in 2030. Thus, Debtors stated that their mortgage payments exceeded what they owed monthly to Washington Mutual by several thousand dollars. Mr. Miller never did anything to account for such a large discrepancy. Presumably the Chapter 7 Trustee will investigate where that money went.

In the statement of financial affairs, Debtors showed that their income in 2003 was $90,626. Question 1 asked for 2 years of income; Debtors supplied only one.

Debtors' Schedules I and J show no withholding of income taxes or other deductions to pay income taxes. Obviously, no individual debtor can earn income in a bankruptcy case and not be subject to income and FICA taxes. Thus, these Schedules, prepared by Mr. Miller, were not correct, or, if they were correct, they revealed that no Chapter 11 plan could be feasible.

Based on these considerations, the Court finds that the reasonable value of Mr. Miller's services in the initial stages of the case is $500. The disallowed fees represent excessive and unnecessary time and a failure to provide competent legal advice to the Debtors in possession concerning full disclosure on the schedules and statement of financial affairs.

REAL ESTATE

The time expended by Mr. Miller and the fees he seeks in this category are as follows:

Category	Hours	Fees Requested
RE - Washington Mutual Issues	.99	$282
RE - Motion to Sell	4.81	$1,371
RE- Totals	5.8	$1,653

Mr. Miller spent an hour dealing with a motion for relief from stay filed by Washington Mutual and almost five hours preparing and filing a motion for an order authorizing the sale of

the Debtors' residence. No sale took place during the Chapter 11 case. Ultimately, the Chapter 7 Trustee filed a new motion to sale and in July 2006 closed the sale to a different buyer than the one mentioned in Mr. Miller's motion. This work was not necessary, and there is no evidence to show that there was any reasonable prospect that the proposed sale could have closed.

Although the time spent working with counsel for Washington Mutual, which first moved for stay relief in July 2005, might have prevented stay relief at that time, there is no evidence to that effect. The failure to convert the case to Chapter 7 in 2005 had the effect of postponing the liquidation of the residence. In short, the hour spent in dealing with Washington Mutual has not been shown to have benefitted the creditors or the estate to any degree.

PLAN

Mr. Miller expended 3.55 hours for which he seeks $1,012 for preparing a draft of a plan and disclosure statement that were never filed. He has not produced a copy of either document. There is no evidence to show that a plan had any chance of being confirmed. Accordingly, Mr. Miller has failed to prove that expending this time was necessary.

CASE ADMINISTRATION

The time expended by Mr. Miller and the fees he seeks in this category are as follows:

Category	Hours	Fees Requested
Case Admin - § 341 Meeting	1.58	$450
Case Admin - Bar Date Order	.6	$171
Case Admin- Accountant	2.05	$584
Case Admin - Conversion	1.83	$522
Case Admin - US Tr Analyst	1.58	$454
Case Admin - Operating Rpts	9.97	$2,200

Case Admin - Misc.	4.59	$1,302
Case Admin - Totals	22.2	$5,683

Much of the time in this category was unnecessary or non-legal work and hence is not compensable. The exceptions are attending the meeting of creditors and obtaining a bar order for filing claims, for which tasks the Court will approve $621.00. The bar order presumably prompted the tax creditors to file their claims, which, had they been properly reviewed, would have revealed that Chapter 11 was not a road to financial relief for either Debtors or their creditors. Mr. Miller had to attend the meeting of creditors.

Mr. Miller filed an application to employ an accountant, which the Court approved, but the accountant refused to be involved. Maybe Mr. Miller could not have anticipated the reaction of the accountant. But there is no evidence to show that hiring an accountant would have had any positive effect in the case, with the possible exception that an accountant would have been able to communicate the obvious fact that Debtors' expenses during the Chapter 11 case exceeded their income. This application produced nothing of value for the estate.

Mr. Miller met with an analyst from the Office of the U.S. Trustee. Mr. Miller failed to show that his presence at such a meeting was necessary. The analyst presumably is concerned with accounting issues, and Mr. Miller is not an accountant. Whether Debtors attended the meeting on December 1, 2004 is not revealed in that time entry. The Debtors in possession were responsible for preparing financial reports in a proper form. This is not legal work.

Mr. Miller tracked his time in very small increments for reading and responding to emails. While that shows admirable efficiency, there is no evidence that any of the matters that were the subjects of those emails were necessary.

Some of the emails concerned the monthly operating reports filed belatedly and incorrectly by Debtors. They were later amended. These reports show in plain black and white that this case was hopeless as a Chapter 11 case, thereby making Mr. Miller's time in pursuing a hopeless case unnecessary.

Debtors filed operating reports on forms prescribed by the U.S. Trustee that showed the following information:

Month	Date of Filing	Income	Date of Amended Filing	Revised Income
11/12/04-11/30/04	03/09/05	$2,119	09/13/05	$1,919.51
December 2004	03/09/05	$3,990.92	09/13/05	$3,990.92
January 2005	08/16/05	$10,820.20	09/13/05	$10,820.00
February 2005	04/01/05	$5,572.30	09/13/05	$8,398.10
March 2005	08/16/05	$7,263.10	09/13/05	$7,263.10
April 2005	08/16/05	$15,957.62	09/13/05	$15,957.62
May 2005	08/16/05	$9,876.33	09/13/05	$9,876.63
June 2005	08/16/05	$1,283.55	09/13/05	$1,283.55
July 2005	09/13/05	$12, 712.26		

These are the only operating reports Debtors filed prior to the hearing on Mr. Miller's fee application. They show that Debtors' average monthly income was about $8,434. None of these reports show current income taxes being withheld or reserved. The I.R.S. filed on March 13, 2006, a claim for administrative taxes in the amount of $10,754.22 for income taxes for the last quarter of 2004 and for 2005. As counsel to the Debtors in possession, Mr. Miller should have advised them that they had to pay current income taxes. Had he realized that they were not

paying taxes, he should have reported the matter to the U.S. Trustee, whose analyst should have recognized the same problem. The failure to pay taxes was a bright, flashing red light that this case was not feasible. If Debtors were paying current income taxes, their reports were inaccurate.

Mr. Miller prepared in July 2005 a response that he never filed to a motion of the U.S. Trustee to dismiss the case. Mr. Miller has not shown that the preparation of that response was necessary, and that service produced no value to the estate.

Most of the time Mr. Miller spent with respect to operating reports involved meeting with Debtors to review and to revise what they had done. The operating reports are financial reports requiring no legal skill to complete. The fact that Debtors were incapable of completing such reports accurately and on a timely basis showed that they had no business operating as debtors in possession. Mr. Miller is not entitled to compensation for non-legal work involved in showing Debtors what they were doing wrong. This work was in a broad sense unnecessary because the case was doomed from the start.

Mr. Miller prepared and filed a motion to convert the case to Chapter 7 and a notice of hearing. The motion said that Debtors filed the case on November 12, 2004; the case was not an involuntary and had not previously been converted; it would be best for creditors to convert the case; and Debtors are qualified to be in Chapter 7. For that work, Mr. Miller seeks to be paid $522. All he had to do was ask the U.S. Trustee, who had previously moved to dismiss, to move to convert. The charge is outrageous in part because Mr. Miller's time, based on the lack of skill demonstrated in this case, is not worth $300 an hour. The need to convert the case was caused by filing the Chapter 11 in the first place. This case should never have been filed under Chapter 11, and therefore, any compensation for filing this motion would be unreasonable.

The Court will allow the expenses of $17.11 for making copies.

For these reasons, it is

ORDERED that David Miller's fee application, as supplemented, is GRANTED in part and DENIED in part. The Court approves reasonable compensation in the amount of $1,121.00 and reasonable expenses in the amount of $17.11 for a total of $1,138.11. Mr. Miller is directed to promptly pay to the Chapter 7 Trustee the sum of $8,861.89, representing the balance of the funds paid to him by Debtors.

Dated: September 1, 2006.

JAMES E. MASSEY
U.S. BANKRUPTCY JUDGE