

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 7
)	
WANDA RENEE TYREE,)	CASE NO. 10-68797 - MHM
)	
Debtor.)	

)	
WANDA RENEE TYREE,)	
)	
Movant,)	
v.)	CONTESTED MATTER
)	
GABRIEL GUZMAN,)	
HAIT & EICHELZER,)	
)	
Respondent.)	

ORDER AWARDING DAMAGES

As an initial matter, the court apologizes for the delay in entry of this order. The materials connected with this submission were misplaced and overlooked.

An order was entered September 27, 2010, concluding that an execution by *feri facias* in which the sheriff has taken possession of the relevant property but the property had not been sold prepetition does not fully divest a debtor of title to the property and does not deprive a debtor of the right to seek and obtain turnover (the "Turnover Order"). The extant law on the subject was scarce and the Turnover Order specifically found no basis for punitive damages because Respondent's legal arguments, together with the lack of Georgia law on the subject, made Respondent's position plausible. The Turnover Order required Respondents, within 14 days, to "take the steps necessary to effect a

turnover of all the Property to the Chapter 7 Trustee, including, if necessary, the payment of all storage fees required to obtain a release of the Property.”

This case is now before the court to award actual damages, as mandated by §362(k). Debtor filed a *Statement of Damages* October 7, 2010 (Doc. No. 43) (the “Statement”). The Statement set forth that, as Respondents were required by the Turnover Order to pay all storage fees, the only actual damages Debtor had were the attorneys fees she incurred to obtain turnover of the Property. Attached to the Statement were itemized time entries for the services provided by Debtor’s attorney in connection with the turnover action, which total \$6,967.50.

Unfortunately, the service instructions on the Turnover Order, by error, failed to include Respondent or counsel for Respondent. Therefore, the first actual notice Respondents had of the provisions of the Turnover Order was service by Debtor of the Statement. Within 14 days thereafter, Respondents contacted the Chapter 7 Trustee to arrange for turnover, but because Trustee’s report of no distribution had already been filed, the value of the Property was inconsequential, and the cost that would be incurred by Trustee to store the Property, Trustee declined to accept turnover. The parties, including Debtor, negotiated and executed a consent order providing for abandonment of the Property by Trustee and directing turnover of the Property to Debtor (the “Consent Order”). The Consent Order was entered November 2, 2010. The Property was turned over to Debtor November 8, 2010.

Meanwhile, before entry of the Consent Order, on October 28, 2010, Debtor filed a motion to hold Respondents in contempt for failure to comply with the Turnover Order

(Doc. No. 46) (the “Contempt Motion”). Respondents filed a responses to the Contempt Motion (Doc. No. 51 and 53), complaining that they undertook to comply with the Turnover Order within 14 days after they received notice of the Turnover Order on or about October 8, 2010. The Turnover Order, however, required compliance with 14 days *of the date of entry of the order*. Assuming Respondents received actual notice of the Turnover Order October 8, 2010, Respondents still had until October 11, 2010 to comply with the Turnover Order or seek an extension of time. They did neither. Instead, Respondents concluded that computation of the 14 days would begin on the date they received actual notice of the Turnover Order.

On the other hand, however, at the time the Contempt Motion was filed, Debtor’s attorney knew that Respondents were in the process of effectuating turnover of the Property to Debtor. Once service of the Consent Order was achieved, Respondents acted expeditiously to effectuate turnover of the Property to Debtor. Debtor did not assert any actual damages for the delay except attorneys fees arising from filing the Contempt Motion. In view of the equities on both sides, it is appropriate to find Respondents in contempt but to award no damages.

The attorneys fees sought by Debtor under §362(k) were evaluated pursuant to the principles set forth in *Norman v. Housing Authority of City of Montgomery*, 836 F. 2d 1292 (11th Cir. 1988). The value of a professional's services is determined by multiplying the number of hours reasonably expended by a reasonable hourly rate. That calculation results in the lodestar. The initial consideration in calculating the lodestar is that of a reasonable hourly rate, which is determined using the subjective factors set forth

in *Johnson v. Georgia Highway Express, Inc.*, 488 F. 2d 714 (5th Cir. 1974).¹ Based on this court's knowledge of prevailing market rates and an evaluation of the skill, experience and reputation of the Applicant,² the hourly rates which the Applicant seeks to charge are reasonable.

The other consideration in calculating the lodestar is hours reasonably expended. Hours which would be unreasonable to bill to a client irrespective of the skill of counsel must be excluded. *Norman*, 836 F. 2d 1292. Attorneys, including their paralegals or legal secretaries, may not be compensated for clerical or ministerial activities. *Stroock & Stroock & Lavan v. Hillsborough Holdings Corp.*, 127 F. 3d 1398 (11th Cir. 1997). Several time entries for services by a paralegal have been reduced because the described services were clerical. Additionally, the time entries for preparation of the initial motion seeking turnover and damages for violation of the automatic stay, of the reply to Respondents' response to that motion, and attending the hearing are excessive and have been reduced.

In conclusion, Debtor's attorney's hourly rates are reasonable. Except as noted above, the hours expended were reasonable. No factors are present that require reduction or enhancement of the lodestar.³ Therefore, the Applicant is entitled to compensation in the amount of \$5,340.00. Accordingly, it is hereby

¹ *Bonner v. City of Prichard*, 661 F. 2d 1206 (11th Cir. 1981), renders decisions of the Fifth Circuit issued prior to September 30, 1981, binding precedent for the Eleventh Circuit.

² *See, Blum v. Stenson*, 456 U.S. 886, 104 S. Ct. 1541 (1984).

³ *See, Blanchard v. Bergeron*, 489 U.S. 87 (1989) and *Johnson v. Georgia Highway Express*, 488 F. 2d 714 (5th Cir. 1974). Re enhancement, *see, Perdue v. Kenny A. ex rel. Winn*, 130 S. Ct. 1662 (2010); *Blum v. Stenson*, 456 U.S. 886; *In re Flowers*, 178 BR 553 (Bankr. S.D. Fla. 1995)

ORDERED that Respondent shall pay damages under §362(k) in the amount of \$5,340. Said damages shall be paid to Debtor's attorney who, to the extent that Debtor's attorney has already been compensated by Debtor, shall turn over such amount to Debtor. Judgment will be entered in accordance with this order.

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Debtor, Debtor's attorney, Respondents and Respondents' attorney, and the Chapter 7 Trustee.

IT IS SO ORDERED, this the 27th day of September, 2012.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE