

Dated: March 31, 2025
The following is ORDERED:



Denise E. Barnett
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

In re:

Michael Edward Seebeck,
Debtor.

Case No.: 23-25405
Chapter 7

**MEMORANDUM OPINION AND ORDER APPROVING, IN PART,
APPLICATION FOR ALLOWANCE AND PAYMENT OF PROFESSIONAL FEES**

This case came before the Court on Ashley Wisch of EXP Realty's ("Realtor's") *Application of Ashley Wisch of EXP Realty for Allowance and Payment of Professional Fees* ("Fee Application").¹ A hearing was conducted on January 7, 2025, and concluded on January 28, 2025. Upon review of the record, filed documents, evidence presented, and consideration of the arguments from the parties, the Fee Application is approved, in part, for the reasons explained below.

¹ ECF No. 180.

I. PROCEDURAL AND FACTUAL BACKGROUND

A. Procedural Background

On November 1, 2023 (“Petition Date”), Michael Edward Seebeck (“Mr. Seebeck”) filed a voluntary petition commencing a case under chapter 13 of the Bankruptcy Code.² Mr. Seebeck’s Schedule A/B listed one real property and two vehicles.³ Mr. Seebeck’s real property located in Germantown, Tennessee (“real property”), was worth \$429,000.00 and had \$160,366.52 in secured claims held by Nationstar Mortgage LLC (“Nationstar”).⁴ Schedule E/F listed \$86,352.49 in nonpriority unsecured claims.⁵

On February 9, 2024, Nationstar filed a *Motion for Relief From Automatic Stay And Waiver of the 30-Day Hearing Requirement* (“Motion for Relief from Stay”), regarding Mr. Seebeck’s real property.⁶ On February 16, 2024, Mr. Seebeck filed an amended chapter 13 plan.⁷ On February 22, 2024, the chapter 13 trustee filed her *Objection to Confirmation* (“Objection”) of Mr. Seebeck’s chapter 13 plan, citing that the amended plan was not properly served.⁸ On March 18, 2024, Mr. Seebeck filed a *Motion to Convert Chapter 13 Case to a Chapter 7 Case* (“Motion to Convert”).⁹ Prior to the conversion to chapter 7, the chapter 13 case was dismissed

² ECF No. 1.

³ ECF No. 97.

⁴ ECF No. 97, Schedule A/B, Schedule C, and Schedule D. On Schedule C, Mr. Seebeck checked the box that stated “100% of fair market value up to any applicable statutory limit.” The Claims Register listed Nationstar has holding \$179,626.99 in secured claim on Mr. Seebeck’s real property.

⁵ ECF No. 97, Schedule E/F.

⁶ ECF No. 55. The Motion for Relief from Stay claimed that Mr. Seebeck was in default of \$5,043.33 and an unpaid principal balance of \$160,366.52.

⁷ ECF No. 60. Mr. Seebeck filed his original chapter 13 plan on December 12, 2023. ECF No. 27.

⁸ ECF No. 64.

⁹ ECF No. 76.

and the chapter 13 trustee's Objection was moot.¹⁰ The dismissal order was vacated, and on May 7, 2024, Mr. Seebeck's chapter 13 case was converted to a chapter 7 case.¹¹

On June 7, 2024, the chapter 7 trustee filed an objection to Nationstar's Motion for Relief from Stay, claiming that he believed that there was "substantial equity" in Mr. Seebeck's real property and proposed to "hire a realtor to list the property on the market."¹² On June 13, 2024, the chapter 7 trustee filed an objection to Mr. Seebeck's claim of exemptions on his real property.¹³ On July 15, 2024, Mr. Seebeck filed an *Opposition to Motion for Relief of Stay*, claiming that he was not properly served with Nationstar's Motion for Relief from Stay.¹⁴ On July 22, 2024, Mr. Seebeck filed his *Further Opposition to Motion for Relief from Stay*.¹⁵ On July 22, 2024, Mr. Seebeck filed his *Reply to Trustee's Objection to Property Exemptions*, claiming that Nationstar failed to provide proper notice.¹⁶

On August 19, 2024, the *Order Approving Application for Employment of James E. Bailey III and the Law Firm of Butler Snow, LLP as Attorneys for the Trustee Pursuant to 11 U.S.C. § 327(a) and Fed. R. Bankr. P. 2014(a)* was entered.¹⁷ On August 22, 2024, Mr. Seebeck filed an *Opposition to Trustee's Application for Order Approving Employment of James E. Bailey*

¹⁰ The hearing took place on March 19, 2024, at 10:30 a.m.

¹¹ ECF Nos. 86 and 87.

¹² ECF No. 106.

¹³ ECF No. 109. The chapter 7 trustee claimed that Mr. Seebeck "incorrectly applied property exemption of 11 U.S.C. § 522(d)(1)" to his real property and that the correct exemption was under T.C.A. § 26-2-301 limited at \$35,000.00.

¹⁴ ECF No. 120.

¹⁵ ECF No. 124. Mr. Seebeck claimed that Nationstar's Motion for Relief from Stay should be denied, because Nationstar failed to establish a factual and legal right to relief from the automatic stay, Nationstar was not the valid holder of the note, and Nationstar failed to meet its initial burden to demonstrate relief from the automatic stay.

¹⁶ ECF No. 125.

¹⁷ ECF No. 141.

III, stating concerns as to the fees that will accrue against the equity of Mr. Seebeck's real property.¹⁸ On September 23, 2024, an *Order Overruling Opposition to Trustee's Application for Order Approving Employment of James E. Bailey III and the Law Firm of Butler Show, LLP* was entered.¹⁹ On September 4, 2024, *Order Sustaining Trustee's Objection to Debtor's Claim of Exemptions* was entered.²⁰ On September 6, 2024, the *Order Granting Motion to Extend Time to Object to Discharge* was entered.²¹ On September 12, 2024, a *Consent Order Sustaining Trustee's Objection to Motion for Relief from Automatic Stay* ("Consent Order") was entered.²²

On September 16, 2024, the chapter 7 trustee filed an *Application to Immediately Employ Real Estate Professional* ("Application to Employ") Ashley Wisch of EXP Realty and a *Verified Statement of Realtor to be Employed*,²³ stating that the Realtor be entitled to "six percent (6%) commission with a list price of \$500,000," regarding Mr. Seebeck's real property.²⁴ On October 3, 2024, the *Order Granting Application to Immediately Employ Real Estate Professional* was entered.²⁵ On September 19, 2024, the chapter 7 trustee filed the *Trustee's Motion to Sell Real*

¹⁸ ECF No. 143.

¹⁹ ECF No. 163.

²⁰ ECF No. 149.

²¹ ECF No. 150.

²² ECF No. 153. The Consent Order stated that the chapter 7 trustee had 90 days from the entry of the order to obtain a contract to sell Mr. Seebeck's real property located at 2460 Horsham Drive, that if the chapter 7 trustee was unable to obtain a contract to sell the real property, then the automatic stay would be lifted and Nationstar would be entitled to begin foreclosure proceedings, and that the chapter 7 trustee should be allowed to continue efforts to sell the property and may file a motion to sell the property up until the foreclosure date.

²³ ECF No. 156.

²⁴ ECF No. 155.

²⁵ ECF No. 171.

Property (“Motion to Sell”).²⁶ On September 23, 2024, Nationstar filed an *Agreed Response to Trustee’s Motion to Sell Real Property*, claiming that Nationstar held a secured claim on Mr. Seebeck’s real property at 2460 Horsham Drive in the amount of \$191,679.82 and that the chapter 7 trustee was in the process of selling Mr. Seebeck’s real property.²⁷

On September 26, 2024, Mr. Seebeck filed a *Motion for Voluntary Dismiss[al] of Chapter 7 Bankruptcy* because Mr. Seebeck “strongly believe[d] he [would] have the ability to pay outside of bankruptcy” due to a “change in his financial circumstances” that would allow him to “pay his debts.”²⁸ On October 17, 2024, the chapter 7 trustee filed an *Objection to Motion for Voluntary Dismissal of Chapter 7 Bankruptcy*.²⁹

On November 26, 2024, the chapter 7 trustee filed a *Motion to Approve Settlement*.³⁰ The Motion to Approve Settlement stated that Mr. Seebeck provided a “Cashier’s Check to the Chapter 7 Trustee for \$67,617.02, which equal[ed] the amount of unsecured claims filed in the case” and laid out the following additional professional fees and commissions that were due as follows:

1. \$6,630.85 Chapter 7 Trustee statutory commission.
2. \$62.04 anticipated Chapter 7 Trustee expense for service of Notice of Trustee’s Final Report.

²⁶ ECF No. 159. The Motion to Sell stated that Mr. Seebeck’s real property would be “sold as is-where is with no warranties express or implied and all sales will be subject to approval by the trustee and the bankruptcy court,” that the transaction would be supported by sound business judgment, that the chapter 7 trustee would provide reasonable notice to interested parties, and the chapter 7 trustee would obtain a fair and reasonable price, that the chapter 7 trustee would exercise good faith in performing his statutory duties, that Mr. Seebeck’s real property was free and clear of liens and unpaid real property taxes, and Mr. Seebeck’s duty to cooperate with the chapter 7 trustee.

²⁷ ECF No. 164.

²⁸ ECF No. 167.

²⁹ ECF No. 173. The chapter 7 trustee claimed that Mr. Seebeck failed to establish cause for the voluntary dismissal of his chapter 7 case, the chapter 7 trustee was in the process of liquidating Mr. Seebeck’s assets that could result in full payment to the creditors, Mr. Seebeck had not obtained the assent to dismissal from all the creditors, and Mr. Seebeck failed to identify how or why the creditors would not be prejudiced by the dismissal of Mr. Seebeck’s chapter 7 case.

³⁰ ECF No. 177.

3. \$5,712.50 attorney fee and expenses for James E Bailey III and The Law Firm of Butler Snow.
4. \$3,210.00 professional fees for Ashely Wisch as Realtor for EXP Realty.

The total of these additional fees equals \$15,615.39.³¹

The Motion to Approve Settlement further provided:

Debtor pays and lump sum payment of \$67,617.02 and then \$651.00 per month on and by the 17th of each month beginning in January 2025 directly to the Chapter 7 Trustee with payments to conclude in January of 2027 to complete the payment of the additional \$15,615.39 in professional fees and commissions. No interest will be added to the Settlement Amount so long as the Debtor does not default in payment of any installments. The Debtor shall have fifteen (15) business days to cure any default in payment. The Debtor shall not be permitted more than three (3) defaults during the payment term. If the Debtor defaults in payment of the Settlement Amount and such default is not cured within 15 business days or, if the Debtor defaults more than 3 times during the payment term, the Trustee may file an Affidavit of Default and, thereupon, the Court shall (a) enter a judgment against the Debtor in the amount of (x) the default plus (y) the remaining balance of the Settlement amount (with said judgment to bear interest at the Federal Post-Judgment Interest Rate under 289 U.S.C. § 1961 if effect as of the date of the judgement); and (b) the Chapter 7 Trustee shall immediately file a motion to sell the real estate . . . to satisfy the aforementioned judgment.³²

On November 26, 2024, an *Application of James E. Bailey III and Butler Snow LLP for Allowance and Payment of Compensation and Reimbursement of Expenses as Counsel to the Trustee for the Period July 1, 2024 Through November 26, 2024* (“Application of James E. Bailey III”) was filed by James E. Bailey III (“Mr. Bailey”).³³ That same day, the Fee Application in the amount of \$3,210.00 was filed by the Realtor.³⁴ The Realtor claimed that it “immediately listed the property” as per the contract signed with the chapter 7 trustee and that the Realtor “handled multiple contracts with potential buyers and provided the Chapter 7 Trustee

³¹ ECF No. 177.

³² ECF No. 177.

³³ ECF No. 178.

³⁴ ECF No. 180.

with potential purchase offers.”³⁵ On November 27, 2024, an *Order Withdrawing Motion to Dismiss* was entered.³⁶ On December 2, 2024, an *Order Withdrawing Motion to Sell Property Free and Clear of Liens Under Section 363(f)* was entered.³⁷

On January 7, 2025, at 9:30 a.m., the Court held a hearing on the chapter 7 trustee’s Motion to Approve Settlement, the Application of James E. Bailey III, and the Fee Application. At the hearing, the Court approved the Application of James E. Bailey III and granted, in part, the chapter 7 trustee’s Motion to Approve Settlement.³⁸ The Court approved all aspects of the chapter 7 trustee’s Motion to Approve Settlement, except for the realtor fees of \$3,210.00.³⁹ The Court continued the hearing on the Fee Application to January 28, 2025 to allow the chapter 7 trustee to provide more information in support of the Realtor’s compensation.⁴⁰ The Court took the matter under advisement at the conclusion of the hearing.⁴¹

On January 30, 2025, the *Order Granting Motion to Approve Settlement in Part* (“Order Granting Motion”) was entered.⁴² The language in the Order Granting Motion was similar to the Motion to Approve Settlement, with the addition of a decretal paragraph that stated that the order

³⁵ ECF No. 180.

³⁶ ECF No. 187. At the hearing on November 19, 2024, at 9:30 a.m., Mr. Seebeck stated in open Court that he would voluntarily withdraw his motion to dismiss his chapter 7 case. Hearing on Debtor’s Motion to Voluntarily Dismiss Chapter 7 Bankruptcy on November 19, 2024 (“Hearing on Nov. 19, 2024”), at 10:03 – 10:06 a.m.

³⁷ ECF No. 188. At the hearing on November 19, 2024, at 9:30 a.m., the chapter 7 trustee stated in open Court that he would voluntarily withdraw his motion to sell Mr. Seebeck’s real property. Hearing on Trustee’s Motion to Sell Real Property on November 19, 2024 (“Hearing on Nov. 19, 2024”), at 10:03 – 10:06 a.m.

³⁸ Hearing on Ashley Wisch’s Application for Allowance and Payment of Professional Fees on January 7, 2025 (“Hearing on Jan. 7, 2025”), at 10:11 a.m.

³⁹ Hearing on Jan. 7, 2025, at 10:15 a.m.

⁴⁰ Hearing on Jan. 7, 2025, at 10:07 - 10:15 a.m.

⁴¹ Hearing on Ashley Wisch’s Application for Allowance and Payment of Professional Fees on January 28, 2025 (“Hearing on Jan. 28, 2025”), at 2:48 p.m.

⁴² ECF No. 192.

may be “amended for payment amount or duration of payments after the Application for Compensation for the Realtor Ashley Wisch has been adjudicated.”⁴³

B. Factual Background

On January 7, 2025, the Court conducted an initial hearing on the chapter 7 trustee’s Motion to Approve Settlement, the Application of James E. Bailey III, and the Fee Application. The chapter 7 trustee and Mr. Seebeck were present at the hearing, and Mr. Bailey appeared virtually. The United States Trustee (“U.S. Trustee”) was not present at the hearing.⁴⁴ At the hearing, the chapter 7 trustee laid out the terms of the Motion to Approve Settlement.⁴⁵ The chapter 7 trustee stated that in lieu of selling his real property, Mr. Seebeck provided “a check for \$67,617.02 to [the chapter 7 trustee]” and agreed to the chapter 7 trustee’s statutory commission of anticipated expenses for service of the chapter 7 trustee’s final report of \$5,712.50 to Mr. Bailey and \$3,210.00 professional fees for the Realtor, for a total of \$15,615.39 in professional fees and commissions that was to be paid \$651.00 monthly beginning on January 17, 2025, for 24 consecutive months.⁴⁶

When the Court inquired into how the realtor’s fee of \$3,210.00 was calculated, the chapter 7 trustee explained that the Realtor “marketed the property” and “fielded various offers to sell the property.”⁴⁷ The chapter 7 trustee added that there were “two or three offers, one was a cash offer, no provisions,” that “there might have been another two cash offers that [the Realtor] had gone back and forth with,” and that the Realtor was entitled to 6 percent commission

⁴³ ECF No. 192 (emphasis added).

⁴⁴ Hearing on Jan. 7, 2025, at 10:03 a.m.

⁴⁵ ECF No. 177.

⁴⁶ Hearing on Jan. 7, 2025, at 10:00 a.m.

⁴⁷ Hearing on Jan. 7, 2025, at 10:07 a.m.

contingent on the sale of Mr. Seebeck’s real property at a \$540,000.00 cash offer.⁴⁸ The chapter 7 trustee clarified that the \$3,210.00 realtor fee was included in the \$15,615.39 amount.⁴⁹ Mr. Seebeck interjected by stating that he was “curious” as to how a realtor could charge approximately \$428.00 per hour.⁵⁰

The Fee Application explained that the Realtor “immediately listed the property . . . per contract signed with the Chapter 7 Trustee” and that the Realtor “handled multiple contacts with potential buyers and provided the Chapter 7 Trustee with potential purchase offers.”⁵¹ The Fee Application was accompanied by an invoice in the amount of \$3,210.00 “in lieu of a commission on the sale of the real estate.”⁵² The invoice was presented as follows:

Invoice Date: Oct. 23, 2024		Amount Due: \$3,210.00	
Due Date: Oct. 23, 2024			
Bill To: 2460 Horsham Dr., Germantown, TN Sale			
# ITEMS & DESCRIPTION	QTY/HRS	PRICE	AMOUNT (\$)
1 Real Estate Hours	7.5	\$428.00	\$3,210.00
Subtotal			\$3,210.00
TOTAL			\$3,210.00 USD

At the January 28, 2025, hearing, the chapter 7 trustee, Mr. Seebeck, and the United States Trustee were in attendance. The Realtor was not present. The chapter 7 trustee stated that

⁴⁸ Hearing on Jan. 7, 2025, at 10:07 – 10:08 a.m. Mr. Bailey interjected by stating that the cash offer was “much less than” the \$540,000.00 amount that the chapter 7 trustee stated.

⁴⁹ Hearing on Jan. 7, 2025, at 10:10 a.m.

⁵⁰ Hearing on Jan. 7, 2025, at 10:12 a.m.

⁵¹ ECF No. 180.

⁵² ECF No. 180.

he had “no additional information to present to the Court in evidence at this time” supporting the reasonableness of the Realtor’s request for \$3,210.00 in compensation.⁵³ Instead, the chapter 7 trustee reiterated that the Realtor “marketed the property, she obtained two cash offers on the property, and then when Mr. Seebeck and [the chapter 7 trustee] entered into negotiations to stop the sale, there were offers, but we [did not] move forward with those offers.”⁵⁴ The chapter 7 trustee added that “there were no expenses” that the Realtor incurred.⁵⁵ The chapter 7 trustee argued that the Realtor was “entitled to commission on the sale that [did] not occur.”⁵⁶ When the Court asked for further clarification on the meaning of “marketing,” the chapter 7 trustee explained that the Realtor listed Mr. Seebeck’s real property on the Multiple Listing Service (“MLS”) database and obtained two offers.⁵⁷ No evidence was proffered or submitted supporting the \$3,210.00 in compensation requested. The Realtor neither appeared nor testified at the hearing. The United States Trustee had no objections to the Fee Application.⁵⁸ The Court took the matter of the Fee Application under advisement.⁵⁹

II. LEGAL DISCUSSION⁶⁰

The issue before the Court is whether \$3,210.00 is reasonable compensation pursuant to 11 U.S.C. § 330 when the real property was not sold, and no evidence was presented regarding

⁵³ Hearing on Jan. 28, 2025, at 2:41 p.m.

⁵⁴ Hearing on Jan. 28, 2025, at 2:41 p.m.

⁵⁵ Hearing on Jan. 28, 2025, at 2:42 p.m.

⁵⁶ Hearing on Jan. 28, 2025, at 2:41 p.m.

⁵⁷ Hearing on Jan. 28, 2025, at 2:43 p.m.

⁵⁸ Hearing on Jan. 28, 2025, at 2:46 p.m.

⁵⁹ Hearing on Jan. 28, 2025, at 2:55 p.m.

⁶⁰ The Court has subject-matter jurisdiction under 28 U.S.C. § 1334(b). Venue is proper in this District. 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A). The following shall constitute the court’s findings of fact and conclusions of the law in accordance with Rule 7052, Federal Rules of Bankruptcy Procedure.

services performed other than listing the real property in the MLS database and discussing the listing with some individuals who showed an interest in the real property.⁶¹

Section 330 of the Bankruptcy Code governs the compensation of professionals who are paid from the bankruptcy estate.⁶² Subsection 330(a)(1) provides:

(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, a consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a *professional person* employed under section 327 or 1103--

(A) *reasonable compensation* for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and
(B) reimbursement for actual, necessary expenses.⁶³

A “professional person” under subsection 330(a)(1) includes a realtor.⁶⁴ Here, the Realtor is a “professional person” under subsection 330(a)(1).

Subsection 330(a)(1)(A) and (B) provides that after a notice and a hearing, a court may award “reasonable compensation for actual, necessary services” rendered by professionals.⁶⁵ Bankruptcy courts enjoy wide discretion in determining reasonable fee awards.⁶⁶ Where a fee agreement exceeds the reasonable value of a professional service, bankruptcy courts may

⁶¹ Hearing on Jan. 28, 2025, at 2:41 and 2:42 p.m.

⁶² 11 U.S.C. § 330 (2025).

⁶³ 11 U.S.C. § 330(a)(1) (2025) (emphasis added).

⁶⁴ See *In re Waggoner*, 605 B.R. 222, 227 (Bankr. D.N.M. 2019) (explaining that real estate brokers are “professional persons” within the meaning of the section of the Bankruptcy Code governing employment of professional persons) (citations omitted); see also *In re Silver Oak Homes Ltd.*, 167 B.R. 389, 397 (Bankr. D. Md. 1994) (stating that the employment of “professional persons” include realtors) (citations omitted).

⁶⁵ 11 U.S.C. § 330(a)(1)(A)-(B) (2025).

⁶⁶ *In re Village Apothecary, Inc.*, 45 F.4th 940, 949 (citing *In re Boddy*, 950 F.2d 334, 338 (6th Cir. 1991)); accord *In re Mkt. Ctr. E. Retail Prop., Inc.*, 730 F.3d 1239, 1248-49 (10th Cir. 2013) (“[B]ankruptcy courts have wide discretion in awarding compensation to attorneys, trustees, and professionals so long as it is reasonable.” (quoting *In re Com. Fin. Servs.*, 427 F.3d 804, 810 (10th Cir. 2005))).

determine reasonable compensation.⁶⁷ Subsection 330(a)(2) provides that “[t]he court may, on its own motion or on the motion of the United States Trustee . . . , the trustee for the estate, or any other party in interest, award compensation that is less than the amount of compensation that is requested.”⁶⁸

Here, pursuant to the settlement agreement, Mr. Seebeck paid the chapter 7 trustee \$67,617.02 to retain his interest in the real property.⁶⁹ Additionally, Mr. Seebeck agreed to pay the chapter 7 trustee’s statutory commission of \$6,630.85, compensation and reimbursement of expenses in the amount of \$5,712.50 to Mr. Bailey (chapter 7 trustee’s counsel), and \$3,210.00 to the Realtor, for a total of \$15,615.39.⁷⁰ The chapter 7 trustee explained that the Realtor marketed the property and fielded (two or three) offers to sell Mr. Seebeck’s real property.⁷¹ The Court continued the hearing to January 28, 2025, to provide the chapter 7 trustee additional time to present evidence supporting the reasonableness of the compensation being sought on behalf of the Realtor.⁷² At the January 28, 2025 hearing, the chapter 7 trustee provided the Court with no new information.⁷³

Subsection 330(a)(3) provides, in its entirety:

(3) In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

⁶⁷ *In re Huffman*, 502 B.R. 205, 208-09 (Bankr. S.D. Ohio 2012) (explaining that bankruptcy courts may consider additional factors outside the “lodestar calculation” and can adjust the lodestar award either upwards or downwards to achieve a reasonable result).

⁶⁸ 11 U.S.C. § 330(a)(2) (2025).

⁶⁹ Hearing on Jan. 7, 2025, at 10:00 a.m.

⁷⁰ Hearing on Jan. 7, 2025, at 10:00 a.m. and ECF No. 177.

⁷¹ Hearing on Jan. 7, 2025, at 10:07 a.m.

⁷² Hearing on Jan. 7, 2025, at 10:31 a.m.

⁷³ Hearing on Jan. 28, 2025, at 2:55 p.m.

- (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;
- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.⁷⁴

The burden of proof “as to entitlement to and reasonableness of a fee request” is on the fee applicant pursuant to subsection 330(a)(1)(A).⁷⁵

While there was no objection to the \$3,210.00 request for the Realtor’s compensation, this Court is “still charged with conducting an independent examination of that application.”⁷⁶ In the Sixth Circuit, bankruptcy courts apply “the lodestar method of fee calculation” in determining reasonable attorney’s fees.⁷⁷ The “lodestar amount” is calculated by “multiplying the attorney’s reasonable hourly rate by the number of hours reasonably expended.”⁷⁸ Although the lodestar framework is primarily used to calculate attorney’s fees, the method has also been applied to real estate professionals.⁷⁹

⁷⁴ 11 U.S.C. § 330(a)(3) (2025).

⁷⁵ *In re McLean Wine Co., Inc.*, 463 B.R. 838, 846 (Bankr. E.D. Mich. 2011).

⁷⁶ *In re Kieffer*, 306 B.R. 197, 206 (Bankr. N.D. Ohio 2004).

⁷⁷ *In re Boddy*, 950 F.2d at 337 (6th Cir. 1991).

⁷⁸ *Id.*

⁷⁹ *In re Begun*, 162 B.R. 168, 171 (Bankr. N.D. Ill. 1993) (holding that the application of the lodestar analysis allowed an award of only \$75,000.00 to the real estate broker, which was half of the requested compensation, for efforts of selling the chapter 7 debtor’s real estate property).

Bankruptcy courts are given discretion in reducing real estate brokers' fees.⁸⁰ When evaluating fee applications for real estate brokers, courts apply the *Womack* factors.⁸¹ The *Womack* factors are “(1) the reasonableness of the fee, in light of what would have been paid in a transaction occurring in the open marketplace; (2) the amount in the estate from which such a payment can be made; (3) the amount of time and expense put into the sale of the Property by the Broker; (4) the amount brought into the estate by the sale; (5) the difficulty of finding a buyer for the Property; and (6) the amount which might be left to pay off other creditors after the Broker's fees and other administrative expenses are paid.”⁸²

Here, the Court finds that the first, second, fourth, and sixth factors in *Womack*, were not met because Mr. Seebeck's real property was never sold.⁸³ Before the Realtor could sell Mr. Seebeck's real property, Mr. Seebeck and the chapter 7 trustee reached a settlement agreement.⁸⁴ The Court also finds the third factor not satisfied. Neither the Realtor nor the chapter 7 trustee sufficiently described the services that the Realtor provided to Mr. Seebeck. The chapter 7 trustee explained that the Realtor “marketed the property,” “fielded various offers to sell the property,”

⁸⁰ *In re Schubert*, 143 B.R. 337, 343 (S.D.N.Y. 1992) (reducing of the broker's fees was affirmed because the broker played a minimal role in obtaining the sale); *In re American Mortgage & Invest. Services*, 158 B.R. 43 (Bankr. D.N.J. 1993) (finding that the appropriate broker's fee was two percent of the sale price, which was the equivalent of \$245.00 per hour for each of the brokerage firm's employees who worked on the sale); *In re Sergio, Inc.*, 39 B.R. 522, 525 (Bankr. D. Haw. 1984) (reducing the broker's commission from ten percent to three percent was appropriate because the broker did not produce the buyer, but only spent 320 hours regarding the sale of the property); *In re Clapp*, 36 B.R. 768, 771 (Bankr. D. Haw. 1984) (finding that the brokerage fee was reduced from \$62,500.00 to \$20,000.00 because two-thirds of the time and almost all expenses substantiated by the broker were for a subsequent resale and leaseback of the property which was not a condition of the sale of the property by the debtor).

⁸¹ *In re Begun*, 162 B.R. at 176 (citing *In re Womack, Inc.*, 1 B.R. 95, 98 (Bankr. D. Nev. 1979)).

⁸² *Id.*

⁸³ Hearing on Jan. 7, 2025, at 10:00 a.m.; see also *In re Concept Clubs, Inc.*, 125 B.R. 634, 637 (Bankr. D. Utah 1991) (showing that the debtor's real property had been sold in determining the commercial reasonableness of the broker's fee in light of what would be paid in a transaction in the open marketplace).

⁸⁴ ECF No. 180.

and obtained “two or three offers, one was a cash offer [with] no provisions.”⁸⁵ There was no sale. In her Fee Application, the Realtor only provided an invoice that billed for 7.5 hours at a price of \$428.00 per hour for a total of \$3,210.00 in realtor’s fees. The invoice provided no additional details as to what the 7.5 hours entailed. At the January 28, 2025, hearing, the chapter 7 trustee did not present any new information that was already presented at the January 7, 2025 hearing.⁸⁶ The chapter 7 trustee merely added that “there were no expenses” that the Realtor incurred and that the Realtor had obtained two offers by listing Mr. Seebeck’s real property on MLS.⁸⁷ The \$3,210.00 realtor fee was included in the \$15,615.39 amount.⁸⁸ On the fifth factor, the Realtor allegedly managed to obtain two offers, one being a cash offer.⁸⁹ In sum, neither the chapter 7 trustee nor the Realtor provided evidence to support the reasonableness of the requested compensation of \$3,210.00 to the Realtor. Hence, the Court disallows 5.5 hours of the Realtor’s time spent both listing Mr. Seebeck’s real property on MLS and obtaining the two offers.⁹⁰ Accordingly, the professional fees and commissions as presented in the Settlement Agreement is reduced from \$15,615.39 to \$13,261.39.⁹¹

III. CONCLUSION AND ORDER

For the reasons cited above, the Court finds and concludes that the *Application of Ashley Wisch of EXP Realty for Allowance and Payment of Professional Fees* is approved, in part, and the Realtor’s request for compensation should be reduced. Accordingly, it is **ORDERED**:

⁸⁵ Hearing on Jan. 7, 2025, at 10:07 – 10:08 a.m.

⁸⁶ Hearing on Jan. 28, 2025, at 2:41 p.m.

⁸⁷ Hearing on Jan. 28, 2025, at 2:42 – 2:43 p.m.

⁸⁸ Hearing on Jan. 7, 2025, at 10:10 a.m.

⁸⁹ Hearing on Jan. 7, 2025, at 10:07 a.m.

⁹⁰ Hearing on Jan. 7, 2025, at 10:07 a.m. and Hearing on Jan. 28, 2025, at 2:41 – 2:43 p.m.

⁹¹ ECF No. 177.

1. The Fee Application is **APPROVED, IN PART.**
2. The compensation requested in the Fee Application is reduced from \$3,210.00 to \$856.00.
3. The total settlement amount outlined in the Motion to Approve Settlement (ECF No. 177) is reduced from \$15,615.39 to \$13,261.39.
4. Consistent with the last decretal paragraph in the *Order Granting Motion to Approve Settlement, In Part* (ECF No. 192), the chapter 7 trustee may submit an amended order that changes the payment amount or duration of payments consistent with this Memorandum Opinion and Order on the Fee Application.

Copy of Memorandum and Order to be served on:

Debtor, Michael Edward Seebeck (Pro Se)
Chapter 7 Trustee, Brian Matthew Glass, Esq.
Attorney to Chapter 7 Trustee, James E. Bailey, III
United States Trustee
All Creditors on Matrix