

ORDERED.

Dated: July 13, 2012



*Eileen W. Hollowell*

Eileen W. Hollowell, Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In re:	)	Chapter 11
	)	
SUNSET PROFESSIONAL PARK,	)	Case No. 4:09-bk-32194-EWH
LLC,	)	
	)	
	)	
	)	<b>MEMORANDUM DECISION</b>
Debtors.	)	
	)	

**I. INTRODUCTION**

Sunset Professional Park, LLC (“Debtor”) filed a Chapter 11 voluntary petition on December 14, 2009. The course of the case has been labyrinthine as Debtor and its principal, Robert Schwartz (“Schwartz”), have pursued several adversary proceedings, endured conversion to Chapter 7 and back to Chapter 11, seen the appointment of a special master and a Chapter 11 Trustee, and most recently, initiated a protracted dispute over attorneys’ fees. The Court will resolve the questions concerning these fees by approving in full the applications submitted by Debtor’s counsel, Eric Sparks (“Sparks”), and Debtor’s special counsel, the Udall Law Firm (“Udall”).

1 **II. FACTUAL AND PROCEDURAL HISTORY**

2 On April 28, 2010, the Court entered an Order approving the employment of  
3 Sparks as Debtor's counsel. The Court entered two orders approving Udall as special  
4 counsel, one on January 13, 2010 and another on July 7, 2010. Sparks served as  
5 Debtor's attorney of record while Udall provided special services relating to the sale of  
6 Debtor's real property and a lawsuit brought against Bank of Oklahoma in September  
7 2010.  
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9 In light of a report filed by a special master appointed to review Debtor's finances  
10 and the totality of a record reflecting misappropriation of funds, the Court converted  
11 Debtor's case to Chapter 7 on December 19, 2011. On January 9, 2012, the case was  
12 re-converted to Chapter 11, and the Court directed the U .S. Trustee to appoint a  
13 Chapter 11 trustee to oversee administration of the estate. The Court approved the  
14 appointment of Sally Darcy ("Chapter 11 Trustee") on January 31, 2011.  
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16 Chapter 11 Trustee has since evaluated various requests for compensation filed  
17 by Sparks and Udall. Sparks filed a First Application for Allowance of Compensation and  
18 Reimbursement of Expenses on May 20, 2011 and a Second Application for Allowance  
19 of Compensation and Reimbursement of Expenses on July 13, 2011 (collectively "the  
20 Sparks Application"). In total, Sparks seeks \$84,565.54 in fees and costs. Udall filed its  
21 Application for Allowance of Compensation to Special Counsel on May 20, 2011, a  
22 Supplement to Application for Allowance of Compensation on July 12, 2011, and a  
23 Revised Application for Allowance of Compensation on February 23, 2012 (collectively  
24 "the Udall Application"). In total, Udall seeks \$69,616.70 in fees and costs. Schwartz,  
25 represented by his personal attorney, D. Michael Romano ("Romano"), filed objections  
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1 to the Sparks Application and the Udall Application (collectively “the Schwartz  
2 Objections”) on March 15, 2012.

3           At a March 1, 2012 hearing about compensating estate professionals, the Court  
4 ordered Chapter 11 Trustee to file a recommendation concerning compensation within  
5 sixty days. To compile this report, Chapter 11 Trustee reviewed the Sparks Application,  
6 the Udall Application, the Schwartz Objections, and met with Sparks, Udall attorneys,  
7 Schwartz, and Romano. On April 27, 2012, Chapter 11 Trustee filed Trustee’s  
8 Recommendation re Attorney Fees and Costs Requested by Eric Sparks, P.C. and the  
9 Udall Firm (“the Trustee’s Recommendation”). Chapter 11 Trustee recommended that  
10 Sparks and Udall receive full payment, noting that the Sparks Application and Udall  
11 Application were supported by detailed billing records and attorney feedback that  
12 indicated appropriate professional conduct. Further, Chapter 11 Trustee found the  
13 Schwartz Objections problematic because while contending that Debtor had been  
14 overcharged and inadequately represented, the Schwartz Objections failed to identify  
15 any specific time entries or billing records in dispute.  
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19           On May 7, 2012, Schwartz filed an objection to the Trustee’s Recommendation.  
20 Reprising the arguments from the Schwartz Objections, Schwartz argued that Sparks  
21 had failed to adequately communicate with Debtor; had failed to provide adequate  
22 planning, assistance, and counsel while charting a course for the bankruptcy case; and  
23 had made mistakes during the pendency of associated adversary proceedings and  
24 while preparing various documents for Debtor. Similarly, Schwartz argued that Udall  
25 had double billed Debtor by assigning multiple attorneys to the same tasks; had taken  
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1 credit for work that Romano completed on Debtor's behalf;<sup>1</sup> had misstated its expertise;  
2 and had failed to prevent adverse outcomes for Debtor.

3 On May 15, 2012, Schwartz also filed a Motion to Authorize Evidentiary Hearing  
4 concerning professional compensation. The Court convened a hearing on May 30, 2012  
5 to consider this Motion to Authorize and denied the request. On May 31, Chapter 11  
6 Trustee filed a Response to the objection lodged in opposition of the Trustee  
7 Recommendation. Chapter 11 Trustee noted that Schwartz had never identified specific  
8 time entries submitted by Sparks or Udall that supported the objections, that quality of  
9 work is inherently subjective, and that there was no persuasive showing that the Sparks  
10 Application or Udall Application should be denied. The Court took the matter under  
11 submission to determine the extent to which professional fees should be paid. It has  
12 conducted its own, independent review of the applications, the billing records, and all  
13 associated documents.  
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### 16 III. ISSUE

17 Are Sparks and Udall entitled to the full amounts each has requested in their  
18 respective fee applications?  
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### 20 IV. JURISDICTIONAL STATEMENT

21 Jurisdiction is proper under 28 U.S.C. §§ 1334 and 157(b)(2)(A).  
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23 <sup>1</sup> The process through which a debtor may retain counsel is laid out by 11 U.S.C. § 327 and Fed. R.  
24 Bankr. P. 2014. Professionals representing a debtor must apply to the Court for approval. See Atkins v.  
25 Wain, 69 F.3d 970 (9th Cir. 1995). Romano represents Debtor's principal, Schwartz, notwithstanding that  
26 at one point during this case, Debtor sought to replace Sparks with Romano. The Court denied the request  
27 because as Schwartz's counsel, Romano could not satisfy the requirement under § 327 that Debtor's  
28 counsel be disinterested. The conflict stemmed from Schwartz's status as a creditor and insider of Debtor.  
Nevertheless, the Court's review of the billing sheets submitted by Sparks and Udall strongly suggest that  
Romano acted as a type of "shadow" counsel for Debtor.

1 **V. DISCUSSION**

2 Section 330<sup>2</sup> provides that after notice and a hearing, a court may award an  
3 attorney employed by a debtor “reasonable compensation for actual, necessary  
4 services” and “reimbursement for actual, necessary expenses.” 11 U.S.C.  
5 § 330(a)(1)(A), (B). “Notice and a hearing” is a term of art in the Code defined as notice  
6 and hearing “appropriate in the particular circumstances.” 11 U.S.C. 102(1)(A).  
7 Bankruptcy courts have broad discretion as to the type of hearing to convene, and on  
8 occasion, “the hearing requirement may be satisfied without oral presentation of  
9 evidence and without oral argument.” Law Offices of David A. Boone v. Derham-Burk (In  
10 re Eliapo), 468 F.3d 592, 603 (9th Cir. 2006). “All that is required is that the applicant be  
11 given a reasonable opportunity to present legal argument and/or evidence to clarify or  
12 supplement his Application.” Id. (internal quotation omitted).  
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15 In the present case, the Court provided Sparks, Udall, Schwartz, and Chapter 11  
16 Trustee with appropriate notice and hearing. The Court held a hearing on March 1, 2012  
17 during which Chapter 11 Trustee conveyed Schwartz’s interest in objecting to the  
18 Sparks and Udall fees; Schwartz was afforded two weeks to file his objections;  
19 Chapter 11 Trustee entered a formal recommendation after conferring with all  
20 concerned parties and reviewing the Sparks and Udall applications; Sparks, Udall,  
21 Schwartz, and Chapter 11 Trustee were permitted to respond to all pertinent filings; and  
22 the Court held a hearing on May 15 during which it entertained the Motion for an  
23 evidentiary hearing and explained to the parties which fee-related matters were under  
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26 <sup>2</sup> Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C.  
27 §§ 101-1532. The Federal Rules of Bankruptcy Procedure, Rules 1001-9037, are referred to as “Rules.”  
The Federal Rules of Civil Procedure are referred to as “Civil Rules.”

1 consideration. There is no confusion regarding the facts of this matter, and the  
2 documentary record contains all necessary information.

3           When determining the amount of reasonable compensation for estate attorneys,  
4 a court must consider the time spent on the case, the rates charged, whether the  
5 services provided were beneficial to the estate or completion of the case, whether  
6 services were provided in a reasonable amount of time commensurate with the nature  
7 of the tasks, and whether the compensation is reasonable based on customary rates  
8 charged by similar professionals. 11 U.S.C. § 330(a)(3). A court shall not allow  
9 compensation for work that is unnecessarily duplicative, not reasonably likely to benefit  
10 the debtor's estate, or not necessary to the administration of the case. 11 U.S.C.  
11 § 330(a)(4). The Ninth Circuit BAP has instructed that to establish that services were  
12 necessary or beneficial, a professional "need demonstrate only that the services were  
13 reasonably likely to benefit the estate at the time rendered." Garcia v. U.S. Trustee,  
14 335 B.R. 717, 724 (9th Cir. BAP 2005).

15           The Court has independently reviewed the Sparks Application and the Udall  
16 Application and finds that both comply with Section 330(a)(3). As noted before, this  
17 case has been contentious and has demanded rigorous work by Debtor's attorneys.  
18 The billing records reflect those long hours. They do not demonstrate misfeasance.  
19 Sparks, an experienced Chapter 11 debtor's attorney, billed at an hourly rate of \$325  
20 per hour. That is well aligned with the market in Tucson, AZ for lawyers with his skill and  
21 experience. The hourly fees charged by his staff—an associate at \$150, a law clerk at  
22 \$100, and a paralegal at \$75—match the marketplace. Udall, a multi-service firm that  
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1 offers a range of professional expertise and extensive litigation experience, charged fair  
2 fees, as well. Partners billed at \$250 per hour, associates at \$200, and clerks at \$175.

3 Similarly persuasive are the specific time entries that Sparks and Udall  
4 submitted. When awarding fees, not only must a bankruptcy court apply Section  
5 330(a)(3), but it also should inquire into whether services were adequately documented  
6 and whether attorneys exercised reasonable billing judgment. Roberts, Sheriden &  
7 Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet), 251 B.R. 103, 109 (9th Cir.  
8 BAP 2000). Both applications contain meticulous notes that reflect not only categories  
9 of work, but also details of the tasks carried out. These records itemize the work  
10 performed, and they directly contradict a number of the issues raised by the Schwartz  
11 Objections. Notably, the Court did not see evidence that either Sparks or Udall  
12 neglected to communicate adequately with Debtor, engaged in inappropriate double  
13 billing, or otherwise committed unlawful or unethical judgment. Indeed, the Udall  
14 Application indicates that many hours of service were performed at no charge to the  
15 Debtor. Likewise, the hours billed by both firms and the Trustee Recommendation  
16 demonstrate that the services provided were reasonably likely to benefit the estate at  
17 the time rendered.  
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21 In contrast to the detailed records submitted by Sparks and Udall, the Schwartz  
22 Objections did not identify specific time entries that supported Schwartz's various  
23 arguments to reduce the fees sought by counsel. Later, when Schwartz objected to the  
24 Trustee Recommendation, he again neglected to provide the details necessary to  
25 support his contentions. Instead, Schwartz appears unhappy with the results obtained in  
26 both the Chapter 11 case and the associated litigation. The Court is not a forum for  
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1 such complaints. If Schwartz believes that Debtor's lawyers did something improper, he  
2 can raise those claims with the State Bar of Arizona.

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4 **VI. CONCLUSION**

5 The Sparks Application and the Udall Application comply with the law, both the  
6 Code and the Ninth Circuit conventions for evaluating fee applications. Meanwhile, the  
7 Schwartz Objections failed to explain with specificity why the Court should reach any  
8 other conclusion. Accordingly, in a separate Order that will be entered on the same day  
9 as this Memorandum Decision, the Sparks Application and the Udall Application are  
10 both granted in full.

11 Dated and signed above.

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14 To be NOTICED by the Bankruptcy  
15 Noticing Center ("BNC") to the following:

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17 7898 N. Ancient Indian Dr.  
18 Tucson, AZ 85718

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