

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

In re Case No. 05-10001-A-7
DDJ, INC., DC No. THA-7

Debtor.

Thomas H. Armstrong, attorney for James E. Salven, chapter 7 trustee, filed his application for payment of first interim fees and expenses on August 8, 2011. Joe and Connie Flores filed an opposition to the application. A hearing was held September 7, 2011, after which the court took the matter under submission. This matter is core under 28 U.S.C. § 157(b)(2)(A). This memorandum¹ contains findings of fact and conclusions of law required by Federal Rule of Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52.

In the fee application, Armstrong seeks court approval of fees in the amount of \$43,892.25 and reimbursement of expenses in

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1 the amount of \$706.64. The period covered by the application is
2 May 11, 2005, through August 1, 2011. The application is
3 supported by the declaration of James E. Salven, the trustee.
4 Mr. Salven states that the estate has approximately \$56,405.60 on
5 hand.

6 Mr. Armstrong also filed a declaration in support of his
7 application. In that declaration, he describes the work that he
8 has performed for Mr. Salven in the case. In addition, the
9 declaration attaches copies of his invoices describing in detail
10 the services performed. The court is cognizant of and takes
11 judicial notice of the extensive litigation in this case between
12 Mr. and Mrs. Flores and the chapter 7 trustee. That litigation
13 is described in Mr. Armstrong's declaration in support of the
14 application and in the opposition by Mr. and Mrs. Flores to the
15 application. It will not be reiterated here. Suffice it to say
16 that this litigation has required heavy involvement by counsel
17 for the trustee.

18 According to Mr. and Mrs. Flores, the court lacks
19 jurisdiction to approve fees and expenses to Mr. Armstrong
20 because of "dirty hands" and "numerous misrepresentations" to the
21 court by Mr. Armstrong. The court observes that in each
22 instance, the trustee has prevailed. While Mr. and Mrs. Flores
23 have appealed numerous orders of this court, none of those
24 appeals concern fees to Mr. Armstrong. None of those appeals
25 mean that the court lacks jurisdiction to hear and consider this
26 fee application.

27 Mr. and Mrs. Flores also observe that there are other
28 administrative expenses in the case, including the expenses of

1 Jeffrey Wall, as attorney for the DDJ, LLC chapter 7 trustee, and
2 special counsel, Henry D. Nunez. Additionally, Mr. Salven will
3 be requesting compensation as trustee.

4 Having reviewed the application, the court is persuaded that
5 it is appropriate to allow compensation to Mr. Armstrong for his
6 services as attorney to the chapter 7 trustee in this case.

7 This application is an interim application under Bankruptcy Code
8 § 331. Under § 330(a)(1), the court may allow to a professional
9 person "reasonable compensation for actual, necessary services"
10 and "reimbursement for actual, necessary expenses."

11 The court has considered the time Mr. Armstrong spent on the
12 services; the rates that he charged; whether the services were
13 necessary to the administration of the case or beneficial at the
14 time the services were rendered; whether the services were
15 performed within a reasonable amount of time; and Mr. Armstrong's
16 skill and experience in the bankruptcy field. Having reviewed
17 the application, the court is persuaded that the services were
18 necessary and beneficial. The trustee has prevailed in the
19 litigation and the motions in this court. The services were
20 performed within a reasonable time and are reasonable based on
21 customary compensation charged by comparably skilled
22 practitioners. There does not appear to be any unnecessary
23 duplication of services of services that were not reasonably
24 necessary to benefit the estate or necessary to the
25 administration of the case.

26 For the foregoing reasons, the court will enter an order
27 approving the application. However, due to the potential
28 insolvency of the chapter 7 estate, pending a final report and

1 accounting, the trustee may, in his discretion, pay Mr. Armstrong
2 an amount up to but not exceeding \$30,000 in fees as well as
3 reimbursement of the actual expenses in the amount of \$706.64.
4 While the entire amount of fees is approved, only up to \$30,000
5 may be paid, pending a final report. A separate order will
6 issue.

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8 DATED: November 17, 2011.
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12 WHITNEY RIMEL, Judge
13 United States Bankruptcy Court
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