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5 IN THE UNITED STATES BANKRUPTCY COURT
6 FOR THE DISTRICT OF ARIZONA
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8 In re

9 PHILIP RODAKIS,
10 RODAKIS GENERAL PARTNERSHIP,
AND PDR ENTERPRISES, INC.

11 Debtors.

Chapter 7

Case No. 2:06-bk-04123-SSC, et al.

(Substantively Consolidated)

(Not for Publication- Electronic Docketing
ONLY)

12
13 MEMORANDUM DECISION GRANTING,
14 IN PART, AND DENYING, IN PART, THE
ADMINISTRATIVE EXPENSE CLAIM OF
DEBORA RODAKIS

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16 I. INTRODUCTION

17 On October 14, 2008, Debora Rodakis filed a motion seeking allowance of an
18 administrative expense claim for the legal fees and costs that she incurred with respect to an
19 involuntary Chapter 11 proceeding that she filed against the Rodakis General Partnership and
20 with respect to a voluntary Chapter 11 proceeding filed by Philip Rodakis. Counsel for Anthony
21 H. Mason, the Chapter 7 Trustee, filed a partial objection to the relief requested. The Court
22 conducted a hearing on the matter, at which both parties requested that the matter be deemed
23 under advisement and that the Court render a decision on the pleadings that had been filed
24 without any further hearings on the matter. This Decision constitutes the Court's decision on the
25 matter, with the findings of fact and conclusions of law set forth herein. Fed. R.Bankr. P. 7052.
26 The Court has jurisdiction over this matter, and this is a core proceedings. 28 U.S.C. §§1334 and
27 157 (West 2008).

1 II. FACTUAL HISTORY

2 On November 21, 2006, Debora Rodakis filed an involuntary Chapter 11
3 bankruptcy petition against the Rodakis General Partnership (“Partnership”), which was assigned
4 Case No. 2:06-BK-03904-RTB. On December 6, 2006, Philip Rodakis commenced a voluntary
5 Chapter 11 proceeding, which was assigned Case No. 2:06-BK-04123-SSC (“Individual
6 Debtor”). The Individual Debtor and the Partnership share similar creditors, including, among
7 others, John and Irene Rodakis, the Individual Debtor’s parents.

8 On December 22, 2006, Arboleda Brechner (the “AB law firm”) was appointed
9 counsel for the Individual Debtor. In the Application seeking employment of counsel, the AB
10 law firm disclosed the receipt of a \$5,000 retainer, which was applied to pre-filing consultation
11 and bankruptcy planning.¹ The Partnership case was being administered by another judge of this
12 Court, and on March 22, 2007, the AB law firm simply filed a Notice of Appearance in the case.²
13 On April 30, 2007, the AB law firm filed the Partnership’s Schedules and Statement of Affairs.³
14 According to the Disclosure of Compensation, filed by the AB law firm in the Partnership case,
15 the AB law firm received the sum of \$2,000, and the source of the compensation was the
16 Partnership.⁴ The electronic docket reflects, however, that the AB law firm did not file a
17 separate application to be appointed counsel for the Partnership.

18 At the Section 341 Meeting of Creditors in the Partnership case, the AB law firm
19 conceded that John Rodakis paid the retainer to the Partnership Debtor.⁵ As noted previously,
20 John Rodakis is a creditor of both Debtors and is the parent of the Individual Debtor. At the
21 same Section 341 Meeting of the Partnership Debtor, the Individual Debtor testified that a

22 1. See Docket Entry No. 13 in the Individual Debtor case.

23 2. See Docket Entry No. 12 in the Partnership case.

24 3. See Docket Entry No. 17 in the Partnership case.

25 4. Id.

26 5. See Docket Entry No. 18 in the Partnership case.

1 granted by order dated August 2, 2007.¹⁰ On August 1, 2007 a Stipulated Motion to Convert the
2 Partnership case to one under Chapter 7 was filed by Debora Rodakis and the Debtor, with the
3 same Trustee to be appointed in the case.¹¹ On August 6, 2007, this Court ordered that the AB
4 law firm deposit its retainers in the Individual and Partnership Debtor cases, or the aggregate
5 amount of \$7,500, with the Court registry account pending further order of the Court, including a
6 final determination by the AB law firm whether it sought compensation for the services rendered
7 for one or both Debtors.¹² Ultimately because of the conflict of interest, the AB law firm
8 requested that it be permitted to withdraw as counsel for the Individual Debtor.¹³ The Motion
9 was granted.¹⁴ On September 5, 2007, the Partnership case was converted to one under Chapter
10 7,¹⁵ and the Trustee in the Individual Debtor case was also appointed the Trustee in the
11 Partnership case.

12 Because of the intertwined entities, and the failure to keep appropriate books and
13 record, the Court ultimately ordered the substantive consolidation of a non-debtor entity, the
14 restaurant corporation, with the estates of the Individual Debtor and the Partnership, with all
15 estates to operate as a “single economic unit.”¹⁶ After notice and hearing, the Court granted the
16 Trustee’s Motion for Substantive Consolidation.¹⁷ On September 3, 2008, the AB law firm
17 entered into a Stipulated Order with the Trustee waiving any claim that it might have had to the
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19 **10.** See Docket Entry No. 77 in the Individual Debtor case.

20 **11.** See Docket Entry No. 35 in the Partnership case.

21 **12.** See Docket Entry No. 85 in the Individual Debtor case.

22 **13.** See Docket Entry Nos. 107 and 109 in the Individual Debtor case.

23 **14.** See Docket Entry No. 112 in the Individual Debtor case.

24 **15.** See Docket Entry No. 42 in the Partnership case.

25 **16.** See Docket Entry No. 175 in the Individual Debtor case.

26 **17.** See Docket Entry No. 192 in the Individual Debtor case.

1 \$7,500 which was deposited with this Court.¹⁸ After appropriate notice and hearing, the Trustee
2 also entered into a Stipulation with the Individual Debtor, allowing him to keep certain assets of
3 the Individual Debtor’s estate, but releasing any interest that he might have to the \$7,500 in
4 retainer assets, with the funds becoming property of the consolidated estates.¹⁹

5 In the current Motion, Debora Rodakis now seeks allowance of an administrative
6 expense claim for her counsel in connection with the filing of the Partnership involuntary
7 petition, the disqualification motion of the AB law firm, and the request to appoint a Trustee.
8 The amount requested is \$9,030 in legal fees and \$1,039 in costs. The Trustee does not oppose
9 the request that costs in the amount of \$1,039 to file the involuntary Chapter 11 filing against the
10 Partnership be allowed as a Chapter 11 administrative expense of the consolidated estates. The
11 Trustee also does not oppose allowing a reduced legal fee of \$2,490, for the filing of the
12 involuntary petition, as an administrative expense claim of the Chapter 11 consolidated estates.

13 III. LEGAL ANALYSIS

14 Counsel for Debora Rodakis seeks allowance of its administrative expense claim
15 pursuant to 11 U.S.C. §503(a), (b)(1)(A), (b)(3)(A)-(B), (b)(3)(D), and/or (b)(4) (West 2008).²⁰
16 Section 503(a) simply focuses on the timing of the filing of such a request for an administrative
17 expense. The Trustee does not assert that this request was untimely filed.

18 Counsel for Ms. Rodakis next asserts that it is entitled to compensation as “actual,
19 necessary costs or expenses of preserving the estate....” Unfortunately, other than a cursory
20 reference to Section 503(b)(1)(A), counsel provides no support that his firm’s fees and costs
21 somehow fall within the parameters of that Subsection. An administrative expense must (1) arise
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23 **18.** See Docket Entry No. 273 in the Individual Debtor case.

24 **19.** See Docket Entry Nos. 264 and 280 in the Individual Debtor case.

25 **20.** Given the filing dates of the involuntary and voluntary proceedings, the
26 BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005
27 (“BAPCPA”) must be considered in rendering this Decision.

1 from a transaction with the debtor in possession, and (2) directly and substantially benefit the
2 estate. Abercrombie v. Hayden Corp. (In re Abercrombie), 139 F.3d 755, 757 (9th Cir. 1998).
3 Ultimately, Ms. Rodakis and her counsel carry the burden of proof of any fee application. In re
4 DAK Indus., Inc., 66 F.3d 1091, 1094 (9th Cir. 1995); In re Megafoods Stores, Inc., 163 F.3d
5 1063, 1071-72 (9th Cir. 1998). The Court concludes that Ms. Rodakis and her counsel have not
6 carried their burden of proof under this Subsection.

7 Counsel also seeks payment under Section 503(b)(3)(A), (B), or (D). These
8 Subsections provide as follows:

- 9 (b) After notice and a hearing, there shall be allowed administrative expenses. . .
10 [for] –
11 (3) the actual, necessary expenses, other than compensation and
12 reimbursement specified in paragraph (4) of this subsection, incurred by
13 –
14 (A) a creditor that files a petition under [S]ection 303 of this title;
15 (B) a creditor that recovers, after the court's approval, for the
16 benefit of the estate any property transferred or concealed by
17 the debtor;
18 (D) a creditor. . . in making a substantial contribution in a case
19 under chapter 9 or 11 of this title.

20 These Subsections focus on the actual, necessary expenses, other than
21 compensation, that would be incurred by a creditor that files an involuntary petition against a
22 debtor. In this case, the creditor did incur the expense of \$1,039 to file the involuntary Chapter
23 11 petition against the Partnership. This action prevented the Partnership property from
24 proceeding to a trustee's sale by an insider, the parent of the Individual Debtor. The Trustee
25 does not dispute that this expense should be paid. The Court agrees. The actions of this creditor
26 did preserve the Partnership estate for the benefit of all creditors. However, since the
27 Partnership case was ultimately converted to a Chapter 7 proceeding, and the Debtors' estates
28 and the non-debtor estate were substantively consolidated, the creditor's claim for this expense
must be considered a Chapter 11 administrative expense, which will be paid after all Chapter 7
administrative expenses of the consolidated estates are paid in full. *See* 11 U.S.C. §726(b) (West
2008). Ms. Rodakis and her counsel also seek expenses for her recovery, after court approval of

1 any property transferred or concealed by the debtor for the benefit of the estate, or recovery of
2 expenses for making a substantial contribution to the case. However, Ms. Rodakis and her
3 counsel have set forth no other expenses which fall within the parameters of Section
4 503(b)(3)(B) or (b)(3)(D). The only expense incurred was for the filing fee of the involuntary
5 petition which is already covered by Section 503(b)(3)(A). Although there is a decision, In re
6 Sedona Institute, 220 B.R. 74 (9th Cir. BAP 1998), arising from a case filed in the District of
7 Arizona which allowed the recovery by the creditor of its attorneys' fees and costs when no
8 expense had been shown under Section 503(b)(3), the Court is unable to apply it to the facts
9 herein. In Sedona Institute, the Panel concluded that the creditor had made a substantial
10 contribution in the case. That finding alone was apparently sufficient for the Panel to conclude
11 that reasonable professional fees could be awarded under Section 503(b)(4). Id. at 81.

12 In this case, Ms. Rodakis and her counsel have not made the requisite showing
13 that she made a substantial contribution to the case. Once appointed, the Trustee substantively
14 consolidated the estates of the Individual and Partnership Debtors and the non-debtor entity and
15 aggressively pursued the recovery of the assets of the estates and undertook the necessary
16 settlements with creditors. The Court concludes that although Ms. Rodakis prevented the
17 foreclosure of the Partnership property by filing the involuntary proceedings, it was the Trustee
18 that labored to recover assets for the benefit of creditors. Thus, the Court concludes that Ms.
19 Rodakis did not make a substantial contribution in the case.

20 Under the analysis set forth in Sedona Institute, if the Court is unable to find that
21 the creditor made a substantial contribution, the Court never reaches the issue of whether
22 reasonable compensation should be paid to her counsel. Moreover, given the plain language of
23 Section 503(b)(3)(B) or (b)(3)(D), which requires that some type of expense must be incurred by
24 the creditor in recovering property for creditors or in making a substantial contribution in the
25 case as a precursor for the creditor to recover the reasonable compensation of her professionals,
26 the Court questions the ongoing precedential effect of Sedona Institute. The Supreme Court has
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1 in a case under this title...” *See* 11 U.S.C. §503(b)(4)(West 2008). The Trustee, although with
2 some concern about whether the compensation has been adequately described, would allow
3 \$2,490 in attorneys’ fees for the filing of the involuntary petition as a Chapter 11 administrative
4 expense. The Court has carefully reviewed the time entries submitted by Ms. Rodakis’ counsel
5 and sets forth its mixed findings of fact and law as to the services rendered hereinafter.

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7 A. Services re Involuntary Petition

8 Counsel requests \$2,490 for 8.3 hours of time at the rate of \$300 per hour. There
9 is some “lumping of time entries” that should have been broken down by Counsel. However, the
10 Court concludes that spending 1.0 hour, on November 17, 2006, discussing and reviewing the
11 documents with his client as to the filing of an involuntary petition against the Partnership is
12 reasonable, that is, that the time, nature, and extent of such services is reasonable and the hourly
13 rate for such services is reasonable. The 2.50 hours expended by Counsel to conduct research
14 and prepare a memorandum is reasonable even though Counsel also reviewed and analyzed
15 documents, prepared the petition and summons, and did other tasks during the same time-period
16 on November 20, 2006. Thus, although the various tasks were lumped in the entry, the Court
17 concludes that just preparing the memorandum on the normal issues resulting from
18 contemplating the filing of an involuntary petition would have taken more than 2.50 hours.

19 Based upon the test set forth above, the Court concludes that 2.50 hours at \$300
20 per hour is reasonable compensation for the services rendered. However, the Court cannot find
21 that the other entries provide value to the consolidated bankruptcy estates. For instance, Counsel
22 chose to file an involuntary Chapter 11. If he had filed an involuntary Chapter 7, he could have
23 requested the immediate appointment of a Chapter 7 Trustee that could have handled issues
24 regarding the imposition of the automatic stay, presented an order for relief once the Partnership
25 did not oppose the relief requested, review orders, and take other action as necessary to preserve
26 the estate. As such, with no explanation, the Court is unable to conclude that the additional

1 services regarding the filing were reasonable or provided value to the estate. The Court must
2 deny these fees.

3 The Court finds that Counsel should be allowed a Chapter 11 administrative
4 expenses for 3.50 hours at \$300 per hour, or the amount of \$1,050.

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6 B. Services re Disqualification

7 Although the Trustee would award no compensation for these services, the Court
8 concludes that some compensation should be paid. First, Counsel attended the Section 341
9 Meeting of Creditors and learned important information about the Partnership and Individual
10 Debtors and their counsel who was attempting to represent numerous adverse interests. Because
11 of the pressing of these issues by Ms. Rodakis' Counsel, the firm was able to recover the sum of
12 \$7,500 to be placed in the Court's registry account. Counsel learned sufficient information to
13 press for the appointment of a trustee which would benefit all creditors of all estates. Perhaps
14 another way to analyze these facts is for the Court to conclude that the information acquired at
15 the Section 341 Meeting of Creditors should be considered on its own, and was instrumental in
16 Ms. Rodakis' Counsel acting on a number of matters at once. As such, the Court shall award the
17 2.0 hours at the Meeting of Creditors as being reasonable compensation for services that
18 ultimately were of value to these estates. The Court concludes that the other services relating to
19 the disqualification of counsel were not of direct benefit or value to the estates, since the issue
20 was ultimately pursued and resolved by the Trustee.

21 The Court finds that Counsel should be allowed a Chapter 11 administrative
22 expense for 2.0 hours at \$300 per hour, or the amount of \$600.

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24 C. Services re Trustee's Appointment

25 Unfortunately, Ms. Rodakis' Counsel chose to file one motion seeking conversion
26 of the Chapter 11 Individual Debtor proceedings to Chapter 7 or the appointment of a Chapter 11
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1 Trustee. The Court did conduct hearings on the Motion, but the Individual Debtor ultimately
2 chose to file his own Notice concerning his voluntary conversion of his case to one under
3 Chapter 7. Thus, it is hard to quantify the specific value of these services in the context of these
4 consolidated estates. Once the Individual Debtor's case was converted, the Partnership case
5 converted to one under Chapter 7 in approximately one month's time, and the one Trustee for the
6 two estates subsequently took over the laboring oar of substantively consolidating the Debtor
7 and non-debtor estates, liquidating the estates' assets, and resolving claims against the
8 consolidated estates. Thus, on this record, the Court can see no basis, as a matter of law or fact,
9 to award any compensation for services rendered on this consolidated Motion.

10 The Court finds that Counsel shall have no claim for the services rendered as to
11 the appointment of a Chapter 11 trustee or for the other relief requested in the Motion.

12 13 IV. CONCLUSION

14 The Court concludes that Ms. Rodakis, having demonstrated that she filed a
15 petition under 11 U.S.C. § 303 is entitled to an administrative expense under 11 U.S.C. §
16 503(b)(3)(A). However, Ms. Rodakis, having failed to demonstrate that she recovered estate
17 property under 11 U.S.C. § 503(b)(3)(B) or provided a "substantial contribution" to the estate
18 under 11 U.S.C. § 503(b)(3)(D), is not entitled to an administrative expense under either of these
19 subsections. Accordingly, the Motion is granted, in part, and denied, in part. Ms. Rodakis shall
20 have a Chapter 11 administrative expense of \$1,039 for the filing of the Partnership involuntary
21 case. Her Counsel shall also be allowed, as a Chapter 11 administrative expense claim, the
22 amount of \$1,650 for the attorneys' fees incurred by him representing Ms. Rodakis in these
23 consolidated cases. Since Counsel has avowed that it advanced the filing fee on behalf of his
24 client, the aggregate amount of \$2,689 shall be allowed as a Chapter 11 administrative expense
25 claim, which shall be paid to Ms. Rodakis' counsel, when, and if, there are sufficient funds in the
26 consolidated estates that payment will not prejudice claimants of equal or higher priority. The
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1 Court shall execute a separate order incorporating this Decision.

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3 DATED this 30th day of March, 2009

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6 Honorable Sarah Sharer Curley
7 United States Bankruptcy Judge
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