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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re

DARLENE DIANE HEALY,

No. 00-12104

Debtor(s).

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Memorandum re Trustee's Compensation

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The court has determined that Chapter 7 trustee Jeffrey Locke has done an excellent job in this case, returning a dividend of 100% plus interest to the unsecured creditors, whose claims total about \$95,000.00. The amount Locke seeks as compensation, \$11,028.46, seems fair and reasonable to the court. The U.S. Trustee does not disagree as to the value of Locke's services, but argues that the court has no power to award this amount because it exceeds the statutory maximum fee set forth in § 326(a) of the Bankruptcy Code.

One of the U.S. Trustee's arguments is *de minimus*. His substantial argument is that a deposit of \$7,800.00 which Locke held for a time and then refunded to the potential purchasers cannot be considered when computing the maximum fee.

There is one reported case on the issue. In *In re Caddie Constr. Co.*, 195 B.R. 797, 799 (Bankr. M.D. Fla. 1996), a bankruptcy court held that a deposit which was received by trustee on prospective sale but which was returned because sale was never consummated could not be considered in computing the maximum trustee fee. However, the logic of that case seems flawed. The court there ruled that the deposit could not be considered because it was not property of the estate. However, the statute provides that the maximum fee is computed by considering "all moneys disbursed or turned over in the case by the

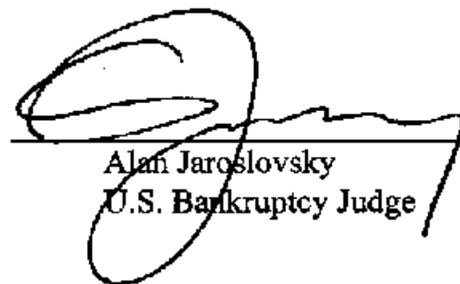
1 trustee to parties in interest . . . .” Since the statute does not limit computation to property of the estate,  
2 it seems improper for a court to write such a restriction into the Code.<sup>1</sup>

3 The person who gave Locke the deposit was certainly a party in interest as to the deposit. The  
4 Bankruptcy Code provides that the maximum fee is computed on *all* moneys disbursed or turned over.  
5 The returned deposit can therefore be considered in determining the maximum fee.

6 The court feels compelled at this point to remind all parties that a maximum fee is not the proper  
7 fee for a trustee in every case. Often, a fair and adequate fee is considerably less than the maximum. In  
8 this case, the trustee did a very good job and deserves a healthy fee, probably more than the maximum.  
9 The court therefore awards as much as it can.

10 For the foregoing reasons, the U.S. Trustee’s objection is overruled except as to the *de minimus*  
11 portion of his objection. Locke shall be awarded a fee of \$11,020.00; his costs will be allowed as filed.  
12 He shall submit an appropriate form of order.

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14 Dated: November 3, 2003

  
Alan Jaroslovsky  
U.S. Bankruptcy Judge

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26 <sup>1</sup>The court cannot help noting that the U.S. Trustee himself benefits from a liberal definition of  
“disbursement” as meaning any and all funds paid out for any reason. *In re Cash Cow Service of  
Florida, L.L.C.*, 249 B.R. 33, 37 (Bkrcty.N.D.Fla. 2000).