

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO**

In re: QUICK CASH, INC.,
Debtor.

No. 11-15-11800 JA

**ORDER REGARDING COMPLIANCE WITH
11 U.S.C. § 327, 11 U.S.C. § 329, Fed.R.Bankr.P. 2014 and Fed.R.Bankr.P. 2016**

At a status conference held March 8, 2016, counsel for the Consumer Claimant's Committee asserted that Quick Cash, Inc. ("Quick Cash" or "Debtor") has retained attorneys to provide legal advice to the Debtor without Court approval of their employment, and asked the Court to require Quick Cash to seek approval of employment of such counsel. The Court elected to treat this request as an oral motion to compel all counsel providing advice to the Debtor to file an application for employment. Quick Cash argued that the Debtor's principals sought advice of a consumer attorney on behalf of a new company, and that it is unnecessary for a professional who will not seek compensation from the Debtor's bankruptcy estate to file an employment application even if Debtor takes advantage of such advice in its business. The Court took the matter under advisement. As explained more fully below, the Tenth Circuit's decision in *In re Land*, 943 F.2d 1265 (10th Cir. 1991) is controlling and requires the Debtor to seek Bankruptcy Court approval of the employment of all attorneys providing professional services to the Debtor, even if they will not be paid for such services from the bankruptcy estate.

DISCUSSION

Several Bankruptcy Code sections and Rules govern the disclosure and employment requirements for attorneys providing professional services to a Chapter 11 debtor. *See* 11 U.S.C. § 327, 11 U.S.C. § 329, Fed.R.Bankr.P. 2014, and Fed.R.Bankr.P. 2016. Section 329(a) requires disclosure by any attorney representing a debtor to file a statement concerning

compensation, regardless of whether such attorney will seek compensation from the bankruptcy estate. *See Land*, 943 F.2d at 1267 (observing that § 329(a) applies “[r]egardless of whether an attorney representing a debtor intends to seek compensation from the bankruptcy estate”). It provides:

Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

11 U.S.C. § 329(a).

Employment of professionals is governed by 11 U.S.C. § 327. One primary purpose “of § 327 is to uncover any potential conflicts of interest between the attorney and the estate.” *In re Land*, 116 B.R. 798, 805 (D.Colo. 1990), *aff’d*, 943 F.2d 1265 (10th Cir. 1991). Similarly, the disclosure requirements in Fed.R.Bankr.P. 2014, applicable when seeking employment under 11 U.S.C. § 327, are designed to reveal conflicts that could disqualify an attorney for lack of disinterestedness. *See* Fed.R.Bankr.P. 2014(a) (requiring an application for employment to be “accompanied by a verified statement of the person to be employed setting forth the person’s connections with the debtor, creditors, any other party in interest, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.”).

In *Land*, an attorney who provided services to the debtor argued that he was not required to seek employment under 11 U.S.C. § 327 because a majority of his compensation was paid by third parties, and not from the bankruptcy estate. *Land*, 116 B.R. at 805. The district court rejected this argument, concluding that the attorney’s employment was nevertheless subject to bankruptcy court approval under 11 U.S.C. § 327(a). *Id.* at 806. Requiring the attorney to return

the fees to the third-party under 11 U.S.C. § 329(b)(2) was appropriate. *Id.* The Tenth Circuit affirmed, finding that “[r]eturn of compensation received is an appropriate remedy where the debtor or the attorney fails to obtain the bankruptcy court’s approval of the attorney’s employment.” *Land*, 943 F.2d at 1267 (citations omitted).¹ Thus, in accordance with *Land*, “the requirements of § 327(a) are not conditioned on the attorney’s seeking compensation from the estate under § 330(a).” *In re Harlan*, 2006 WL 6593255, *4 (Bankr.S.D.Ca. Oct. 4, 2006) (quoting *In re Peterson*, 163 B.R. 665, 669 (Bankr.D.Conn. 1995), citing *Land*, and other cases holding the same). *See also, In re Boh! Ristorante, Inc.*, 99 B.R. 971, 972-73 (9th Cir. BAP 1989) (recognizing that court approval of employment is required for attorneys providing services to the debtor, even when the payment for such services is from a third-party source).

A debtor must seek court approval of the employment of an attorney who forms an attorney-client relationship with and provides legal advice to the debtor, even if such attorney has been employed by a non-debtor third-party and will not seek compensation from the bankruptcy estate. This provides the Court with the necessary oversight to ensure that the attorney is disinterested and competent. *See* 3 Collier on Bankruptcy §327.03 (Alan N. Resnick and Henry J. Sommer, eds., 16th ed. Rev. 2012) (prior court approval of employment under §327(a) “gives the court an opportunity to review any conflicts, the professional’s competency, and the necessity for the services performed.”).

Here, Debtor’s counsel represented to the Court that the principals of the Debtor sought advice from a consumer-law attorney to ensure that the contracts to be used in their business comply with applicable consumer protection laws. If an attorney-client relationship between the consumer-law attorney and the Debtor is formed, and the attorney gives legal advice to the

¹ A return of legal fees is not the only sanction a court may impose for failure to comply with 11 U.S.C. §§ 327 and 329 and Bankruptcy Rules 2014 and 2016.

Debtor, the Debtor must seek and obtain court approval of the attorney's employment under 11 U.S.C. § 327(a), regardless of whether a third party had retained and will pay the attorney. The attorney is also subject to the disclosure requirements of 11 U.S.C. § 329 and Bankruptcy Rules 2014 and 2016.

WHEREFORE, IT IS HEREBY ORDERED, that any attorney forming an attorney-client relationship with the Debtor and who provides legal advice to the Debtor must make the disclosures required under 11 U.S.C. §329, and the Debtor must seek approval of such attorney's employment under 11 U.S.C. § 327(a), even where the attorney is acting in a consulting capacity, had been retained by a third party, and does not seek compensation for such services from the bankruptcy estate. The Debtor is directed to promptly provide a copy of this order to any such attorney.


ROBERT H. JACOBVITZ
United States Bankruptcy Judge

Date entered on docket: March 14, 2016

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