

Department of Justice
Executive Office for United States Trustees

Final Agency Action
Case No. 00-0006

Review of the Decision of the
United States Trustee for [redacted]
Regarding [redacted]

[Redacted] (“trustee”), a member of the chapter 7 panel for the United States Bankruptcy Court for the [redacted] since January 10, 1994, seeks review under 28 C.F.R. § 58.6 of a decision by the United States Trustee to terminate her receipt of new case assignments and not reappoint her to the panel of trustees upon the expiration of her term on December 31, 2000. I affirm the United States Trustee’s decision based upon the record before me.¹

Course of this Proceeding

The United States Trustee commenced a regularly scheduled Field Examination of the trustee during the week of June 26, 2000, selecting sixteen cases administered by the trustee to review in detail. A Field Examination is conducted by personnel of the United States Trustee Program and is designed to identify whether a trustee’s asset administration system and internal controls are adequate to safeguard bankruptcy estate funds. See 1998 Handbook for Chapter 7 Trustees at 9-16. On October 24, 2000, a Report of the Field Examination (“Field Examination Report”) was issued which concluded that

the quality of the trustee’s internal controls, financial record keeping, reporting procedures, and asset administration procedures was [sic] **inadequate** for safeguarding of bankruptcy estate funds in accordance with the [1998] Handbook [for Chapter 7 Trustees].

¹The record includes the United States Trustee’s Notice of Decision to Terminate the Assignment of Cases and Notice of Decision not to Renew Term Appointment dated October 26, 2000 (“Notice”), which contained the Field Examination Report; the trustee’s Request for Review dated November 14, 2000 (“Request for Review”); the United States Trustee’s Response dated November 27, 2000, (“UST Response”); all exhibits thereto attached or incorporated by reference; and data maintained by the Office of Review and Oversight, Executive Office for United States Trustees.

Field Examination Report 3. Based upon these conclusions, and the trustee's failure to adequately monitor the work of professionals employed by her, the United States Trustee notified the trustee of his decision to terminate new case assignments and not reappoint her upon the expiration of her term. The trustee timely filed her Request for Review with the Director of the Executive Office for United States Trustees.

Standard of Review

In conducting this review, the Director must consider two factors:

- (1) Did the United States Trustee's decision constitute an appropriate exercise of discretion; and,
- (2) Was the United States Trustee's decision supported by the record.

See 28 C.F.R. § 58.6(i) (specifying the scope of the Director's review).

Analysis

I. THE DUTIES OF THE UNITED STATES TRUSTEE AND CASE TRUSTEE

United States Trustees supervise panel trustees, 28 U.S.C. § 586(a)(1), and appoint them to individual chapter 7 cases. 11 U.S.C. § 701. They carefully "monitor the performance of panel members . . . in order to determine whether they should be continued in or removed from panel membership." H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 102 (1977). Under the law, "[t]he United States trustee is permitted to conduct his own investigation . . . to exercise effective supervision and make an effective evaluation of the performance of the private trustees on the panel." Id. at 110.

Trustees are fiduciaries with wide-ranging responsibilities to effectuate the goals of the particular chapter under which a bankruptcy case is filed. Because they are fiduciaries, trustees are held to very high standards of honesty and loyalty. See generally Woods v. City National Bank & Trust Co., 312 U.S. 262, 278 (1941); Mosser v. Darrow, 341 U.S. 267 (1951). See also Meinhard v. Salmon, 249 N.Y. 458, 464, 164 N.E. 545, 546 (1928) (Cardozo, C.J.).

II. THE STATED REASONS SUPPORT TERMINATION OF THE TRUSTEE

In support of its decision, the United States Trustee listed nine deficiencies in the Field Examination Report and listed six cases where excessive and duplicative fees were sought by the trustee's law firm. The relevant Field Examination deficiencies and the fee disputes will be discussed in turn.

As a preliminary matter, the trustee states that the United States Trustee failed to issue a Report within 30 days of the exit conference or provide her with a 45 day period to respond to the Field Examination Report as provided in the Handbook for Chapter 7 Trustees. Request for Review 3-4. The trustee quotes the following language from page 9-16 of the Handbook:

A written report on the results of the audit or examination is issued within 30 days of the exit conference. The United States Trustee forwards the report to the trustee. The trustee must provide a written response to the United States Trustee within 45 days of the date of the written report describing and documenting the corrected actions taken and the procedural changes implemented.

The trustee notes that the report was not issued until almost four months after the exit conference, she was provided only 13 days to respond to the report, and she received the Notice one day after receiving the Field Examination Report. The trustee concludes that “tak[ing] such drastic remedial action based on a report which contains factual inaccuracies without first affording me the opportunity to respond with documentation to prove the inaccuracies was clearly an abuse of discretion by [the United States Trustee].” Request for Review 4.

The trustee’s interpretation of the Handbook is not entirely correct. The trustee fails to quote language in the same section of the Handbook that states that a trustee will be suspended if an inadequate audit or field examination is issued, and notes that an interim directive requiring immediate suspension may be issued if warranted. Handbook, pages 9-16 to 9-17. Furthermore, the trustee was not prejudiced in any way by the unexplained shortened response time from 45 to 13 days, and the issuance of the Notice before a response was received. The Notice by its own terms did not take effect until 20 days after issuance, and the trustee stayed its application by filing a timely Request for Review. 28 C.F.R. § 58.6(b), (c).

A. The Field Examination deficiencies relied upon support termination

The United States Trustee relied upon nine deficiencies from the Field Examination Report:

1. The trustee did not prepare written bank account reconciliations each month in every case.
2. The trustee permitted a real estate agent who had been regularly employed by her in other cases to purchase the assets of the debtor in the [G] case.
3. The trustee failed to report the theft of assets in the [T] case to the police, the U.S. Attorney, or the United States Trustee.

4. The trustee failed to adjust the payment schedule of installment payments she received in the [N] case that was based upon the prime rate, and she accepted late payments without charging additional interest.
5. There is no evidence that the trustee attempted to secure a \$300 checking account balance in the [S] case.
6. In every case reviewed that had accounts receivable, collection efforts either were not undertaken or were not timely undertaken.
7. Reports of sale were not filed in those cases reviewed that had sales.
8. The Field Examination team found no evidence that notices of abandonment were filed. In addition, Form 1 was not filled out correctly to note abandonment.
9. The trustee did not administer a personal injury suit in the [H] case, and did not file a complaint to revoke the debtor's discharge for absconding with the settlement.

Notice 2-3; Field Examination Report passim. After reviewing the record, I conclude that items 2, 8, and 9 represent serious failings on the part of the trustee that support the action of the United States Trustee.²

1. *The sale of estate assets to a real estate agent regularly employed by the trustee*

The Field Examiners reported that assets in the [G] case were sold to a real estate agent frequently hired by the trustee, noting that “a professional regularly employed by the trustee is not permitted to bid or buy property at a . . . sale,” citing to the Handbook. Field Examination Report 6. The real estate agent apparently purchased the property for “someone else” who is not identified. Id. In response, the trustee argues that such a sale is not prohibited, but merely should be avoided. Request for Review 7. She further states that

²Because I have concluded that these three items and the trustee's failure to supervise professionals support termination, I need not conclude whether items 1, 3, 4, 5, 6, 7 support a decision to terminate or suspend the trustee.

Prior to the sale, a motion to sell the property to Ms. [S] was properly filed with the Court and Notice was served on all parties in interest. All interested parties, including the Office of the United States Trustee, were given twenty-nine (29) days to object to the proposed sale. The Office of the United States Trustee, fully aware that Ms. [S] is a realtor regularly retained by me to market and sell real estate owned by estates administered by me, failed to object . .

Id.

The trustee's behavior in this transaction, and her subsequent defense, reflect a lack of complete candor. First, the trustee's statement that notice was provided "[p]rior to the sale" is simply not true. The property sold was located on the premises of the debtor's business; the landlord had given notice that it would evict the tenant by noon on April 1, 2000. Request for Review, Exhibit E. The trustee sold the property for \$3500 and received a check on March 29, 2000. Field Examination Report 6. The check was deposited on April 6, 2000. Id. The trustee did not actually sell the property to Ms. [S], who provided the check, but to four unnamed individuals. Request for Review Exhibit G. These four individuals picked up most of the assets sold (some had to be left behind) on April 1, 2000. The motion to sell was not filed **until September 16, 2000**. Request for Review Exhibit H.

Second, the trustee's motion for sale and notice did not accurately disclose the relevant facts. The motion fails to state that the sale had already taken place and the assets disposed of (in large part). Instead, the motion claims that the sale price was "earnest money" pending court approval, and notes that "the cost of moving, marketing and selling the property will exceed the difference between the estimated market price of the property (\$4,000) and Ms. [S]'s bid of \$3,500.00." Request for Review Exhibit H ¶ 5. Most importantly, the motion fails to accurately identify the true parties in interest, i.e., the four unidentified purchasers. In her Request for Review, the trustee (and the real estate agent in an attached "To Whom It May Concern" letter) still fails to identify the purchasers. Request for Review 7 and Exhibit G. These practices raise serious concerns about full disclosure and accountability.

The language in the Handbook reflects the bedrock of bankruptcy administration: "Equity tolerates in bankruptcy trustees no interest adverse to the trust. This is not because such interests are always corrupt but because they are always corrupting." Mosser v. Darrow, 341 U.S. 267, 271 (1951). The Supreme Court's decision in Mosser provides an instructive parallel to the trustee's sale of property to the real estate agent she regularly employs. In Mosser, the trustee was held personally liable for allowing employees of the debtor to trade in the debtor's securities for their own account. Id. at 269. The Court held that the prohibitions on self-dealing applied to the debtor's employees:

These strict prohibitions would serve little purpose if the trustee were free to authorize others to do what he is forbidden. While there is no charge of it here, it is obvious that this would open up opportunities for devious dealings in the name of others that the trustee could not conduct in his own.

Id. at 271. This prohibition applies equally to professionals and others that the trustee regularly employs, such as the real estate agent in this matter. The trustee also cannot claim any waiver or estoppel based upon the court's approval of the sale because the motion misstates or fails to state the relevant facts. Court approval cannot even be inferred. Indeed, it could be argued that the trustee misrepresented the true state of affairs – an intolerable situation.

Accordingly, I find that this deficiency is a serious matter that supports the United States Trustee's decision.

2. *The trustee's failure to abandon estate property*

The Field Examiners reported that they found no evidence in the reviewed files that the trustee filed notices of abandonment. Field Examination Report 9. In addition, the trustee failed to complete columns 4 and 6 of Form 1³ to reflect that assets were respectively abandoned or administered. *Id.* The Notice further stated in a footnote that the trustee's failure to promptly abandon property is not new, relating two instances where creditors have complained to the United States Trustee about their inability to contact the trustee about abandoning certain fully-secured assets. Notice 3 at note 1.

In response, the trustee states that abandonments were filed:

Usually, a secured creditor, especially of listed vehicles, will present a Notice of Proposed Abandonment and the documentation proving that there is no equity in the asset, to me at the 341 hearing. After reviewing the documentation and the Notice of Proposed Abandonment, I usually announce my abandonment on the record and execute the Notice of Proposed Abandonment.

Request for Review 15. Once again, the trustee's response does obviate the concerns in this area. It in effect states that she does not affirmatively review and abandon assets, but relies upon the acts of creditors. The trustee did not respond to the charge of non-responsiveness.

³Form 1 is an individual estate property record that must be completed and maintained in every asset case. See generally Handbook for Chapter 7 Trustees 9-4 to 9-7.

The Handbook states the following regarding abandonment:

A trustee should abandon any estate property that is burdensome or of inconsequential value to the estate. Property should be abandoned when the total amount to be realized would not result in a meaningful distribution to creditors or would redound primarily to the benefit of the trustee and professionals.

* * *

Scheduled property that is not administered before the case is closed is deemed abandoned upon entry of the order closing the estate. § 554(c). However, the trustee should not rely on the deemed abandonment provisions of § 554(c) where property may expose the estate to some type of liability. An order granting relief from stay does not remove property from the estate. The trustee should immediately abandon fully secured property or uninsured property of no value to the estate.

Handbook, pages 8-2 to 8-3. A trustee's abandonment of assets is not a "ministerial" duty that can be ignored; it is central to preservation of the estate by reducing risk. For example, an estate would be liable for any tax gain when property is foreclosed upon unless the property had been previously abandoned. *E.g., In re Bentley*, 916 F.2d 431 (8th Cir. 1990). A trustee could also be personally liable for the destruction of uninsured property that had not been previously abandoned. *In re Reich*, 54 B.R. 995 (Bankr. E.D. Mich. 1985).

I also find that this inattention is a serious matter supporting the United States Trustee's decision.

3. *The trustee's failure to administer an estate claim for personal injury and pursue a debtor who absconded with settlement proceeds*

The Field Examination Report discovered that the trustee failed to administer a personal injury claim held by the [H] bankruptcy estate. The facts, which are involved but relevant to this review are as follows:

| | |
|---------|--|
| 2/27/97 | petition filed |
| 6/27/97 | trustee files status report indicating she was investigating possibility of assets |
| 8/19/97 | letter from trustee to debtor's personal injury attorney requesting information and documentation concerning personal injury claim |

| | |
|----------|--|
| 9/29/97 | trustee files letter reporting existence of assets and requesting bar date for claims |
| 11/13/97 | letter from debtor's personal injury attorney to trustee's office suggesting that trustee engage debtor's counsel as special counsel to litigate personal injury suit |
| 1/7/99 | note to trustee's file of telephone call advising her that debtor had settled personal injury claim for \$18,000 in April of 1998 and received all of the insurance proceeds |
| 1/28/99 | trustee files complaint against tortfeasor |
| 3/4/99 | answer filed; notes that claim settled and paid to debtor |
| 4/16/99 | trustee's letter to Office of U.S. Trustee enclosing report of no distribution with explanation |
| 6/29/99 | entry of order closing case |
| 8/19/99 | trustee's letter to Office of U.S. Trustee in response to request for further information |
| 10/8/99 | letter from Assistant U.S. Trustee requesting trustee take further action |
| 4/20/00 | letter from Assistant U.S. Trustee reiterating request for trustee to take further action |
| 7/11/00 | letter to Analyst in Office of U.S. Trustee regarding her analysis of 11 U.S.C. § 727(e) (revocation of discharge) |

The trustee's defense to this course of action is merely to state that the deadline to file a complaint to revoke discharge had passed. She fails to address totally why she failed to take any necessary steps to secure this asset. The trustee did not, upon discovery of the claim, notify the alleged tortfeasor and her insurance company of the estate's interest in the matter. UST Response Exhibit K-19. She did not appear to respond to the letter from debtor's personal injury counsel seeking to be appointed special counsel; moreover, a lawsuit was filed only after the debtor had absconded with the settlement proceeds.⁴

⁴The debtor's personal injury counsel was never appointed. The trustee's own law firm was appointed counsel for the estate, but it is unclear whether its responsibility included liquidation of this claim. UST Response Exhibit K-1.

The trustee's initial failure to secure this asset was compounded by her failure to attempt to recover the proceeds and revoke the debtor's discharge. Instead, upon discovery of the loss (nine months after the fact) the trustee merely filed a pro forma lawsuit against the tortfeasor in state court⁵ and filed a stale criminal referral with the Assistant United States Trustee upon his specific request. UST Response Exhibits K-13 and K-19. When the United States Trustee pressed the trustee to take further action to recover the funds from the debtor (which included providing the trustee with the debtor's current address), the trustee stated that she could not file a complaint to revoke discharge because she learned of the debtor's act more than one year after the debtor's discharge. UST Response Exhibit K-22.

The trustee misreads the provisions governing revocation of discharge:

(d) On request of the trustee . . . the court shall revoke a discharge granted . . . if—

(1) * * * ;

(2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver such property to the trustee;

(3) * * * .

(e) The trustee . . . may request a revocation of a discharge—

(1) * * * ;

(2) under subsection (d)(2) . . . before the later of—

(A) one year after the granting of such discharge; and

(B) the date the case is closed.

11 U.S.C. § 727(d)-(e). The case was not closed until June 1999 and this act was controlled by the trustee herself. The case was only closed after the trustee filed a report of no distribution in April of 1999. The closing of the case also foreclosed any action to recover the payment under 11 U.S.C. § 549, which permits the trustee to recover unauthorized postpetition transactions.

⁵The record in this case does not reflect the status of the state court litigation, but the trustee's subsequent filing of a report of no distribution suggests that the case was not successful.

Accordingly, I find that the trustee abdicated her duty to object to the debtor's discharge, 11 U.S.C. 704(6), and recover the payment made to the debtor, 11 U.S.C. § 704(1). The trustee's negligence in this case would have justified her removal by the court, and may justify recovery of this loss from the surety on her trustee bond.⁶

4. *Summary*

The Field Examination deficiencies set forth in the Notice support the trustee's termination. The trustee fails to recognize the impropriety of allowing a real estate agent regularly employed by her to purchase on behalf of undisclosed principals property of the estate, and the impropriety of failing to fully disclose all relevant facts to the court approving the sale. The trustee fails to promptly abandon estate assets, which unfairly frustrates the legitimate rights of secured creditors and exposes estates to liability. Finally, the trustee fails to admit that her own inattention and inaction caused an \$18,000 loss to the estate and permitted an unworthy debtor to obtain a discharge.

At some point, the United States Trustee can properly decline to assist a recalcitrant trustee who refuses to adhere to the highest fiduciary standards and seek termination or removal. Based upon these facts, this point has been reached and therefore the United States Trustee properly exercised his discretion in terminating the trustee.

B. The trustee's perceived failure to adequately supervise professionals supports termination

In addition to the selected Field Examination deficiencies, the United States Trustee alleges that the trustee has failed to adequately monitor the work of professionals employed by her, and in support discusses the fee applications filed in six cases. Notice 4-7. Each of the cases will be discussed in turn. While I dismiss as hyperbole the United States Trustee's statement that "[t]he trustee's "failure to monitor professionals, *standing alone*, is more than sufficient justification for my decision that she should not continue as a panel trustee," UST Response 2, I do conclude that the applications by the trustee's law firm in four cases⁷ confirm the trustee's failure to devote her time to trustee duties, and demonstrate that the trustee's lack of regard for her fiduciary status.

⁶The United States Trustee is urged to investigate the possibility of a bond claim in this matter. The deadline for filing a claim, two years from the trustee's discharge, is fast approaching. It appears that the trustee was discharged from her duties upon the closing of the case on June 29, 1999; therefore the deadline would be June 28, 2001.

⁷The objections filed by the United States Trustee in two cases ([Hi], [Tr]) to the fees sought by the trustee's law firm were pending at the time of the Notice. I have not relied upon these two matters in making a decision.

In the case of [B], the trustee's law firm sought fees of \$7,177.50. UST Response Exhibit L-1. Only \$5014, derived from the sale of the debtor's personal property, was on hand. Id. Exhibit L-3. The United States Trustee objected, seeking a reduction of \$5,872.50 for excessive and duplicative fees. Id. Exhibit L-2. The bankruptcy court awarded \$4500. Id. Exhibit L-3. Standing alone, this matter would not warrant suspension or termination, although it is troubling that in what appears to be a routine single asset case, the trustee retained her own law firm in addition to an outside auctioneer.

In the case of [Ho], the trustee's law firm sought fees of \$4050. UST Response Exhibit M-1. Only \$5,123.94, derived from the sale of the debtor's residence to the debtor, was on hand. Id. Exhibit M-2. The United States Trustee objected, and the bankruptcy court awarded only \$1237.61. Id. Exhibit M-3. The court's order found that several time entries reflected an excessive amount of time or excessive charge for the services rendered, or charges for work that is the responsibility of the trustee. Id. Exhibit M-3 at 3-4, 6. The transcript of the hearing contains the following surprising colloquy:

THE COURT: So you wasted a lot of time because you didn't order the title search early enough and you trusted what was on the schedule.

[TRUSTEE]: That's correct, Your Honor.

THE COURT: And you think the estate should pay for all that wasted time?

[TRUSTEE]: Well, the only person that is hurt in this particular situation is our firm because –

THE COURT: No, I don't think so. I think maybe unsecured creditors are hurt.

[TRUSTEE]: The unsecured creditors are hurt?

THE COURT: Who do you think you are collecting money for?

[TRUSTEE]: But they wouldn't have gotten any money if we didn't collect anything anyway, and they don't get any money by waiting, so I guess I don't understand how they are hurt.

THE COURT: Well, its sort of an absolute standard. The unsecured creditors are entitled to whatever is there. . . .

Id. Exhibit M-4 at 7. This utter failure on the part of the trustee to understand her obligations to unsecured creditors shocks the conscience. In the trustee's Request for Review, she offers no defense for her actions other than stating that the judge "is widely known for making abusive and outrageous comments to attorneys who appear before her." Request for Review 18. Whatever her reputation, the judge showed remarkable restraint in the face of the trustee's refusal to accept that she is supposed to act in the interests of creditors and not her law firm.

The case of [A] also involved administration of a single asset, the debtor's personal injury claim, which resulted in a recovery of approximately \$25,000. UST Response Exhibit N-3. The trustee's law firm sought compensation in the amount of \$13,510; the United States Trustee objected. Id. The court awarded \$7,195, finding that numerous entries were excessive or duplicative of a trustee's duties. Id.

Finally, the trustee's law firm sought \$39,885 in the case of [J]. Id. Exhibit O-2. \$171,138.83 was recovered by the trustee. Id. Exhibit O-1. The United States Trustee objected. Id. Exhibit O-6. The bankruptcy court awarded \$16,762. Id. Exhibit O-11. Again, a judge expressed an opinion of the fee applications filed in this matter:

[THE COURT:] And just seriously questions whether or not it actually took 1.8 hours to draft a routine fee application to employ a lawyer, just taints the whole application. Taints everything in front of the Court. And sometimes, like I said, sometimes the first thought is best. And I'm going to disregard my first thought in this case. My first thought was just to throw the whole thing out. I'm really not over that either.

It's just so tainting. Some of the time entries in here are just based upon the document this Court's reviewing; it's just incredulous as far as this Court's concerned, totally unreasonable....

Worse case scenario, there's just no way \$53,000 [all professional fees sought and trustee compensation] of time handling that matter. . . .

* * *

This application is so – I hate to use the words out of w[h]ack. It's just so egregious in the total amounts, total amounts requested in this. . . .

Id. Exhibit O-10. I agree with the judge's assessment of the trustee's behavior in this case and in the other fee applications discussed.

The conclusions reached in these cases are consistent with the trustee's cumulative data on closed cases. As of June 30, 2000, a database maintained by the Office of Review and Oversight within the Executive Office for United States Trustees revealed the following information on cases closed⁸ by the trustee:

| Case Name | Closed | Receipts | Trustee comp. | % | Trustee firm | % | Unsec. | % |
|----------------|----------|-------------|---------------|------------|--------------|------------|----------|------------|
| [1] | 02/18/98 | \$7,326 | \$400 | 5% | \$1,974 | 27% | \$0 | 0% |
| [2] | 02/18/98 | \$4,413 | \$267 | 6% | \$1,660 | 38% | \$0 | 0% |
| [3] | 06/16/98 | \$1,427 | \$357 | 25% | \$420 | 29% | \$538 | 38% |
| [4] | 06/16/98 | \$1,181 | \$295 | 25% | \$380 | 32% | \$390 | 33% |
| [5] | 11/05/98 | \$1,585 | \$396 | 25% | \$460 | 29% | \$274 | 17% |
| [6] | 08/17/98 | \$13,092 | \$1,632 | 12% | \$5,400 | 41% | \$278 | 2% |
| [7] | 09/18/98 | \$17,536 | \$2,504 | 14% | \$9,977 | 57% | \$4,192 | 24% |
| [8] | 02/04/99 | \$15,878 | \$2,338 | 15% | \$9,611 | 61% | \$2,915 | 18% |
| [9] | 02/04/99 | \$14,222 | \$2,172 | 15% | \$2,040 | 14% | \$0 | 0% |
| [10] | 12/06/99 | \$2,335,756 | \$86,276 | 4% | \$114,231 | 5% | \$46,582 | 2% |
| [11] | 04/10/00 | \$5,338 | \$758 | 14% | \$3,580 | 67% | \$0 | 0% |
| Average | | | | 15% | | 36% | | 12% |

The data, albeit limited, reveals two things: the trustee has employed her own law firm in every asset case to date, and on average the trustee and her law firm together receive slightly more than half (51%) of the average estate, while general unsecured creditors on average receive only 12%. This same pattern is confirmed by the four cases discussed in this decision. The trustee's administration of [A] resulted in an administrative insolvency; the trustee and her law firm appear to have received 76% of the estate's funds on hand in [H]; 41% in [A]. While the percentage recovery by the trustee and her law firm in [J] was smaller than the others (13%), it was the largest of the cases administered by the trustee of the four cases (\$171,138).⁹

In summary, the trustee's failure to supervise and restrain professionals supports termination. Although not explicitly relied upon by the United States Trustee in terminating the trustee, her behavior could lead one to conclude that the trustee is administering cases for her own benefit and not on behalf of creditors.

⁸This data does not include the [B], [H], [A], or [J] cases discussed above.

⁹Although the United States Trustee concluded in the trustee's evaluation for 1999 that her data was "skewed" because of her low average receipts, it did reflect that other trustees overseen by the [redacted] Office (covering [redacted]) and their law firms only received 15.3% of receipts on average. UST Response Exhibit C. Similarly, trustees and their law firms only received 10.0% within Region [redacted] ([redacted]) and 7.3% nationally.

Conclusion

Based upon my review of the record, including the written submissions of the United States Trustee and the trustee, I affirm the United States Trustee's decision to terminate the trustee's future appointment to chapter 7 cases and decision to not reappoint her to the panel of trustees upon expiration of her term.

The foregoing conclusions and decisions constitute final agency action in this matter.

Dated: December 28, 2000

Kevyn D. Orr
Director
Executive Office for United States Trustees