

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION**

IN RE: JOSHUA JAMES, Debtor

**No. 6:16-bk-70760
Ch. 13**

**ORDER DENYING MOTION FOR ALLOWANCE
OF ADMINISTRATIVE CLAIM**

Before the Court are the debtor's *Motion Requesting Allowance of Administrative Claim* that was filed on September 16, 2016, including a notice of opportunity to object to the motion, and the *Trustee's Response to Motion Requesting Allowance of Administrative Claim* that was filed on October 12, 2016. The trustee's response stated the he did not object to "the Movant's compensation being deemed as an administrative expense. However, the motion is unclear regarding the amount requested, which renders it impossible to determine the feasibility of the motion." In the trustee's prayer for relief, he "respectfully request[ed] that the motion be denied" The Court set both pleadings for hearing on November 29, 2016, and then, at the request of the parties, continued the pleadings to January 5, 2017. Prior to the hearing, the trustee informed the Court that the trustee's response was sustained and that the trustee would prepare the proposed order.

On January 5, 2017, the parties submitted a proposed order that was titled *Agreed Order Approving Allowance of Administrative Claim*. However, before the Court could review the parties' proposed order, the trustee filed a *Chapter 13 Order of Dismissal For Failure to Make Plan Payments*.¹ As stated in court on January 5 in an unrelated case, after a chapter 13 case is dismissed, the Court will not enter an order for the allowance of an

¹ In accord with this Court's General Order Number 11, as amended by the 4th Amendment to General Order 11 dated April 11, 2013, a chapter 13 trustee is appointed to administer and enter certain orders of the Court which are routine in nature. The *Chapter 13 Order of Dismissal For Failure to Make Plan Payments* is one such order [Order 28].

administrative claim; the trustee needs to proceed in accordance with 11 U.S.C. § 1326. That section provides that if a plan is not confirmed, such as the occasion presented in this case, “the trustee shall return any such payments not previously paid and not yet due and owing to creditor pursuant to paragraph (3) to the debtor, after deducting any unpaid claim allowed under section 503(b).” 11 U.S.C. § 1326(a)(2). Because the proposed administrative claim was not an allowed claim under § 503(b) when the case was dismissed, the trustee is not authorized to deduct the proposed claim prior to returning any payments remaining in the trustee’s possession to the debtor.²

Accordingly, the Court denies the debtor’s *Motion Requesting Allowance of Administrative Claim*.

IT IS SO ORDERED.


Ben Barry
United States Bankruptcy Judge
Dated: 01/09/2017

cc: Wm. Marshall Hubbard
Matt Black
Jack W. Gooding

² This position was also recognized by the trustee in an earlier case decided by Judge Taylor when the trustee stated in his supplemental brief that “[w]ithout a § 503(b) order, the Bankruptcy Code requires the Trustee to return the funds on hand to the debtor.” (T’s Supp. Br.; *In re Rogers*, 5:13-bk-14339, doc. 76, p.3.)