

CONSUMER BANKRUPTCY

Bankruptcy Court says \$5,000 Chap 13 fee reasonable

Recent decision reviews legal fee factors

By Craig D. Robins

What is a reasonable legal fee for a typical Chapter 13 bankruptcy case? That issue was addressed in a decision just released by Judge Jerome Feller, a bankruptcy judge in the Eastern District of New York, sitting in the Brooklyn Bankruptcy Court.

In that case, Chapter 13 trustee Marianne DeRosa objected to a \$7,500 flat legal fee that the debtor's attorney had charged. She insisted that the debtor's attorney, Paul Hollender, of New York City, bring a formal fee application to approve his fee. She then filed opposition to his fee, arguing that it was in excess of the fees customarily charged for routine cases in this district. Judge Feller issued a 12 page decision on October 11, 2012 in which he concluded that reasonable compensation for a routine Chapter 13 filing in this jurisdiction is \$5,000. *In re: Nicholas Moukakis*, (01-12-42200-jf, Bankr. E.D.N.Y.).

Trustee Marianne DeRosa pointed out that the customary Chapter 13 fees in this jurisdiction are between \$3,500 and \$5,000.

This is important news as Long Island bankruptcy attorneys have at times been at odds with the two Chapter 13 trustees in this district over what a reasonable fee is. For a period of time, Chapter 13 trustee Michael J. Macco insisted that every bankruptcy practitioner charging over \$4,000 had to bring a fee application to seek approval of the fee. Now we have a current judicial determination indicating what is reasonable for routine Chapter 13 cases.

For those who are not familiar with Chapter 13 practice, these bankruptcy proceedings, which involve a payment plan, usually require several court appearances, and often involve at least twice as much work as a typical Chapter 7 case.

Judge Feller began the legal analysis in his decision by reviewing the elementary bankruptcy law concept that the Bankruptcy Court not only has the authority, but the duty, to determine the reasonableness of compensation paid or agreed to be paid for representing a debtor in a bankruptcy case regardless of

whether a party in interest objects to it.

The judge then determined that the following factors were necessary to assess the reasonableness of the legal fee: the necessity of the services rendered, the benefit to the debtor, the time expended, the customary fees and reasonable hourly rates for the services performed, and public policy concerns.

Judge Feller observed that the *Moukakis* case was unexceptional and uncomplicated. The debtors' income was about \$150,000 per year. They owed about \$92,000 in unsecured debt. Their mortgage was current. The plan proposed a distribution of about 44 percent to unsecured creditors. The debtors retained their attorney about seven weeks before the petition was filed. There was only one meeting of creditors. The court confirmed the Chapter 13 plan less than six weeks after that. The attorney performed the legal work well.

The retainer agreement the attorney used provided for the \$7,500 flat legal fee, and also indicated that this was for the bare minimum of possible legal services in a Chapter 13 case. The attorney also indicated that he reserved the right to charge additional fees for services such as amendments, attendance at additional meetings of creditors or hearings, and routine motion practice. Of the \$7,500 fee, the debtors paid \$2,000 prior to filing. In his fee application, the debtor's attorney claimed he spent 12 hours devoted to the case, and that his paralegals expended a total of 23 hours.

The debtors were actually able to afford the higher fee; however, that did not sway the judge. He observed that they were paying a portion of the fee through the Chapter 13 plan, and that unless there is a 100 percent plan, unsecured creditors will effectively pay the fee while receiving a lower *pro rata* distribution.

The judge also commented on the public policy considerations for ensuring that Chapter 13 legal fees are reasonable.

Empirical evidence shows that Chapter 13 cases are much more likely to succeed when debtors are represented by counsel.



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Accordingly, in order to ensure that debtors have access to counsel, they should not be overcharged. Thus, a reasonable fee must be one which protects the debtor, while being generous enough to encourage lawyers to render the necessary and exacting services that bankruptcy cases often require.

Some districts in other parts of the country have "fee caps" in consumer cases which essentially permit bankruptcy counsel to charge any fee up to the cap without having to obtain court approval. Our district is not one of them.

Judge Feller, in the decision, expressly stated that "this Court is not hereby endorsing fee limits in Chapter 13 cases" and "does not intend to establish a fee cap in Chapter 13 cases."

Looking back to other decisions which addressed Chapter 13 legal fees in this district, in 2010, Judge Robert E. Grossman, sitting in the Central Islip Bankruptcy Court, addressed the propriety of a \$15,000 fee charged by an attorney who apparently was less than competent in representing the debtor. In that case, Chapter 13 trustee Michael J. Macco objected to the fee and the Judge reduced it to \$4,000 stating that "the bankruptcy proceeding was not compli-

cated" and the attorney "performed at an incompetent level." Judge Grossman pointed out that experienced counsel charged between \$4,000 and \$4,500 for cases in the district. He therefore reduced the fee to \$4,000 for this attorney and ordered him to disgorge the rest.

The attorney appealed to the District Court, which affirmed. *In re Arebelo*, 2011 U.S. Dist. LEXIS 37449, 2011 WL 1336676.

The takeaway here is that an experienced Chapter 13 bankruptcy attorney, who does a proper and professional job, can charge as much as \$5,000 for a typical Chapter 13 case, and more if unusual or additional legal work is necessary. In addition, if the trustee or court challenges the legal fee, the bankruptcy attorney bears the burden of demonstrating the reasonableness of the fee.

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