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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE))	CASE NO. 95-52097
DIANE FUNK,))	
Debtor.))	CHAPTER 7
)	
		JUDGE MARILYN SHEA-STONUM
		ORDER APPROVING COMPROMISE

This matter came before the Court for a hearing on the trustee's motion to compromise a Title VII claim that arose pre-petition against Great Northern Wood Preserving Co. for the alleged sexual harassment of the debtor(the "Subject Claim") pursuant to Bankruptcy Rule 9019 and the debtor's objection to the compromise. The trustee's motion seeks approval of a compromise of the Subject Claim. The debtor argues that the compromise by the trustee may affect her rights with regard to the Subject Claim and that the settlement amount is too low. Appearing at the hearing were Richard Wilson, Trustee; Gregory Hail, debtor's counsel; Diane Funk, debtor; and via telephone, Steve C. Bailey, who was retained by the trustee as special counsel for the pursuit of the Subject Claim.

The Subject Claim which the trustee seeks to compromise arose prior to the date the debtor filed a petition for relief under Chapter 7 of the Bankruptcy Code(November 17, 1995). The debtor listed the Subject Claim on her schedule B-personal property. Pursuant to 11 U.S.C. § 541(a) that claim, which arose pre-petition and allowed only for the possibility of recovering back pay for a period of time wholly prior to the debtor's filing date and the award of punitive damages, became property of the bankruptcy estate upon the debtor's filing of her petition for relief. In addition, the debtor did not claim and is not entitled to

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any exemptions with respect to this claim or any recovery on it. The debtor's only potential recovery with regard to the Subject Claim would result should there remain any balance after distribution to holders of allowed claims in her case in accordance with 11 U.S.C. § 726.

Prior to filing her petition for relief the debtor employed Steve C. Bailey to represent her in connection with the EEOC claim. On May 29, 1996, the trustee moved for the appointment of Mr. Bailey as his attorney to represent him in connection with what had become the estate's claim against Great Northern Wood Preserving Co. On June 19, 1996, this Court entered an order appointing Mr. Bailey as counsel for the trustee. Despite this appointment, Mr. Bailey continued to view himself as having a dual obligation: one to the debtor and one to the trustee. After his retention by the trustee, Mr. Bailey did not have a dual obligation. As counsel for the trustee, Mr. Bailey owes his professional obligations, including his duty of loyalty, to the trustee, not to the debtor. See *In re Johnson*, 25 B.C.D. 827 (N.D. Cal. 1994); and *In re Bowman*, 181 B.R. 836, 847 (D. Maryland 1995). This is particularly true in this case where the debtor has no exemptions in the claim and the claim involved has a wholly prepetition character.

The trustee represented to the Court that in his judgment the compromise should be accepted. He requested an evaluation by his counsel, who up to the hearing had refused to provide one based on his perceived dual obligation. Counsel for the trustee indicated that he believed there to be many legal impediments to a recovery on this claim and, even in a perfect world, he did not view the likelihood of receiving more than the total of the claims and expenses in this bankruptcy¹ as greater than 40 percent, which this Court views as a highly

¹During the hearing the Court requested that special counsel base his opinion regarding a recovery on the Subject Claim large enough to provide for an eventual distribution to the debtor on unsecured claims totaling \$28,000, priority claims totaling \$5,000, in addition to trustee's fees, special counsel's fees, and interest. In fact, assuming a maximum statutory trustee fee award and recovery by Mr. Bailey of a 40 percent contingency fee, as provided in his retention agreement, the total dollar amount of distributions that would have priority over the debtor's right to any residual amount in the case would be in excess of \$50,000.

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optimistic evaluation.

Therefore, pursuant to Bankruptcy Rule 9019, the trustee's motion to compromise the estate's EEOC claim for \$2,224.99 is granted.

IT IS SO ORDERED.

MARILYN SHEA-STONUM
Bankruptcy Judge

DATED: 6/11/98