

IT IS SO ORDERED.

Dated: 09:41 AM September 27 2006



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

IN RE:) CASE NO. 05-81397
)
North Coast Oil, Inc.,) CHAPTER 7
)
DEBTOR(S)) JUDGE MARILYN SHEA-STONUM
)
IN RE:)
) CASE NO. 05-81475
Thomas & Yasmen Abdallah,)
) CHAPTER 7
DEBTOR(S).)
) JUDGE MARILYN SHEA-STONUM
)
) ORDER RE: MOTION SEEKING
) CLARIFICATION OF FEES PAID TO
) JAMES MAJOR AND FOR
) DISGORGEMENT

This matter is before the Court on the Motion of Amer Abuaun and Sata Sammur (the “Movants”) seeking clarification of Attorney James Major’s fee disclosure and an order directing James Major to disgorge fees [docket # 102] (the “Motion”) and the Limited Objection of Richard Wilson, Chapter 7 Trustee, to the Motion [docket #177]. The Court held a hearing on the Motion and the Objection on July 12, 2006. Appearing at the hearing were Richard Wilson, Chapter 7 Trustee; Michael Moran, counsel for the Chapter 7 Trustee;

Robert Dubyak and David Webster, counsel for Movants, and James Major, *pro se*. During the hearing, the Court received evidence in the form of exhibits and in the form of testimony from Mr. Major, Amer Abuaun and David Webster. Following witness testimony, the Court adjourned the hearing and scheduled closing arguments for July 21, 2006. Mr. Moran and Mr. Dubyak appeared at the adjourned hearing. Following the conclusion of the adjourned hearing, the Court took the matter under advisement.

This proceeding arises in a case referred to this Court by the Standing Order of Reference entered in this District on July 16, 1984. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A) and (B) over which this Court has jurisdiction pursuant to 28 U.S.C. §1334(b). In reaching its determinations and whether or not specifically referenced, the Court considered the demeanor and credibility of the testifying witness. Based upon such testimony, the evidence presented at the trial, the arguments of counsel, the pleadings in the above-captioned chapter 7 cases and pursuant to FED. R. BANKR. P. 7052 made applicable to this matter by FED. R. BANKR. P. 9014(c), the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. James Major is an attorney licensed to practice law in the State of Ohio and admitted to practice before this Court.
2. In November or December 2005 Major met with, *inter alia*, Thomas Abdallah to discuss potential bankruptcy proceedings for Thomas and Yasmien Abdallah and various business entities in which Thomas and Yasmien Abdallah were equity owners, including North Coast Oil, Inc., AP Investment Properties, LLC, Ray's Discount Drug, Inc., Fairview Marathon, Inc., Sprague Marathon, Inc., A & H Marathon, Inc. and North Olmsted Oil Company (together with

the Abdallahs, the “Debtors”).

3. In addition, Mr. Major met with Movants. As a result of these meetings, Movants came to believe that they had hired Mr. Major to represent their interests.
4. During those meetings, Mr. Major was made aware that Movants claimed to be vendees under a land installment contract with Thomas Abdallah.
5. Movants each paid \$6,700 to Mr. Major for what they believed was a retainer to represent their interests in bankruptcy. The memo line of the check signed by Mr. Samur says “Represent us in bankruptcy retainer.” The memo line of the check signed by Mr. Abuaun says “For Fee Amer Abuaun.”
6. On December 2, 2005, James Major caused voluntary petitions for relief under chapter 7 to be filed on behalf of North Coast Oil, Inc., AP Investment Properties, LLC, Ray’s Discount Drug, Inc., Fairview Marathon, Inc., Sprague Marathon, Inc., A & H Marathon, Inc. and North Olmsted Oil Company and on December 13, 2005, for Thomas and Yasmien Abdallah.
7. According to the Disclosure of Compensation of Attorney for Debtor(s) made pursuant to 11 U.S.C. § 329 and Fed. R. Bankr. P. 2016 filed in each of the 8 cases, Mr. Major received \$2,583.14 in fees from each debtor, totalling \$20,665.12. Mr. Major did not disclose in this statement or any other filing with the Court that the actual sources of the compensation paid to him were Mr. Abuaun, Mr. Samur and Mr. Habas.
8. None of the Schedules or Statements of Financial Affairs filed in any of the eight bankruptcy cases disclosed that Mr. Abdallah believed money was owed by Mr. Abuaun, Mr. Samur and Mr. Habas to one of the Debtors.

9. Mr. Major testified that the source of his retainer for each of the Debtors was in fact Movants and Mr. Habas, not the Debtors.
10. The Court does not credit Mr. Major's testimony or Mr. Abdallah's affidavit, Trial Exhibit B, that the Movants owed money to Mr. Abdallah or one of his business entities. None of the schedules or statements of financial affairs for any of the 8 Debtors list debt owed from Movants.
11. Mr. Major was aware at the time he accepted funds from the Movants that the interests of Movants were adverse to the interests of the estates of the Debtors.

CONCLUSIONS OF LAW

1. Section 329 of the Bankruptcy Code provides with respect to compensation received by debtor's counsel that

If such compensation exceeds the reasonable value of any such services, the court may ... order the return of any such payment, to the extent excessive, to

 - (1) the estate, if the property transferred -
 - (A) would have been property of the estate; ... or
 - (2) the entity that made such payment.

11 U.S.C. § 329.
2. A chapter 7 debtor's counsel has an affirmative duty to disclose all his connections with a debtor including the amount of fees paid or promised to be paid and the source of such payments. 11 U.S.C. § 329 and Bankruptcy Rule 2016.
3. The disclosure must be "direct and comprehensive." *In re Saturley*, 131 B.R. 509, 517 (D. Maine 1991). Without regard to whether actual harm accrues to the estate, "[a]nything less than the full measure of disclosure leaves counsel at risk that all compensation may be denied." *Id.*

4. A failure to properly disclose is grounds for disgorgement. *Miller v. U.S. Trustee (In re Independent Engineering Co., Inc.)*, 232 B.R. 529, 532 (1st Cir. B.A.P. 1999) aff'd 197 F.3d 13 (1st Cir. 1999).
5. Major failed to properly disclose the source of payments he received as compensation for services rendered or to be rendered in contemplation of or in connection with the Debtors' chapter 7 bankruptcy cases.
6. In addition to his failure to comply with Bankruptcy Rule 2016 and Bankruptcy Code § 329, Major had a conflict of interest.
7. Major's dual representation of the Debtors and the Movants is a violation of the Ohio Code of Professional Responsibility, DR 5-105.

CONCLUSION

Major's failure to comply with Bankruptcy Code § 329 and Bankruptcy Rule 2016 combined with his conflict of interest provides the basis for this Court's decision to direct the disgorgement of any funds paid to Major by Movants or Debtors. A total of not less than \$13,400 shall be disgorged by Major to the Debtors' estates. No distribution of the funds disgorged by Major shall be made absent further order of the Court.

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cc: (via electronic mail) Michael Moran
Robert Dubyak
James Major