

So no IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:

In Proceedings Under Chapter 13

DONALD WEINBERG and
BRENDA WEINBERG

Case No.: 07-15875

Debtors.

JUDGE RANDOLPH BAXTER

MEMORANDUM OF OPINION AND ORDER

This matter is before the Court on Debtors' motion to release their counsel and the return of attorneys' fees paid (the "Motion"). This Court acquires core matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a), (b)(1), 28 U.S.C. § 1334 and General Order No. 84 of the District. A hearing was held upon due notice to all entitled parties. After considering the record, generally, the following constitutes the Court's factual findings and conclusions of law.

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On August 8, 2007, the Debtors filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Ohio, Eastern Division. The Debtors' Chapter 13 Plan was filed the same date, and was confirmed on November 5, 2007.

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The subject Motion was granted, partially, allowing the Debtors to be relieved of their counsel of record on May 20, 2010. Thus, the sole dispositive issue before this Court is whether the Debtors are entitled to the return of any attorneys' fees paid.

The Debtors assert that the Rauser & Associates law firm (the "Firm") has not been

properly handling the matters in their bankruptcy case. They refer to their attorney's alleged refusal to represent them in a lawsuit involving a creditor who was granted relief from stay with respect to their vehicle, apparently pertaining to a deficiency balance after sale of the vehicle. The Debtors also allege that their attorney has not handled a matter in which their water utility provider billed them for an arrearage on their account. Further, they assert that their calls to the firm have not resulted in actions taken in the above matters.

The Firm contends that the fees charged have been fully earned in this case. It argues that the Debtors' plan has been confirmed, and that any matters dealing with prepetition delinquency with the water company have been dealt with.¹ It asserts that any arrearage due the water company at the time of filing was scheduled on the Debtors' petition, and that the Cleveland Division of Water was noticed on several occasions of Debtors' bankruptcy. It notes that the exhibits attached to Debtors' Motion show that the charges on Debtors' water bill relate to 2009 and 2010 water service.

Administrative Order 07-2 governs allowance of attorneys' fees in Chapter 13 cases in the Cleveland Bankruptcy Court. It specifies that debtor's counsel shall file an executed copy of the "Rights and Responsibilities of Chapter 13 Debtors and their Attorneys" within five days of filing the petition. Administrative Order 07-2 at 2-3. It further provides that debtor's counsel need not file a fee application if certain requirements are met. Specifically:

¹The Firm's written response to the Debtors' Motion (docket no. 32, filed May 17, 2010) states that the Firm noticed the Cleveland Division of Water of Debtors' bankruptcy via fax on October 12, 2007, November 23, 2007, and June 20, 2008, in addition to the Court notice of the filing. They further respond that the amount due the Cleveland Division of Water at the time of Debtors' filing was estimated by the Debtors to be \$105.98, scheduled as such on the Debtors' petition, and note that the materials submitted by Debtors with their Motion pertain to 2009 and 2010 water service.

3. If –

(a) an executed copy of the form “Rights and Responsibilities of Chapter 13 Debtors and their Attorneys” has been filed with the Court;

(b) the total fee (including expenses other than filing fees) requested by counsel for the debtor is \$3,000 or less;

(c) the fee arrangement provides that \$800 or less will be paid before the filing of the bankruptcy petition with the balance to be paid through the Chapter 13 plan; and

(d) no party in interest has objected to the proposed fee,

then those fees may be allowed by the Court in the order confirming the debtor’s plan of reorganization based upon the form “Rights and Responsibilities of Chapter 13 Debtors and their Attorneys” signed by the attorney and debtor, and the attorney need not file a fee application under 11 U.S.C. §330 and Bankruptcy Rule 2016(a).

Administrative Order 07-2 at 3. It also provides a list of the types of matters that should be covered by the above fee. The attorney fee should include meeting with and advising the debtor, understanding his or her financial situation, preparing required documents to be filed, representation in certain routine matters, and “[p]roviding such other legal services as are necessary for the administration of the case.” Administrative Order 07-2 at 4-5.

The Firm’s response indicated that Debtors were charged \$500 prior to the filing of the petition, and \$2,500 was to be paid through Debtors Chapter 13 Plan. The required “Rights and Responsibilities of Chapter 13 Debtors and their Attorneys” was filed concurrently with Debtors’ petition. As such, no fee application was required.

The retainer agreement between the Firm and the Debtors states that the attorney fee covers the provision of certain “basic services” in connection with the Debtors’ bankruptcy case. According to the retainer agreement, these basic services include “taking creditor calls both pre and post-filing;

pre-filing advice; advice during the case concerning the nature and effect of the applicable Chapter of bankruptcy Client decides to file; submitting information pursuant to requests from the trustee . . . and other regular and routine services not specifically stated.” The retainer agreement also provides that an additional fee will apply for certain “non-basic services,” such as adversary proceedings, depositions, interrogatories, and other discovery, Rule 2004 examinations, and actions to enforce the discharge injunction. Further, the retainer agreement outlines a refund policy should the client terminate the representation prior to the completion of basic services. It states: “If the termination of the attorney-client relationship occurs *prior to the completion of the basic services* . . . Rauser & Associates shall be entitled to retain funds representing the quantum meruit (value of service) portion of the attorney fee paid by client” (emphasis added).

The Firm filed all required paperwork for the Debtors at the commencement of their bankruptcy case and continued to represent the Debtors through the confirmation of their plan and for approximately halfway through the time period of Debtors’ sixty-month plan. Debtors’ complaints regarding their representation pertain to matters not encompassed by the retention agreement. Debtors’ complaint that they were not represented in a suit with one of their creditors deals with a suit not filed in this Court, but a separate matter after stay relief was granted by this Court on the subject collateral. Further, the information submitted pertaining to the water utility provider covers a period of time in 2009 and 2010, approximately two years after the petition was filed. The listed balance due on those items is different from the arrearage amount scheduled by the Debtors.² The record reflects that the Firm has served as Debtors’ counsel of record for nearly three

²The arrearage amount scheduled by Debtors in their bankruptcy petition to Cleveland Division of Water is \$105.98. Debtors’ Schedule F, at 1. The items submitted by Debtors with their Motion from Cleveland Division of Water show a past due amount of \$65.88.

years, and has filed the required paperwork for Debtors' case and represented them through confirmation, and for nearly half of the plan period.

An examination of the parties' retainer agreement reveals that the fees charged and received by the Firm have been fully earned (\$3,000). Said amount is within the acceptable range of this Court's aforementioned Administrative Order. Further, prior to the present termination of counsel motion, the record reflects no opposition to the fees charged by the Firm.

This case was filed on August 8, 2007. Without interruption, the Firm has prosecuted Debtors' case from petition filing through plan confirmation. The record reflects no pending contested matters or adversary proceedings filed by or against the Debtors. The Debtors' confirmed plan has required no modification. The Chapter 13 Trustee continues to administer the Plan's payments, as ordered, under the Court approved Plan. In summary, the basic services required to be performed by the Firm on the Debtors' behalf have been performed. Thusly, the subject fees charged have been fully earned and are reasonable. No termination of the Firm's representation was sought by the Debtors prior to the Firm's completion of the above-referenced basic services.

Accordingly, the portion of Debtors' Motion requesting return of attorneys fees is hereby denied. The Firm's Objection is hereby sustained. Each party is to bear its respective costs.

IT IS SO ORDERED.

Dated, this 11th day of
June, 2010


JUDGE RANDOLPH BAXTER
UNITED STATES BANKRUPTCY COURT