

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:) Case No. 02-15712
)
PAUL SHIMKO, and) Chapter 13
SHELLY SHIMKO,)
) Judge Arthur I. Harris
Debtors.

ORDER

On April 27, 2006, debtors' counsel filed an application for compensation (Docket #64), requesting approval of \$8,892.93 in additional fees beyond the \$1,200 previously awarded in the July 22, 2002, confirmation order (Docket #13). On May 3, 2006, the Chapter 13 trustee filed a brief in opposition (Docket #66), which was later withdrawn. For the reasons that follow, the Court will defer any ruling on the current fee application until – (1) debtors and the Chapter 13 trustee indicate their written consent agreeing to a specific dollar figure in additional fees also acceptable to debtors' counsel, or (2) debtors' counsel notifies the Court in writing that she has been unable to obtain the written consent of debtors and the Chapter 13 trustee to a specific dollar figure in additional fees also acceptable to herself.

This Chapter 13 case was filed on May 24, 2002. Therefore, it predates the effective date of Administrative Order 03-6, which governs the allowance of attorneys fees in cases filed on or after August 1, 2003. Rather, Administrative

Order 98-4 governs the allowance of attorneys fees in this case. Administrative

Order 98-4 provides in pertinent part:

2. If counsel seeks fees exceeding the [\$1,200 limit] set forth above, counsel shall submit a detailed fee application in accordance with [General Order 93-1]. This requirement applies to initial fee applications as well as to additional or supplemental applications. In the case of an additional or supplemental application, the application shall also (a) describe in detail the services provided from the beginning of the case in accordance with the Guidelines and (b) attach the debtor's authorization for allowance of those fees. . . .

In the statement of compensation filed with the petition under Bankruptcy Rule 2016 debtors' counsel indicated that she agreed "to accept [her] hourly rate, \$150/hr. with a minimum fee of \$1,200." As part of the April 27, 2006, fee application, debtors' counsel included a detailed invoice dated April 26, 2006, itemizing services totaling \$10,082.93. After deducting the \$1,200 already approved and paid through the confirmation order, debtors' counsel is seeking approval of \$8,892.93 in additional fees. Also included with the April 27, 2006, fee application is a fee/retainer agreement dated May 15, 2002, signed by debtors' counsel and debtor Shelly Shimko. The agreement provides in pertinent part:

I/We, Paul & Shelly retain Susan M. Gray, Esq., to represent me before the Bankruptcy Court. I have agreed to pay Susan M. Gray a retainer free of \$1,200 to cover legal fees for services rendered or to be rendered on behalf of myself in contemplation of or in connection with the bankruptcy case. . . .

In return for the above disclosed retainer, I, Susan M. Gray have

agreed to render legal services for all aspects of the bankruptcy case

The above-disclosed retainer fee is expected to be sufficient to pay in full for all of the foregoing legal services, and usually does. However, I wish to emphasize that my hourly rate of \$150.00/hr is applicable at all times. If the work on your case requires a greater-than-average expenditure of time, you will be liable for, and agree to pay, additional fees incurred on that account over and above the above-disclosed retainer fee. . . .

Although the written agreement indicates a rate of \$150 per hour, all of the services in the current fee application are billed at the rate of \$185 per hour, and there is no indication that debtors ever agreed to accept this higher rate. Nor is there any written agreement by the debtors to the specific dollar figure – \$8,882.93 – requested in the current fee application.

Although it is unclear whether Administrative Order 98-4 requires debtors' written authorization for the specific dollar figure requested in the current fee application, as opposed to the submission of an almost four-year-old fee agreement, the Court would much prefer the debtors' written authorization for the specific dollar figure requested. The Court is constantly striving to eliminate or at least reduce the awkward possibility of fee disputes where the debtors and debtors' counsel have opposing interests and the debtors no longer have an attorney representing the debtors' interests. Indeed, the attorney's interests concerning fees may be diametrically opposed to the debtors' interests. Such situations should be prevented from occurring whenever possible.

In the present case, there is also the problem that the additional fee application, if approved, may render the debtors' Chapter 13 plan infeasible. Under 11 U.S.C. § 1322(d) the Chapter 13 plan must be completed by July 2007. By waiting until April 2006 to seek approval of additional fees incurred as far back as 2003, debtors' counsel may have made it impossible for her to be paid through a successful Chapter 13 plan. Nor is there any indication in anything filed with the Court that debtors' counsel warned her clients that such a large fee request would be forthcoming this late into the Chapter 13 case.

Under these circumstances, the Court will defer ruling on the current fee application until – (1) debtors and the Chapter 13 trustee indicate their written consent agreeing to a specific dollar figure in additional fees also acceptable to debtors' counsel, or (2) debtors' counsel notifies the Court in writing that she has been unable to obtain the written consent of debtors and the Chapter 13 trustee to a specific dollar figure in additional fees also acceptable to herself.

IT IS SO ORDERED.

/s/ Arthur I. Harris 6/1/2006
Arthur I. Harris
United States Bankruptcy Judge