

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE: *
* CASE NUMBER 06-40050
STEPHEN J. ROSATI and *
LISA MARE ROSATI, * CHAPTER 7
*
Debtors. * THE HONORABLE KAY WOODS
*

ORDER DENYING MOTION TO RESPOND INSTANTER TO
MOTION FOR FEES AND EXPENSES OF TRUSTEE

The matter before the Court is the Motion to Respond Instanter to Motion for Fees and Expenses for Trustee ("Motion to Respond"), which was filed on August 16, 2006 on behalf of Debtors Stephen J. Rosati and Lisa Mare Rosati.¹ For the reasons set forth below, this Court denies the Motion to Respond.

The history of this case is set forth in the Court's Order Imposing Sanctions dated August 8, 2006. Upon the request of Michael D. Buzulencia, Chapter 7 Trustee in this case ("Trustee"), this Court issued an Order to Appear and Show Cause, directing Debtor Lisa Mare Rosati ("Debtor") only to appear on July 6, 2006 and show cause why she should not be sanctioned for failing to appear and participate at the Meeting of Creditors pursuant to 11 U.S.C. § 341 (the "341 Meeting"). Debtor failed to appear at the hearing on the Order to Appear and Show Cause, but was represented

¹As set forth herein, Debtor Stephen J. Rosati has not been sanctioned and he was not the subject of the prior Order to Appear and Show Cause. As a consequence, it is not clear why he would want or need to respond to the Trustee's motion.

by her counsel. At the conclusion of the hearing, the Court stated that it found Debtor in contempt for failing to appear at the hearing on the Order to Appear and Show Cause and for failing to attend and participate at the 341 Meeting, which, as noted in the August 8, 2006 Order, had been rescheduled and noticed a total of eight times. The Court further held that it was appropriate to sanction Debtor in an amount to cover the Trustee's fees and expenses in connection with the 341 Meetings. The Court instructed Trustee that he had ten days to apply for fees and expenses incurred in connection with the 341 Meetings. The Court further instructed Debtor's counsel that he would have ten days thereafter to oppose any such fees and expenses.

On July 17, 2006, Trustee filed Affidavit setting forth his time and expenses in seeking Debtor's attendance at the 341 Meetings. Debtor failed to timely file any response thereto. Twenty-two days after the Trustee applied for his fees and expenses - on August 8, 2006 - this Court entered Order Imposing Sanctions. As set forth in the Order Imposing Sanctions, Debtor was not sanctioned for invoking her Fifth Amendment privilege, but rather was sanctioned in an amount to reimburse Trustee for his costs and expenses relating to Debtor's failure to attend the original and rescheduled 341 Meetings. As explained in the Order, Debtor was entitled to invoke the privilege against self-incrimination, but she failed to do so properly. Debtor invoked a blanket assertion of privilege with respect to all questions in lieu of properly invoking the privilege.

Debtor's Motion to Respond has been filed a month - rather than the Court-ordered ten days - after Trustee applied for his fees and expenses and more than a week after this Court issued the Order Imposing Sanctions. Because Debtor has not moved this Court to vacate or reconsider the Order Imposing Sanctions, there can be no purpose in granting the Motion to Respond. The matter has already been concluded. Furthermore, based upon the Debtor's Response, which was filed contemporaneously with the Motion to Respond, Debtor has articulated no reason for the Court to vacate or reconsider its Order Imposing Sanctions. Debtor was not sanctioned for invoking her privilege against self-incrimination; she was sanctioned (i) for her conduct in failing to properly invoke the privilege, thus causing the Trustee to schedule and reschedule the 341 Meeting multiple times, and (ii) for failing to appear in response to the Order to Appear and Show Cause.

IT IS SO ORDERED.

**HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE**