
In the United States Bankruptcy Court
for the
Southern District of Georgia
Brunswick Division

In the matter of:)	
)	Chapter 13 Case
JOSEPH NORRELL)	
BRENDA NORRELL)	Number <u>97-20336</u>
)	
<i>Debtors</i>)	

MEMORANDUM AND ORDER

Debtor filed his petition for protection under the Bankruptcy Code on March 13, 1997. In April of 1999, Aurora Loan Services, Inc. (“Aurora”) submitted an affidavit of default to this Court, pursuant to a prior consent order, alleging that the Debtors had defaulted on their March and April payments. Debtors filed a counteraffidavit alleging that an oral agreement had been reached between them and Aurora to satisfy those payments. Debtors’ attorney failed to appear at a hearing held by this Court on the matter and this Court took under advisement the matter of counsel’s failure to appear. Pursuant to applicable authority, I enter the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Debtors filed a voluntary petition under Chapter 7 of the Bankruptcy Code on March 13, 1997. On July 7, 1997, Debtors’ Chapter 7 case was converted to a Chapter 13 case. On June 9, 1997, prior to conversion, Harbourton Mortgage Company (“Harbourton”) filed a motion

for relief from the automatic stay, which was continued until after the case's conversion. In August of 1997, Harbouton transferred the servicing of the debt to Aurora Loan Services, which consequently assumed prosecution of Harbouton's continued motion for relief from the stay. On September 18, 1997, the motion was denied, pursuant to a consent order directing Debtors to strictly comply in terms of payments to Aurora.

This Court confirmed Debtors' Chapter 13 repayment plan in December of 1997. In April of 1999, Aurora submitted an affidavit alleging that Debtors had defaulted on their March and April payments. Debtors filed a counteraffidavit alleging that an oral agreement had been reached between Debtors and a representative of Aurora, whereby Debtors were granted until the end of April to make their February, March and April payments. A hearing on the issue was subsequently scheduled for May 12, 1999, and all parties were notified. Debtors stated at the hearing that they paid their attorney an additional \$130.00 to file the counteraffidavit and to appear at the hearing. Despite this additional payment, Debtor's attorney failed to appear in court for the scheduled hearing. Mrs. Norrell also stated at the hearing that counsel instructed her to deal directly with Aurora, rather than his intervening on her behalf.

CONCLUSIONS OF LAW

11 U.S.C. § 330 provides for the payment of attorney's fees in bankruptcy cases upon a determination of "reasonable compensation." To that end, the Federal Rules of Bankruptcy Procedure provide that:

Any entity seeking interim or final compensation for services . . . from the estate shall file an application setting forth a detailed statement of (1) the services rendered, time expended, and expenses incurred, and (2) the amounts requested. An application for compensation shall include a statement as to what payments have theretofore been made or promised to the applicant for services rendered or to be rendered in any capacity whatsoever in connection with the case, [and] the source of the compensation so paid or promised.

Fed. R.Bankr. P. 2016(a). Additionally, this Court determined, by General Order in effect at the time Debtors' case was filed, that a fee of up to \$950.00 was justified in a Chapter 13 without further application. *See* General Order 1995-4, May 11, 1995. The Order further provides that:

Debtors' counsel are directed to file written statements pursuant to Bankruptcy Rule 2016(b) disclosing the fee arrangement with their clients.

Id. Debtors' counsel filed an initial Rule 2016 statement in the Chapter 13 case disclosing a fee arrangement of \$750.00. Despite the fact that this fee was lower than the maximum allowed by General Order 1995-4, counsel was nonetheless required, pursuant to Section 330 and Rule 2016, to file a new fee disclosure statement upon his accepting additional monies from his clients. No amended disclosure was filed nor did counsel request Court approval of the additional fee.

Moreover, the local rules of the Southern District of Georgia adopt the current canons of professional ethics of the American Bar Association as the standards of professional conduct for members of this bar. *See* Local Rule 83.5(d). Inherent in the practice of law is the requirement that attorneys provide competent representation, which includes "legal knowledge, skill,

thoroughness and preparation reasonably necessary for the representation.” Model Rules of Professional Conduct Rule 1.1; *see also* State Bar of Georgia Rule 3-106. A vital component of competence is “reasonable diligence and promptness in representing a client.” Model Rules of Professional Conduct Rule 1.3; *see also* Standard 44 of Rule 4-102 (“A lawyer shall not without just cause to the detriment of his client in effect wilfully abandon or wilfully disregard a legal matter entrusted to him.”); DR 6-101 of Rule 3-106 (“A lawyer shall not neglect a legal matter entrusted to him.”).

The situation before this Court results from precisely the type of conduct addressed by the ABA Rules.

The classic pattern presented by conduct violating Rule 1.3 is that of a lawyer who takes on a matter and then lets it slide, frequently missing a limitations period, a court-imposed deadline, *or a court appearance*. . . . Neither the Rule nor the Comment is limited to persistent neglect . . . [and] actual prejudice to the client’s matter is not an element of the disciplinary offense. . . . Rule 1.3 imposes a duty to carry through to conclusion all matters related to the representation unless the lawyer withdraws.

Comment, Model Rule 1.3 (emphasis supplied). Withdrawal from representation also requires more than simple failure to appear. *See* Model Rules of Professional Conduct Rule 1.16 (withdrawal allowed only in specific circumstances following notice to clients).

This Court should not have to instruct counsel on the necessity of appearing at a hearing on a contested matter or of shouldering the burden of negotiating with an adverse party.

Counsel's disregard of a scheduled hearing involving his clients runs afoul of basic tenets of professionalism and ignores his already financially-distressed clients' legal needs. I find that counsel abandoned his clients, and collected an unauthorized fee for services rendered. Because the Court retains the authority to approve attorney's compensation for the duration of Debtors' case, and because I find counsel's conduct to require remedial action I conclude that all fees in this case should be forfeited.

ORDER

Pursuant to the foregoing, IT IS THE ORDER OF THIS COURT that Debtor's attorney refund the amount of \$750.00 in fees previously remitted by the Chapter 13 Trustee and \$130.00 paid by Debtors, or a total of \$880.00, to the Chapter 13 Trustee *instanter* to be paid over to Debtors after cure of any plan arrearage.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of July, 1999.