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U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

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**NOT FOR PUBLICATION**

**UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT**

In re:	)	BAP No. NC-11-1331-DHDo
	)	
ISTIAKALI BALOOCH,	)	Bk. No. 07-51118-ASW13
	)	
Debtor.	)	
_____	)	
ISTIAKALI BALOOCH,	)	
	)	
Appellant,	)	
	)	
v.	)	<b>M E M O R A N D U M<sup>1</sup></b>
	)	
DAVID A. BOONE; LEELA V. MENON,	)	
	)	
Appellees.	)	
_____	)	

Submitted on January 20, 2012  
at San Francisco, California

Filed - February 8, 2012

Appeal from the United States Bankruptcy Court  
for the Northern District of California

Hon. Arthur S. Weissbrodt, Bankruptcy Judge, Presiding

Appearances: Istiakali Balooch, Appellant, pro se;  
David A. Boone, Appellee, pro se.

Before: DUNN, HOLLOWELL, and DONOVAN,<sup>2</sup> Bankruptcy Judges.

<sup>1</sup> This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

<sup>2</sup> Hon. Thomas B. Donovan, United States Bankruptcy Judge for the Central District of California, sitting by designation.

1 After the bankruptcy court granted the motion to withdraw  
2 filed by counsel for a chapter 13<sup>3</sup> debtor, debtor appealed. We  
3 AFFIRM.

4 I. FACTS

5 Appellant Istiakali Balooch filed a voluntary chapter 13  
6 petition ("Petition") on April 18, 2007. Appellee David A. Boone of  
7 the Law Offices of David A Boone was Mr. Balooch's bankruptcy  
8 attorney of record. Appellee Leela V. Menon was an attorney in the  
9 Law Offices of David A. Boone who did work on behalf of Mr. Balooch  
10 in the chapter 13 case.

11 Two days before the Petition was filed, Mr. Balooch and  
12 Mr. Boone signed a document titled "Rights and Responsibilities of  
13 Chapter 13 Debtors and Their Attorneys" ("Fee Agreement"), which, as  
14 its name suggests, set out the duties of Mr. Balooch and Mr. Boone  
15 for purposes of prosecuting Mr. Balooch's chapter 13 case. The Fee  
16 Agreement also established the attorney fees to be charged by  
17 Mr. Boone. Under the Fee Agreement, Mr. Boone was authorized to  
18 charge \$5,600 as "initial fees," an enhancement over his \$2,750 fee  
19 for a basic case based on the inclusion of some or all of the  
20 following factors in Mr. Balooch's case: use of "the compromise  
21 plan," involvement of claims relating to one or more parcels of real  
22 property, involvement of vehicle loans or leases, and the existence  
23 of an operating business. The Fee Agreement was specific about when  
24 Mr. Boone would seek additional fees as well as how much those

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25  
26 <sup>3</sup> Unless otherwise specified, all chapter and section  
references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
all "Rule" references are to the Federal Rules of Bankruptcy  
Procedure, Rules 1001-9037.

1 additional fees would be.

2           The bankruptcy court approved the initial fees to Mr. Boone  
3 in the amount of \$5,600 by order entered February 27, 2008.  
4 Thereafter, in accordance with the Fee Agreement, Mr. Boone sought,  
5 and the bankruptcy court approved, supplemental compensation (1) in  
6 the amount of \$600 based upon a required response to filing of a  
7 motion for relief from the automatic stay more than one year  
8 following the petition date, (2) in the amount of \$400 based upon  
9 the filing of a post-confirmation plan modification, and (3) in the  
10 further amount of \$600 based upon a required response to the filing  
11 of a second motion for relief from the automatic stay ("GMAC  
12 Motion") more than one year following the petition date. The fees  
13 the bankruptcy court approved for services Mr. Boone rendered in  
14 Mr. Balooch's case totaled \$7,200 as of May 24, 2010.

15           The GMAC Motion, filed March 17, 2010, resulted in the  
16 underlying dispute which led to this appeal. Notwithstanding the  
17 confirmation of Mr. Balooch's chapter 13 plan, which provided that  
18 the prepetition property tax obligation on his residence would be  
19 paid through the plan, GMAC paid those taxes as an advance. To  
20 address the "default" created by the improper tax advance, GMAC  
21 imposed an escrow account and increased Mr. Balooch's monthly  
22 payment by nearly \$1,000. When Mr. Balooch failed to make the  
23 increased monthly payment, GMAC filed the GMAC Motion asserting that  
24 Mr. Balooch was in default on his post-petition mortgage payments.

25           No fewer than seven hearings were scheduled to address the  
26 GMAC Motion. Following the July 22, 2010, continued hearing on the

1 GMAC Motion, the bankruptcy court directed Mr. Balooch to continue  
2 to make "interim" payments of \$1,410.82, the amount of Mr. Balooch's  
3 regular monthly payment to GMAC prior to the imposition of the  
4 escrow, during the pendency of the proceedings on the GMAC Motion.  
5 Ultimately, on December 15, 2010, the bankruptcy court took the GMAC  
6 Motion "off calendar," but provided that either party could restore  
7 the GMAC Motion to the calendar on 15 days' notice. Notably, GMAC  
8 was not granted relief from the automatic stay.

9           This "resolution" of the GMAC Motion did not resolve  
10 Mr. Balooch's dispute with GMAC. Although GMAC did amend its proof  
11 of claim to add the erroneous tax advance as part of its prepetition  
12 claim, it is apparent from the record that GMAC made little, if any,  
13 effort to correct its accounting with respect to the mortgage, with  
14 the result that improper late charges and other costs continued to  
15 suggest that Mr. Balooch remained in default. To compound the  
16 hardship to Mr. Balooch, GMAC reported these alleged defaults to  
17 credit reporting agencies, which Mr. Balooch contends has hampered  
18 his ability to refinance GMAC's mortgage.

19           Through his letter dated December 15, 2010 ("Boone Letter"),  
20 Mr. Boone informed Mr. Balooch that the GMAC Motion was taken off  
21 calendar, and, in effect, that he would not be taking action with  
22 respect to continued accounting issues with GMAC:

23           We were informed by [GMAC's counsel] that they were yet to  
24 hear from their client but expected that the delinquent  
25 reporting on your credit report would not be corrected by  
26 his client, GMAC. He urged that you explore refinance  
options that would not require the reversal of these  
items. You may also wish to try to correct the matter by  
dealing directly with GMAC.

1           On December 21, 2010, the bankruptcy court received  
2 correspondence dated December 13, 2010<sup>4</sup> ("December 2010 Letter"),  
3 from Mr. Balooch addressed to the bankruptcy judge assigned to his  
4 case. In the December 2010 Letter, Mr. Balooch informed the  
5 bankruptcy court of the specifics of his dispute with GMAC: "My  
6 objective is to refinance the property. . . ."

7           Past months I have waited for GMAC Mortgage to remove late  
8 reporting on my credit history. In order to be approved  
9 for the loan pending with Vitek Mortgage the reversal of  
negative reports by GMAC Mortgage must be attained.

10 Mr. Balooch did not copy Mr. Boone with the December 2010 Letter.

11           After the GMAC Motion was taken off calendar, Mr. Boone sent  
12 a letter dated January 28, 2011, to GMAC's counsel outlining  
13 Mr. Balooch's concerns, confirming that beginning in December 2009  
14 Mr. Boone had provided information to three separate attorneys for  
15 GMAC to address the accounting issues "with little progress or  
16 resolution," and stating that Mr. Balooch was authorized to engage  
17 in direct communication with GMAC's counsel and with appropriate  
18 officers of GMAC "to resolve the outstanding accounting issues to  
19 avert the necessity for the matter to be re-set on the court's  
20 calendar."

21           By his letter to Mr. Balooch dated February 11, 2011  
22 ("February 2011 Letter"), Mr. Boone advised Mr. Balooch that as a  
23 result of the efforts Mr. Boone had undertaken in defense of the  
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25           <sup>4</sup> It appears from the record that the Boone Letter was  
26 attached to the December 2010 Letter, suggesting that the December  
2010 Letter actually was drafted on or after December 15, 2010.

1 GMAC Motion, the automatic stay remained in place, and GMAC could  
2 not proceed with any foreclosure activity absent further allegations  
3 of default and restoration of the GMAC Motion to the calendar.  
4 Mr. Boone stated that he had been "more than attentive" to  
5 Mr. Balooch's file and had addressed all bankruptcy issues.  
6 Finally, Mr. Boone informed Mr. Balooch that he would not continue  
7 representation of Mr. Balooch in connection with the GMAC accounting  
8 dispute:

9 We understand your concerns center on the derogatory  
10 commentary in your credit report and we confirm we have  
11 always advised you to follow the credit report dispute  
12 processes but you advised you were reluctant to do so  
13 believing this avenue would somehow hamper and hinder your  
14 goals.

15 . . .  
16 You may wish to hire alternate Counsel to address your  
17 lender's internal credit reporting practices.

18 On March 18, 2011, the bankruptcy court received  
19 correspondence from Mr. Balooch dated March 14, 2011 ("March 2011  
20 Letter") addressed to the bankruptcy judge assigned to his case. In  
21 the March 2011 Letter, Mr. Balooch restated the dispute to the  
22 bankruptcy court, pointing out that GMAC ignored (1) the provision  
23 of the confirmed plan by paying prepetition property taxes through  
24 an advance<sup>5</sup> and (2) the court's order setting Mr. Balooch's payment  
25 at \$1,410.82, by continuing to impose a forced tax impound account  
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23 <sup>5</sup> The plan is silent as to postpetition property taxes. It  
24 appears from the record that GMAC made a further advance for  
25 postpetition property taxes during the pendency of proceedings on  
26 the GMAC Motion, which Mr. Balooch, through Mr. Boone, repaid  
promptly upon being informed of the advance. Accounting issues were  
created and continue to exist with respect to this advance as well.

1 on Mr. Balooch which increased his monthly payment amount.  
2 Mr. Balooch requested that the bankruptcy court resolve his dispute  
3 with GMAC "by holding the lender responsible for unfair debt  
4 collection action filed." Mr. Balooch concluded with an apology for  
5 "any inconvenience [he] may have caused," but explained that his  
6 attorneys had informed him during a telephone conference that they  
7 would not be helping him further in the dispute. Mr. Balooch did  
8 not copy Mr. Boone with the March 2011 Letter. Attached to the  
9 March 2011 Letter was a letter from Mr. Balooch to Mr. Boone, dated  
10 March 11, 2011, requesting assistance in resolving his dispute with  
11 GMAC resulting from the wrongful tax advance.

12 On May 5, 2011, Mr. Boone filed a motion to withdraw  
13 ("Withdrawal Motion") as counsel in Mr. Balooch's chapter 13 case.  
14 In the Withdrawal Motion, Mr. Boone recounted the procedural history  
15 of the GMAC Motion, pointing out that he had raised with the  
16 bankruptcy court Mr. Balooch's concerns regarding GMAC's derogatory  
17 credit reporting:

18 While the Court was unwilling to order the lender to amend  
19 its reporting to the credit bureaus, the Court suggested  
20 the lender provide a figure for cure by [Mr. Balooch] to  
21 enable the retraction of the damaging entries on his  
22 credit report. This amount was never provided by [GMAC]  
23 or perhaps their policies and procedures prohibited same.

24 Mr. Boone asserted that he had addressed all of the bankruptcy  
25 issues in connection with the GMAC Motion and that he "successfully  
26 defended" the GMAC Motion. Further, after the GMAC Motion came off  
calendar, Mr. Boone attempted to assist Mr. Balooch in his dispute  
with GMAC by writing letters to GMAC's counsel seeking clarification

1 requested by Mr. Balooch and by authorizing direct contact between  
2 Mr. Balooch and a GMAC representative. Nevertheless, Mr. Balooch  
3 was dissatisfied with Mr. Boone's services as evidenced by his  
4 sending the December 2010 Letter and the March 2011 Letter to the  
5 bankruptcy court without Mr. Boone's knowledge or approval.  
6 Mr. Boone asserted that in connection with the December 2010 Letter,  
7 Mr. Balooch attached confidential correspondence from Mr. Boone,  
8 reflecting a breakdown in the attorney-client relationship.  
9 Finally, Mr. Boone informed the bankruptcy court that Mr. Balooch  
10 had filed complaints regarding GMAC with the Comptroller of the  
11 Currency and the Department of Corporations, referencing Ms. Menon  
12 as his counsel in making the complaints, despite the fact that  
13 neither Ms. Menon nor Mr. Boone represented Mr. Balooch in  
14 connection with the complaints.

15 Mr. Boone asserted that by his conduct Mr. Balooch had  
16 created a conflict which rendered it unreasonably difficult for  
17 Mr. Boone to carry out his employment effectively, such that  
18 Mr. Boone should be allowed to withdraw pursuant to either  
19 Rule 3-700(C)(1)(d), Rule 3-700(C)(2), or Rule 3-700(C)(6) of the  
20 California Rules of Professional Conduct.<sup>6</sup>

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22  
23 <sup>6</sup> The relevant provisions of the Cal. Rules of Prof. Conduct  
24 provide for the permissive withdrawal of counsel if the client "by  
25 other conduct renders it unreasonably difficult for the [attorney]  
26 to carry out the employment effectively," when the "continued  
employment is likely to result in a violation of these rules or of  
the State Bar Act," or when the "[attorney] believes in good faith,  
in a proceeding before a tribunal, that the tribunal will find the  
existence of other good cause for withdrawal."



1           In his response ("Response") to the Withdrawal Motion,  
2 Mr. Balooch complained that Mr. Boone discontinued his services to  
3 Mr. Balooch before seeking permission from the bankruptcy court to  
4 withdraw. He attached the February 2011 Letter as an exhibit to the  
5 Response. Mr. Balooch then chronicled in the Response his  
6 dissatisfaction with Mr. Boone's services in connection with the  
7 GMAC dispute, asserting that Mr. Boone failed to enforce GMAC's  
8 compliance with the terms of the confirmed plan, failed to pursue  
9 remedies against GMAC's attorneys when they refused to make any  
10 effort to resolve the accounting issues, and allowed GMAC to  
11 increase his monthly payments and to accrue late fees and attorney  
12 fees. Mr. Balooch further complained that an issue had arisen in  
13 the case relating to a secured vehicle which Mr. Boone failed to  
14 address. With respect to the assertion in the Withdrawal Motion  
15 that Mr. Balooch inappropriately designated Ms. Menon as his counsel  
16 in his complaint with the Comptroller of the Currency, Mr. Balooch  
17 explained that he filed the complaint on the advice of Ms. Menon,  
18 and on that basis he identified her in the complaint as his  
19 attorney. He further explained that he used his own e-mail address  
20 in the complaint only because he was required to provide an e-mail  
21 address and did not know Ms. Menon's. Mr. Balooch concluded by  
22 requesting that the bankruptcy court deny the Withdrawal Motion and  
23 refund to Mr. Balooch attorneys fees previously paid to Mr. Boone  
24 for services that Mr. Balooch asserted were not provided.

25           At the hearing on the Withdrawal Motion held June 20, 2011,  
26 the bankruptcy court noted for the record that Mr. Balooch had not

1 appeared, and then granted the Withdrawal Motion. The order  
2 authorizing Mr. Boone's withdrawal was entered June 23, 2011.  
3 Mr. Balooch filed his notice of appeal on June 27, 2011.

4 At oral argument Mr. Balooch advised the Panel that his  
5 dispute with GMAC had been resolved and his credit report corrected.

## 6 II. JURISDICTION

7 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334  
8 and 157(b) (2) (A). We have jurisdiction under 28 U.S.C. § 158.

## 9 III. ISSUE

10 Whether the bankruptcy court abused its discretion when it  
11 granted the Withdrawal Motion.

## 12 IV. STANDARDS OF REVIEW

13 Whether to grant a motion to withdraw as counsel is a matter  
14 within the discretion of the bankruptcy court, subject to review on  
15 appeal for an abuse of that discretion. See U.S. v. Carter, 560  
16 F.3d 1107, 1113 (9th Cir. 2009); LaGrand v. Stewart, 133 F.3d 1253,  
17 1269 (9th Cir. 1998).

18 We apply a two-part test to determine whether the bankruptcy  
19 court abused its discretion. United States v. Hinkson, 585 F.3d  
20 1247, 1261-62 (9th Cir. 2009) (en banc). First, we consider de novo  
21 whether the bankruptcy court applied the correct legal standard to  
22 the relief requested. Id. Then, we review the bankruptcy court's  
23 fact findings for clear error. Id. at 1262 & n.20. We must affirm  
24 the bankruptcy court's fact findings unless we conclude that they  
25 are "(1) 'illogical,' (2) 'implausible,' or (3) without 'support in  
26 inferences that may be drawn from the facts in the record.'" Id. at

1 1262.

2 Under the abuse of discretion standard, we must have a  
3 definite and firm conviction that the bankruptcy court committed a  
4 clear error of judgment in the conclusion it reached before reversal  
5 is appropriate. Hopkins v. Cerchione (In re Cerchione), 414 B.R.  
6 540, 545 (9th Cir. BAP 2009).

7 V. DISCUSSION

8 Although Mr. Balooch has appealed the order granting the  
9 Withdrawal Motion, both the Response and his reply brief on appeal  
10 reflect that he was unhappy with Mr. Boone's representation.  
11 Nowhere in his submissions to the bankruptcy court or to this Panel  
12 does Mr. Balooch suggest he wants Mr. Boone to continue as his  
13 attorney of record in the bankruptcy case. Thus, we find no basis  
14 upon which we can determine that the bankruptcy court committed a  
15 clear error in judgment when it authorized Mr. Boone to withdraw  
16 from his representation of Mr. Balooch in the chapter 13 case.

17 It appears Mr. Balooch has appealed the order granting the  
18 Withdrawal Motion because the bankruptcy court failed to require  
19 Mr. Boone to disgorge the compensation he had already received in  
20 the case. "I am seeking a refund and other payments as [the] court  
21 deems necessary." Reply Brief at page 2, paragraph (H). "It is  
22 very important that the court award the reimbursement of David A.  
23 Boone's fees [of] \$7,200.00. I require daily medications that I now  
24 have to purchase. . . . Prior to my [bankruptcy] filing I did not  
25 have the above mentioned medications cost. I am unable to afford  
26 additional cost for attorney." Id. at page 4.

1 Any issue Mr. Balooch has with respect to compensation  
2 awarded to Mr. Boone is not properly before us in our consideration  
3 of whether the bankruptcy court abused its discretion when it  
4 authorized Mr. Boone to withdraw as counsel for Mr. Balooch. While  
5 the Response did include a request for a refund of fees that were  
6 paid for "services not provided," Mr. Balooch did not appear<sup>7</sup> at the  
7 hearing scheduled to consider the Withdrawal Motion and the Response  
8 in order to press his request. In our view, the request that  
9 Mr. Boone disgorge previously awarded fees was collateral to the  
10 determination of whether it was appropriate to allow Mr. Boone to  
11 withdraw as counsel for Mr. Balooch in the bankruptcy case, such  
12 that the bankruptcy court was not required to consider the request  
13 in conjunction with the Withdrawal Motion.

14 Four orders approving compensation to Mr. Boone were entered  
15 by the bankruptcy court prior to the time Mr. Boone filed the  
16 Withdrawal Motion. Mr. Boone served Mr. Balooch with each  
17 application for compensation at the time it was filed. We observe  
18 that Mr. Balooch never filed a timely objection contemporaneous with  
19 the pending consideration of the compensation applications. Nor did  
20 he appeal any of the compensation orders, entered by the bankruptcy  
21 court.

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23 <sup>7</sup> Mr. Balooch appears to suggest on appeal that he was  
24 unable, for medical reasons, to attend the hearing. However, there  
25 is nothing in the record which suggests that Mr. Balooch made any  
26 effort to obtain a continuance of the hearing on the Withdrawal  
Motion, or that he sought reconsideration of the order on the  
Withdrawal Motion on the basis that he medically was unable to  
attend the hearing.

1 At oral argument Mr. Balooch asserted that if he could not  
2 get back the fees he had paid to Mr. Boone, then he wanted Mr. Boone  
3 to continue to provide services to him. Mr. Boone stated at oral  
4 argument that the only outstanding matter in Mr. Balooch's case was  
5 Mr. Balooch's requirement to make plan payments. Oral argument is  
6 not the time to "negotiate" a remedy not sought from the bankruptcy  
7 court.

#### 8 VI. CONCLUSION

9 Mr. Balooch does not want Mr. Boone to serve as his counsel  
10 in the bankruptcy case. Any dissatisfaction Mr. Balooch has  
11 regarding compensation paid to Mr. Boone during the pendency of  
12 Mr. Balooch's bankruptcy case is not properly before the Panel in  
13 this appeal. While we sympathize with Mr. Balooch for the apparent,  
14 inappropriate treatment he has received at the hands of GMAC, which  
15 he has since resolved,<sup>8</sup> we do not see any abuse of discretion in the

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17 <sup>8</sup> Two weeks prior to oral argument, Mr. Balooch filed a  
18 "Motion and Request to Submit New Evidence." Attached to this  
19 document were copies of three letters from GMAC Mortgage. The  
20 first, dated July 14, 2011, prompted by an inquiry by the State of  
21 California Department of Corporations ("Corporations Department")  
22 dated July 14, 2011, was addressed to Mr. Balooch. It confirmed  
23 removal of the escrow account and the issuance of an electronic  
24 notice "to the four major credit bureaus to update their records to  
25 reflect all payments since the Bankruptcy filing as paid on time."  
26 The second, dated September 7, 2011, was addressed to the  
Corporations Department. It clarified that GMAC Mortgage no longer  
was asserting outstanding late charges with respect to Mr. Balooch's  
account, and it confirmed that the account "currently reflects a due  
date of October 1, 2011." It also stated that GMAC Mortgage was  
entitled to collect \$950.00 in outstanding fees resulting from the  
proof of claim and motion for relief filed with the Bankruptcy  
court. The third letter, dated November 16, 2011, was addressed to

(continued...)

1 bankruptcy court's decision to grant the Withdrawal Motion. We  
2 therefore AFFIRM the bankruptcy court's order granting the  
3 Withdrawal Motion.

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19           <sup>8</sup>(...continued)  
20 Mr. Balooch. It advised that, in response to a further inquiry from  
21 the Corporations Department, GMAC Mortgage had decided both to  
22 remove the \$950.00 outstanding fees from Mr. Balooch's account and  
23 to withdraw the GMAC Motion.

24           Also attached to the document was another copy of the  
25 Disclosure of Compensation filed in the bankruptcy case, previously  
26 included in Mr. Balooch's excerpts of record, this time with an  
27 additional paragraph circled.

28           We understand the purpose of the document and its attachments  
29 to be to emphasize Mr. Balooch's position that Mr. Boone did not  
30 resolve Mr. Balooch's accounting and credit reporting dispute with  
31 GMAC. Under the circumstances, we find no harm in granting Mr.  
32 Balooch's motion to supplement the record on appeal.