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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NOT FOR PUBLICATION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.)	M E M O R A N D U M¹
)	
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,² Bankruptcy Judges.

¹ 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.

² 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 13³ 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

25
26 ³ 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, 2010⁴ ("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
24

25 ⁴ 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 advance⁵ 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
26

23 ⁵ 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.⁶

21

22 ⁶ The relevant provisions of the Cal. Rules of Prof. Conduct
23 provide for the permissive withdrawal of counsel if the client "by
24 other conduct renders it unreasonably difficult for the [attorney]
25 to carry out the employment effectively," when the "continued
26 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 appear⁷ 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.

23 ⁷ 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,⁸ we do not see any abuse of discretion in the

16 _____
17 ⁸ 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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⁸(...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.

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

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