

NOT FOR PUBLICATION

OCT 19 2007

HAROLD S. MARENUS, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

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In re:	)	BAP No.	WW-07-1170-MkPaJ
	)		
LINDA KONCICKY,	)	Bk. No.	01-23374
	)		
Debtor.	)		
	)		
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LINDA KONCICKY,	)		
	)		
Appellant,	)		
	)		
v.	)	<b>MEMORANDUM<sup>1</sup></b>	
	)		
JOHN S. PETERSON, Chapter 7	)		
Trustee; BRUCE KRIEGMAN;	)		
EISENHOWER & CARLSON; GORDON,	)		
THOMAS, HONEYWELL; QUACKENBUSH)	)		
& HANSEN, PS; RONALD P. BELL,	)		
	)		
Appellees.	)		
	)		
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Argued by Video Conference and Submitted  
on September 21, 2007

Filed - October 19, 2007

Appeal from the United States Bankruptcy Court  
for the Western District of Washington

Hon. Thomas T. Glover, Bankruptcy Judge, Presiding.

Before: MARKELL, PAPPAS and JURY, 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.

1 Pro se debtor, Linda Koncicky ("Debtor"), appeals the  
2 bankruptcy court's approval of the Trustee's Final Report ("Final  
3 Report") and Applications for Administrative Expenses ("Fee  
4 Applications"). While the trustee ultimately paid only a single  
5 unsecured claim in the amount of \$5,659.20, the Final Report  
6 sought approval of \$144,774.70 in fees and expenses. Debtor,  
7 however, provides no factual or legal basis for reversal. Upon  
8 review of the record and in light of the applicable standard of  
9 review, we conclude that we AFFIRM.

#### 10 I. FACTS

11 On December 4, 2001, Debtor filed a voluntary petition under  
12 chapter 7.<sup>2</sup> She originally included a single unsecured claim for  
13 \$12,000.<sup>3</sup> John S. Peterson was appointed as trustee ("Trustee").  
14 In the normal course of investigating the Debtor's financial  
15 affairs, the Trustee discovered material misrepresentations and  
16 omissions in Debtor's schedules and Statement of Financial  
17 Affairs. After bankruptcy court approval, the Trustee retained  
18 Ronald Bell ("Bell") as his counsel to pursue a denial of Debtor's  
19 discharge.<sup>4</sup> At trial, the court found that the Debtor had  
20 misrepresented her marital status and assets and had fraudulently  
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22 <sup>2</sup> Unless otherwise indicated, all chapter, section and rule  
23 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and  
24 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as  
25 enacted and promulgated prior to the effective date (October 17,  
2005) of the relevant provisions of the Bankruptcy Abuse  
Prevention and Consumer Protection Act of 2005, Pub. L. 10908,  
April 20, 2005, 119 Stat. 23.

26 <sup>3</sup> Debtor subsequently amended her schedules to include a  
27 second claim of unstated amount.

28 <sup>4</sup> Applicants Gordon Thomas Honeywell, Eisenhower & Carlson,  
and Bruce Kriegman later substituted after Bell withdrew.

1 transferred a partial interest in significant real property  
2 ("Property") to her husband. Thereafter, in a series of orders,  
3 the court denied the Debtor's discharge and directed the Debtor  
4 and her spouse to convey their individual interests in the  
5 Property to the Trustee.<sup>5</sup> The enforcement of these orders proved  
6 difficult.

7 An example of the difficulty can be seen in the efforts to  
8 enforce the bankruptcy court's order divesting the Debtor of the  
9 Property. The Trustee began his efforts in November 2002, when  
10 the Debtor submitted a Motion to Reconsider the ordered transfer.  
11 The court's denial of the motion was followed by Debtor's appeal  
12 to the BAP (which was dismissed for lack of prosecution), three  
13 attempts to reinstate the appeal, and finally an appeal to the  
14 Ninth Circuit, where she lost. Undeterred, the Debtor filed a  
15 motion for rehearing to the Ninth Circuit.

16 On June 15, 2006, the Ninth Circuit denied that motion, and  
17 then, following a similar action undertaken by the BAP, barred the  
18 Debtor from making further filings. During this same time period,  
19 Debtor also appealed a bankruptcy court order approving Bell's  
20 fees and costs to the United States District Court for the Western  
21 District of Washington. The district court affirmed, and Debtor  
22 again appealed to the Ninth Circuit. The Ninth Circuit also  
23 rejected this appeal.

24 Debtor and her spouse's continued refusal to convey the  
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26 <sup>5</sup> These orders included: Summary Judgment denying discharge  
27 and ordering turnover of the Debtor's and her spouse's interest in  
28 Property entered August 6, 2002; Findings of Fact and Conclusions  
of Law finding Debtor fraudulently transferred property to  
husband; and Order to turnover husband's interest in property.

1 Property required another round of proceedings. On November 5,  
2 2003, the bankruptcy court, acting on the Trustee's motion, issued  
3 a judgment vesting title of Property in the Trustee pursuant to  
4 Rule 7070. It also ordered that the Debtor and her spouse (as the  
5 Defendants) turn over the Property to the Trustee.<sup>6</sup> After they  
6 failed to comply, the bankruptcy court, on August 1, 2006,  
7 authorized issuance of a Writ of Execution for the Property. It  
8 also denied Defendants' Motion to Stay Enforcement of Sale,  
9 Objection to Claims, Relief from Judgment and Orders, and other  
10 Requested Relief. Debtor and her spouse appealed this order to  
11 the BAP and filed an emergency motion for stay with the BAP on the  
12 day the writ was served. The BAP denied the motion, directing the  
13 Debtor and her spouse to file it with the bankruptcy court. The  
14 bankruptcy court issued a temporary stay of the Writ of Execution  
15 sua sponte, in order to allow the Debtor and her spouse to renew  
16 their motion with the BAP. The bankruptcy court denied the  
17 Trustee's motion for reconsideration and vacation. On September  
18 21, 2006, the BAP denied the second motion of the Debtor and her  
19 spouse for emergency stay on the basis of a failure to show a  
20 likelihood of success of appeal on the merits.

21 When the marshal resumed execution of the writ, the Debtor  
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23 <sup>6</sup> In entering the judgment and order, the bankruptcy court  
24 considered: the Trustee's Motion; Declaration of Plaintiff's  
25 Counsel in Support of Motion for Entry of Judgment Pursuant to  
26 FRBP 7070 and other Applicable Law; prior Summary Judgment,  
27 Findings of Fact and Conclusions of Law and related order;  
28 Defendants' Opposition to Motion for Entry of Judgment Pursuant to  
FRBP 7070; Debtor's Opposition to Motion for Order Compelling  
Debtor to Turn Over Property of the Estate; Debtor's Motion to  
Stay Enforcement and for Waiver or Reduction of Supersedeas Bond;  
and the Trustee's Reply and Opposition to Debtor's Opposition and  
to Debtor's Motion.

1 and her spouse agreed to participate in settlement negotiations  
2 with the Trustee, which resulted in an agreement dated October 5,  
3 2006 ("Settlement Agreement"). The terms of the settlement  
4 included agreement by Debtor and her spouse: to pay \$144,456.00 to  
5 the estate,<sup>7</sup> to withdraw or dismiss their pending motions and  
6 appeals, to cooperate as necessary to carry out the terms, and to  
7 not file any further pleadings or documents not in accordance with  
8 the terms of the Settlement Agreement.<sup>8</sup>

9 On October 24, 2006, the Debtor and her spouse filed a  
10 response of non-opposition to the Trustee's motion to approve the  
11 Settlement Agreement. Thereafter, on October 31, 2006, the  
12 bankruptcy court issued its order approving the Settlement  
13 Agreement. On or about December 7, 2006, the Debtor made her  
14 final payment to the Trustee under the agreement.

15 On March 14, 2007, after the Fee Applications were filed, the  
16 Trustee filed the Final Report requesting allowance of fees and  
17 expenses in the amount of \$144,774.70.<sup>9</sup> On April 12, 2007,

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20 <sup>7</sup>The agreement required an immediate payment of \$50,000 with  
21 the balance of \$94,456.00 due within 60 days, which could be  
22 funded by a home equity loan or reverse mortgage on the Property.

22 <sup>8</sup>Paragraph 16 of the Settlement Agreement provides in  
23 pertinent part as follows:

23 "b. [Debtor and her spouse] agree that they will not file any  
24 further pleadings or documents in the Debtor's chapter 7 case  
25 (except, to the extent applicable, any pleadings for  
26 withdrawal/dismissal described above and any pleadings supporting  
27 approval of the agreement).

25 c. [Debtor and her spouse] agree that they will not file any  
26 further appeals of any kind relating to the Debtor's chapter 7  
27 case, the Action, or any order approving this agreement."

27 <sup>9</sup>The difference, between the settlement amount paid by the  
28 Debtor and the amount of fees and expenses requested by the  
Trustee, reflects accrued interest credited to the Debtor.

1 apparently contrary to the Settlement Agreement, see note 8, the  
2 Debtor filed an objection to the report. On April 20, 2007, at  
3 hearing, the bankruptcy court approved the Final Report and the  
4 Fee Applications. The court overruled Debtor's objections,  
5 finding that she had raised only dissatisfaction with the outcome  
6 of rulings already settled rather than refuting that the Trustee  
7 and professionals had met the criteria for award of compensation  
8 under section 330.

9 On April 24, 2007, the bankruptcy court issued its order  
10 approving the report and awarding compensation. In response, and  
11 again contrary to the Settlement Agreement, the Debtor filed this  
12 appeal to the BAP.

## 13 **II. JURISDICTION**

14 The bankruptcy court had jurisdiction under 28 U.S.C.  
15 §§ 1334, 157(b)(2)(A), (B). This court has jurisdiction under 28  
16 U.S.C. §§ 158(a) and (b).

## 17 **III. ISSUES**

18 Did the bankruptcy court abuse its discretion in approving  
19 Trustee's Final Report and Fee Applications pursuant to 11 U.S.C.  
20 § 330?

## 21 **IV. STANDARD OF REVIEW**

22 We review the bankruptcy court's award of attorney fees for  
23 abuse of discretion. Smith v. Edwards & Hale, Ltd. (In re Smith),  
24 317 F.3d 918, 923 (9th Cir. 2002). We find an abuse of discretion  
25 if we have a definite and firm conviction that the bankruptcy  
26 court committed a clear error of judgment. Mendez v. Salven (In  
27 re Mendez), 367 B.R. 109, 113 (9th Cir. BAP 2007).

28 Factual findings made in the course of awarding compensation

1 are not disturbed unless clearly erroneous. See Friedman Enters.  
2 v. B.U.M. Int'l Inc. (In re B.U.M. Int'l, Inc.), 229 F.3d 824, 830  
3 (9th Cir. 2000); Rule 8013. A finding is not "clearly erroneous"  
4 unless, based on the entire evidence, the reviewing court is left  
5 with the definite and firm conviction that a mistake has been  
6 committed. United States v. U.S. Gypsum Co., 333 U.S. 364, 395  
7 (1948).

## 8 **V. DISCUSSION**

9 Awards of compensation to trustees and their professionals  
10 are evaluated based upon the criteria contained in section 330.  
11 The bankruptcy court has wide discretion to award reasonable  
12 compensation and reimbursement for actual, necessary services  
13 rendered, and expenses incurred, by the trustee and those  
14 professionals employed by the trustee. See Southwestern Media,  
15 Inc. v. Raum, 708 F.2d 419 (9th Cir. 1983); 11 U.S.C. § 330. In  
16 determining if compensation is reasonable, the court looks to the  
17 nature, extent, and value of the services rendered, taking  
18 relevant factors into consideration. 11 U.S.C. § 330(a)(3).  
19 "Determinations as to necessity, reasonableness, etc., involve  
20 questions of fact," Stalnaker v. DLC, Ltd., (In re DLC, Ltd.),  
21 295 B.R. 593, 608 (8th Cir. BAP 2003), which as noted above are  
22 subject to a clearly erroneous standard.

23 Here, the record amply demonstrates that the amounts awarded  
24 were within the discretion of the bankruptcy court. The record  
25 shows that the Trustee filed the Final Report with the bankruptcy  
26 court and, along with his professionals, made application to the  
27 court for compensation and reimbursement of fees incurred in  
28 fulfilling their duties. The Fee Applications included detailed

1 description of the services rendered, explanation of why they were  
2 necessary, and itemization of costs and fees, pursuant to the  
3 requirements of Rule 2016(a). Further, the record shows that the  
4 Debtor established a pattern of failing to cooperate, obstructing  
5 court orders, and initiating proceedings without basis.

6 The extent and amount of attorneys' fees are almost  
7 exclusively the result of Debtor's prevarications and obduracy.  
8 She persisted in pursuing myriad unsuccessful appeals and other  
9 unwarranted actions, all of which unnaturally and unnecessarily  
10 prolonged an otherwise routine voluntary chapter 7 case.

11 Debtor's actions are most puzzling in light of the facts that  
12 she settled with the Trustee, supported the court's approval of  
13 the settlement, made full payment to the Trustee per the  
14 settlement in the amount of \$144,456.00, and only then, contrary  
15 to the terms of the Settlement Agreement (see Note 8) objected to  
16 the Final Report and Fee Applications and then filed this appeal.<sup>10</sup>  
17 In short, the Debtor has turned out to be her own worst enemy.

18 The bankruptcy judge took all of this into consideration when  
19 he approved the Final Report and Fee Applications. As he stated:

20 Ms. Koncicky, you know, I can't really spend any time  
21 telling you what I already told you during the trial.  
22 Sadly you've created your own problems here. And  
23 they've now mushroomed into just, you know, \$100,000 of  
24 expenses to you. It's too bad. But, you know, even  
today, most of what you raise are dissatisfactions with  
things and excuses concerning -- either dissatisfaction  
with prior rulings that have been settled on appeal; or,  
you know, in the case of the settlement, an argument

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26 <sup>10</sup> We read the court approved Settlement Agreement to have  
27 required Debtor to seek court approval before filing both an  
28 objection to the Final Report and Fee Applications and this  
appeal. The record reveals no attempt to do so. We, however,  
will not pursue this further in light of the fact that the Trustee  
did not object to Debtor's filings.



1 that it's somehow extortion. You had a lawyer involved  
2 with it. You've had several lawyers in the case. But  
it's time for all of this to end so -

3 Tr. Of Proceedings at 8:8-19, Apr. 20, 2007.

4 Deference is given to the judge's familiarity with the  
5 necessity of the trustee to respond, and with the nature and  
6 extent of the services rendered in responding, to the numerous  
7 actions taken by the Debtor. In re Continental Ill. Sec. Litig.,  
8 962 F.2d 566, 568 (7th Cir. 1992). Based on the evidence in the  
9 record and deference to the judge's familiarity with the case, the  
10 judge's determination that the Trustee's and professionals'  
11 substantial fees and expenses were reasonable is not clearly  
12 erroneous.

13 We make this determination in light of the rule that, "[a]  
14 party opposing a fee application must carry the burden of  
15 explaining what therein is unreasonable or, at least, what would  
16 be reasonable under the circumstances." In re Blackwood Assocs.,  
17 L.P., 165 B.R. 108, 112 (Bankr. E.D.N.Y. 1994) (citing In re  
18 Hunt's Health Care, Inc., 161 B.R. 971, 981-982 (Bankr. N.D. Ind.  
19 1993) as quoting Steinlauf v. Continental Ill. Corp. (In re  
20 Continental Ill. Sec. Litig.), 962 F.2d 566, 570 (7th Cir. 1992)).  
21 "[Debtor has] the responsibility to challenge the information and  
22 produce evidence controverting that produced by the applicant."  
23 In re Schugg, 2007 WL 1089676, \*10 (Bankr. D. Ariz. Apr. 10,  
24 2007). The court must, however, construe pro se briefs liberally  
25 to ascertain Debtor's contentions. Balistreri v. Pacifica Police  
26 Dep't, 901 F.2d 696, 699 (9th Cir. 1988). Yet, the court need not  
27 ferret out arguments and seek to substantiate them in law when  
28 Debtor fails to do so. See DeBuono v. Fanelli (In re Fanelli),

1 263 B.R. 50, 62 (Bankr. N.D.N.Y. 2001).

2 Here, with minor exceptions, Debtor merely repeats verbatim  
3 the objections made to the bankruptcy court. She contends that  
4 the fees charged by the Trustee and other professionals were  
5 either not actually incurred or were not necessary as required  
6 pursuant to section 330. Beyond a protracted series of  
7 disconnected questions and statements as to the propriety of  
8 various charges, the Debtor provides no legal basis or factual  
9 evidence to support her conclusions of impropriety on the part of  
10 the bankruptcy court, the Trustee, or his professionals.

11 Debtor's legal arguments are a mixture of relevant and  
12 irrelevant (and in some cases, nonexistent) legal authority. As  
13 to those statutes and rules that may be relevant, Debtor makes  
14 only conclusory statements as to their application. To support  
15 her contention that the court abused its discretion, for example,  
16 she states categorically that the court did not review the Final  
17 Report pursuant to sections 327-330. Debtor Br. p. 22. Debtor  
18 does not, however, provide any discussion applying the cited law.

19 Debtor continues by citing cases that are either irrelevant  
20 or erroneously applied. For example, she cites to Valley Eng'g v.  
21 Elec. Eng'g Co., 158 F.3d 1051 (9th Cir. 1998) stating that a  
22 "[c]reditor claim has been dismissed when hides a document  
23 important to other party," with no further discussion as to its  
24 relevance. Debtor Br. p. 23. She also cites to Mass. Mut. Life  
25 Inc. Co. v. Brock, 405 F.2d 429, 432 (5th Cir. 1968). Although it  
26 is unclear what point this case supports, in any event its holding  
27 is misapplied. The holding in the case, that bankruptcy  
28 professionals cannot be compensated at the same rate as other

1 practitioners, was overruled by the enactment of section  
2 330(a)(3)(E) to recognize that compensation of bankruptcy  
3 practitioners should be in parity with that of others.

4 Debtor's factual evidence is also deficient. Quite  
5 literally, the Debtor, in large part, merely questions the amount,  
6 propriety of, or need for individual charges. For example, the  
7 Debtor asked: "(for what was the check?)" [sic]; "How many pages  
8 is one creditor's matrix to read it 0.75 hour?" [sic]; "Phone  
9 Discussion with Trustee 1.10 hour?" [sic]; "What Mr. Bell  
10 discussed what he already did not discussed in previous 33  
11 conferences?" [sic] Debtor Br. pp. 11-12. Debtor otherwise makes  
12 conclusory statements regarding specific work or charges. Again  
13 by example, the Debtor states: "6 hours is excessive." "No proof."  
14 "Any charge for Motions to shorten time is unnecessary and costly  
15 expense." [sic] Id. p. 15.

16 Debtor also asserts a number of other objections unrelated to  
17 fees. For example, Debtor charges that the Trustee violated the  
18 automatic stay, terminated her appeals and motions, initiated  
19 frivolous lawsuits, and deprived Debtor of her right to  
20 conversion. Debtor Br. pp. 4-6, 8. Debtor defends transfer of  
21 the Property to her husband as being in accordance with a  
22 separation agreement (Debtor Reply Br. p. 3), although it has been  
23 determined to be illusory. She again represents herself as being  
24 single, as she did in her petition, based upon a definition in  
25 "Webster Dictionary" [sic] that it means the same as "separated,"  
26 although she does not dispute that she is married. Id. As  
27 pointed out by the bankruptcy court these issues were either  
28 previously decided and/or are not before the court.

1 **VI. CONCLUSION**

2 The bankruptcy court did not clearly error in finding that  
3 the services provided by the Trustee and his professionals were  
4 actual and necessary, or that the amounts requested were  
5 reasonable under the circumstances. And Debtor did not produce  
6 adequate proof to the contrary. Therefore the bankruptcy court  
7 did not abuse its discretion in approving the Trustee's Final  
8 Report and the Fee Applications. WE AFFIRM.

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