

NOT FOR PUBLICATION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
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LINDA KONCICKY,)	Bk. No.	01-23374
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Debtor.)		
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LINDA KONCICKY,)		
)		
Appellant,)		
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v.)	MEMORANDUM¹	
)		
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.

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.

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 7.² She originally included a single unsecured claim for
13 \$12,000.³ 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.⁴ At trial, the court found that the Debtor had
20 misrepresented her marital status and assets and had fraudulently
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22 ² 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 ³ Debtor subsequently amended her schedules to include a
27 second claim of unstated amount.

28 ⁴ 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.⁵ 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 ⁵ 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.⁶ 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 ⁶ 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,⁷ 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.⁸

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 \$144,774.70.⁹ On April 12, 2007,
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20 ⁷The 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.

23 ⁸Paragraph 16 of the Settlement Agreement provides in
24 pertinent part as follows:

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

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

⁹The difference, between the settlement amount paid by the
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.¹⁰
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 ¹⁰ 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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