NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	
MURRAY WINDMAN and PAULINE WINDMAN,	BAP No.: CC-08-1080-MkHPa
Debtors.	BK No.: 2:07-bk-17535-BB
ARTHUR G. LAWRENCE,	
Appellant,	
v.	**MEMORANDUM**[*]
THE UNITED STATES TRUSTEE, Los Angeles; PAULINE WINDMAN; MURRAY WINDMAN; HANEY, BUCHANAN & PATTERSON, LLP; WAYNE WINDMAN; IRVING WINDMAN; FRED WINDMAN; MURIEL WINDMAN; WILLIAM BRENDEN,	
Appellees.	

Argued and Submitted on September 25, 2009
at Pasadena, California

Filed - November 18, 2009

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

Honorable Sheri Bluebond, Bankruptcy Judge, Presiding

Before: MARKELL, HOLLOWELL, AND PAPPAS, Bankruptcy Judges.

[*]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.

I. Summary

Arthur Lawrence appeals an order requiring him to disgorge $8,850 in attorneys' fees he received for two bankruptcy cases he filed for the same debtor. We affirm.

II. Facts

Arthur Lawrence filed two chapter 11[1] bankruptcy cases for Murray and Pauline Windman (the "Debtors"). The first was filed on June 22, 2007, case no. 07-bk-15236-BB ("Windman I"). The Debtors had not obtained pre-petition credit counseling before filing, and Mr. Lawrence filed inaccurate schedules on their behalf. As a result, Windman I was dismissed on August 10, 2007, and closed on August 29, 2007.

Still represented by Mr. Lawrence, the Debtors immediately filed a second case on August 29, 2007, case no. 07-bk-17535-BB ("Windman II"). Although the Debtors had obtained credit counseling by this time, Mr. Lawrence still supplied the same inaccurate schedules as he did in Windman I.

A potential cause of this lapse is that Mr. Lawrence had his own problems. On September 18, 2007, Mr. Lawrence was temporarily suspended from practice after failing the Multi-State Professional Responsibility Exam.[2]

As a result, Mr. Lawrence was unable to practice law, and the Debtors hired another attorney to represent them in

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[1]Unless specified otherwise, all Code, chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

[2]He been ordered to take the exam because he had improperly co-mingled client funds.

Windman II. This change of attorneys was not terribly prejudicial, as the Debtors were not actually in any financial distress. Indeed, as admitted by their new bankruptcy counsel, Mr. Lawrence had filed the two bankruptcy petitions not to reorganize the Debtors' finances, but to obtain a litigation reprieve from a group of family members (the "Plaintiff Group") who were suing the Debtors over a family real estate deal.

The Office of the United States Trustee (the "UST") then filed a motion to dismiss the case. Based upon the Debtor's admission and the material deficiencies in their filings, the bankruptcy court found Windman II to have been filed in bad faith. The bankruptcy court then: dismissed Windman II on November 1, 2007; barred the Debtors from filing for bankruptcy again for 120 days; and, jointly and severally sanctioned the Debtors and Mr. Lawrence $18,000.[3] The court also found Mr. Lawrence did not seek or obtain court approval for his employment in either case,[4] and reserved jurisdiction after the dismissal to rule on the propriety and reasonableness of Mr. Lawrence's fees.

Given Mr. Lawrence's performance in Windman I and II the UST filed a motion in Windman II pursuant to 11 U.S.C § 329

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[3]This money was to go to the Plaintiff Group to cover their attorneys' fees.

[4]Although the issue is not before the panel on appeal, "an attorney who fails to comply with the disclosure requirements forfeits any right to receive compensation". Peugeot v. U.S. Trustee (In re Crayton), 192 B.R. 970, 981 (9th Cir. BAP 1996); Hale v. U.S. Trustee (In re Basham), 208 B.R. 926, 931(9th Cir. BAP 1997) aff'd sub nom. In re Byrne, 152 F.3d 924 (9th Cir. 1998).

which sought to force Mr. Lawrence to disgorge some of his fees. Although the exact amount might be debated, it appeared that Mr. Lawrence had received a total of $12,928 from the Debtors for both cases, of which $2,078 consisted of filing fees Mr. Lawrence advanced to them. When he filed Windman II, Mr. Lawrence disclosed a $10,000 retainer for that case on the form entitled "Disclosure of Compensation of Attorney For Debtor," filed in accordance with Rule 2016.

The UST's motion was heard on February 7, 2008. At the hearing on the UST's motion, the bankruptcy court ordered Mr. Lawrence to return the entire $10,000 retainer from Windman II to the Debtors. Thereupon Mr. Lawrence informed the court that the $10,000 compensation he had disclosed was actually for Windman I, despite the documents he submitted in Windman II. Given this recollection, the court continued the hearing until February 28, 2008 to allow Mr. Lawrence the opportunity to submit additional evidence on how much in fees he had actually received in each case.

On February 26, 2008, Mr. Lawrence filed a "First Amended Disclosure of Compensation of Attorney For Debtor" in Windman II which stated that his compensation for Windman II was $2,139. Mr. Lawrence was not the most diligent timekeeper, but he had prepared and submitted a billing statement for the court between the two February hearings to reflect this allocation of fees between the two cases. This statement was thinly supported by the only contemporaneous statement of his fees in the record – a handwritten, undated note from the Debtors' bookkeeper, which had dates corresponding to book entries in Mr. Lawrence's

records, but which did not explicitly allocate fees between Windman I and Windman II.

Based upon this record, the bankruptcy court determined that the sums the Debtors paid to Mr. Lawrence were excessive in light of the limited value of services he provided. The court expressed "reason to doubt Mr. Lawrence's financial records" and based on the record in front of it, found that the Debtors "paid...$10,850...for both cases."[5] On this basis, the court determined that Mr. Lawrence was only entitled to retain $1,000 per case, and ordered him to disgorge $8,850. It further ordered him to pay this sum to the Plaintiff Group's attorney in partial satisfaction of the $18,000 in sanctions previously imposed on Debtors and Mr. Lawrence.[6]

Mr. Lawrence appeals this fee reduction.

III. Statement of Jurisdiction

A fee reduction motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). The bankruptcy court had jurisdiction under 28 U.S.C. §§ 157(b)(1) and (2). This was a final order, and the panel has jurisdiction pursuant to 28 U.S.C.

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[5]The court did not make an explicit finding on the allocation of fees paid by the Debtors to Mr. Lawrence for the two cases.

[6]Although the Debtors and the Plaintiff Group eventually stipulated to remove that bad faith finding from the order dismissing Windman II, they also explicitly agreed to allow the attorneys' fees payment to stand unchallenged. The stipulation indicates that this money was paid, as it refers to "the $19,000 [sic] paid". The Debtors, and not Mr. Lawrence, appear to have paid all this money.

§§ 158(a)(1) and (c)(1). Notice of appeal was timely filed in accordance with Rules 8002(a) and (b).

IV. Issues Presented

1. Did the bankruptcy court err when it determined that Mr. Lawrence provided legal services of limited value and therefore reduced his fees in Windman II, a case it specifically retained jurisdiction over to rule on fees?

2. Did the bankruptcy court err in exercising its "arising under" jurisdiction, when, given the facts of these cases, it ordered disgorgement of fees purportedly paid in Windman I after that case was closed and without formally reopening it?

V. Standards of Review

The panel reviews findings of fact under the clearly erroneous standard, giving due regard to the opportunity of the bankruptcy court to judge the credibility of witnesses. Rule 8013. "[The panel] review[s] the bankruptcy court's conclusions of law and questions of statutory interpretation de novo." Village Nurseries v. Gould (In re Baldwin Builders), 232 B.R. 406, 410 (9th Cir. BAP 1999) (citations omitted). As it pertains to this case, a reduction of attorneys' fees is reviewed for abuse of discretion. Roberts, Sheridan & Kotel, PC v. Bergen Brunswig Drug. Co. (In re Mednet), 251 B.R. 103, 106 (9th Cir. BAP 2000).

VI. Discussion

A. Did the bankruptcy court err when it determined that Mr. Lawrence provided legal services of limited value?

Mr. Lawrence's strenuous objections aside, it is undisputed that the bankruptcy court had the authority to order a reduction

of fees in Windman II. The analysis starts and ends with the Bankruptcy Code. "If ... compensation [of an attorney] exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive." § 329(b).

> What constitutes reasonableness is a question of fact to be determined by the particular circumstances of each case. The requested compensation may be reduced if the court finds that work done was excessive or of poor quality. The reasonableness of a ... fee arrangement is within the sound discretion of the bankruptcy court.

3 Collier on Bankruptcy ¶ 329.04 (Alan N. Resnick & Henry J. Sommer, eds., 15th rev. ed. 2009).

The bankruptcy court, after dismissing Windman II, explicitly retained jurisdiction to rule on the UST's motion to reduce Mr. Lawrence's fee. Mr. Lawrence thereafter represented to the court that he received $2,139 for Windman II. The court determined that the value of Mr. Lawrence's services in Windman II was $1,000.

There is nothing to indicate that the court abused its discretion in making these determinations, and ample evidence in the record to support such a determination. Therefore, we affirm the court's determination that the value of services rendered by Mr. Lawrence in Windman II was $1,000 and affirm the court's disgorgement order of the excess $1,139.

Mr. Lawrence argues that disgorgement is "moot" because the Debtors paid the entire $18,000 awarded to the Plaintiff Group. This argument conflates two distinct and unrelated points. Mr. Lawrence confuses the finding of excessive compensation with the directed destination of the monies disgorged. The court

found that Mr. Lawrence provided services of limited value. Therefore, it ordered him to disgorge his excessive fees. As the destination of that money, the court directed the disgorged fees to help satisfy the $18,000 sanctions judgment. But the disgorgement was not dependant on there being a sanctions judgment to satisfy. If that judgment has been satisfied in full, the court should direct that the excess fees be repaid to the Debtors.[7]

B. Did the bankruptcy court err in exercising its "arising under" jurisdiction when it ordered disgorgement in Windman I?

The court determined that the value of Mr. Lawrence's services was $1,000 in each case, and ordered him to disgorge the remainder, or $8,850, to the Debtors. Of that amount, $7,711 is allocable to payments Mr. Lawrence contends were paid in connection with Windman I.[8] Mr. Lawrence argues that since Windman I is closed, with no reservation of jurisdiction as to

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[7]Mr. Lawrence further argues that Ms. Windman (Mr. Windman has since died) has signed a document waiving repayment of any fees from Mr. Lawrence. There is, however, no evidence of this in the record, and even if there was, Ms. Windman's wishes do not control the courts determination that Mr. Lawrence provided services of limited value. After Mr. Lawrence has disgorged his excessive fees, Ms. Windman is free to do whatever she wants with her money.

[8]The sum is arrived at as follows: Start with the $12,928 Mr. Lawrence charged. Deduct the $2,078 in filing fees. That leaves $10,850. The court determined the value of his legal services for each case was $1,000 and ordered disgorgement of $8,850. Subtract the $1,139 in ordered disgorgement for Windman II, and that leaves the remainder – or $7,711 – for Windman I.

fees, the bankruptcy court lacked the power to order any disgorgement related to Windman I. The UST counters that the court had jurisdiction in Windman II to order disgorgement of fees from Windman I.

Bankruptcy courts have broad powers over fees paid to attorneys. This analysis starts with the general grant of jurisdiction in 28 U.S.C. § 1334(b). Bankruptcy courts have "original but not exclusive" jurisdiction over "all civil proceedings arising under" the Bankruptcy Code. 28 U.S.C. § 1334(b). The court retains this jurisdiction even after a case is dismissed or closed, because "it depends solely on the existence of [a] civil proceeding arising under title 11." Aheong v. Mellon Mortg. Co. (In re Aheong), 276 B.R. 233, 244 (9th Cir BAP 2002). See also Elias v. U.S. Trustee (In re Elias), 188 F.3d 1160, 1162 (9th Cir. 1999).

Here, the UST sought relief under § 329(b). That request for relief was a "civil proceeding" arising under the Bankruptcy Code, since the relief sought was specifically provided for by a section of the Bankruptcy Code. Section 1334(b), in turn, gives bankruptcy courts the jurisdiction to hear such matters, even if the case in which the proceeding is brought is not the case in which the matter originally arose.[9]

This reading is confirmed by Aheong. In Aheong, after the case was dismissed and closed, the debtor claimed that a

[9]Section 1334(b) grants the jurisdiction to the district courts, but the Central District of California, from which this appeal arises, has, in accordance with 28 U.S.C. § 157(a), adopted a general order of reference of all bankruptcy matters to the bankruptcy court.

creditor violated the automatic stay by moving to foreclose under a state court judgment obtained the day after the debtor filed bankruptcy. In response, the creditor asked the court to "annul" the stay because it had never received notice of the filing from the debtor. This violated a standing order in the district that required the debtor to give such notice to her creditors. Id. at 248, 252. The Panel affirmed the court's annulment of the stay without the necessity of reopening the dismissed case because the creditor "sought to enforce ... a right, namely its right to relief upon a proper showing of 'cause' under Section 362(d)." Id. at 246. See also Menk v. Lapaglia (In re Menk), 241 B.R. 896, 904 (BAP 9th Cir. 1999). Just as the motion seeking post-dismissal relief in Aheong related to § 362, the motion here for fee disgorgement relates to § 329, and so falls within the court's "arising under" jurisdiction. See also In re Elias, 188 F.3d at 1161; In re Menk, 241 B.R. at 904.

Because the court had jurisdiction to decide the disgorgement issue, the only remaining question is whether an order of disgorgement could be entered with respect to the money paid for work done in Windman I without formally reopening that case under § 350. We think it could. We need not decide whether reopening Windman I was required, because, on these facts, any error was harmless. Mr. Lawrence filed Windman II the day Windman I was closed, acting in bad faith and with his only aim to frustrate state court litigation. Both cases have the same debtors, the same judge, the same inaccurate list of creditors, and the same attorney, Mr. Lawrence. The rights of

other creditors and parties in interest were not materially infringed upon by the fact that the case was not reopened on notice to all creditors. See, e.g., In re Henderson, 360 B.R. 477, 484 (Bankr. D.S.C. 2006).

There are also equitable concerns that could act to preclude Mr. Lawrence from raising the reopening issue. Only after the court ordered disgorgement of fees in Windman II did Mr. Lawrence claim they were actually earned in Windman I. If there was any factual confusion, it was due to Mr. Lawrence's actions.

Given the lack of any prejudice to any party in interest, the bankruptcy court did not commit reversible error by not reopening Windman I. It had jurisdiction and cause to reduce Mr. Lawrence's fees, depriving us of any grounds to reverse its order.

VII. Conclusion

We affirm.