

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA**

In re

Case No. 02-80082-DHW
Chapter 7

DONALD JEFF BALLARD
SUZANNE BALLARD,

Debtors.

ORDER DISALLOWING COMPENSATION

Donald Jeff Ballard and Suzanne Ballard filed this case under chapter 7 on January 16, 2002 under the legal representation of Braxton Blake Lowe.

On March 5, 2002, Lowe filed the disclosure of compensation form required under Fed. R. Bankr. Proc. 2016(b). Lowe disclosed a \$1,500 fee for representing the debtors. The debtors had paid \$700 leaving an unpaid balance of \$800.¹

On July 1, 2002, the debtors filed a motion to convert the case from chapter 7 to chapter 13. An order converting the case entered without a hearing on July 11, 2002.²

On September 19, 2002, the chapter 13 trustee filed a motion to reconvert the case to chapter 7. The trustee contended that the debtors had converted the case in bad faith. The trustee cited their failure to file a chapter 13 plan and attend two scheduled meeting of creditors. The trustee also noted that the conversion followed liquidation activity by the chapter 7 trustee and that unencumbered assets were available in the chapter 7 estate for distribution to unsecured creditors.

¹ On April 5, 2002, Lowe filed an amended disclosure of compensation form, but that form was identical to the one filed originally.

² No hearing is required on a debtor's motion to convert from chapter 7 to chapter 13. 11 U.S.C. § 706(a) gives a debtor the absolute right to voluntarily convert a case from chapter 7 to chapter 13 absent certain exceptions not present here.

A hearing on the trustee's motion was set for October 23, 2002, but was continued to November 13, 2002, and the debtors' attorney Lowe was ordered to appear.

Without first filing any notice of appearance, Charles M. Ingrum filed on behalf of the debtors an amended petition and schedules plus an original plan on November 12, 2002. Ingrum filed the disclosure of compensation form required by Fed. R. Bankr. Proc. 2016(b) which reflects that he agreed to represent the debtors for \$1,300 and that none of that amount had been paid. Two days later, on November 14, 2002, Lowe filed a motion to withdraw from representing the debtors. Ingrum filed a notice of appearance on November 19, 2002.

On November 22, 2002, the court entered an order denying the chapter 13 trustee's motion to reconvert the case to chapter 7. The court also granted Lowe's motion to withdraw as counsel for the debtors.

A final hearing on confirmation of the debtors' chapter 13 plan was held on July 9, 2003. The court declined to confirm the plan finding that the conversion to chapter 13 had been done in bad faith. The court ordered the case reconverted to chapter 7 (Docket entry 98).

On February 24, 2004, Ingrum filed a motion to withdraw as attorney for the debtors. The motion states that Ingrum was employed to represent the debtors only in the chapter 13 case and not in the chapter 7 case.³

Because the court could not discern what, if anything, Ingrum had been paid for his services, the motion was set for hearing on March 22, 2004. After several continuances the motion came on for hearing on April 5, 2004.

Ingrum stated in open court that he had been paid \$1,600 for services rendered in the chapter 13 case and \$1,000 for services rendered in the chapter 7 case. The hearing was further continued to April 19, 2004, and Ingrum was ordered to file an itemization of services rendered.

³ The court notes that the motion to withdraw was not filed until some 7 months after the case reconverted to chapter 7.

Ingrum neither filed the itemization nor appeared at the hearing on April 19, 2004. The hearing was continued to April 26, 2004, and Ingrum was ordered to appear.

Ingrum appeared at the April 26, 2004 hearing. He produced an itemized statement of services rendered together with his corresponding charges. He claims to have earned \$2,376.80 while the case was in chapter 13 and another \$397.49 after reconversion to chapter 7.

However, Ingrum has not amended his statement of compensation to reflect any increase in the \$1,300 fee nor to reflect the amount, if any, he has been paid by these debtors. His only disclosure of compensation was that filed in November 2002 shortly before he entered a notice of appearance following the conversion to chapter 13. The disclosure reflected that he agreed to accept \$1,300, none of which had been paid.

Congress has imposed on bankruptcy courts the responsibility of ensuring the reasonableness of professional fees charged by debtors' attorneys and by other professionals representing bankruptcy estates. 11 U.S.C. §§ 329 and 330. The role of the court is one of gatekeeper charged not only with assuring an orderly and efficient use of a debtor's assets but also of preventing abuse that might occur if the debtor, often in a weakened bargaining position, were allowed to hire and pay professionals without court supervision. *In re Production Associates, Ltd.*, 264 B.R. 180, 186 (Bankr. N.D. Ill. 2001) (citing *In re Pannebaker Custom Cabinet Corp.* 198 B.R. 453, 463 n.6 (Bankr. M.D. Pa. 1996)).

To enable the courts to fulfill that responsibility, a debtor's attorney is required, pursuant to 11 U.S.C. § 329 and Fed. R. Bankr. Proc. 2017, to disclose the compensation paid or agreed to be paid for representing the debtor in bankruptcy. Further, if the compensation is found to be excessive, the court may order such payment disgorged and returned to the estate or to the entity making the payment. Section 329 is implemented by Fed. R. Bankr. Proc. 2016(b) which makes it clear that the attorney's obligation to disclose both compensation agreements and payments is a continuing one.

In this case, Ingrum has not complied with the disclosure requirements of

the Bankruptcy Code. He has thereby deprived the court of the ability to review the reasonableness of the compensation and fulfill its gatekeeper function. For that reason alone counsel is not entitled to compensation in this case. *In re Keller Financial Services*, 248 B.R. 859 (Bankr. M.D. Fla. 2000) (disclosure of only part of prepetition retainer justifies disgorgement of entire retainer); *Arens v. Boughton (In re Prudhomme)*, 43 F.3d 1000 (5th Cir. 1995) (failure to disclose retainer justifies disgorgement of retainer).

Assuming, *arguendo*, that Ingrum had properly disclosed his compensation, the court is still not convinced that any compensation is due. In particular, these debtors paid their initial counsel to represent them in chapter 7. After conversion, Mr. Ingrum assisted the debtors for some 8 months in chapter 13. However, the plan was never confirmed. The case was then reconverted to chapter 7 based on a finding that the conversion to chapter 13 had been done in bad faith. Should counsel be compensated for this work? We think not.

For these reasons it is

ORDERED that debtors' counsel is not entitled to any compensation in this case and that any monies paid to counsel by or on behalf of the debtors be paid over to the chapter 7 trustee, Cecil M. Tipton, Jr.

Done this 5th day of May, 2004.



Dwight H. Williams, Jr.
United States Bankruptcy Judge

c: Debtors
Charles M. Ingrum, Sr., Attorney for Debtors
Cecil M. Tipton, Jr., Trustee
Teresa R. Jacobs, Bankruptcy Administrator