
**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE**

In re:

Bk. No. 00-12808-MWV
Chapter 7

John J. Diamond III,
Debtor

Terrie Harman, Esq.
HARMAN LAW OFFICES
Attorney for Debtor

Geraldine Karonis, Esq.
OFFICE OF THE UNITED STATES TRUSTEE
Attorney for United States Trustee

Timothy P. Smith, Esq.
Chapter 7 Trustee

MEMORANDUM OPINION

The Court has before it the United States Trustee's motion for the examination of fees paid to Debtor's counsel. In response to this motion, counsel for the Debtor filed an application for Chapter 13 attorneys' fees and costs, which did not contain an itemized breakdown of fees and expenses. An itemized statement was filed on November 24, 2004, and a hearing was held on December 14, 2004.

JURISDICTION

This Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the "Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court for the District of New Hampshire," dated January 18, 1994 (DiClerico, C.J.). This is a core proceeding in accordance with 28 U.S.C. § 157(b).

DISCUSSION

This case was originally filed pursuant to Chapter 13 of the United States Bankruptcy Code on October 6, 2000, and converted to Chapter 7 on October 23, 2000.

The fee application, as originally filed, requested approval of fees in the amount of \$9,020.55 and reimbursement of expenses in the amount of \$66.38, all of which had been paid. The United States Trustee justifiably believed these fees were high for a Chapter 13 case that lasted less than three weeks before being converted to Chapter 7. Had the itemized statement been timely filed, this matter may never have arrived at the hearing stage.

At the hearing, the Chapter 7 trustee argued that under section 329 of the Bankruptcy Code,¹ this Court had the obligation to review all fees paid by the Debtor within one year prior to the filing of the bankruptcy petition. However, that review is for fees “for services rendered or to be rendered in contemplation of or in connection with the case.” Counsel for the Debtor argued at the hearing that the Debtor had a myriad of problems prior to the filing and that most of the legal fees accrued in attempting to avoid bankruptcy rather than in planning for it. The itemized statement supports this position showing the majority of the time was spent trying to negotiate a settlement with Premier Capital, Inc., and in connection with divorce proceedings.

The itemization further reveals that the Debtor was billed monthly, and payment was immediately made. The fees that are the subject of the application include a credit to the Debtor making the prepetition payments roughly equal to the fees and costs now sought.

Based on the Court’s review of the itemized statements and the representations of Debtor’s counsel, the Court will not second-guess the work of Debtor’s counsel with hindsight.

The Court, having concluded the examination requested by the United States Trustee, finds that the fees requested are either not in contemplation of or in connection with the Chapter 13 filing, that the

¹ Unless otherwise noted, all statutory section references herein are to the Bankruptcy Reform Act of 1978, as amended, 11 U.S.C. §§ 101, *et seq.*

payments are contemporaneously made for the work done, or if in connection with the Chapter 13, are reasonable.

CONCLUSION

This opinion constitutes the Court's findings and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. The Court will issue a separate order consistent with this opinion.

DATED this 29th day of November, 2005, at Manchester, New Hampshire.

/s/ Mark W. Vaughn
Mark W. Vaughn
Chief Judge