

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

Michael J. Gentner,

Chapter 13

Case No.: 03-10387

Debtor.

Hon. Robert E. Littlefield, Jr., United States Bankruptcy Judge

MEMORANDUM-ORDER DENYING DEBTOR'S OBJECTION TO CLAIM

On July 27, 2005, Michael J. Gentner (the "Debtor") filed an Objection to the claim of Marilyn T. Carreras, Esq. (the "Creditor"), Claim No. 19, timely filed on July 25, 2005, in the amount of \$46,396.86. The Creditor's claim results from legal services she performed on behalf of the Debtor in his state court matrimonial action between February 1997 and May 2002. (*See* Creditor's Answer to Objection to Claim Filed ¶ 3, No. 167.) The basis for the Debtor's Objection is that service charges have allegedly been improperly added to the Debtor's legal bill. The Debtor asserts that "[t]here is no agreement supporting the imposition of legal services charges to the debtor's account." (Debtor's Objection to Claim ¶ 5, No. 165.)

A hearing was held in this matter on October 6, 2005. At that time, the following briefing schedule was set: submission by the Debtor on or before November 4, 2005; reply by the Creditor on or before November 30, 2005; and a response by the Debtor on or before December 7, 2005. The Debtor has failed to submit additional papers setting forth the legal basis for his Objection to the Creditor's claim.

11 U.S.C. § 502(a) provides that "a claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects." 11 U.S.C.

§ 502(a) (1994). “A proof of claim executed and filed in accordance with [the Federal Rules of Bankruptcy Procedure] shall constitute *prima facie* evidence of the validity and amount of the claim.” FED. R. BANKR. P. 3001(f). Where an objection has been filed, therefore, the objecting party bears the burden of presenting evidence to overcome the presumed validity and amount of the claim. The burden returns to the claimant only if the objecting party can produce sufficient evidence to overcome the *prima facie* effect given to the claim. COLLIER ON BANKRUPTCY ¶ 502.02[3][f] at 502-19 (15th ed. rev. 2004).

The Debtor has not presented evidence to overcome the presumed validity and amount of the Creditor’s claim. Even if the Debtor had filed additional submissions on or before the expired deadline, however, the court notes for the record that the parties’ Retainer Agreement (attached to the Creditor’s Answer to Objection to Claim Filed) provides for a service charge of 2% per month of the unpaid balance remaining on the client’s bill. To meet his initial burden, the Debtor would have needed to indicate some statutory or common law infirmity with this portion of the Retainer Agreement. Because he rested on the Objection alone, the Debtor is not entitled to the relief requested.

Based on the foregoing, it is hereby

ORDERED, that the Debtor’s Objection to the Creditor’s claim is hereby denied.

Dated: December 20, 2005
Albany, New York

/s/ Robert E. Littlefield, Jr.

Hon. Robert E. Littlefield, Jr.
United States Bankruptcy Judge