

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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In re

BRUCE MARTIN,

Debtor.  
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Chapter 13  
Case No. 04-17210

APPEARANCES:

RICHARD CROAK, ESQ.  
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*Chapter 13 Standing Trustee*  
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Hon. Robert E. Littlefield, Jr., U.S. Bankruptcy Judge

**MEMORANDUM-DECISION AND ORDER**

The current matter before the court is the request of Bruce Martin (“Debtor”) that the court sanction George Hom (“Hom”) by awarding attorney’s fees. The court has jurisdiction pursuant to 28 U.S.C. §§ 157(b)(1), (b)(2)(B), and 1334.

**FACTS**

1) The Debtor filed a petition for relief under Chapter 13 of the Bankruptcy Code on November 9, 2004. (No. 1.) The Debtor had previously filed a petition under Chapter 7 of the Code with the Bankruptcy Court for the Southern District of New York in 1994. In the context of the Debtor’s Chapter 7 case, Hom obtained a judgment, dated January 19, 1995, declaring the Debtor’s debt to him in the amount of \$45,462.45 non-dischargeable under § 523 (a)(6) of the Code (the “Judgment of Non-Dischargeability”).

2) Hom filed a priority unsecured claim in the amount of \$45,502.45, plus interest, on February 22, 2005. (Claim No. 3.) The basis for the claim is listed as “Malicious Personal Injury.” Hom indicated the debt was incurred April 24, 1991 and referenced a judgment obtained August 25, 1993. When prompted to specify the basis for seeking priority status for his claim, Hom referred to § 523(a)(6). (*Id.*)

3) Hom attached an itemized statement to his claim form breaking down his claim as follows:

(a) \$45,462.45 plus interest from April 24, 1991 to date = \$\_\_\_\_\_

(See, Exhibit 1)

(b) \$220.16 plus interest from August 2, 1995 to date = \$\_\_\_\_\_

(See, Exhibit 2)

Payments Received: \$ 6,900.00 (Paid from December 15, 1999, to date of January 10, 2005).

(*Id.* Sch. A.) In support of his claim, Hom also attached copies of the Judgment of Non-Dischargeability and a Statement of Costs awarded by the Superior Court of New Jersey dated August 2, 1995.

4) On June 10, 2005, the Debtor filed a motion objecting to Hom’s claim on the basis that it was not entitled to priority status under 11 U.S.C. § 507, and Hom failed to attach a copy of the underlying judgment. (No. 79.)

5) In response to the Debtor’s objection, Hom filed an amend claim on July 1, 2005 (the “Amended Claim”). (Claim 6.) The Amended Claim was also classified as a priority unsecured debt pursuant to Code § 523(a)(6) in the amount of \$45,502.45, plus interest. Hom continued to assert that the basis for the claim was “Malicious Personal Injury,” however, Hom referenced five judgments obtained 8/25/93, 1/19/95, 8/2/95, 8/7/95, and 11/18/99, respectively. In addition to the Judgment of Non-Dischargeability and the Statement of Costs, Hom attached a Superior Court of New Jersey Order For Judgment by Default filed August 7, 1995, and a Civil Court of the City of New York Decision and Order dated November 18, 1999

6) By Interim Order dated July 27, 2005, the court sustained the Debtor’s objection, re-classified Hom’s claim as general unsecured, and directed Hom to file an amended proof of claim with a copy of the underlying judgment substantiating his claim by August 24, 2005. (No. 98.)

7) Hom filed a second amended proof of claim on August 10, 2005 (the “Second Amended Claim”). (Claim 7.) In addition to the exhibits that were attached to the Amended Claim, Hom attached a Transcript of a Judgment dated December 7. The remainder of the claim mirrored the Amended Claim. Despite the court’s July 27, 2005 order deeming Hom’s claim general unsecured, Hom continued to classify his claim as priority.

8) On August 19, 2005, the Debtor filed a motion objecting to the Second Amended

Claim and seeking sanctions. The Debtor objected to Hom's categorization of his claim as priority, notwithstanding the court's July 27, 2005 order, and his failure to attach a copy of the underlying judgment and to calculate the total amount of his claim. (No. 117.)

9) At the hearing held on September 15, 2005, the court overruled the Debtor's objection as to the validity of Hom's claim and instructed Hom on how to compute his claim. By Order dated September 21, 2005 (No. 134), Hom was given until October 21, 2005 to further amend his claim to address the interest component. The court further ordered that absent the required amendment, no interest would be allowed on the claim.

10) Hom filed a third amended proof of claim on September 21, 2005 for \$45,462.45 (the "Third Amended Claim"). (Claim No. 8.) This time the claim was categorized as a general unsecured claim. Hom indicated his total claim was \$94,019.48 itemized as follows: \$45,462.45, plus interest of \$55,236.87 and costs of \$220.16, less credits of \$6,900.

11) On September 22, 2005, the Debtor filed a motion objecting to the Third Amended Claim as still being incorrectly calculated and seeking sanctions. (No. 138.)

12) At the hearing held on October 13, 2005, the court ruled that the Third Amended Claim was not properly calculated. By Interim Order, dated October 17, 2005 (No. 144), Debtor's counsel, with Hom's consent, was directed to prepare and file a proof of claim on behalf of Hom, and Hom was given until October 25, 2005 to object to the replacement claim. If an objection were filed, a further hearing would be held on October 27, 2005.

13) A general unsecured claim in the amount of \$38,562.45 was filed by the Debtor on behalf of Hom on or about October 13, 2005. (Claim No. 9.) The replacement claim did not include an interest component.

14) On October 24, 2005, Hom filed an Affirmation in Opposition (No. 154) objecting to the replacement claim filed by the Debtor on his behalf, triggering a further hearing on October 27, 2005.

15) At the hearing held on October 27, 2005, Hom was instructed to file any amended claim by November 4, 2005, and the Debtor was given until November 9, 2005 to reply. The matter was then adjourned until November 10, 2005.

16) Hom filed a fourth amended general unsecured claim (the "Fourth Amended Claim") on November 7, 2005 in the amount of \$90,344.11 calculated as follows: \$45,462.45, plus interest and costs of \$53,506.66, less credits of \$8,625.00. (Claim No. 10.)

17) Pursuant to the court's oral ruling of November 10, 2005, Hom's claim was reduced to \$82,823.35. In addition, the court ordered that the Debtor submit any further pleadings with respect to his request *sub judice* for sanctions by December 1, 2005. Hom was

given until January 13, 2006 to respond, and the Debtor until January 20, 2005 to reply. The court's oral ruling was subsequently incorporated into an Order dated December 7, 2005. (No. 168.)

18) Debtor's counsel filed an affirmation in support of his request for sanctions on November 30, 2005; Hom filed a response on January 5, 2006.

19) Debtor's counsel has submitted detailed time records to support his request for an award of sanctions equal to his attorney's fees of \$2,565, which counsel computed by multiplying 13.5 hours by his hourly rate of \$190.

### **ARGUMENTS**

The Debtor argues that Hom has, on more than one occasion, ignored orders of the court. More specifically, Hom filed claims requesting priority status after the court ruled to the contrary and Hom, after multiple attempts, would not or could not correctly calculate the interest portion of his claim. All of this required multiple objections from the Debtor, numerous appearances at hearings by Debtor's counsel and, consequently, additional attorney's fees. Debtor's counsel believes Hom should be sanctioned because having been "given numerous opportunities by the Court and specific direction on how the claim must be calculated, Hom has continuously and willfully violated the Court's Orders. Hom's deliberate disregard for the Court's Orders constitutes a fraud upon the Court, and must be sanctioned." (Debtor's Request for Sanctions ¶ 17).

Hom asserts that the Debtor's request for sanctions is procedurally defective as the request was not made by motion with notice. In addition, Hom argues that the Debtor's request is without merit and that the Debtor failed to attach transcripts, written orders, and other evidence related to his allegations. Hom takes the position that because the Debtor failed to submit any evidence in support of his allegations, there is nothing for him to respond to.

### **DISCUSSION**

Before turning to the merits of the Debtor's request, Hom raises procedural issues

that must be addressed. Hom claims that the Debtor's request for sanctions is procedurally defective because the Debtor has not filed an appropriate motion with notice. Apparently, Hom has overlooked that this matter originated with the Debtor's Notice of Objection to Claim (No. 139) and Objection to Third Amended Claim (No. 138). Sanctions were part of the original relief sought. A hearing on the objection was held on October 13, 2005 and pursuant to the terms of an Interim Order adjourned until October 27, 2005. On October 27, 2005, Hom was directed to file the Fourth Amended Claim by November 4, 2005, and the Debtor was given until November 9, 2005 to reply. Again, the hearing was adjourned; this time until November 10, 2005. A hearing was held on November 10, 2005, resulting in the Order dated December 7, 2005, which reduced Hom's claim and set a schedule for further submission on that portion of the Debtor's motion seeking sanctions. Hom, with the court's consent, appeared telephonically at each of the hearings. Thus, contrary to Hom's assertions, the Debtor's request for sanctions was brought on by motion.

The process of filing a claim should not be this difficult. According to the court's docket, the Hom claim has been submitted six different times, five by Hom and one by the Debtor on Hom's behalf. All six efforts had infirmities such that the court finally had to calculate the amount of the claim. At this juncture, however, the claim itself is not the issue; the claim allowance process is.

Given Hom's pro se status, the court will give him the benefit of the doubt regarding his initial efforts at filing a claim. However, that presumption of innocence ceases after the court's July 27, 2005 Order directing that Hom's claim be reclassified to general unsecured. Notwithstanding that decision, on August 10, 2005, Hom filed the Second Amended Claim and continued to assert priority status. With the first 4 of Hom's claims, it was also unclear as to

how Hom was computing the interest portion of his claim. The amount of Hom's claim was mercurial, ranging from \$45,502.45 plus interest, to \$94,019.45 including interest, to \$90,344.11 including interest. In addition, Hom asserted his claim was based upon 5 judgments, but failed to produce the underlying judgment from which the others originated. Each of these instances was cause for additional objections to be filed by the Debtor and multiple hearings with the court.

Section 105(a) of the Bankruptcy Code grants bankruptcy courts the authority to issue "any order . . . that is necessary or appropriate to carry out the provisions of this title." As noted by the court in *Grand Street Realty, LLC v. McCord*, slip copy, 2005 WL 2436214 (E.D.N.Y. Sept.30, 2005),

The Second Circuit has characterized section 105(a) . . . as authorizing the broad exercise of the courts' equitable powers to address misconduct which interferes with the administration of bankruptcy estates or which "might impede the reorganization process." *In re Momentum Mfg. Corp.*, 25 F.3d at 1136 (internal quotation marks omitted); see also *Casse v. Key Bank Nat'l Ass'n (In re Casse)*, 198 F.3d 327, 336 (2d Cir. 1999) ("Bankruptcy courts, both through their inherent powers as courts, and through the general grant of power in section 105, are able to police their dockets and afford appropriate relief." (quoting 2 Collier on Bankruptcy at 105-5 to -7 (15th ed. 1999)))

*Id.* at \*5. While the court concurs that an award of reasonable fees to Debtor's counsel is appropriate under 11 U.S.C. § 105, it disagrees with the amount of fees sought.

In evaluating the reasonableness of attorney's fees, the court is guided by the "lodestar" approach, which requires the court to determine the reasonable hourly rate for services rendered and multiply that by the reasonable number of hours required to complete the task at hand. In this case, the court finds the billing rate sought by Debtor's counsel, \$190 per hour, reasonable and commensurate with fees charged by other attorneys in the Capital District with similar levels of expertise for similar tasks. Having determined the hourly rate to be reasonable, the court next

turns to whether the time spent and the corresponding fee incurred for the tasks identified were reasonable. Debtor's counsel submitted detailed time records indicating that 13.5 hours of time was spent in connection with Hom's claim. After reviewing the billing records, the court will disallow fees for the 5 hours of legal services rendered on or before July 27, 2005, the date of the court's order reclassifying Hom's claim. The court will also disallow fees for the 1.5 hours of legal services rendered on October 13, 2005 and October 24, 2005 with respect to the Debtor's attempt at filing an accurate replacement proof of claim on behalf of Hom. That claim was even more inaccurate than Hom's efforts for it provided no interest whatsoever.

In light of the facts and circumstances of this case, the court will award attorney's fees as a sanction to Debtor's counsel in the amount of \$1,330 (7 hours x \$190/hour). Rather than Hom paying this amount directly to Debtor's counsel, this amount shall be deducted from the amount being paid to Hom through the Debtor's chapter 13 plan and paid to Debtor's counsel instead. To accomplish this, Hom's claim shall be reduced by \$1,330, and Debtor's counsel shall be allowed an administrative claim to be paid through the Debtor's plan in the amount of \$1,330.

It is so ORDERED.

Dated: September 5, 2006

Albany, New York

/s/Robert E. Littlefield, Jr.  
Honorable Robert E. Littlefield, Jr.  
United States Bankruptcy Judge