IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN THE MATTER OF:	:	CHAPTER 7
JOSEPHINE GIMELSON	:	CIVIL ACTION No. 04-3216
	:	BANKRUPTCY ACTION No.00-11773F
Debtor	:	

MEMORANDUM

ROBERT F. KELLY, Sr. J. **NOVEMBER 23, 2004**

Presently before this Court is an appeal from two orders of the United States Bankruptcy Court for the Eastern District of Pennsylvania ("Bankruptcy Court"). The first order on appeal is the Bankruptcy Court order dated March 24, 2004, which sustains an objection to an amended proof of claim and disallowed a request for an administrative expense by *pro se* Appellant/Creditor, Samuel A. Litzenberger, Esq. ("Litzenberger"). The second order on appeal is the Bankruptcy order dated June 1, 2004, which denied reconsideration of the previous order dated March 24, 2004. For the reasons set forth below, the Bankruptcy Court Order will be affirmed.

I. BACKGROUND

This appeal, and the entire bankruptcy proceedings from which it stems, arises from unpaid fees for legal services rendered by Litzenberger concerning a divorce action involving Appellee/Debtor, Josephine Gimelson ("Gimelson"). Since 1994, for more than a decade, the parties have been entrenched in litigation regarding the unpaid attorney's fee and the associated costs of trying to collect the fee. I will not attempt to recapitulate the entire history of this case that has spanned years and has involved a myriad of judicial and arbitral proceedings.

Instead, I refer for additional background information summarized in the Memorandum Opinion by the Bankruptcy Court issued in this case and this Court's prior opinion, In re Gimelson, No. 00-4983, 2001 WL 336988 (E.D. Pa. Apr. 3, 2001). Nevertheless, I will provide an extensive outline of the pertinent underlying facts in order to adequately set forth the issues and events relevant to this appeal.[1]

A. Factual History

In November 1991, Litzenberger and Gimelson entered into a written agreement ("the 1991 Agreement"). The 1991 Agreement engaged Litzenberger, who at all relevant times was an attorney duly licensed to practice law in the Commonwealth of Pennsylvania, to represent Gimelson in a state court divorce action.[2] Litzenberger signed the 1991 Agreement on November 27, 1991 and Gimelson signed it on December 2, 1991.

As part of the 1991 Agreement, Gimelson promised to pay a retainer of $4,500.00. Litzenberger agreed to bill on an hourly basis, with the hourly rate not to exceed $150.00 for a period lasting at least six months. Litzenberger promised to maintain contemporaneous time records and render an accounting upon Gimelson's request. No clerical or secretarial time was to

---

[1] Neither Litzenberger nor Gimelson provide a factual background of this case in their appellate pleadings. In its Memorandum Opinion, the Bankruptcy Court provided an extensive outline of the factual history of this action. Neither party appears to offer any disagreement with the Bankruptcy Court's recitation of the facts. Thus, the instant outline of the factual history of this action has been primarily elicited from the detailed background section contained within the Bankruptcy Court's Memorandum Opinion.

[2] As mentioned earlier, Litzenberger is proceeding *pro se* in this appeal. Typically, a *pro se* plaintiff's complaint is liberally construed. See Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the expectations are a good deal higher in the case where the plaintiff is a practicing attorney. Serra v. Salus, No. 00-4344, 2000 WL 1886572, at *1 (E.D. Pa. Dec. 15, 2000), *aff'd*, 281 F.3d 233 (3d Cir. 2001)(Table); see also Clement v. Pub. Serv. Elec. and Gas Co., 122 F. Supp.2d 551, 552 (D.N.J. 2000).

be charged to Gimelson. Both parties also agreed that any fee disputes would be resolved by arbitration.[3] On June 12, 1992, approximately six months into the legal representation, Gimelson signed a Judgment Note in favor of Litzenberger in the amount of $30,500.00. Litzenberger prepared the Judgment Note and requested that it be signed by Gimelson as "additional security" for the payment of his fee. Litzenberger testified that the amount of the Judgment Note approximated the unpaid fees earned by him from the date of the initial fee agreement to the date of the Judgment Note, after crediting the amount of the retainer. Litzenberger also testified that, as of June 1992, no invoices had been prepared or sent to Gimelson reflecting sums due.

Litzenberger represented Gimelson in her divorce proceeding until he was granted leave to withdraw as her counsel in September 1994. Upon the termination of the attorney-client relationship, Litzenberger alleged that there were outstanding fees owed for his legal services. On December 5, 1994, Litzenberger recorded Gimelson's confession of Judgment Note with the Court of Common Pleas, Bucks County, Pennsylvania (Civil Action No. 94-09007), which

---

[3] Specifically, paragraph eight of the engagement letter provides, in pertinent part, as follows:

> In the event of a dispute between us regarding fees, costs, or any other aspect of our attorney-client relationship, the dispute shall be resolved by binding arbitration through the American Arbitration Association and in accordance with its rules. Client shall be liable to pay the costs of the proceeding due to the American Arbitration Association and, in the event the Attorney prevails, the reasonable value of his time consumed in said litigation and his out-of-pocket expenses in connection therewith shall be paid to him by client. All claims for alleged legal malpractice or breach of fiduciary duty shall likewise be submitted for resolution.

(Bankr. Ct. Mem. Op. at 3)(citations omitted).

created a judgment lien on all real estate owned by Gimelson in Bucks County. At the time, Gimelson owned real property in the form of a house located at 3871 Stump Road, Doylestown, Bucks County, Pennsylvania.

In February 1995, Litzenberger made a request for arbitration with the American Arbitration Association to resolve the parties' dispute regarding unpaid legal fees. At the first arbitration, Litzenberger sought $79,875.52 in legal fees and costs arising from his representation of Gimelson, plus costs and legal fees in pursuit of payment. There is no dispute that Litzenberger's demand included, at least, all services and costs from mid-June 1992 (when the confession of Judgment Note was signed) through the date of demand. At the arbitration hearing, Litzenberger submitted time records related to his representation of Gimelson. Some of those records documented services rendered and expenses incurred from December 4, 1991 through some point in 1993. Thus, the first arbitration request also included a request for compensation for at least some services rendered by him before the Judgment Note was signed.[4]

On June 28, 1995, an arbitration award ("First Arbitration Award") was issued in Litzenberger's favor in the amount of $85,519.13, plus costs and fees associated with the arbitration in the amount of $1,000.00 and reimbursement of $738.32 in fees advanced. On August 21, 1995, Litzenberger filed a petition to confirm the June 1995 arbitration award and enter judgment on the award in the Court of Common Pleas, Bucks County, Pennsylvania (Civil Action No. 95-05716). After extensive litigation, including at least one appeal, see Litzenberger

[4] However, Litzenberger claims that the $30,500.00 worth of fees and costs represented by the Judgment Note were excluded from the first arbitration demand. The issue of whether the amount of $30,500.00 contained in the Judgment Note was included in the First Arbitration Award is an issue in the instant appeal.

v. Gimelson, 736 A.2d 21 (Pa. Super. 1998)(Table), the Court of Common Pleas entered judgment in favor of Litzenberger by order dated June 28, 1999, in conformity with a Pennsylvania Superior Court order upholding the First Arbitration Award. On July 12, 1999, this judgment was "reassessed" by the Clerk of Court in the amount of $106,966.68, which included 6% annual interest from June 28, 1995 - the date of the First Arbitration Award - through June 28, 1999, the date judgment was entered.

In addition to litigation regarding the First Arbitration Award, there was also contemporaneous litigation concerning the Judgment Note recorded in 1994. On July 11, 1996, Gimelson filed a petition to strike or open the confessed judgment. Relying upon the 1991 agreement stating that all fee disputes would be decided by binding arbitration, Litzenberger argued that only an arbitration panel, and not a trial court, could determine the legitimacy of the Judgment Note. The trial court disagreed with Litzenberger's legal position; however, the Pennsylvania Superior Court vacated certain rulings of the trial court and remanded the dispute to permit the arbitration of the validity of the Judgment Note, and resolution of the issue whether it forms part of the fee awarded by the arbitrator. Ultimately, Gimelson's petition to strike or open the Judgment Note was denied. Judgment on the Note was entered on January 7, 2000, in the amount of $56,023.28.

On May 11, 1999, during the litigation to set aside the confessed judgment, Litzenberger initiated a second arbitration proceeding against Gimelson. In the second arbitration request, Litzenberger demanded $37,587.16 for costs and fees expended post first arbitration hearing through February 12, 1999 and reimbursement of attorney's fees incurred and paid in the amount of $9,678.40. In connection with this second arbitration request, Litzenberger

also requested a ruling by the second arbitrator that the confessed judgment represented a debt owed in addition to the award rendered in his favor by the first arbitration.[5]

On June 11, 1999, the second arbitration hearing occurred resulting in an award ("Second Arbitration Award") in Litzenberger's favor in the amount of $28,657.77, plus additional costs associated with the arbitration. This Second Arbitration Award represented compensation for Litzenberger's fee collection efforts after the First Arbitration Award was issued. Regarding Litzenberger's demand that the June 1992 Judgment Note be found to represent an obligation completely separate from the First Arbitration Award, the arbitrator ruled in paragraph 3 of the Second Arbitration Award as follows:

> The Judgment Note in the sum of $30,500.00 (principal) plus twenty-five (25%) percent collecting fee is, in all respects, valid and represents security for the Claimant's fee for services rendered. As a security interest, the Judgment Note was not included in the Arbitrator's Award dated June 28, 1995.

(Bankr. Ct. Mem. Op. at 8)(citation omitted).

Concerned that the ruling did not establish that the Judgment Note represented a distinct obligation, Litzenberger requested clarification from the arbitrator. In a letter dated July 8, 1999, Litzenberger wrote, in part, as follows:

---

[5] In his submission of a statement of issues regarding his second arbitration request, the first issue posed by Litzenberger was the following:

> 1. A determination that in addition to the award of June 28, 1995, in the amount of $86,257.45, there is due to Claimant under a Judgment Note the sum of $30,500.00 principal plus 25% collecting fees in the amount of $7,625.00, a total of $38,125.00, plus annual interest at the rate of 6%.

(Bankr. Ct. Mem. Op. at 7)(citations omitted).

> Pursuant to Rule R-48, I am requesting the Arbitrator, through the American Arbitration Association, to clarify paragraph 3. As I interpret paragraph 3, [the arbitrator] has found that there is an additional $30,500.00 owed to me plus a 25% collecting fee because he says it was not included in his prior award of June 28, 1995. However, it is also susceptible to the interpretation that there was no additional money due under it but it is only valid as a security document for payment of monies awarded on June 28, 1995, and monies awarded in the current July 6, 1999 award. I would appreciate clarification of this. I am specifically not asking for relitigation or redetermination of the merits of any claim decided.

(Bankr. Ct. Mem. Op. at 9)(citation omitted). Despite Litzenberger's letter, there is nothing in the record that indicates that the arbitrator responded to this communication or altered his award in any manner.

On August 9, 1999, Litzenberger filed a petition to confirm the arbitrator's July 6, 1999 award and enter judgment thereon in the Court of Common Pleas, Bucks County, Pennsylvania (Civil Action No. 99-05177). The court entered judgment in favor of Litzenberger on November 15, 1999 in the amount of $31,602.43, which included 6% annual interest for the time period of July 6, 1999 through November 6, 1999. On February 8, 2000, in response to Litzenberger's praecipe, the judgment was reassessed by the Clerk of Court in the amount of $32,712.29.

On February 10, 2000, Gimelson filed a voluntary petition in bankruptcy under chapter 7. From 1991 through approximately June 2001, Gimelson resided at 3871 Stump Road, Doylestown, Pennsylvania. Prior to Gimelson's bankruptcy filing, she transferred her interest in the realty to her children. The chapter 7 trustee, Michael Kaliner, Esq., was aware that Litzenberger had brought an action in state court challenging Gimelson's transfer of her realty to

her children as fraudulent. After investigating the issue, Kaliner chose not to administer the property because he determined that, in attempting to the sell the realty, the cost of administration (including the cost to have the transfer set aside) would most likely not benefit any unsecured creditors because of the recorded liens and claims against the property. On February 17, 2000, Litzenberger moved in the Bankruptcy Court for relief from the automatic stay so he could prosecute his fraudulent conveyance claim in the state court and, if successful, execute upon the Stump Road property. The chapter 7 trustee did not file any objection.[6]

On April 13, 2000, Litzenberger was granted relief from the automatic stay to exercise his state law rights, if any, upon the Stump Road property. On September 8, 2000, upon the request of Litzenberger, a sheriff's sale of Gimelson's Stump Road property was conducted in Bucks County. At the sale, Litzenberger created and signed an announcement that provided as follows:

> This sale is being conducted on a Judgment which is a fourth lien. The first lien is a Mortgage recorded on 4/24/73 in favor of Girard Trust Bank. The second lien is a Mortgage recorded on 11/24/85 in favor of Mellon Bank. The third lien is Judgment entered at Bucks County Prothonotary No. 94-09007 filed on 11/25/94. The fourth lien is the current Judgment on which the sale is occurring. The upset price is $125,000.00. To my knowledge, there are no liens prior to the Judgment on which the sale is conducted that have not been mentioned herein. It is Plaintiff's opinion that the prior Judgment will be divested by this sale but that neither of the mortgages will be divested by the sale and that the purchaser will buy under and subject to both the first and second mortgages, represented by the creditor to have combined payoffs of approximately $32,000.00, Defendant's former husband being under Court Order to pay all payments due under the second

[6] The Bankruptcy Court noted that the chapter 7 trustee testified during a hearing that he would have opposed Litzenberger's lift stay motion had he known that Litzenberger would receive a "windfall" from the sale of the Stump Road property.

mortgage which I am told is current.

(Bankr. Ct. Mem. Op. at 10)(citations omitted). Thus, the sheriff's sale was conducted as an execution on the judgment based upon the First Arbitration Award (Civil Action No. 95-05716). At the sale, the property was sold to Litzenberger for sheriff's costs of $824.19. On December 28, 2000, a sheriff's deed conveying title to the Stump Road property to Litzenberger was recorded.

Gimelson remained in possession of the property after the sheriff's sale. On January 8, 2001, Litzenberger filed a complaint in the Court of Common Please, Bucks County, Pennsylvania, to eject Gimelson and obtain possession of the Stump Road property. On June 19, 2001, as a result of the litigation, Litzenberger obtained possession of the property. By an agreement of sale dated July 10, 2001, and executed July 19, 2001, Litzenberger sold the Stump Road property to Joseph Bonargo ("Bonargo"). On July 23, 2001, the closing took place whereby Bonargo paid $196,500.00 for the property. Prior to the closing, Bonargo paid a deposit of $19,650.00 to Litzenberger. In addition, at the closing, Litzenberger received a check for $87,158.37.[7]

---

[7] Several line items listed on the closing statement from the sale to Bonargo were at issue in the Bankruptcy Court, and are currently in dispute in the instant appeal. They are as follows:

- $10,000 of the sale proceeds were paid to Kathleen Swartz ("Swartz"), then legal secretary for Litzenberger, for support services and repairs.

- Two tax payments, one payment in the amount of $4,975.06 for real estate and sales taxes billed to Litzenberger for the year 2001 and the second payment of over $4.000.00 for additional payments for taxes accruing on July 23, 2001 (these last payments had been pro-rated in equal shares with Bonargo). These taxes were assessed after Litzenberger became the registered owner of the property on December 28, 2000. However, Litzenberger did not have actual possession of the property until June 19, 2001 because Gimelson remained in possession. As a

In connection with Gimelson's chapter 7 case, Litzenberger participated in a Bankruptcy Rule 2004 examination of Gimelson ("2004 examination").[8] On August 30, 2000, Litzenberger filed an application for examination of Gimelson. Based upon the chapter 7 trustee's support for such an examination, Litzenberger's request was approved, in part, on November 27, 2000. By an order, the Bankruptcy Court directed that the chapter 7 trustee may

---

result of litigation initiated by Litzenberger to eject Gimelson and obtain possession of the property, Litzenberger gained possession of the property on June 19, 2001.

- Two outstanding mortgages on the property held by Mellon Bank ("the Bank"). The first mortgage had a payoff amount of $2,718.95 and the second mortgage had a payoff amount of $22,518.05. In addition to the payoff amount, the closing statement also reflected a $14,763.00 payment to Mellon Bank to reimburse it for its attorney's fees. The Bank did not initiate any foreclosure action or other litigation regarding the property prior to the sheriff's sale. The Bank's counsel fees arose solely from litigation commenced by Litzenberger in February 2001 (after the execution sale, but before the sale to Bonargo). In that litigation, Litzenberger filed a state court action to compel Mellon Bank to mark its mortgages satisfied without further payment. The counsel fees stem from Litzenberger's litigation against Mellon Bank. Prior to resolution of the litigation, Litzenberger sold the Stump Road property to Bonargo. Litzenberger stated that he ran out of time to follow through with the litigation.

The addition or deduction of these items from the sale proceeds of the Stump Road property will be discussed at length later in this Memorandum Opinion.

[8] Bankruptcy Rule 2004 provides, in pertinent part, as follows:

> On motion of any party in interest, the court may order the examination of any entity. . . .The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge.

Bankr. R. 2004 (a), (b).

examine Gimelson in his office and, after the trustee was finished his questions, Litzenberger was permitted to examine Gimelson. In accordance with the Bankruptcy Court's order, the initial examination was conducted by the trustee after which Litzenberger was permitted to ask his own questions.

Litzenberger attended and participated in the 2004 examination. At the 2004 examination it was disclosed by Gimelson to the trustee that she possessed a one-fourth ownership interest in real property located at Cliffside Park, New Jersey, and also in the Bahamas, which she had inherited from her mother's estate.[9] These properties had not been listed on Gimelson's bankruptcy schedules or statements. Also, it was discovered that the $41,000.00 Gimelson had disclosed in her schedules as due and owing from her divorce settlement had actually already been paid to her and she subsequently had transferred those funds to a daughter.

Under 11 U.S.C. § 363(h), the bankruptcy trustee successfully prosecuted litigation against Gimelson and her three children. After an extensive sale hearing involving competitive bidders, the trustee sold the Cliffside Park property at auction for $1,015,000.00. Since Gimelson owned a one-fourth interest in that property, the bankruptcy estate received one-forth of the net proceeds from that sale.

On December 18, 2000, Litzenberger filed his first proof of claim in which he

[9] Since Litzenberger had previously represented Gimelson in her divorce action, he had general knowledge about Gimelson's assets and brought to the trustee's attention his concerns that certain property had not been disclosed on Gimelson's bankruptcy schedules or statements. Although Litzenberger voluntarily assisted the trustee in investigating Gimelson's assets, he was never appointed by the Bankruptcy Court as an attorney to represent the trustee in any matter within the bankruptcy case. Thus, Litzenberger's participation in the 2004 examination was in his own interest as a creditor.

alleged a secured claim of $205,626.37.[10] On July 5, 2001, Litzenberger filed his first amended proof of claim for an unsecured claim of over $50,000.00. On January 9, 2002, Litzenberger filed a second amended proof of claim. This claim amended and combined both the original proof of claim and the first amendment. In the second amendment, Litzenberger alleged a secured claim of $96,373.00 and an unsecured claim in excess of $5,000.00. On July 1, 2002, Litzenberger filed a third amended proof of claim. In that filing, Litzenberger asserted that he was owed eight separate unsecured claims and an administrative claim of $12,090.50. Litzenberger conceded that his secured claim had been divested, but was not satisfied by the sheriff's sale of the Stump Road property.

On September 13, 2002, after a directive by the Bankruptcy Court seeking clarification of the specific amount of his claim, Litzenberger filed a fourth amended proof of claim. In this claim, Litzenberger alleged that he was owed $212,935.77 as an unsecured claim, plus an administrative claim that continued to accrue. At trial, Litzenberger again amended his claim. He reduced his prepetition claim to $202,190.28, from which he credited the receipt of $64,294.72 as all of the alleged proceeds of his sale of the Stump Road property to Bonargo. After trial, Litzenberger increased his credit from the sale proceeds of the Stump Road property

---

[10] "Generally, an unsecured creditor wishing to assert a claim must file a proof of claim." In re Pennave Props. Assocs., 165 B.R. 793, 796 (E.D. Pa. 1994)(citing Bankr. R. 3002(a), 11 U.S.C.A.). "The proof of claim is prima facie evidence of the validity and amount of the claim." Id. (citing Bankr. R. 3001(f), 11 U.S.C.A.). The proof of claim is also the creditor's statement as to the amount and character of the claim and is deemed allowed absent objection." Id. (citations omitted). "It has long been understood that a party filing a proof of claim in a bankruptcy case subjects itself to the equitable power of the bankruptcy court and triggers the allowance of claims process." In re CitX Corp., 302 B.R. 144, 159 (Bankr. E.D. Pa. 2003)(citing Langenkamp v. Culp, 498 U.S. 42, 44 (1990)).

to $84,702.09.[11] A substantial portion of the claim, approximately $54,000.00, represented purported legal fees for activities that Litzenberger undertook after the sheriff's sale of the Stump Road property. Litzenberger paid himself the $54,000.00 and then reduced the bankruptcy estate's credit from the sale of the Stump Road property by this amount. Prior to the hearing conducted regarding Gimelson's objection, Litzenberger was not represented by counsel. No part of these fees had been awarded by any court judgment. Litzenberger maintained that, according to his calculations, after applying the proceeds of the sale of the Stump Road property he was still owed $117,488.19 by the estate as an unsecured creditor. He also asserted a first priority administrative expense claim in the amount of $15,521.00 for post-petition discovery of assets in the bankruptcy case. As a result, Litzenberger demanded payment of $137,892.56 from the trustee, in addition to those funds he already received from the sale of the Stump Road property.

B. Bankruptcy Court's Memorandum Opinion

The Bankruptcy Court analyzed Litzenberger's claim and Gimelson's objection thereto. After a hearing, the Bankruptcy Court issued a Memorandum Opinion and Order. The Bankruptcy Court began by fixing the amount of Litzenberger's allowed claim as of the date of Gimelson's bankruptcy filing on February 10, 2000. Litzenberger asserted that he held a prepetition claim in the amount of $201,894.28 based upon three distinct judgments regarding the Judgment Note, the First Arbitration Award and the Second Arbitration Award. This claim was secured at the time the bankruptcy was filed because the judgments would create liens upon

[11] This amount gave the bankruptcy estate credit for the deposit received from Bonargo plus one month of property taxes accrued while Litzenberger had possession of the realty.

all realty owned by Gimelson in Bucks County, and the state court order which concluded that Gimelson's prepetition transfer of the Stump Road property was improper.

Gimelson objected to the amount sought by Litzenberger arguing that the allowable amount of his claim should be greatly reduced. Gimelson asserted that Litzenberger could not collect on both the Judgment Note and the First Arbitration Award because the first arbitration judgment subsumes the debt represented by the confessed judgment.[12] The Bankruptcy Court determined that it was more likely than not that the confessed judgment on the Judgment Note and the judgment on the First Arbitration Award overlapped and that the former should not be included in Litzenberger's allowed claim.[13] Since Gimelson did not contend that there was any overlap between the First and Second Arbitration Awards, the Bankruptcy Court allowed Litzenberger to recover on both judgments entered upon both of those awards. Based upon both judgments, and accounting for interest and other expenses, the Bankruptcy Court determined that the prepetition amount of Litzenberger's claim was fixed as of February 10, 2000 (the date of the commencement of Gimelson's bankruptcy) at $142,293.75.[14] At the time of

---

[12] Gimelson also argued that there were miscalculations and improper accrual dates concerning the issue of interest; however, this appeal does not include any issue pertaining to interest. Therefore, any issues regarding the accrual and amount of interest will not be addressed.

[13] In a footnote, the Bankruptcy Court stated that "[i]f Mr. Litzenberger provides documentary evidence that the services covered by the judgment note were indeed excluded from the first arbitration award, he may move for reconsideration of this decision pursuant to Fed. R. Bankr. P. 3008." (Bankr. Ct. Mem. Op. at 31 n.17). Citing to the Bankruptcy Court's footnote, Litzenberger filed a motion for reconsideration. Litzenberger's motion for reconsideration, as well as the Bankruptcy Court's Memorandum Opinion addressing that Motion, will be discussed in detail later.

[14] The amount of $142,293.75 represents $86,257.45 principal and $23,934.67 interest on the first arbitration judgment and $31,602.43 principal and $499.20 interest on the second arbitration judgment.

filing, this allowed claim was secured by Gimelson's interest in the Stump Road property.

Finding that Litzenberger had a claim of $142,293.75, the Bankruptcy Court also determined that the proceeds received by Litzenberger from the sale of the Stump Road property exceeded the value of his secured claim. In order to determine whether Litzenberger was oversecured on February 10, 2000, the Bankruptcy Court assessed the value of Litzenberger's judgment lien on Gimelson's interest in the Stump Road property.[15] The Bankruptcy Court accepted the net proceeds from the sale of the Stump Road property as indicative of the collateral's value and relevant to determining whether Litzenberger was oversecured at the time of the bankruptcy filing. Thus, the Bankruptcy Court needed to determine the proper calculation of the sale proceeds because it represented the amount of Litzenberger's claim that had been satisfied. That is, Litzenberger's allowed secured claim has been repaid in full if he received more than $142,293.75, from the proceeds of the sale of the Stump Road property.

In calculating what Litzenberger received as a result of the sale, the Bankruptcy Court found that some of the credits used to calculate the net proceeds claimed by Litzenberger from the sale were improper. The Bankruptcy Court explained that Pennsylvania law takes a relatively narrow view of the types of expenses that may be deducted from execution sale proceeds for purposes of satisfying a judgment lien on property. The judgment creditor may deduct prior encumbrances remaining on the property, taxes paid by the creditor and costs

---

[15] An oversecured creditor, the Bankruptcy Court explained, is entitled to postpetition interest, attorney's fees and costs. Such entitlement is limited to the amount that the collateral's value exceeds his claim for postpetition expenses when added to the principal amount of the claim. As the Bankruptcy Court explained, "if a creditor is oversecured by $20,000.00, the creditor may only add up to $20,000.00 in postpetition interest to his claim. The balance, if any, would be treated as an unsecured claim subject to disallowance under [11 U.S.C. § 502(b)(2)]." (Bankr. Ct. Mem. Op. at 36)(citation omitted).

associated with the sale.

The Bankruptcy Court determined that Litzenberger could not properly deduct the $10,000 payment to his legal secretary Kathleen Swartz. The Court found that the $10,000 payment included services outside the sale of the property or services that did not relate to the actual sale of the property. As a result, the Bankruptcy Court considered the $10,000 payment as part of the proceeds recovered by Litzenberger.

As for the $14,763.00 paid to Mellon Bank for reimbursement of legal fees, the Bankruptcy Court also concluded that the amount was considered part of the sale proceeds received by Litzenberger and cannot be deducted. Failing to provide any itemization of the fees or a precise explanation of how they relate to the sale of the Stump Road property, the Bankruptcy Court determined that the expense was a result of Litzenberger's action against the Bank. The Bank did not institute any foreclosure or any other litigation against the property. Thus, the Bank did not incur any legal fees from litigation brought against Gimelson. The fees apparently were incurred only after the September 2000 sheriff's sale and only in connection with litigation between Litzenberger and the Bank.[16] Therefore, the attorney's fees owed to the Bank resulted solely from Litzenberger's litigation against Mellon Bank Acknowledging that the mortgage payoff amounts were properly deducted from the proceeds of the sale, the Bankruptcy Court did not permit Litzenberger to deduct the amount of the attorney's fees resulting from an action which was initiated and pursued by him after he had obtained legal title to the realty for the sole purpose of his own benefit.

---

[16] The Bankruptcy Court noted that the fees were not included in the payoff figures at the time the sheriff's sale took place or when Litzenberger obtained title to the property.

Regarding the deduction of certain real estate tax payments paid by Litzenberger that accrued in 2001 (after Litzenberger had obtained title, but not actual possession, to the property in December 2000), the Bankruptcy Court determined that he was allowed to deduct certain amounts attributed to the payment of tax liabilities that he paid while Gimelson was in wrongful possession of the property.[17] The Bankruptcy Court concluded that Gimelson was liable for property taxes accruing during her possession. Either before or at closing, Litzenberger paid a total of $9,052.44 in taxes that accrued on the real estate in 2001. Accounting for the time when Gimelson was in wrongful possession of the property, the Bankruptcy Court held that Litzenberger was responsible for a total amount of $1,094.15 of the taxes he paid, which amount was to be included in the net proceeds he received from the sale.

Adding the Mellon Bank fees, the fee paid to Swartz and the small portion of the real estate taxes to the amount of $138,766.09 (the amount conceded by Litzenberger that he received from the sale of the Stump Road property), the Bankruptcy Court concluded that it was clear that the value of the Stump Road property received by Litzenberger was $164,623.24. In light of the value of Litzenberger's prepetition claim at $142,293.75, the $164,623.24 value of the Stump Road property received by Litzenberger is more than the amount owed to him on his prepetition claim. Consequently, the Bankruptcy Court found it unnecessary to address Litzenberger's unsecured claim regarding $54,064.00 in legal fees for his postpetition activities allegedly connected with the sheriff's sale of the Stump Road property because it was not possible for Litzenberger to hold an unsecured claim regardless of the propriety of his demand

[17] Litzenberger obtained possession of the property on June 19, 2001. He sold the property to Bonargo pursuant to an agreement of sale executed on July 19, 2001. Closing on the property occurred on July 23, 2001.

for postpetition fees.

Lastly, the Bankruptcy Court addressed Litzenberger's request for an administrative claim in the amount of $15,521.00 to compensate him for his investigation and involvement in the 2004 examination of Gimelson which led to discovery that she failed to include in her bankruptcy schedules and statements that she was a one-quarter owner of the Cliffside Park property and that she received $41,000 in funds. Specifically, Litzenberger requested $14,685.00 in compensation for his own personal time expended on those issues and $836.00 for reimbursement of costs and expenses (including $337.50 in secretarial expenses for preparation of the itemization of the administrative claim). Litzenberger made his request pursuant to 11 U.S.C.§ 503(b)(3)(B) and 11 U.S.C. § 503(b)(4).

Under 11 U.S.C.§ 503(b)(3)(B), the Bankruptcy Court held that Litzenberger was not entitled to recover any administrative expenses because he had not received court approval, which is a precondition to an award under Section 503(b)(3)(B), to recover any assets hidden by Gimelson. The Bankruptcy Court pointed out that Litzenberger was given permission to attend an examination of Gimelson, which was to be primarily conducted by the chapter 7 trustee, pursuant to Bankruptcy Rule 2004. Relating to the examination, the Bankruptcy Court also pointed out that Litzenberger was only involved in the discovery phrase, and not involved in the actual recovery of the assets which is required for qualification to recover expenses pursuant to Rule 503(b)(3)(B).[18]

The Bankruptcy Court also held that Litzenberger was not entitled to an

[18] The Bankruptcy Court stated that the property was recovered by the trustee, acting through his counsel, with litigation under 11 U.S.C. § 363(h) followed by a later auction sale.

administrative claim under 11 U.S.C. § 503(b)(4). The Bankruptcy Court explained that Section 503(b)(4) affords an administrative priority to reimburse a creditor for compensation paid for professional services provided by an attorney for an entity. The Bankruptcy Court concluded that Litzenberger, who acted in a personal capacity throughout the bankruptcy case, was not entitled to administrative compensation under Section 503(b)(4) because it did not allow for reimbursement of time spent by a creditor who represented himself and had not incurred any attorney fees.

In conclusion, the Bankruptcy Court stated that, in recognition of two state court judgments against Gimelson, Litzenberger was owed approximately $142,000.00 at the time Gimelson filed her chapter 7 bankruptcy petition. In the bankruptcy case, Litzenberger was permitted to obtain title to and sell Gimelson's Stump Road property for approximately $196,000.00. After deducting outstanding mortgage liens, taxes and other costs directly connected to the sale, the Bankruptcy Court determined that Litzenberger received net proceeds of approximately $165,000.00. Thus, recovery of the sale proceeds fully repaid the allowed oversecured claim held by Litzenberger. Therefore, Litzenberger's amended claim, alleging that he is owed an additional $117,488.19 was disallowed and Gimelson's objection was sustained. The Bankruptcy Court also disallowed Litzenberger's request for an administrative expense in the amount of $15,521.00 because the request fell outside the scope of Section 503(b)(3)(B) and Section 503(b)(4).

C. Bankruptcy Court's Memorandum Opinion Regarding Litzenberger's Motion for Reconsideration

On April 2, 2004, Litzenberger filed a motion for reconsideration of the

Bankruptcy Court's denial of his proof of claim. Litzenberger's motion for reconsideration was based upon the Bankruptcy Court's footnote regarding its ruling that there was an overlap between the confessed judgment on the Judgment Note and judgment on the First Arbitration Award. In the footnote, the Bankruptcy Court stated that Litzenberger may move for reconsideration of its decision pursuant to Federal Rule of Bankruptcy Procedure 3008 if he provides documentary evidence that the services covered by the Judgment Note were excluded from the First Arbitration Award. Pursuant to Rule 3008, Litzenberger moved for reconsideration contending that he discovered additional evidence supporting his amended proof of claim. The Bankruptcy Court held an evidentiary hearing on Litzenberger's motion. At the hearing, Litzenberger provided testimony and additional documents for review. Gimelson elected not to offer any additional evidence, but did cross-examine Litzenberger.

At the hearing, Litzenberger testified that his memory had been recently refreshed and that he recalled the attorney representing Gimelson during the first arbitration conceded at the outset that there was a debt owing to Litzenberger of at least $30,000.00 as of June 12,1992 (the date that the Judgment Note in the amount of $30,5000.00 was signed). Upon this basis Litzenberger contends that there was no overlap between the confessed judgment and the first arbitration judgment. Litzenberger argues that the first arbitration hearing addressed only the amount of the costs and fees owed to him after the Judgment Note was signed on June 12, 1992. Additionally, Litzenberger contends that the judgment entered on the First Arbitration Award must have been limited to valuing his costs and fees as Gimelson's divorce counsel after June 12, 1992. After consideration of the additional evidence, the Bankruptcy Court found that Litzenberger failed to meet his evidentiary burden on the issue of whether the judgments

overlapped.

The Bankruptcy Court pointed out that Litzenberger conceded that his original demand in the first arbitration proceeding could have been construed to include the time period and fees and costs covered by the Judgment Note. The arbitration demand did not state to the contrary and it included the retainer agreement signed on December 2, 1991, which was also the basis for the Judgment Note. The Bankruptcy Court stated that there would have been no need for Gimelson's attorney to make any concession regarding the Judgment Note unless he believed that the debt for the fees and costs covered by that instrument was implicated in the arbitration hearing. The Bankruptcy Court also pointed out, as it had previously done at a prior hearing, that copies of costs cards that were introduced into evidence, and conceded by Litzenberger that they were presented to the arbitrator during the first arbitration hearing, identify services rendered by Litzenberger during the period of time covered by the Judgment Note. According to the Bankruptcy Court, there was no evidence that the arbitrator was asked to disregard the items identified in the costs cards to the extent they covered services already included in the Judgment Note. Litzenberger could have eliminated these items from consideration by not offering the card into evidence or by deleting them as superfluous entries.

The Bankruptcy Court went on to address two additional billing documents introduced at the reconsideration hearing. The documents, both dated prior to the signing of the June 12, 1992 Judgment Note, appear to be draft invoices detailing the services and costs provided to Gimelson. The one document, exhibit 2, dated May 27, 1992 itemizes fees and costs totaling $30,383.29 rendered by Litzenberger as of that date. The Bankruptcy Court stressed that the total of $30,383.29 is virtually identical to the amount of the Judgment Note for $30,500.00

signed by Gimelson in June 1992. Thus, as stated by the Bankruptcy Court, it is likely that the Judgment Note represented a debt for fees and services detailed in exhibit 2. Moreover, a comparison of the services listed on exhibit 2 with those mentioned on the costs cards admitted into evidence at the arbitration hearing shows some similar entries which supported Gimelson's contention that the arbitrator was offered evidence of her unpaid obligation to Litzenberger from the inception of his engagement as her attorney until the date of the arbitration demand (without any deduction of those services and costs that underlay the Judgment Note).

The Bankruptcy Court stated that the inferences sought by Litzenberger regarding Gimelson's concession at the first arbitration are unlikely because the First Arbitration Award exceeded Litzenberger's original demand by $5,000.00, not including costs associated with the arbitration itself. After subtracting $30,500.00 from any amount owed to Litzenberger, and after making any disallowance proven by Gimelson at the contested hearing, the Bankruptcy Court found that it was unlikely that the arbitrator would award Litzenberger more than he requested. Instead, the Bankruptcy Court found that it was more likely than not that the arbitrator accepted the $30,500.00 balance of the Judgment Note as uncontested, resolved any disputes as to additional amounts due, and issued an all-encompassing award which included the amount of the Judgment Note.

In addition to the aforementioned, Litzenberger also supported his reconsideration motion by offering copies of certain state court orders issued in February, March and April 2000 as exhibits 6, 7 and 8, respectively. Exhibit 6 was a February 16, 2000 order reviving the judgment on the Judgment Note. Exhibit 7 was a March 7, 2000 order whereby the state court determined that Gimelson's transfer of real property was a fraudulent conveyance. Lastly,

exhibit 8 was an April 13, 2000 order permitting Litzenberger to execute upon that real estate. Litzenberger introduced these exhibits to demonstrate that the confessed judgment on the Judgment Note and the judgment on the First Arbitration Award are valid and there is no overlap between them, therefore, he could fully collect upon both judgments. Otherwise, Litzenberger argued, the state court would not have revived the confessed judgment.

The Bankruptcy Court disagreed with Litzenberger's argument reaffirming its previous conclusion that Pennsylvania law prevents Litzenberger from recovering on multiple judgments arising from the same cause of action. The Bankruptcy Court focused upon the fact that a party holding two judgments arising from the same cause of action may choose to execute on either of them, however, not both. Therefore, the entry of the first arbitration judgment alone did not invalidate the confessed judgment or require the latter's satisfaction, even if the two judgments overlapped. As a result, there would have been no valid basis to require Litzenberger to relinquish any lien priority status afforded by his confessed judgment, even if the debt represented by that judgment was included in the First Arbitration Award. The Bankruptcy Court acknowledged that the state court orders show that the confessed judgment and the first arbitration judgment are valid, but do not prove that there was no overlap between them.

Not unsympathetic to Litzenberger's difficult task in meeting his burden of proof, the Bankruptcy Court concluded that there is a likelihood that the two judgments overlap and state law would preclude the enforcement of the confessed judgment. After careful consideration of all of the evidence presented (including the testimony and additional evidence pertaining to the issue of reconsideration), the Bankruptcy Court came to its conclusion acknowledging that it was not absolutely certain that the two judgments overlapped, but the weight of the evidence

supported Gimelson's position that they most likely did. Thus, the Bankruptcy Court determined that Litzenberger is not entitled to collect both judgments under Pennsylvania law, and his proof of claim was disallowed for the reasons enunciated in its earlier Memorandum Opinion. In light of its conclusion, the Bankruptcy Court pointed out that its determination still left Litzenberger with more than $164,000.00 in proceeds from the sale of the Stump Road property.

II. LEGAL STANDARD

The district court sits as an appellate court in bankruptcy cases.[19] In re Li, 249 B.R. 388, 389 (E.D. Pa. June 6. 2000)(citation omitted). "As a proceeding tried initially before the Bankruptcy Court for the Eastern District of Pennsylvania, the standard of review for the district court is governed by [Federal Rule of Bankruptcy Procedure] 8013." Id. at 389 (quotation and internal quotation marks omitted). Rule 8013 provides as follows:

> On an appeal the district court or bankruptcy appellate panel may affirm, modify, or reverse a bankruptcy judge's judgment, order, or decree or remand with instructions for further proceedings. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses.

Fed. Bankr. R. P. 8013.

On appeal, "the district court 'applies a clearly erroneous standard to findings of fact, conducts plenary review of conclusions of law, and must break down mixed question of law and fact, applying the appropriate standard to each component.'" In re Li, 249 B.R. at 389-90 (quoting Meridian Bank v. Alten, 958 F.2d 1226, 1229 (3d Cir. 1992)). That is, when reviewing

[19] Appellate jurisdiction over the final order of the Bankruptcy Court is pursuant to 28 U.S.C. § 158(a).

mixed questions of law and fact, the district court must accept the bankruptcy court's "finding of historical or narrative facts unless clearly erroneous, but exercises 'plenary review of the [bankruptcy] court's choice and interpretation of legal precepts and its application of those precepts to the historical facts.'" Mellon Bank, N.A. v. Metro Communications, Inc., 945 F.2d 635, 642 (3d Cir. 1991)(quoting Universal Minerals, Inc. v. C.A. Hughes & Co., 669 F.2d 98, 101-02 (3d Cir.1981)).

III. DISCUSSION

Litzenberger raises several points on appeal.[20] Litzenberger argues that the Bankruptcy Court erroneously: (1) disallowed his amended proof of claim; (2) disallowed his request for an administrative claim; and (3) denied his motion for reconsideration. Each of Litzenberger's claims will be addressed *seriatim*.

A. Litzenberger's Amended Proof of Claim

1. Overlap of Judgment Note and First Arbitration Award

In the Bankruptcy Court, Litzenberger's last amended proof of claim encompassed a prepetition claim in the amount of $201,894.28, based primarily upon the three judgments regarding the Judgment Note, the First Arbitration Award and the Second Arbitration Award. Gimelson objected to the amount sought by Litzenberger arguing that it should be greatly reduced. Gimelson argued, and the Bankruptcy Court agreed, that Litzenberger cannot collect on both the Judgment Note and the First Arbitration Award because the debt represented by the

[20] Litzenberger's Statements of Issues to be Presented includes issues that have not been included in his Appeal Brief. The issues raised in Litzenberger's Appeal Brief are the sole issues that have been addressed and argued; therefore, only those issues will be analyzed. In his appeal, Litzenberger also requests an oral argument. After reviewing the complete record in this case, an oral argument is unnecessary and Litzenberger's request for oral argument is denied.

confessed judgment is subsumed within the first arbitration judgment. Litzenberger countered Gimelson's argument by asserting that the validity and the amount of the three judgments and, accordingly, his proof of claim based upon those judgments has been determined by final orders of the state court and cannot be challenged in a bankruptcy case. Additionally, Litzenberger argued that there was no overlap between the confessed judgment on the Judgment Note and the First Arbitration Award because the services and costs covered by the Judgment Note were not awarded by the first arbitration.

The Bankruptcy Court rejected Litzenberger's contentions on several grounds. The Bankruptcy Court addressed Litzenberger's argument that the validity and the amount of the three judgments and, thus, his proof of claim based upon those judgments cannot be challenged in bankruptcy court because they have been determined by final orders of the state court. Finding that it is more likely than not that the Judgment Note and the First Arbitration Award overlap, the Bankruptcy Court concluded that Litzenberger is not entitled to recover the confessed judgment on the Judgment Note because Pennsylvania law does not permit a plaintiff to recover twice for the same cause of action, notwithstanding the existence of multiple judgments.[21]

Litzenberger argues that the Bankruptcy Court incorrectly concluded that his First Arbitration Award judgment encompasses his confessed judgment on his Judgment Note. Litzenberger argues that the Bankruptcy Court improperly applied the respective burdens of proof in this action and erroneously placed a conclusive burden of proof on him to overcome

[21] The Bankruptcy Court concluded that the First Arbitration Award subsumed the entire confessed judgment on the Judgment Note. The Bankruptcy Court noted that since Litzenberger executed upon the First Arbitration Award and not the smaller confessed judgment, the latter judgment had been satisfied.

Gimelson's objection.

a. Burden of Proof

In Bankruptcy Court, proofs of claim are deemed allowed unless a party in interest objects. 11 U.S.C. § 501 (1996). "If a party in interest files an objection to a proof of claim pursuant to 11 U.S.C. § 502(a), the burden of establishing the validity of the proof of claim is placed on different parties at different times." United States of America v. Baskin & Sears, P.C., 207 B.R. 84, 86 (E.D. Pa. 1997). In bankruptcy proceedings, the shifting of the burdens of proof regarding proof of claims is as follows:

> The claimant must first come forward and allege facts sufficient to support the claim. Thereafter, in traditional bankruptcy cases, debtors have the burden of production to demonstrate that the proof of claim is invalid with at least as much evidence as produced by the claimant. If the debtor meets its burden of production, the burden shifts back to the claimant to demonstrate the validity of its proof of claim.

Baskin, 207 B.R. at 86 (internal citation omitted). Concerning the final burden of production, the claimant must "prove the claim by a preponderance of the evidence." In re Galloway, 220 B.R. 236, 244 (Bankr. E.D. Pa. 1998). "As in non-bankruptcy law, bankruptcy claimants seeking damages must prove their entitlement." Baskin, 207 B.R. at 86.

Regarding the shifting burdens of proof, Litzenberger claims that Gimelson did not meet her burden of proof and, therefore, his proof of claim should have been granted without any reduction. Additionally, Litzenberger asserts, despite the Bankruptcy Court's conclusion otherwise, that he met the final burden of proof by a preponderance of the evidence. The Bankruptcy Court throughly reviewed and analyzed the evidence regarding the issue of overlap. The Bankruptcy Court held an evidentiary hearing addressing this issue and thoughtfully

examined all of the evidence. The Bankruptcy Court even upheld its decision after reconsideration, which included consideration of Litzenberger's additional evidence in support of his claim and testimony elicited during an evidentiary hearing on the issue. It appears that Litzenberger's argument that the Bankruptcy Court erred resolves itself into separate attacks on the Bankruptcy Court's fact-finding, which is subject to review for clear error, and its conclusion that he had not satisfied his burden, which is subject to plenary review. Under either standard, Litzenberger's claim fails. The Bankruptcy Court's findings are not clearly erroneous and Litzenberger's argument that he met his burden of persuasion by the requisite preponderance of the evidence is without merit.

1.) Bankruptcy Court's Findings of Fact

Based upon the evidence of record, including the Bankruptcy Court's opportunity to judge the credibility of the witnesses at the evidentiary hearing, there has been no clear error in the Bankruptcy Court's findings of fact. The Bankruptcy Court carefully examined all of the evidence available and made logical conclusions therefrom. Litzenberger has not pointed to any factual issues or findings where upon the Bankruptcy Court was clearly erroneous in its findings or assessments. Based upon all of the evidence presented before the Bankruptcy Court, including all of the evidence and briefs on appeal, Litzenberger has not shown that any of the Bankruptcy Court's findings of fact were clearly erroneous.

2.) Bankruptcy Court's Conclusions of Law

Litzenberger argues that the Bankruptcy Court erred in its conclusions of law in two respects: (1) concluding that Gimelson successfully met her burden of production; and (2) finding that Litzenberger failed in meeting his ultimate burden of persuasion regarding the

amount of his proof of claim.[22] Upon plenary review, the Bankruptcy Court logically concluded that Gimelson met her burden of production to demonstrate that Litzenberger's proof of claim is invalid as it relates to the overlap of the Judgment Note with the First Arbitration Award. Litzenberger attempts to show that Gimelson's arguments and evidence in support of her burden of persuasion lack merit. When considering the facts of the case, including the confusion regarding the security nature of the Judgment Note along with the uncertainty of what exactly was included within the First Arbitration Award, Gimelson's burden of proof to overcome the *prima facie* validity of Litzenberger's proof of claim has been successfully met. Gimelson's argument and evidence supporting her theory that the Judgment Note was a security interest that was included within the First Arbitration Award is sufficient to overcome the conclusivity of Litzenberger's disputed proof of claim.

Upon plenary review, Litzenberger's argument that he successfully satisfied his ultimate burden of persuasion regarding the amount of his proof of claim also fails. Litzenberger argues that he met his burden of showing that the Judgment Note was excised from the First Arbitration Award and, therefore, should be included within the calculation of his proof of claim. Litzenberger points to his own testimony stating that such amount was excised.[23] Litzenberger

---

[22] This section also includes analysis of issues that were presented, and addressed, regarding Litzenberger's motion for reconsideration. In his motion for reconsideration, Litzenberger focused upon the issue of the relevant burdens of proof and whether they have been successfully met. As mentioned earlier, Litzenberger's motion for reconsideration included additional evidence and oral argument pertaining to the burden of proof issues. Since the reconsideration motion deals more in-depth with the burden of proof issues, I will include its arguments, evidence, as well as the Bankruptcy Court's pertinent analysis, in this discussion.

[23] Additionally, Litzenberger supports his argument by referring to the specific language of the arbitrator's finding concerning the Second Arbitration Award stating that the Judgment Note is "in all respects, valid and represents security for the Claimant's fee for services rendered.

relies heavily upon his own testimony, however, such testimony is not conclusive in light of other factors that weigh upon the overlap issue. As explained by the Bankruptcy Court, other factors that are to be taken into consideration include the following: copies of costs cards that were introduced into evidence, and presented to the arbitrator during the first arbitration hearing, identifying services rendered by Litzenberger during the period of time covered by the Judgment Note; evidentiary hearing exhibits 1 and 2 (draft invoices detailing the services and costs provided to Gimelson dated prior to the signing of the June 12, 1992 Judgment Note) appearing to show that the Judgment Note represented a debt for fees and services and a comparison of the services listed on exhibit 2 with those mentioned on the costs cards show some similar entries which support Gimelson's contention that the arbitrator was offered evidence of her unpaid obligation to Litzenberger from the inception of his employment as her attorney until the date of the arbitration demand; and the First Arbitration Award exceeded Litzenberger's original demand by $5,000.00, which shows that it is likely that the arbitrator accepted the $30,500.00 balance of the Judgment Note as uncontested, resolved any disputes as to additional amounts due, and issued an all-encompassing award including the amount of the Judgment Note as opposed to

---

As a security interest, the Judgment Note was not included in the Arbitrator's Award dated June 28, 1995." Although quoting the arbitrator's language as support for his argument, Litzenberger fails to acknowledge the confusing nature of the statement as he had previously done in a letter that he wrote to the arbitrator seeking clarification stating, in part, that the arbitrator's statement is "susceptible to the interpretation that there was no additional money due under [the Judgment Note] but it is only valid as a security document for payment of monies awarded on June 28, 1995, and monies awarded in the current July 6, 1999 award." Thus, Litzenberger's reliance upon the specific section of the arbitrator's finding does not clarify the confusion regarding the nature of the Judgment Note or its inclusion into the First Arbitration Award.

awarding more than requested after subtracting the $30,500.00 from any amount owed to Litzenberger and making any disallowance proven by Gimelson.

Concerning the final burden of production regarding Litzenberger's proof of claim, the Bankruptcy Court correctly weighed Litzenberger's testimony and evidence against the aforementioned contradictory evidence in interpreting the legal precepts of this case and applying those precepts to the historical facts of the case. Contrary to Litzenberger's assertion, the Bankruptcy Court also correctly analyzed and applied Franklin Decorators, Inc. v. Kalson, 330 Pa. Super. 140, 479 A.2d 3 (1984), to the facts of this case. The Bankruptcy Court relied upon Franklin Decorators to show that, under Pennsylvania law, " a plaintiff is not permitted to recover twice for the same cause of action, notwithstanding the existence of multiple judgments." (Bankr. Ct. Mem. Op. at 24). In Franklin Decorators, a creditor obtained two judgments of differing amounts against the same debtor based upon the same cause of action. Franklin Decorators, 330 Pa. Super. at 142, 479 A.2d at 3. In such an instance, the Pennsylvania Superior Court determined that recovery on multiple judgments was not permitted because "[i]t is . . . well settled that a plaintiff is limited to one satisfaction for a single injury. . . .When Franklin Decorators obtained two valid judgments on the same cause of action, it could elect which judgment to pursue to satisfaction " Id. at 143, 479 A.2d at 4.

Litzenberger acknowledges "that the [Bankruptcy] Court's holding is consistent with Franklin Decorators, because to the extent [Gimelson] is able to show that the obligations that formed the basis for the judgment entered in the Judgment Note Case and the judgment entered in the 1995 Case to Confirm the First Arbitration Award are one and the same, [Gimelson] could argue that the satisfaction of one results in the satisfaction of the other."

(Litzenberger's Appeal Br. at 11). However, as he did in the Bankruptcy Court, Litzenberger argues that Franklin Decorators is distinguishable from the facts of this case. Litzenberger asserts that, unlike the present case, Franklin Decorators involved a confession of judgment and an independent cause of action on the same contractual instrument for the same obligation. Litzenberger contends that while Gimelson alleges that the present claim at issue flows from one contractual obligation, the facts are undisputably to the contrary because the obligations under the Judgment Note and the First Arbitration Award are separate contractual vehicles with distinct periods of indebtedness. As correctly noted by the Bankruptcy Court, Litzenberger misconstrues the nature of the facts at issue in this case. The Bankruptcy Court pointed out, and I agree, that the confessed judgment and the first arbitration judgment are based upon the same contractual agreement because "[a]lthough the Judgment Note represents a signed document separate from the engagement contract, the fees covered therein are derived from the same 1991 agreement relied upon in the first arbitration proceeding." (Bankr. Ct. Mem. Op. at 25 n.13).

Also aptly noted by the Bankruptcy Court is the fact that the pertinent focus of Franklin Decorators is on whether the judgments are based upon the same cause of action, not whether the judgments are based upon the same document. Consequently, the Bankruptcy Court points out that since both the Judgment Note and the first arbitration judgment involve compensation for services provided under the 1991 agreement, "the same cause of action - contract liability under the 1991 fee agreement - is involved, [and] Franklin Decorators would apply and bar recovery of both judgments to the extent that they cover the same fees." Id. Since the Bankruptcy Court's reasoning and legal analysis of Franklin Decorators to the facts of this case are proper, Litzenberger's argument to the contrary is mistaken.

In light of the aforementioned, the Bankruptcy Court's choice and interpretation of legal precepts and its application of those precepts to the historical facts of this case resulted in the correct conclusions that Gimelson successfully met her burden of production and Litzenberger failed in his final burden of persuasion regarding the amount of his proof of claim. Thus, I affirm the Bankruptcy Court's conclusion that Litzenberger is not entitled to recover the confessed judgment on the Judgment Note because Pennsylvania law does not permit a plaintiff to recover twice for the same cause of action, notwithstanding the existence of multiple judgments, because it is more likely than not that the Judgment Note and the First Arbitration Award overlap.[24]

2. Reduction of Litzenberger's Amended Proof of Claim

The Bankruptcy Court determined that the proceeds received by Litzenberger from the sale of the Stump Road property exceeded the value of his secured claim. The Bankruptcy Court found that some of the credits used to calculate the net proceeds claimed by Litzenberger from the sale were improper.[25] Specifically at issue are the Bankruptcy Court's

---

[24] Litzenberger argues that the Bankruptcy Court ignored "the federal doctrines of Full Faith and Credit, issue preclusion, plus the principles of waiver and estoppel" in its conclusion that Litzenberger is not entitled to recover the confessed judgment on the Judgment Note because it is more likely than not that the Judgment Note and the First Arbitration Award overlap. (Litzenberger's Appeal Br. at 1). The Bankruptcy Court's conclusion is premised upon Pennsylvania law which does not permit a plaintiff to recover twice for the same cause of action, notwithstanding the existence of multiple judgments. Based upon the affirmation of the aforementioned reasoning, Litzenberger's argument pertaining to the doctrines of Full Faith and Credit, issue preclusion, waiver and estoppel do not apply.

[25] One of the credits at issue raised by Litzenberger is the taxes that he paid related to the Stump Road property. In his Appellate Brief, Litzenberger reuses pages from his filing in Bankruptcy Court entitled Litzenberger's Response to Debtor's Findings of Fact and Conclusions of Law to argue that he is not liable for $9,052.44 in taxes that accrued for the calendar year 2001. Instead, he argues that he is only liable for a one month period in which he had legal and

following determinations: Litzenberger could not properly deduct the $10,000 payment to his secretary Kathleen Swartz; Litzenberger was not entitled to deduct $14,763.00 paid to Mellon Bank for reimbursement of legal fees; and Litzenberger is not permitted to reduce the proceeds that he received from the sale of the Stump Road property by the amount of $54,064.00 for attorney's fees.

a.) Payment to Secretary

Litzenberger argues that the Bankruptcy Court erred by finding that he could not properly deduct the $10,000 payment to his secretary Kathleen Swartz from the proceeds that he received as a result of the sale of the Stump Road property.[26] The Bankruptcy Court correctly recognized that, pursuant to Pennsylvania law, compensation to Swartz would be chargeable against the sale proceeds only if the services she provided were directly related to the sale of the Stump Road property. Upon that premise, the Bankruptcy Court found that the payment of $10,000 included services outside the sale of the property or services that did not relate to the actual sale of the property. Citing to testimony by Litzenberger, the Bankruptcy Court found that

---

actual possession of the property. Accounting for Litzenberger's limited actual possession of the property, the Bankruptcy Court held that he was responsible for $1,094.15 of the taxes that he paid and, as a result, that amount was included in the net proceeds that were received from the sale. Thus, Litzenberger actually prevailed on this issue in the Bankruptcy Court. As a result, Litzenberger's argument in his appellate brief that he is not liable for $9,052.44 in taxes is totally irrelevant and will not be addressed any further.

[26] The amount of the payment for $10,000 was determined by a statement prepared by Swartz. (Bankr. Ct. Mem. Op. at 11)(citations omitted). According to the Bankruptcy Court, "[t]he statement indicate[d] that all services for which compensation was sought related to the Stump Road property; however, there [was] no explanation of what specific services were provided or how they were related to the real estate." (Id. at 12)(citation omitted). The Bankruptcy Court noted that "Mr. Litzenberger testified that he did not question Ms. Swartz's itemization." (Id.)(citation omitted).

the $10,000 paid to Swartz was purportedly for "[s]upport services and repairs." (Bankr. Ct. Mem. Op. at 11)(citing Ex. O-9, line 1301). The Bankruptcy Court went on to state that "[a]t trial, Mr. Litzenberger testified that the money was intended to compensate Ms. Swartz for overtime work she had performed during his various litigation with Ms. Gimelson . . . Ms. Swartz was being compensated for 'girl-Friday' services performed from January 1995 through December 2000"[27] (Id. at 11-12)(citations omitted).

Review of the Bankruptcy Court's analysis and conclusion reveals that no error has been committed. The Bankruptcy Court relied upon proper law relevant to the issue at hand and correctly analyzed the law to the applicable facts of the case. Litzenberger's argument on appeal, utilizing copies of the exact same pages from his Response to Debtor's Findings of Fact and Conclusions of Law filed in the Bankruptcy Court, is simply that $10,000.00 was paid to Swartz for secretarial and repair work that was necessary for him to realize his interest in the Stump Road property. Although the Bankruptcy Court pointed out that Litzenberger's claim was denied because the $10,000 fee included services outside the sale of the property or services that did not relate to the actual sale of the property, Litzenberger makes no effort to challenge the Court's reasoning or opinion. The Bankruptcy Court's finding of the narrative facts was proper and, thus, was not clearly erroneous. Likewise proper were the Bankruptcy Court's choice and interpretation of legal precepts, as well as its application of those precepts to the historical facts of this case. Consequently, the Bankruptcy Court's conclusion that Litzenberger could not properly deduct the $10,000 payment to his secretary Kathleen Swartz from the proceeds that he

[27] The Bankruptcy Court pointed out that Litzenberger did not explain his attempt to assess secretarial costs against Gimelson in light of the 1991 Agreement, which provided that Gimelson would not be charged for secretarial services.

received as a result of the sale of the Stump Road property was correct and is affirmed.

b.) Payment to Mellon Bank.

Litzenberger argues that the Bankruptcy Court erred by finding that he was not entitled to deduct from the sale of the Stump Road property the amount of $14,763.00 that he paid to Mellon Bank for reimbursement of legal fees expended by the Bank to defend against an action brought by Litzenberger. The Bankruptcy Court concluded that the expense was solely a result of Litzenberger's litigation against the Bank, and was not related to sale of the property. The Bankruptcy Court acknowledged that "[c]learly, under Pennsylvania law, the payoff of the mortgages is properly deductible from the proceeds of the sale." (Bankr. Ct. Mem. Op. at 46). Although acknowledging that the mortgage payoff amounts were properly deducted from the proceeds of the sale, the Bankruptcy Court did not permit Litzenberger to deduct the amount of Mellon Bank's attorney's fees resulting from an action which was initiated and pursued by Litzenberger for the sole purpose of his own benefit after he had obtained legal title to the realty.

Review of the Bankruptcy Court's analysis and conclusion reveals that no error has been committed. The Bankruptcy Court relied upon proper law relevant to the issue at hand and correctly analyzed the applicable facts of the case to the law. Litzenberger's argument on appeal, which again is merely attaching copies of the exact pages from his filing in Bankruptcy Court addressing this issue to his Appeal Brief, is that he was required to pay Mellon Bank $14,763.00 in its legal fees in order to convey clear title, thereby, realizing his interest in the Stump Road property.

Although the Bankruptcy Court addressed and decided this issue, Litzenberger

fails to address the Bankruptcy Court's opinion or the reasoning therein. Thus, Litzenberger does not show how the Bankruptcy Court's analysis or conclusion were improper. Regarding the payment to Mellon Bank, the Bankruptcy Court's narrative facts were accurate and, thus, were not clearly erroneous. As for the Bankruptcy Court's choice and interpretation of legal precepts, as well as its application of those precepts to the historical facts of this case, they too appear to be appropriate. Litzenberger does not come forward with any argument, let alone proof, that the Bankruptcy Court erred. As a result, the Bankruptcy Court's conclusion that Litzenberger could not properly deduct the $14,763.00 payment in legal fees to Mellon Bank from the proceeds that he received as a result of the sale of the Stump Road property was correct and is affirmed.

c.) Attorney's Fees

Litzenberger argues that he is entitled to deduct $54,064.00 from the sale proceeds of the Stump Road property due to attorney's fees that he incurred in realizing his interest in the Stump Road property. Relying upon the 1991 Agreement, Litzenberger asserts that he is entitled to recover costs and the reasonable value of his time. As previously explained, the Bankruptcy Court concluded that the value of the Stump Road property that Litzenberger received was $164,623.24, more than the amount owed to him on his prepetition claim for $142,293.74. Based upon this conclusion, the Bankruptcy Court held that it was impossible for Litzenberger to hold an unsecured claim regardless of the propriety of his demand for postpetition fees. Specifically, the Bankruptcy Court stated as follows:

> In other words, if Mr. Litzenberger were not entitled to any postpetition fees associated with the sale of the property, the debtor would obtain no additional relief from her present claim objection. She seeks only to have disallowed the latest amended proof of claim, which asserts an unsecured claim after application of the net

> sale proceeds.
>
> Conversely, if Mr. Litzenberger were entitled to charge the estate for postpetition fees, such as those demanded here, any allowed fees would be capped under [11 U.S.C. § 506(b)] by the value of the creditor's interest in his collateral, which is about $165,000.00, after subtracting prior mortgage liens and taxes. As the claimant received the entire net proceeds of the collateral, he could not demand additional payment from the estate as an unsecured creditor for those postpetition fees not paid from the proceeds of the sale of the Stump Road property. Thus, there is no need to analyze whether, absent this ceiling, such fees would fall within the scope of section 506(b).
>
> Mr. Litzenberger inadvertently confused the issue under section 506(b) by subtracting postpetition fees from the sale proceeds in his amended proof of claim. These fees, as they arose post-bankruptcy, can only be allowable as permitted by section 506(b); they do not reduce the value of his interest in the collateral.

(Bankr. Ct. Mem. Op. at 52 n.40).[28]

The Bankruptcy Court addressed and decided Litzenberger's attorney's fees issue, however, in the instant appeal, Litzenberger fails to address the Bankruptcy Court's opinion or its reasoning therein. By failing to address the Bankruptcy Court's decision, Litzenberger does not offer any appropriate grounds upon which the Bankruptcy Court erred in either its assessment of the facts or its application and analyzation of the appropriate law to those facts. The Bankruptcy

---

[28] Section 506(b) provides as follows:

> To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose.

11 U.S.C. § 506(b).

Court's factual assessment and its legal analysis of the facts reveal that it properly decided the attorney's fees issue. As such, I affirm the Bankruptcy Court's conclusion that Litzenberger is not permitted to reduce the proceeds that he received from the sale of the Stump Road property by the amount of $54,064.00 for attorney's fees.

d.) Conclusion

The Bankruptcy Court's conclusion that Litzenberger could not properly deduct the $10,000 payment to his secretary Kathleen Swartz from the proceeds that he received as a result of the sale of the Stump Road property was correct and is affirmed. Likewise, the Bankruptcy Court's conclusion that Litzenberger could not properly deduct the payment in legal fees amounting to $14,763.00 to Mellon Bank from the proceeds that he received as a result of the sale of the Stump Road property was correct and is affirmed. Regarding the issue of attorney's fees, I affirm the Bankruptcy Court's conclusion that Litzenberger is not permitted to reduce the proceeds that he received from the sale of the Stump Road property by the amount of $54,064.00 for attorney's fees. Adding the fee paid to Kathleen Swartz, the Mellon Bank fees, and $1,094.15 of the Stump Road property taxes to the amount of $138,766.09 (the amount conceded by Litzenberger that he received from the sale of the Stump Road property), the Bankruptcy Court properly concluded that the total value of the Stump Road property received by Litzenberger was $164,623.24. As previously explained, the Bankruptcy Court correctly determined that Litzenberger was entitled to a secured claim of $142,293.75 as of the date of the commencement of Gimelson's bankruptcy. Thus, the $164,623.24 value of the Stump Road property received by Litzenberger is more than the amount owed to him on his prepetition

claim.[29]

B. Litzenberger's Administrative Claim

In Bankruptcy Court, pursuant to 11 U.S.C. §§ 503(b)(3)(B) and 503(b)(4), Litzenberger sought $15,521.00 to compensate himself for his "investigation into and involvement in the 2004 Exam of [Gimelson] which led to the discovery that [Gimelson] failed to include on her schedules and statements that she was a one-quarter owner of the Cliffside Park property and has received $41,000.00 in funds that she deposited into her daughters [sic] account."[30] (Bankr. Ct. Mem. Op. at 53)(quoting Litzenberger's Mem. at 19-20). Under Section 503(b)(3)(B), the Bankruptcy Court rejected Litzenberger's claim because he failed to obtain the requisite court approval and he did not actually recover the undisclosed property for the estate. As for Litzenberger's claim pursuant to Section 503(b)(4), the Bankruptcy Court, assuming that a creditor may seek an award under Section 503(b)(4) even though he has no reimbursable expense under Section 503(b), denied his claim finding that Section 503(b)(4) does not permit compensation for time spent by a creditor who represents himself and has incurred no attorney's fees.

1. 11 U.S.C. § 503(b)(3)(B)

Section 503(b)(3)(B) permits the allowance of administrative expenses of "a creditor that recovers, after the court's approval, for the benefit of the estate any property

---

[29] According to the Bankruptcy Court, it was not necessary to determine whether Litzenberger was overpaid on his claim because neither Gimelson nor the trustee sought any recovery from Litzenberger.

[30] Specifically, Litzenberger requested $14,685.00 in compensation for his personal time and $836.00 for reimbursement of costs and expenses (including $337.50 in secretarial expenses for preparation of the itemization of Litzenberger's administrative claim).

transferred or concealed by the debtor." 11 U.S.C. § 503(b)(3)(B)(emphasis added). Relying upon the statute's court approval language, the Bankruptcy Court noted that "the vast majority of decisions recognize that a priority allowance for reimbursement of expenses incurred by a creditor under section 503(b)(3)(B) must be preceded by court approval to incur those expenses." (Bankr. Ct. Mem. Op. at 55)(citing e.g., In re Blount, 276 B.R. 753, 758 (Bankr. M.D. La. 2002); In re Lagasse, 228 B.R. 223, 225 (Bankr. E.D. Ark. 1998); In re Calumet Realty Co., 34 B.R. 922 (Bankr. E.D. Pa. 1983); see generally Official Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery, 330 F.3d 548, 563-64 (3d Cir. 2003)). The Bankruptcy Court noted that Litzenberger did not obtain prior court approval to recover any assets hidden by Gimelson.

Litzenberger argues that he believed that he obtained court approval and, nevertheless, court approval is not always required. Litzenberger concedes that he did not meet the formal requirement of court approval; however, he argues that he reasonably relied upon what he believed to be the Court's approval because "the Trustee was informed of [his] intent to take the 2004 exam, recommended the taking of the exam and 'authorized it." (Litzenberger's Appeal Br. at 16). Litzenberger does not show how his limited action in the 2004 examination overcomes the Section 503(b)(3)(B) requirement of prior court approval to recover Gimelson's assets. Litzenberger merely argues that he believed that he had obtained court approval, but does not offer any legal analysis showing that such a belief is capable of overcoming the court approval requirement.

In its Memorandum Opinion, the Bankruptcy Court noted that it gave Litzenberger permission to attend an examination of Gimelson under Federal Rule of Bankruptcy Procedure 2004. In addressing this issue, the Bankruptcy Court's relied upon the opinion by the

Court of Appeals for the Third Circuit in Cybergenics, in which the Court states that "[w]hile a creditors' committee may certainly assist a debtor in locating property under Bankruptcy Rule 2004, that investigative assistance would not implicate § 503(b)(3)(B) because the committee would not recover the property." 330 F.3d at 564-65 (emphasis added). Based upon this reasoning, the Bankruptcy Court concluded that the "statement indicates that, in this circuit, for a creditor to be entitled to an administrative claim under § 503(b)(3)(B), he must actually recover the property for the estate - mere investigation or participation in a 2004 examination is insufficient." (Bankr. Ct. Mem. Law at 56)(stating "[t]his reasoning is supported by the plain language of § 503(b)(3)(B), which indicates that the creditor must recover for the benefit of the estate any property transferred or concealed by the debtor"). The Bankruptcy Court acknowledged that Litzenberger may have assisted the trustee in discovering the hidden assets, but there is nothing in the record to suggest that he was directly involved in the proceedings by which the assets were recovered for the bankruptcy estate.

Litzenberger does not address the Bankruptcy Court's opinion regarding this issue. Stating that he was on the "sidelines" regarding the auctioning of the Cliffside Park property, Litzenberger argues that there is no dispute that his investigation into and involvement in the 2004 examination led to the discovery of the hidden assets. As pointed out by the Bankruptcy Court, Litzenberger may have assisted the trustee in discovering the hidden assets, but, in order to recover under Section 503(b)(3)(B), he must show that he was directly involved in the proceedings by which the assets were recovered for the bankruptcy estate. Litzenberger does not address the Bankruptcy Court's reliance upon Cybergenics, and he fails to legally show how his participation in the 2004 examination entitles him to attorney's fees under Section

503(b)(3)(B). Thus, Litzenberger's argument relying upon his participation in the 2004 examination neither shows that he actually engaged in efforts to recover the property for the bankruptcy estate nor entitles him to his administrative claim under Section 503(b)(3)(B).

Litzenberger asserts that court approval is not always necessary under Section 503 (b)(3)(B), but he fails to offer any pertinent legal analysis in support of his assertion.[31] Litzenberger does not set forth when court approval is not required or under what circumstances court approval is unnecessary. Thus, although he argues that court approval is not always a requirement, Litzenberger fails to elicit any material cases relevant to the instant case and fails to apply the legal precepts of such cases to the instant action. In light of Litzenberger's failures, he has not proven that he is entitled to an administrative claim under Section 503(b)(3)(B). As a result, I affirm the Bankruptcy Court's decision that Litzenberger is not entitled to an administrative claim for $15,521.00 pursuant to Section 503(b)(3)(B).

2. 11 U.S.C. § 503(b)(4)

"Section 503(b)(4) authorizes claims for attorney's and accountant's fees incurred by all entities who are allowed to claim administrative expenses under § 503(b)(3)."[32] First

---

[31] In support of his argument that a creditor may be relieved from the court approval obligation, Litzenberger cites to the following four cases: In re Antar, 122 B.R. 788 (Bankr. S.D. Fla. 1990); In re Washington Lane Assocs., 79 B.R. 241 (E.D. Pa. 1987); In re Rumpza, 54 B.R. 107 (Bankr. D.S.D. 1985); and In re George, 23 B.R. 686 (Bankr. S.D. Fla. 1982). These cases, most of which have been offset by contrary decisions in the same district or on appeal, do not alter my conclusion that the Bankruptcy Court was correct in its determination that Litzenberger is not entitled to an administrative claim for $15,521.00 pursuant to Section 503(b)(3)(B). Moreover, Litzenberger's failure to obtain court approval is not the sole reason for denying his administrative claim.

[32] Section 503(b)(4) accords administrative claim status to:

> reasonable compensation for professional services rendered by an

Merchs. Acceptance Corp. v. J.C. Bradford & Co., 198 F.3d 394, 395 (3d Cir. 1999). Assuming *arguendo* that a creditor may seek an award under Section 503(b)(4) even though he has no reimbursable expense under Section 503(b), the Bankruptcy Court concluded that Litzenberger would still not be permitted to recover compensation, under Section 503(b)(4), for the time that he spent investigating and informing the trustee of the assets.

The Bankruptcy Court stated that "Section 503(b)(4) specifically permits a creditor to seek reimbursement for the monies the creditor has paid for the professional services of an attorney or accountant under certain circumstances." (Bankr. Ct. Mem. Op. at 58)(quotation and internal quotation marks omitted). Examining Litzenberger's claim, the Bankruptcy Court noted the Litzenberger, as an attorney representing himself, does not seek reimbursement of professional fees that he incurred, but seeks compensation for his own time expended investigating Gimelson's assets and attending her 2004 examination. The Bankruptcy Court quoted the language contained within In re Pappas, 277 B.R. 171, 177 (Bankr. E.D.N.Y. 2002), stating as follows:

> [The creditor] cites no authority (nor could the Court find any) for the premise that Section 503(b) provides a basis to compensate a creditor for his own personal time devoted to a matter. The mere fact that the creditor happens to be an attorney . . . does not change the inquiry. Section 503(b) provides that 'actual' 'expenses' may

---

> attorney or an accountant of an entity whose expense is allowable under paragraph (3) of this subsection, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant.

11 U.S.C. § 503(b)(4).

> be afforded administrative expense status. [The creditor's] time, although valuable, was not an 'actual expense' to him.

(Bankr. Ct. Mem. Op. at 59)(quoting In re Pappas, 277 B.R. at 177). Relying upon this language, the Bankruptcy Court concluded that the language of Section 503(b)(4) does not include the time spent by a creditor who represents himself and has not incurred any attorney's fees, but affords an administrative priority to reimburse a creditor for compensation paid for professional services provided by an attorney for an entity. Thus, the Bankruptcy Court held that Litzenberger was not entitled to administrative compensation under Section 503(b)(4) because he acted in a personal capacity throughout the bankruptcy case.

On appeal, Litzenberger does not offer any argument regarding the Bankruptcy Court's analysis or conclusion. Again, his brief on appeal consists of the identical pages he submitted in a filing to the Bankruptcy Court. Litzenberger's argument for administrative expense under Section 503(b)(4) is contained in a footnote stating that "[t]o the extent that Litzenberger's fees do not constitute costs and expenses, Litzenberger would be entitled to recovery pursuant to Code Section 503(b)(4)."[33] (Litzenberger's Appeal Br. at 16 n.16). Litzenberger offers no analysis as to where or how the Bankruptcy Court erred in its legal analysis of the facts of the case. Likewise, he offers no reasoning as to where the law relied upon by the Bankruptcy Court is incorrect or inapplicable to this action. The Bankruptcy Court's analysis of Litzenberger's administrative claim, including its reasoning for denting it, are sound.

---

[33] As support of his request, Litzenberger cites to In re United States Lines, Inc., 103 B.R. 427 (Bankr. S.D.N.Y. 1989), *order aff'd*, 1991 WL 67464 (S.D.N.Y. 1991) and In re Richton Int'l Corp., 15 B.R. 854 (Bankr. S.D.N.Y. 1981). Litzenberger fails to provide any discussion or analysis of these cases. Upon review of these cases, which are not on-point to the instant case, I find that neither case impacts the Bankruptcy Court's conclusion that Litzenberger is not entitled to an administrative claim pursuant to Section 503(b)(4) under the facts of this case.

After plenary review of the Bankruptcy Court's choice and interpretation of legal precepts and its application of those precepts to the historical facts, I affirm the Bankruptcy Court's decision that Litzenberger is not entitled to an administrative claim for $15,521.00 pursuant to Section 503(b)(4).

C. Litzenberger's Motion for Reconsideration

As explained earlier, Litzenberger's motion for reconsideration addressed the Bankruptcy Court's denial of his amended proof of claim based upon the overlap of the award on the Judgment Note and the First Arbitration Award. The motion sought reconsideration based upon the ground that Litzenberger uncovered new evidence demonstrating that the Judgment Note was not included in the First Arbitration Award. Earlier in this Memorandum Opinion, I addressed, and affirmed, the Bankruptcy Court's decisions that there was an overlap between the award on the Judgment Note and the First Arbitration Award. I also affirmed the Bankruptcy Court's decision that Litzenberger did not meet his ultimate burden of proof that he was entitled to the full amount he sought in his amended proof of claim. In so doing, I analyzed Litzenberger's appellate claim pertaining to the original bankruptcy decision along with the present appellate claim regarding the Bankruptcy Court's denial of his motion for reconsideration. As such, Litzenberger's assertion that the Bankruptcy Court erred in denying his motion for reconsideration has been previously addressed and denied in Section III.A.1. of this Memorandum Opinion. Consequently, the Bankruptcy Court's June 1, 2004 Order denying Litzenberger's motion for reconsideration is affirmed.

For the foregoing reasons, I affirm the Bankruptcy Court's decisions in all respects. An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN THE MATTER OF:	:	CHAPTER 7
JOSEPHINE GIMELSON	:	CIVIL ACTION No. 04-3216
	:	BANKRUPTCY ACTION No.00-11773F
Debtor	:	

ORDER

AND NOW, this 23 rd day of November, 2004, upon consideration of the Brief of Appellant-Creditor, Samuel A. Litzenberger (Doc. No. 6), and the Response thereto, it is hereby **ORDERED** that:

1. the Appeal from the Bankruptcy Court is **DENIED**;

2. the Bankruptcy Court's Orders dated March 24, 2004 and June 1, 2004 are **AFFIRMED**; and

3. Litzenberger's Request for Oral Argument (Doc. No. 5) is **DENIED**.

BY THE COURT:

s/ Robert F. Kelly
ROBERT F. KELLY, Sr. J.