

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

IN RE: MARGARET M. BOYCE : **CIVIL ACTION**
 : :
 : **NO. 04-1369**

MEMORANDUM AND ORDER

Kauffman, J.

October 26, 2006

Margaret M. Boyce (“Debtor”) appeals a final order of the United States Bankruptcy Court for the Eastern District of Pennsylvania awarding fees to Ciardi, Maschmeyer & Karalis, P.C. (“CMK”), a law firm hired by the estate trustee. Debtor also appeals interim orders denying voluntary dismissal of her case and denying recusal. For the reasons that follow, the Orders of the Bankruptcy Court will be affirmed.¹

I. Factual and Procedural History

Given the lengthy factual background, the Court will refer only to those facts relevant to the disposition of this appeal. Debtor voluntarily filed for Chapter 7 bankruptcy on January 4, 2000 under Title 11 of the Bankruptcy Code. R. at tab 3, pg. 1.² Debtor, an attorney, originated her bankruptcy proceedings pro se. Id. An interim trustee, Andrew Schwartz, was appointed to her case on January 5, 2000, and held the first Meeting of Creditors on February 7, 2000. R. at tab 5, pg. 2-3. Debtor originally listed debts totaling \$435,000 and assets in excess of \$215,000. R. at tab 5, pg. 2. During the Meeting of Creditors, Schwartz determined that Debtor’s answers were inconsistent with her petition and schedules and that an investigation under 11 U.S.C. § 549

¹ The Court has jurisdiction under 28 U.S.C. § 158(a)(1) and § 158(a)(3).

² The Record is not stamped with page numbers.

was warranted. R. at tab 5, pg. 4. Following the meeting, Schwartz sought approval from the Bankruptcy Court to retain CMK as counsel to investigate potential claims on behalf of the estate.

Before the Bankruptcy Court ruled on Schwartz's request, Debtor filed a Motion to Voluntarily Dismiss her Chapter 7 case. R. at tab 5, pg. 3. Five days later, she filed a Praecipe to convert her case from a Chapter 7 bankruptcy to a Chapter 13 bankruptcy. Id. Edward Sparkman was appointed trustee in the Chapter 13 case. R. at tab 3, pg. 5. Debtor then filed a Praecipe to voluntarily dismiss her Chapter 13 case on December 7, 2000. Id. at pg. 6. Sparkman objected and requested that the case be converted back to a Chapter 7 bankruptcy. Id. On December 21, 2000, Sparkman's request was granted, pursuant to 11 U.S.C. §1307(c). Upon reconversion, Lawrence Lichtenstein was appointed interim trustee. He successfully applied to the Bankruptcy Court to retain CMK to represent him. Id. at pg. 6.

Lichtenstein and representatives from CMK convened a new Meeting of Creditors to question Debtor about her financial affairs. R. at tab 5, pg. 5. During this meeting, Debtor presented amended schedules that changed her total debt from \$435,000 to approximately \$6,000, and stated assets in excess of \$600,000. Id. at pg. 6. Debtor also revealed a previously undisclosed interest in an escrow fund held by the Prothonotary of the Philadelphia Court of Common Pleas, which had been distributed to her. Debtor already had spent approximately \$9,000 of the escrow funds, but approximately \$20,000 still remained.³ Id. at pp. 6-7. Lichtenstein promptly filed a motion to force Debtor to turn over the remaining funds. Id. at pg.

³ After all exemptions were deducted, the bankruptcy estate eventually included only the money remaining from this fund. R. at tab 5, pg. 7.

6. The motion was granted. R. at tab 3, pg. 9.

As the bankruptcy ran its course, Debtor managed either to settle or have disallowed most of the claims filed by creditors. R. at tab 5, pg. 8. Eventually, the only claims that remained were a claim filed by former trustee Schwartz and claims for the administrative expenses of the current trustee and CMK. Id. at pg. 9.

A fee application was submitted by CMK for compensation and reimbursement of expenses on January 18, 2002. R. at tab 3, pg. 14. Debtor objected and filed another motion to withdraw her bankruptcy petition in February 2002. Id. at pg. 15. The court denied dismissal, and granted in part and denied in part compensation to Trustee's counsel, in the amount of \$14,199.00 for services rendered and \$1,405.19 for expenses incurred from February 5, 2001 to December 31, 2001. Id. at pg. 19.

Debtor subsequently filed a motion to vacate the fee award and to recuse the Honorable Bruce I. Fox. Both motions were denied. Id. at 23. A second and final fee award was granted to CMK on Feb. 27, 2004, in the amount of \$3,412.24 for services rendered and \$353.88 for expenses incurred. Id. This appeal followed.

II. Standard of Review

On appeal, the district court may affirm, modify, or reverse a bankruptcy judge's judgment, order, or decree or remand with instructions for further proceedings. Fed. R. Bankr. P. 8013. The Court must accept the Bankruptcy Court's factual determinations unless they are clearly erroneous. In re Morrissey, 717 F.2d 100, 104 (3d Cir. 1983). In other words, a factual determination must be accepted unless it is either "completely devoid of minimum evidentiary support" or "bears no rational relationship to the supportive evidentiary data." Hoots v.

Pennsylvania, 703 F.2d 722, 725 (3d Cir. 1983). Decisions which involve the exercise of discretion are reviewed for abuse of discretion. See Myers v. S. Med. Supply Co. (In re Myers), 334 B.R. 136, 142 (E.D. Pa. 2005). The review of issues of law is plenary. See Jones v. Chemetron Corp., 212 F.3d 199, 204-05 (3d Cir. 2000).

III. Analysis

A. Award of Fees to Trustee's Counsel

Debtor contends that the Bankruptcy Court committed reversible error when it awarded approximately \$20,500 in fees to CMK. According to Debtor, the fee award violated the requirements set forth in 11 U.S.C. § 330(a)(3) because the work performed by the law firm failed to benefit the estate or any of its creditors. The Court disagrees and finds that the Bankruptcy Court did not err in granting compensation to CMK.

Under 11 U.S.C. § 330(a), the Bankruptcy Court may grant reasonable compensation for services performed by attorneys retained by the trustee. 11 U.S.C. § 330(a)(3)(C) provides that the court must determine “whether the services were necessary . . . at the time at which service was rendered toward the completion of [the] case.” This requirement prevents abuse by denying compensation to any party who performs unnecessary services. See In re Engel, 124 F.3d 567, 571 (3d Cir. 1997).

The trustee retained CMK primarily to verify Debtor's representations regarding the bankruptcy estate. Debtor objects to CMK's compensation because the firm failed to discover any previously undisclosed claims or assets. As a result, the services performed by the firm ultimately resulted in little or no benefit to the estate. However, the language of § 330(a)(3) requires only that the services in question had a reasonable likelihood of benefitting the estate at

the time they were provided, not that they actually did provide a benefit. See In re American Metallurgical Products, Inc., 228 B.R. 146, 159 (Bankr. W.D. Pa. 1998) (“The majority of courts have determined the necessity of particular services from the perspective of the time that the services were rendered rather than based on hindsight after the services have been performed.”).

This is the best interpretation of the statute for at least two reasons. One, while § 330(a)(3) specifies what services are compensable, § 330(a)(4) specifies what services are not compensable. A court “shall not allow compensation for . . . (i) unnecessary duplication of services; or (ii) services that were not (I) reasonably likely to benefit the debtor’s estate; or (II) necessary to the administration of the case.” 11 U.S.C. §§ 330(a)(4)(A). Thus, by implication, a service that is “reasonably likely” to benefit the estate is compensable. Two, under 11 U.S.C. § 704, a trustee is statutorily obligated to investigate the financial affairs of the debtor, to collect all the property of the estate, and to provide information to those claiming to be creditors. The trustee’s ability to carry out these obligations would be constrained severely without the ability to retain counsel when the facts indicate a reasonable likelihood that the Debtor has not satisfied her disclosure obligations.

In this case, the Bankruptcy Court correctly concluded that the services performed by CMK were compensable. Debtor disclosed inconsistent information throughout her bankruptcy. She failed to cooperate fully when the trustee sought additional financial information from her at the outset of the case. She initially failed to disclose her interest in the escrow fund held by the Prothonotary of the Philadelphia Court of Common Pleas and only disclosed it once she had gained access to it and spent some of the money. In light of this conduct, the verification of Debtor’s representations was reasonably likely to benefit the estate. Accordingly, the Bankruptcy

Court's award of fees to CMK was proper.

B. Dismissal

Debtor also contends that the Bankruptcy Court committed reversible error when it refused to dismiss her case to allow her to resolve her remaining disputes with creditors outside of the Bankruptcy Court. “While the debtor may voluntarily place [her]self in bankruptcy, [s]he does not enjoy the same discretion to withdraw [her] case once it has been commenced.” In re Hopkins, 261 B.R. 822, 823 n.2 (Bankr. E.D. Pa. 2001) (citing In re Leach, 130 B.R. 855, 857 n.5 (9th Cir. B.A.P. 1991)). Pursuant to 11 U.S.C. § 707(a), a bankruptcy court may dismiss a Chapter 7 bankruptcy “for cause.” The section has also been construed to allow a Chapter 7 debtor to move for voluntary dismissal. Id. (citing In re Turpen, 244 B.R. 431, 434 (8th Cir. B.A.P. 2000)). In order to dismiss a Chapter 7, the debtor has the burden of demonstrating sufficient cause. Id.

Determining if sufficient cause exists is in the sound discretion of the Bankruptcy Court. In re Heatly, 51 B.R. 518, 519 (Bankr. E.D. Pa. 1985); In re Marra, 179 B.R. 782, 785 (M.D. Pa. 1995). In exercising such discretion, the court should be guided by equitable principles that balance all interests involved. In re Heatly, 51 B.R. at 519; In re Marra, 179 B.R. at 785. On appeal, this Court reviews the Bankruptcy Court's decision under the “abuse of discretion” standard. See Myers v. S. Med. Supply Co. (In re Myers), 334 B.R. 136, 142 (E.D. Pa. 2005). A decision constitutes an abuse of discretion only when no reasonable person could agree with it. Rode v. Dellarciprete, 892 F.2d 1177, 1182 (3d Cir. 1990).

In this case, the Court finds that the Bankruptcy Court did not abuse its discretion. The Debtor voluntarily sought the protections and burdens of the bankruptcy system prior to

negotiating with her creditors. Once in bankruptcy, the Bankruptcy Court found that Debtor failed to cooperate fully with the trustee and misrepresented her financial condition by not fully disclosing assets and other relevant information. That raised at least the possibility that Debtor entered bankruptcy for improper reasons. Accordingly, the Bankruptcy Court acted within its discretion in denying Debtor's dismissal requests until her assets were identified fully and the expenses incurred by the trustee compensated properly.

C. Motion for Recusal

Debtor also contends that Judge Fox should have recused himself pursuant to 28 U.S.C. § 455. The recusal request is based on two grounds: (1) Judge Fox's "comments and remarks" to Debtor, and (2) his "fallacious factual findings and incorrect assumptions." Debtor's Brief at 45. The Bankruptcy Court correctly denied the recusal request because Debtor failed to demonstrate that Judge Fox held a personal bias against her or that a "reasonable man, knowing all the circumstances, would harbor doubts concerning the judge's impartiality." United States v. Dalfonso, 707 F.2d 757, 760 (3d Cir. 1983); 28 U.S.C. § 455. First, adverse rulings are, "almost invariably, grounds for appeal, not recusal." Liteky v. United States, 510 U.S. 540, 555 (1994). Second, the Judge's remarks cited by Debtor are often mischaracterized and, regardless, fail to "reveal such a high degree of favoritism or antagonism as to make fair judgement impossible." Id (noting that expressions of "impatience, dissatisfaction, annoyance, and even anger" generally do not establish bias or partiality).

IV. Conclusion

For the foregoing reasons, the judgements of the Bankruptcy Court awarding legal fees to Trustee's counsel, denying dismissal of Debtor's case, and denying recusal will be affirmed. An

appropriate Order follows.

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ORDER

AND NOW, this 26th day of October, 2006, for the reasons stated in the accompanying Memorandum, it is **ORDERED** that the Orders of the Bankruptcy Court are **AFFIRMED**.

BY THE COURT:

/s/ Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.