

United States Bankruptcy Court

AUG 10 1990

For the NORTHERN District of IOWA BARBARA A. EVERLY, CLERK

IN RE:
FRANK J. TAYLOR

CHAPTER 7
Case No. L-87-01882C

JUDGMENT

This proceeding having come on for trial or hearing before the court, the Honorable Michael J. Melloy, United States Bankruptcy Judge, presiding, and the issues having been duly tried or heard and a decision having been rendered,

[OR]

The issues of this proceeding having been duly considered by the Honorable Michael J. Melloy, United States Bankruptcy Judge, and a decision having been reached without trial or hearing,

IT IS ORDERED AND ADJUDGED: that the JUDGMENT entered on July 31, 1990 is modified to the extent that the award of sanctions for the Debtor's civil contempt is increased to \$2,645.86. Judgment is entered in favor of the Trustee and against the Debtor for the sum of \$2,645.86.



[Seal of the U.S. Bankruptcy Court]

Date of issuance: August 10, 1990

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BARBARA A. EVERLY
Clerk of Bankruptcy Court

By: Juan L. [Signature]
Deputy Clerk

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

FILED
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF IO

AUG 10 1990

Chapter
BANKRUPTCY NO. BARBARA A. EVERLY, CLERK

IN RE:

FRANK J. TAYLOR,

L-87-01882C

Debtor.

ORDER RE: Motion for Reconsideration

The Court has received the Trustee's motion for reconsideration of the court's contempt order entered in this case. In that motion, the Trustee asks the Court to reconsider the amount of sanctions awarded by the Court as against the Debtor. The Trustee argues that the affidavit filed by the Trustee shows that he has reasonably expended more than \$7,000 in time pursuing assets of the estate.

The Court's Order Re: Civil Contempt, filed July 31, 1990, does not set forth in detail how the Court arrived at the amount of sanctions imposed in this case. The Court intends to correct that oversight in this ruling on the Trustee's motion for reconsideration. The undersigned will set out with more specificity how the sanctions were computed.

The Court acknowledges that the Trustee has submitted an affidavit which shows he has expended over \$7,000 of time. The Court does not dispute that the Trustee has spent that time, nor does the Court have any argument with the hourly rate charged by the Trustee. However, the Court cannot find that there is any nexus between the contemptuous behavior of the Debtor, Frank J. Taylor, and all the time spent by the Trustee. A review of the Trustee's time records shows that the bulk of the time has been

spent in pursuing litigation against Northwest Airlines, Inc., Administrator of the Northwest Airlines Pilot's Pension Plan, in an attempt to recover the Debtor's pension benefits for the benefit of the bankruptcy estate. The Court believes that the Trustee's efforts in attempting to recover the pension are unrelated to the Debtor's contempt. The Debtor's entitlement to a pension has always been known to the Trustee. The Trustee has also known from the inception of the case that the pension plan administrator was taking the position that the pension plan was not property of the estate and would vigorously oppose any attempt by the Trustee to require the pension plan administrator to turn over to the bankruptcy estate the pension plan benefits. The litigation spawned by this issue has not been generated by the Debtor; in fact, the Debtor has defaulted as to the adversary complaint filed by the Trustee against the Debtor and Northwest Airlines as administrator of the pension plan.

In summary, the Court does not believe that it is appropriate or legally defensible to award as a sanction time the Trustee has spent attempting to obtain the pension benefits. The Court does believe, however, that time reasonably spent by the Trustee in attempting to obtain information concerning the assets of the Debtor's estate and pursuing other information necessary to administer the estate is an appropriate sanction. It should also be that an order was previously entered on November 16, 1988 assessing sanctions against the Debtor pursuant to Bankruptcy Rule 9011. The Court has attempted to avoid any duplication of the

sanctions between the Rule 9011 order of November 16, 1988 and the sanctions involved in this case. Entries which relate to normal trustee activities unrelated to the Debtor's contemptuous conduct have also been omitted from computation of the amount of the sanctions to be assessed against the debtor, Frank J. Taylor.

In order that the parties will know which items are appropriately subject to the imposition of sanction, the specific entries from the Trustee's time records considered in imposing the sanctions are listed below. In some cases, entries appear to relate to more than one activity by the Trustee. In those cases, a determination was made as to which portion of the entry is subject to compensation as a sanction.

<u>DATE</u>	<u>HOURS</u>
01/11/88	0.40
01/13/88	0.20
01/20/88	0.30
01/21/88	0.30
01/29/88	0.40
02/01/88	3.50 (out of 5.5)
02/09/88	0.20
03/10/88	0.10
03/15/88	0.80
03/15/88	0.10
04/25/88	0.40
04/26/88	0.30
05/18/88	0.30
06/16/88	1.80
06/24/88	2.30
06/27/88	0.30
06/27/88	0.20
03/02/89	0.30
07/14/89	0.30
07/17/89	0.10
08/14/89	0.10
08/22/89	0.30
08/22/89	0.10
08/22/89	0.40
08/22/89	0.80
08/30/89	0.30

09/14/89	0.60
10/18/89	0.20
10/20/89	0.20
11/20/89	0.40
01/24/90	0.40
01/29/90	0.20
01/30/90	0.30
01/30/90	0.60
01/30/90	0.20
01/30/90	0.20
01/30/90	0.20
01/30/90	0.30
02/08/90	0.20
02/15/90	0.30
04/27/88	
09/18/89	
TOTAL	<u>18.90</u>

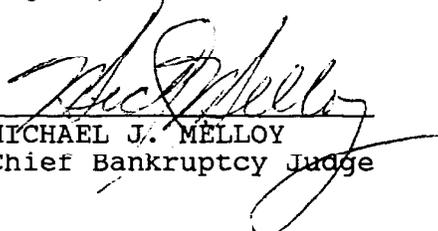
Based upon a review of the itemization, it does appear that some entries were overlooked which should have been awarded as sanctions. Specifically, the three entries for March 10, 1988, totalling 3.6 hours, appear to relate to the Trustee's efforts to obtain information concerning the Debtor's financial affairs. Specifically, those entries relate to efforts to obtain information concerning Debtor's payroll records and bank accounts at Norwest Airlines Credit Union. Likewise, entries for April 20 and 21, 1988, totalling 3.0 hours, relate to the same matters. Accordingly, the Court will add a total of 6.6 hours at \$95 per hour to the sanction award for the Debtor's contemptuous conduct.

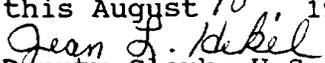
In summary, the motion for reconsideration is granted to the extent that the award of sanctions for the Debtor's contempt is increased by the amount of \$627, which sum represents 6.6 hours of time at \$95 per hour. Any further request by the Trustee to modify the award of sanctions is denied.

IT IS THEREFORE ORDERED that the motion to reconsider the Court's Order re: Civil Contempt filed July 31, 1990 is granted to the extent that the award of sanctions for the Debtor's civil contempt is increased to \$2,645.86. The judgment entered against the Debtor, Frank J. Taylor, in connection with the award of sanctions shall be modified accordingly.

IT IS FURTHER ORDERED that in all other respects the Court's Order of July 31, 1990 shall remain unchanged and in full force and effect.

DONE AND ORDERED this 10th August, 1990.


MICHAEL J. MELLOY
Chief Bankruptcy Judge

Copy to: (w/copy of Judgment)
Frank Taylor,
1700 Alta Drive,
Apt. 1068,
Las Vegas, Nevada 89106,
by ordinary mail and
certified mail;
Dennis Currell, Trustee;
David Baker, Atty for Trustee;
Thomas Peffer,
Atty for Northwest Airlines;
U.S. Trustee;
this August 10, 1990

Deputy Clerk, U.S. Bankruptcy Court
P.O. Box 74890
Cedar Rapids, Iowa 52407