

In the United States Bankruptcy Court

for the Northern District of Iowa

RONALD LOUIS PAQUIN and
KAREN MARGIE PAQUIN

Debtor(s).

Bankruptcy No. 95-40909XM

Chapter 13

ORDER RE: MOTION TO AMEND ORDER ON ALLOWANCE OF PROFESSIONAL FEES

On January 10, 1996, the court issued an order allowing in part and disallowing in part the application of attorneys Roger L. Sutton and Ann M. Troge for professional fees and reimbursement of expenses. The attorneys filed a timely motion asking the court to amend its order. Hearing on the motion was held May 8, 1996 in Mason City. Roger Sutton appeared on his own and Ms. Troge's behalf.

The attorneys' professional application for representing the chapter 13 business debtors sought compensation and reimbursement of expenses in the amount of \$5,624.64, after application of a \$1,000.00 retainer and credits for cash and for goods and services obtained by Sutton at debtors' business. The total application was, therefore, for \$7,092.81. The court assessed a penalty reduction of \$500.00 from allowed fees for the attorneys' failure to disclose the \$1,000.00 retainer and because the attorneys' applied payments of cash and goods and services to their bill during the case without authorization. Sutton argues that the penalty should not be assessed because the failure to disclose the retainer was an innocent mistake and that the credits to the account were taken by staff without the attorneys' knowledge. I do not doubt that. Nonetheless, the penalty will stand. It is essential that attorneys fully disclose all prepetition retainers and that they not apply payments to billings without application to the court. Both disclosure and application are required by the rules. Attorneys must take seriously their obligation to file accurate fee disclosures with the court. Moreover, they should not take payment on fees absent the required application process. The attorneys, not the staff, are ultimately responsible for being sure that the rules are complied with. Failure to comply must bear consequences or carelessness is rewarded, and creditors are kept in the dark. The court will not reduce the \$500.00 penalty.

Attorney Sutton asks that the court award compensation for attorneys' time that was disallowed as not being for legal work. The court has heard Mr. Sutton's representations and will amend its order to compensate the attorneys for 12.00 hours previously disallowed. (Order, docket no. 57, p. 3.) This includes 10 hours spent by Mr. Sutton in advising debtors on their legal authority to pay bills and on their management of the business while in chapter 13. It also includes 2.00 hours for Ms. Troge in "printing" the schedules, which according to Mr. Sutton's representations to the court, consisted of her going over with debtors the scheduled information during printing by the computer. However, the court will not compensate for work done by staff in sending copies to the clients or in picking up tax returns. Also, the court will not change its decision on the appropriate hourly rate.

In re-examining the application and itemization, the court has found other matters that should be adjusted. For one, attorneys billed travel time at 75 per cent of their hourly rate, not the 50 per cent regularly approved by the court.

The court calculates, upon review, that the attorneys billed the equivalent of 59.81 hours for non-travel time. Not included in this time is staff time for clerical work for which attorneys billed a total of \$30.00. Travel time of 2.75 hours will be allowed at half the allowed rate of \$85.00 per attorney. Expenses total \$871.28.

The attorneys will be allowed 59.81 hours at \$85.00 and 2.75 hours at \$42.50, for a total of \$5,200.73 less the penalty of \$500.00 for a total allowance of fees of \$4,700.73 plus expenses newly calculated at \$871.28. The total allowance is \$5,572.01. Attorneys have been paid \$1,468.17. The balance due which shall be paid under the plan is \$4,103.84.

IT IS ORDERED that the attorneys' motion to amend judgment is granted in part and denied in part.

IT IS ORDERED that judgment shall be amended and that Roger L. Sutton and Ann M. Troge, as attorneys for the debtors, are allowed chapter 13 professional compensation and reimbursed expenses as an administrative expense under 11 U.S.C. §§ 330(a)(4)(B) and 503(b)(2) in the amount of \$5,572.01.

IT IS FURTHER ORDERED that the retainer and post-petition payments in the amount of \$1,468.17 shall be credited to the allowance, and the standing trustee shall pay the balance of \$4,103.8 according to the confirmed plan. Judgment shall enter accordingly.

SO ORDERED THIS 13th DAY OF MAY 1996.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on I mailed a copy of this order and a judgment by U.S. mail to: Roger Sutton, Debtors, Carol Dunbar, William Frye, USAttorney and USTrustee.