

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
STEPHEN A. MASON) CASE NO. 06-11678
JANE MASON)
)
Debtors)

DECISION CONCERNING FEES

At Fort Wayne, Indiana on December 21, 2006.

By a decision entered on November 29, 2006, the court determined that Theodore Konstantinopoulos should “reimburse debtor’s counsel for the reasonable fees and expenses incurred as a result of preparing for and attending the trial held in this matter on November 14, 2006” An order issued that day gave counsel fourteen (14) days within which to file an affidavit itemizing any such fees and expenses, and Mr. Konstantinopoulos was given ten (10) days thereafter within which time to file any objections thereto.¹ Debtors’ counsel, Frederick Wehrwein, filed and served the required affidavit on December 7, 2006, and there has been no response thereto within the time required by the court’s order. Accordingly, the matter is now before the court for a decision.

Rule 16(f) was the basis for the order requiring Mr. Konstantinopoulos to reimburse debtors’ counsel for the fees and expenses incurred “as a result of preparing for and attending the trial held in this matter on November 14, 2006” That trial had been scheduled to receive evidence and arguments concerning a motion for relief from stay which had been filed by Mr. Konstantinopoulos on behalf of his client, JPMorgan Chase Bank. Since the focus of the reimbursement called for by

¹The order also required Mr. Konstantinopoulos to pay the clerk of this court \$150.00. As of this date, counsel has not done so. The court strongly suggests that he tend to this matter unless he would like the court to schedule further proceedings.

the court's order was what debtors' counsel had done to prepare for and attend the trial of November 14, 2006, the court was expecting to receive something limited to that time frame – what counsel had done on November 14, and perhaps shortly prior thereto to get ready for the trial. The affidavit counsel filed was not limited to that time frame. It included extraneous things such as what counsel did during the two weeks following the trial regarding the preparation and filing of a motion to approve an agreement regarding relief from the automatic stay. The purpose of the court's order was to reimburse debtors' counsel for the time unnecessarily devoted to this case because of Mr. Konstantinopoulos' failure to appear for a trial which had been scheduled because of the motion he had filed. That motion was denied for the reasons stated in open court at the trial on November 14, 2006, and whatever counsel decided to do after that in reaching an agreement with creditor's counsel is not attributable to Mr. Konstantinopoulos' dereliction.

Although Mr. Konstantinopoulos has not objected to the fees sought by debtors' counsel, that does not relieve the court of the obligation to make an assessment of their reasonableness. Admittedly, in the absence of an objection, the court is often willing to give the applicant the benefit of the doubt where a fee request may be a bit beyond what the court would usually expect to see but where, as here, the shortcomings literally leap out and there appears to be no straight-faced argument which could possibly be made in support of all of the fees and expenses sought, the court cannot in good conscience call them reasonable simply because no one bothered to object. The submission of an unreasonable request for fees may constitute sufficient cause to deny the request in toto rather than decide which portions are reasonable and which are not. Matter of Central Ice Cream Co., 836 F.2d 1068, 1074 (7th Cir. 1987); Brown v. Stackler, 612 F.2d 1057, 1059 (7th Cir. 1980); Matter of Pierce, 165 B.R. 252, 255 (Bankr. N.D. Ind. 1994). However, in this instance, the affidavit filed by

debtors' counsel is sufficiently detailed so that the court can readily determine which of the fees and expenses sought were unnecessarily incurred as a result of preparing for and attending the scheduled trial, such that it will not deny counsel's request completely. These are the .2 hours spent reviewing the file and the notice of trial on October 26, 2006, the .25 hours spent reviewing the file the day prior to trial on November 13, 2006, and .the 35 hours spent attending the scheduled trial on November 14, 2006, for a total of .8 hours.² When multiplied by counsel's standard rate of \$225 per hour, the value of this time totals \$180. Thus, pursuant to the court's order of November 29, 2006, based upon the affidavit which has been filed in this case, Mr. Konstantinopoulos should pay debtors' counsel, Frederick Wehrwein the sum of \$180.00. An appropriate order will be entered.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court

²Counsel also states that he spent .2 hours on October 23 reviewing the file and the motion which had been filed. The time spent on this task would have been done regardless of whether any hearing on the motion had been scheduled, and thus, was not incurred as a result of the preparation for the scheduled trial.