

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

IN RE: )  
 )  
DANIEL FRANK ALBRECHT, ) CASE NO. 07-21592 JPK  
 ) Chapter 13  
Debtor. )

ORDER REGARDING COMPENSATION FOR ATTORNEY FOR DEBTOR

11 U.S.C. § 526(c)(1) states the following:

**(c)(1)** Any contract for bankruptcy assistance between a debt relief agency and an assisted person that does not comply with the material requirements of this section, section 527, or section 528 shall be void and may not be enforced by any Federal or State court of by an other person, other than such assisted person.

Among the material requirements of 11 U.S.C. §§ 527 and 528 is that of 11 U.S.C. § 528(a)(1), which requires that “not later than five business days after the first date on which [a debt relief agency] provides any bankruptcy assistance services to an assisted person, but prior to such assisted person’s petition under this title being filed” a debt relief agency shall execute a written contract with the assisted person which clearly and conspicuously sets out the information required by that statute. The Court’s view of the applicability of the foregoing provisions to an award of compensation to counsel for the debtor upon confirmation of a Chapter 13 plan is clearly set out in the form “Order and Notice Scheduling Hearing on Confirmation of Chapter 13 Plan and Fixing Time to Object Thereto” issued by the Court with respect to every confirmation hearing originally scheduled in a Chapter 13 case subject to the provisions of BAPCPA, as follows:

The Court deems 11 U.S.C. §526(c)(1) to provide that the Court cannot award compensation to the counsel for the Debtor(s) unless that attorney has complied with 11 U.S.C. §528(a)(1) and (2) with respect to an "assisted person" as defined by 11 U.S.C. §101(3). If the Debtor(s) is an "assisted person", in order for the court to award any compensation to the counsel for the Debtor(s), including compensation to be awarded in an order of confirmation, not later than 5 days in advance of the first scheduled confirmation hearing any attorney seeking compensation must file with the Court a Statement of Compliance which affirms that counsel has provided the Debtor(s) with a copy of the fully executed and completed

contract required by 11 U.S.C. §528(a)(1), to which is attached a copy of the contract so provided. If the Debtor(s) is not an "assisted person", not later than 5 days in advance of the first scheduled confirmation hearing any attorney seeking compensation must file with the Court either (1) a Statement which clearly establishes the grounds upon which is based counsel's contention that the Debtor(s) is not an "assisted person", or (2) a Statement of Compliance, to which is attached a copy of the written contract between the Debtor(s) and counsel, if one was utilized. If the required Statement is not timely filed, the Court will not provide for compensation of the counsel for the Debtor(s) in the confirmation order. The required Statement may be filed at the inception of the case.

The record in this case establishes that the debtor is an "assisted person" as defined by 11 U.S.C. § 101(3). Until a court of higher authority whose opinion is binding upon this Court determines otherwise – or until this Court determines otherwise in a written decision entered of record – an attorney in the position of counsel for the debtor in this case will be deemed to be a "debt relief agency" as that term is defined by 11 U.S.C. § 101(12A). The record in this case establishes that the written contract between the debtor and counsel for the debtor is dated subsequent to the date of the filing of the petition. Thus, in accordance with the Court's construction of 11 U.S.C. § 526(c)(1), the Court cannot award compensation for counsel for the debtor in accordance with the terms of any contractual arrangement between the debtor and that attorney. However, the guidepost for compensation to be awarded counsel for the debtor is that stated in 11 U.S.C. § 330(a)(1)(A), and the standard by which compensation is to be determined is not stated in that statute to be pursuant to the terms of any contract between the parties, but rather to be what is determined to be "reasonable compensation for actual, necessary services rendered". Thus, while the Court cannot enforce any contractual arrangement for compensation between the debtor and counsel for the debtor, the Court can – without violating 11 U.S.C. § 526(c)(1) – award reasonable compensation to counsel for the debtor under the provisions of 11 U.S.C. § 330(a)(1)(A).

In order to seek to obtain compensation for services rendered and costs expended up to

and including the date of confirmation of the plan of the debtor, it will be necessary for counsel for the debtor to file an application for compensation, including a detailed itemized statement of all services rendered for which compensation is sought and all expenses incurred for which reimbursement is sought. The statement must include the date of each specific service rendered, a relatively detailed statement of the nature of each service performed on that date, and the amount of time expended with respect to each entry. The application must also include the hourly rate, or flat fee rate if an hourly rate is not utilized, customarily billed by the attorney to clients for services of the nature of those stated in the application. The application shall also assert the amount of "reasonable compensation" to which the attorney deems himself/herself entitled. No less than 20 days notice of the application shall be provided to all creditors and parties-in-interest in the case, including the Chapter 13 Trustee and the United States Trustee, in accordance with the requirements of N.D.Ind.L.B.R. B-2002-2(a)(7). Upon the filing of the application in proper form, and proper provision of notice, the Court will either schedule the application for a hearing or determine compensation without a hearing based upon the application.

IT IS ORDERED that no compensation shall be awarded to counsel for the debtor until an application for compensation, in accordance with the foregoing provisions of this order, has been filed and the Court has determined compensation (and reimbursement of expenses) after appropriate notice and hearing.

IT IS FURTHER ORDERED, pursuant to 11 U.S.C. § 526(c)(1), that any contractual arrangement between the debtor and counsel for the debtor is void, and that any such arrangement is unenforceable against the debtor.

Dated at Hammond, Indiana on March 17, 2008.

/s/ J. Philip Klingeberger  
J. Philip Klingeberger, Judge  
United States Bankruptcy Court

Distribution:  
Debtor, Attorney for Debtor, Trustee, US Trustee