

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
MARSHALL BROWN JR.,) CASE NO. 08-22138 JPK
) Chapter 13
Debtor.)

ORDER IMPOSING SANCTIONS

On October 24, 2008, the court entered an Order for Telephonic Hearing to Show Cause Regarding Sanctions. This Order was addressed to attorney Daniel J. Fojtik, as counsel for Kent County Friend of the Court due to his failure to appear at the hearing held on September 29, 2008 concerning confirmation of the debtor's Chapter 13 plan with respect to an objection to confirmation of that plan which he filed. The order which scheduled the confirmation hearing for September 29, 2008 was very clear in its requirement that attorney Fojtik appear at the confirmation hearing.¹

The court extended an accommodation to attorney Fojtik with respect to both the Order to Show Cause and the initial Pre-hearing Conference on the objection which he filed for Kent County Friend of the Court; both of these matters were scheduled for telephonic conference, in deference to the distance attorney Fojtik would have to drive to appear personally before the court in Hammond, Indiana. Despite this accommodation, attorney Fojtik blew it again. The telephonic conference was scheduled for 11:30 a.m. Central Standard Time on November 20. The court was slightly delayed by prior matters on November 20, but the call for the telephonic conference on the Order to Show Cause and on the Objection which attorney Fojtik filed on behalf of Kent County Friend of the Court was placed at 11:45 a.m. Central Standard Time on November 20. Attorney Fojtik was nowhere to be found. He was apparently out to lunch. The court acknowledges that attorney Fojtik called the number of the court's judicial assistant after

¹As is customary in this court, the objectant could have chosen to appear by means of a local counsel, thus avoiding attorney Fojtik's excursion to Hammond, Indiana. Attorney Fojtik apparently chose to neither appear personally nor obtain representation of the objectant by local counsel.

the attempt to conduct the telephonic hearings had been made, and that he apologized for his unavailability on the basis that he assumed the time of the conferences was based on Eastern Standard Time, thus apparently seeking to explain his unavailability at a time 15 minutes after the actual scheduled time for the conferences, or 1 hour and 15 minutes by his watch. Attorney Fojtik filed an objection in a case in the United States Bankruptcy Court for the Northern District of Indiana, and in doing so he is held to know the time references for this court. The bottom line is that the conference was initiated— with counsel for the debtor present in the court’s chambers— 15 minutes after the scheduled time for the telephonic conference, and attorney Fojtik was unavailable. Attorney Fojtik has now wasted the court’s time— and that of the debtor’s counsel— on two separate occasions, first with respect to the confirmation hearing held on September 29, 2008, and next with respect to the telephonic conferences set for November 20, 2008.

Because attorney Fojtik was not available for the telephonic Show Cause Hearing on November 20, 2008, there is nothing before the court which explains, in an excusable manner, his failure to attend the September 29, 2008 confirmation hearing. N.D.Ind.L.B.R. B-9014-2(b) states that the “provisions of Rule 16(f) of the Federal Rules of Civil Procedure shall apply to all contested matters”. The objection to confirmation filed by Attorney Fojtik initiated a contested matter pursuant to Fed.R.Bankr.P. 9014. Fed.R.Civ.P. 16(f) provides sanctions in the event of a parties’ attorney’s failure to appear at a pre-trial conference, including those sanctions stated in Fed.R.Civ.P. 37(b)(2)(B),(C) and (D). In a benevolent exercise of its discretion, the court elects to not impose any of the sanctions available under Rule 37(b)(2)(B),(C), or (D) on attorney Fojtik, as the court chooses to not penalize attorney Fojtik’s client for the sins of its attorney. Rather, the court chooses to impose the sanction provided by the last paragraph of Fed.R.Civ.P. 37(b)(2), by imposing the sanction of requiring attorney Fojtik to pay the reasonable expenses, including attorney’s fees, caused by his failure to attend the confirmation hearing held on September 29, 2008. The court finds that the reasonable attorney’s fees incurred by counsel for the debtor in attending that hearing without the participation of attorney Fojtik are in the amount

of \$150.00, and that the reasonable attorney's fees of the attorney for the Chapter 13 Trustee in attending that hearing without attorney Fojtik's participation are in the amount of \$100.00.

IT IS ORDERED that attorney Daniel J. Fojtik personally– and not through his client– shall pay to Ricardo Casas, as counsel for Marshall Brown, Jr., attorneys fees in the amount of \$150.00 within 30 days of the date of this order.

IT IS FURTHER ORDERED that attorney Daniel J. Fojtik personally– and not through his client– shall pay to the Chapter 13 Trustee Paul R. Chael, attorneys fees in the amount of \$100.00 within 30 days of the date of this order.

IT IS FURTHER ORDERED that the payment of the foregoing sanctions shall be evidenced by attorney Fojtik by the filing of a certification with the court of the payment of the sanctions to attorney Casas and to Trustee Chael within 30 days of the date of entry of this order.

IT IS FURTHER ORDERED that the pre-hearing conference on the objection of Kent County Friend of Court filed on September 25, 2008, to confirmation of the debtor's plan is continued to **January 12, 2009, at 2:00 P.M.**, to be held in open court in Hammond, Indiana, on that date.

IT IS FURTHER ORDERED that a hearing is scheduled contemporaneously with the foregoing hearing on the objection to confirmation at which attorney Daniel J. Fojtik shall personally appear before the court in Hammond, Indiana and shall show cause, if any he has, why sanctions should not be imposed upon him with respect to his failure to timely participate in the telephonic hearings scheduled for November 20, 2008.

Dated at Hammond, Indiana on December 23, 2008.

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

Distribution:

Debtor, Attorney for Debtor, Trustee, US Trustee
Attorney Daniel Fojtik, attorney for creditor