

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
KEVIN E. RANDALL) CASE NO. 05-10229
LESLEY A. RANDALL)
)
Debtors)

DECISION AND ORDER REGARDING ORDER TO SHOW CAUSE

At Fort Wayne, Indiana, on March 24, 2009.

On March 3, 2009, the court held a preliminary hearing with regard to a motion for relief from stay and abandonment filed by GMAC Mortgage, LLC and the objections thereto filed by the debtors and by the trustee. The debtors appeared for the hearing, through their counsel Fred Wehrwein, as did the trustee, Debra Miller. GMAC's counsel, D. Anthony Sottile, was nowhere to be seen. As a result, the court denied GMAC's motion, and, on its own motion, issued an order requiring Mr. Sottile to show cause, in writing, why he should not be sanctioned and/or required to pay the reasonable attorney fees incurred by debtors' counsel and the trustee in connection with the scheduled hearing. There has been no response to the court's order within the time required and the matter is now before the court for a decision.

A court's most fundamental expectations of the attorneys who appear before it are to show up and be prepared. Thus, an attorney who fails to appear for proceedings scheduled because of something they have filed, or who appears but is substantially unprepared to participate in those proceedings, may be sanctioned either through the court's inherent authority or through Rule 16(f) of the Federal Rules of Civil Procedure. See, G. Heileman Brewing Co., Inc. v. Joseph Oat Corp., 871 F.2d 648, 651-53 (7th Cir. 1989); Matter of Sanction of Baker, 744 F.2d 1438 (10th Cir. 1984);

Matter of Philbert, 340 B.R. 886 (Bankr. N.D. Ind 2006). In bankruptcy cases this is true for both adversary proceedings and contested matters. Philbert, 340 B.R. at 889. See also, N.D. Ind. L.B.R. B-9014-2(b).

The failure to appear is specifically identified by Rule 16(f) as the basis for sanctions. At least to the extent the opposing party should be compensated for the reasonable expenses – “including attorney’s fees” – incurred because of counsel’s non-compliance, the rule is almost, but not quite, mandatory. Unless non-compliance was “substantially justified” or other circumstances would make an award “unjust,” the non-defaulting party is entitled to reimbursement. As a result, the imposition of sanctions under the rule does not depend upon a finding of bad faith, willfulness, or contumaciousness. Matter of Sanction of Baker, 744 F.2d 1438, 1440-41 (10th Cir. 1984). A negligent failure to comply will suffice. Id. at 1441. See also, Harrell v. U.S., 117 F.R.D. 86, 88 (D. E.D. N.C. 1987); Barsoumian v. Szozda, 108 F.R.D. 426 (D. S.D. N.Y. 1985).

Without a response to the order to show cause, the court has nothing before it that could support the conclusion that Mr. Sottile’s absence from the hearing on the motion he filed was substantially justified or that other circumstances would make an award unjust. Both the trustee and debtors’ counsel were required to and did go to the trouble of preparing for and attending the scheduled hearing; yet, because of Mr. Sottile’s absence, those efforts were largely unnecessary. The court sees nothing unjust about requiring an attorney who has caused its opposition to unnecessarily devote time and trouble to a matter to reimburse them for the reasonable value of their labors. In the court’s opinion such a result is necessary, not only as a matter of economic and procedural fairness, but also in order to impress upon litigants the importance of appearing for and being prepared for proceedings scheduled with regard to the things they file. In re Philbert, 340 B.R. 886 (Bankr. N.D.

Ind. 2006).

Mr. Sottile shall, therefore, pay the reasonable attorney fees and expenses incurred by both the trustee and debtors' counsel as a result of preparing for and attending the preliminary hearing held in this matter on March 3, 2009. In order to compensate the United States for the costs he has unnecessarily imposed upon it and the additional time and attention he has required the court to devote to this matter, thereby depriving other litigants of its attention, and to deter similar conduct, see, BondPro Corp. v. Siemens Power Generation, Inc., 466 F.3d 562, 563 (7th Cir. 2006) ("The time has come to impose an exemplary public sanction in the hope of deterring further violations."), he shall also pay the clerk of this court the sum of \$250.00.

The amounts due the clerk of this court shall be paid within fourteen (14) days. The trustee and debtors' counsel shall have fourteen (14) days from this date within which time to file and serve affidavits itemizing any recoverable fees and expenses. Mr. Sottile shall have ten (10) days thereafter in which to file any objections thereto. In the absence of objection, the court will determine the reasonable amount of any fees and expenses without further notice or hearing.

SO ORDERED.

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