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 CONCERNING DEBTORS' ATTORNEY FEES

At Fort Wayne, Indiana, on April 17, 2009

By an order entered on March 24, 2009, the court ordered D. Anthony Sottile, counsel for GMAC Mortgage LLC, to "reimburse the trustee and debtors' counsel for the reasonable costs, expenses, and attorney fees incurred as a result of preparing for and attending the hearing held in this matter on March 3, 2009 . . . ." That order gave the trustee and debtors' counsel fourteen (14) days within which to file an affidavit itemizing any such fees and expenses, and Mr. Sottile was given ten (10) days thereafter within which time to file any objections thereto. Debtors' counsel filed and served the required affidavit on March 30, 2009,[1] 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. Sottile to reimburse the debtors for the attorney fees and expenses they had incurred "as a result of preparing for and attending the hearing held in this matter on March 3, 2009 . . . ." That hearing had been scheduled to consider the issues raised by a motion for relief from stay and abandonment filed by GMAC Mortgage. Since the focus of the reimbursement called for by the court's order was what counsel had done to prepare for and

[1]The trustee elected not to file an affidavit seeking reimbursement of her fees and expenses.

attend the hearing of March 3, 2009, the court was expecting to receive something limited to that time frame – what counsel had done on March 3, and shortly prior thereto to get ready for the hearing. The affidavit counsel filed was not limited to that time frame. It also includes other things counsel did going back to the date the motion was filed. The purpose of the court's order was to reimburse the debtors for the time their counsel was unnecessarily required to devote to this case because of Mr. Sottile's failure to appear for the hearing scheduled on the motion he had filed, see, In re Philbert, 340 B.R. 886 (Bankr. N.D. Ind. 2006), not to recover everything remotely related to the motion he filed.

Although Mr. Sottile 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, there appears to be no straight-faced argument which could possibly be made in support of the fees and expenses sought, the court will not call them reasonable simply because no one bothered to object. An unreasonable request for attorney fees may be sanctionable under Rule 9011. Matter of Central Ice Cream Co., 836 F.2d 1068, 1074 (7th Cir. 1987). Even without the specter of Rule 11, submitting an excessive request for fees constitutes sufficient cause to deny the request in toto rather than sifting through it to sort the wheat from the chaff. Id.; Brown v. Stackler, 612 F.2d 1057, 1059 (7th Cir. 1980); Matter of Pierce, 165 B.R. 252, 255 (Bankr. N.D. Ind. 1994).

None of this should surprise debtors' counsel. He was the recipient of a similar decision and order in Matter of Mason, Case No. 06-11678, which explained the court's expectations when it comes to fees in circumstances like these. Decision and Order dated Dec. 21, 2006. There, after

explaining why the request was excessive, the court simply scaled back counsel's time to what was appropriate, with the expectation that counsel might learn from the experience. Counsel has apparently failed to fully grasp the implications of that lesson, and the court is unwilling to encourage excessive requests by doing nothing more than reducing them to a reasonable level. If we simply reduce excessive fee requests to a reasonable amount, counsel has nothing to lose and everything to gain by seeking more than it should, for the worst that might happen is that the court will award a reasonable sum. If the consequences of being greedy are that one gets nothing, there will be no incentive for greed.

Debtors' requested attorney fees in response to the court's order of March 24, 2009, is not reasonable and is therefore DENIED.

SO ORDERED.

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