

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)
)
KEVIN LEE FINN and) CASE NO. 10-33754 HCD
LAURA ELIZABETH FINN,) CHAPTER 7
)
DEBTORS.)

DECISION AND JUDGMENT

At South Bend, Indiana, on June 13, 2011.

Before the court is the Motion to Disgorge Fees filed by the debtors Kevin Lee Finn and Laura Elizabeth Finn. A trial on the motion was conducted on June 9, 2011. Debtor Kevin Lee Finn appeared with his present attorney, Jacqueline S. Homann, Esq. The debtors' prior attorney, Joseph Lehman, Esq., did not appear.

In the Motion, the debtors ask the court to disgorge the fees of attorney Lehman. An attorney who receives compensation for representing a debtor is required by § 329(a) of the Bankruptcy Code to file a statement concerning the compensation received or agreed to be paid. In the Disclosure of Compensation submitted with the debtors' schedules, attorney Lehman stated that he had received \$900.00 from the debtors in compensation and \$299.00 for the filing fee. Subsection (b) of the statute provides:

If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to –

...
(2) the entity that made such payment.

11 U.S.C. § 329(b)(2). Under this subsection, the court is authorized “to assess the reasonable value of the services counsel provided to the debtor and to compare that value with the amount the debtor paid or agreed to pay for the attorney’s services.” *In re Geraci*, 138 F.3d 314, 318 (7th Cir.), *cert. denied*, 525 U.S. 821 (1998). When determining “reasonable value,” the bankruptcy court should consider the factors set forth

in § 330, which guides the valuation of professional services. *See id.* The attorney whose services are being evaluated “bears the burden of establishing that the fee is reasonable.” *Id.*

In this case, attorney Lehman did not respond to the Motion or appear in court. He did not provide the court with an explanation of the time spent rendering legal services to the Finns; his customary fee; the necessary or beneficial results he obtained in his services; his experience and ability in bankruptcy matters; or other factors for the court’s consideration. *See* 11 U.S.C. § 330(a)(3); *see also Slaton v. Raleigh*, 1998 WL 684210 at *2 (N.D. Ill. Sept. 18, 1998) (presenting factors in assessing reasonable value of an attorney’s services to a debtor, affirming disgorgement of attorney’s fees).

The debtors, by present counsel, stated that attorney Lehman made numerous mistakes in the original documents filed with the court and failed to provide copies of the petition, schedules, statement of financial affairs, and other documents to the debtors. The Statement of Intent the attorney filed was incorrect: It listed the debtor’s intent to reaffirm their obligations on a travel trailer and one vehicle, but failed to include the reaffirmation of the debt on their home and another vehicle, in spite of the fact that the debtors had discussed this intention with attorney Lehman. In addition, the attorney did not offer the debtors appropriate legal advice concerning their reaffirmation obligations. Consequently, one vehicle was repossessed and the mortgage holder filed a motion to abandon and lift the stay on their home.

Attorney Lehman failed to file the certificate of debtor education with the court. His improper preparation of the means test information, as well, caused the United States Trustee first to request numerous corrections and then to file a Motion to Dismiss. The debtor Kevin Finn amended the form himself, on Mr. Lehman’s computer. However, attorney Lehman failed to provide that amended information timely to the United States Trustee, and failed to appear in court at the December 7, 2010 hearing on the Motion to Dismiss. Thereafter, the court scheduled a pretrial conference on the dismissal issue, but attorney Lehman sought and was granted a continuance. At that point, the debtors obtained new counsel, and with her assistance amended their schedules, filed their certificates of debtor education, and resolved issues with

