

**U.S. BANKRUPTCY COURT
District of South Carolina**

Case Number: **08-08404-hb**

ORDER

The relief set forth on the following pages, for a total of 5 pages including this page, is hereby ORDERED.

**FILED BY THE COURT
05/19/2010**



Entered: 05/19/2010

US Bankruptcy Judge
District of South Carolina

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Timothy Carl Kain and
Ruth Mulfinger Kain,

Debtor(s).

C/A No. 08-08404-HB

Chapter 13

ORDER

This matter came before the Court for hearing on the Application for Approval of Chapter 13 Attorney Fees filed by John R. Cantrell, Jr. on February 3, 2010¹ (the “Application”). Cantrell represents Debtors Timothy Carl Kain and Ruth Mulfinger Kain. They filed a Chapter 13 petition on December 30, 2008. Mr. Kain appeared at the hearing and provided testimony in support of the Application. The Chapter 13 Trustee objected to the Application.

Previously this Court entered Operating Order 07-12², effective for all cases filed after January 1, 2008. The Operating Order provides that an attorney representing a debtor in a Chapter 13 case may (a) elect the expedited fee approval procedure set forth in that Operating Order (which binds the attorney to the rules and procedures set forth therein), or (b) pursue payment of fees through a formal application for compensation pursuant to Fed. R. Bankr. P. 2002(a)(6) and 2016(a).

The attorney in this case utilized the expedited procedure, which allows payment of fees with minimal effort. The procedure provides that an attorney and client may agree on an initial fee—an amount negotiated between the parties of up to \$3,000.00—to

¹ Cantrell filed several exhibits thereafter supplementing his Application.

² Superseded by Amended Operating Order 09-01 entered on February 20, 2009, amended only to reflect the renumbering of certain Local Rules and the amendment to the form chapter 13 plan made December 1, 2008.

“fairly compensate an attorney for services through the conclusion of a typical non-business case.” The parties may also negotiate compensation for additional “work necessary as a result of any matters involving the default under or variance from the terms of a confirmed plan, adversary proceedings or for other complicating factors not present in the typical chapter 13 case.” The order requires that charges in addition to the initial fee must be conspicuously allowed by a fee agreement and the request for additional fees must include sufficient information to determine if the fee charged is fair and reasonable. The Operating Order further provides that if the additional fee exceeds \$1,000.00, compensation thereafter is “limited to those [services] rendered in the event of unforeseen circumstances.”

Cantrell’s initial fee for this case was \$2,500.00. His filings indicate additional charges raising the total to \$3,500.00 (initial fee plus supplemental fees of up to \$1,000.00). Thereafter, he filed the Application requesting fees of \$5,872.15 (\$3,500.00 mentioned above, \$400.00 in fees paid to Cantrell from a creditor for settlement of a post-petition dispute, and an additional \$1,972.15). Cantrell provided detailed billing records at a later date.

The Trustee objected to the Application arguing that the most recent services have a value of only \$450.00 rather than the amount charged. Services include review of proofs of claim, defending against the Trustee’s pre-confirmation petition to dismiss the case for failure to file a confirmable plan (relating to 524 language), “extra general 13 charges” and fees for work on a potential loan modification. Cantrell explained that a loan modification was also attempted prior to bankruptcy. He then proffered that after the creditor filed a plan objection, the Debtors made a second attempt at a loan

modification. As a result, Cantrell pointed out that the Debtors did not have to make any mortgage payments to the creditor for a limited time, temporarily saving them \$1,300.00 to \$1,600.00 dollars per month. The Trustee argued that the loan modification work was not unforeseen, and it was thus far unsuccessful. Cantrell proffered additional evidence in support of his work in the case and presented the testimony of Mr. Kain to explain the work and as proof that the Debtors were satisfied with Cantrell's services.

After a review of the evidence, the Court finds that most of the services in the Application fall within the scope of work covered by the initial fee of \$2,500.00, including services rendered in response to Trustee's petition to dismiss the case before confirmation for failure to file a confirmable plan, for services relating to the initial confirmation of the plan, for general chapter 13 charges and for claims review. These are tasks that may be present in any typical non-business case and there is insufficient evidence to indicate that they involve complicating factors warranting additional compensation. Further, there is no evidence from which the Court can find that the disputed charges were unforeseen at the time the case was filed. Therefore, the disputed fees and charges cannot be allowed under the expedited procedure over the Trustee's objection.³

Cantrell requested additional fees and expenses of approximately \$3,000.00 for pursuing approval of the disputed fees and charges over the objection of the Trustee. Because the underlying charges are not permissible, fees and expenses associated with the pursuit of the charges will not be allowed. *See generally In re Fowler*, Case No. 05-10053-hb. slip op. at 13 (Bankr. D.S.C. July 8, 2008) (discussing how other courts have

³ The Trustee did not object to \$450.00 of the \$1,972.00 in controversy so the Court will allow that amount.

disallowed fees for defending fee applications when the objections were filed in good faith).

If the simplified procedure set forth in the Operating Order appears insufficient to fairly compensate an attorney at the commencement of a case, an attorney and client may agree to utilize formal applications for compensation pursuant to Fed. R. Bankr. P. 2002(a)(6) and 2016(a) as an alternative to the limited compensation provided by the expedited procedure.

IT IS THEREFORE, ORDERED:

That the fees set forth in the Application are hereby limited to \$450.00 (in addition to the \$3,500.00 previously disclosed). Any request for fees and costs associated with the collection of the amounts set forth in the Application is hereby **DENIED**.

AND IT IS SO ORDERED.