

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	Chapter 13
)	
Gloria LaFaye Anderson,)	Case No. 14 B 11526
)	
Debtor.)	Judge Jacqueline P. Cox

Order on Motion for Approval of Attorney Fees Per 11 U.S.C. Section 362(k) for Payment of Services Not Covered Under CARA and Approval of Short Notice (Dkt. No. 69)

I. Background

Debtor Gloria Lafaye Anderson filed for bankruptcy relief under Chapter 13 of the Bankruptcy Code on March 28, 2014. A Plan was confirmed herein on June 23, 2014 that requires the Debtor to make monthly payments of \$ 680.00 to the Chapter 13 Trustee Thomas Vaughn for 60 months, distributing 3% on the claims of her general unsecured creditors. *See* Modified Plan, Docket Number 25.

On April 11, 2016 Debtor's attorney Deadra Woods Stokes filed a Motion for Damages ("Motion") against the Debtor's mortgagee, Prospect Mortgage LLC c/o Cenlar FSB, for conducting an inspection of the Debtor's home and changing a front door lock therein under the mistaken assumption that the premises were uninhabited. Attorney Woods Stokes made a few court appearances on the Motion; the Motion was withdrawn on August 29, 2016. The next day this court, realizing that it not been given information about how the matter was settled, set a hearing for September 1, 2016 at which the court was to be given an explanation of the disposition of the funds received in settlement of the Motion. Attorney Woods Stokes informed

the court that she was due fees of approximately \$3000 for work done on the Motion.¹ The court ordered that she could recover only \$900 because this is not a complicated matter where she had to conduct discovery for the Motion or litigate it at a contested hearing. September 1, 2016 Transcript, p. 7.

II. Interpretation of the Court-Approved Retention Agreement

On September 22, 2016 this court entered an order noting that Attorney Woods Stokes had been retained to represent the Debtor herein pursuant to the Court-Approved Retention Agreement (“CARA”). An Application for Compensation for Representing Chapter 13 Debtors filed on April 4, 2014 by Attorney Woods Stokes includes her certification that “[i]f a Flat Fee is requested, the attorney and the debtor have not entered into any agreements that provide for the attorney to receive (a) any kind of compensation, reimbursement, or other payment or (b) any form of, or security for, compensation, reimbursement, or other payment that varies from the Court-Approved Retention Agreement.” Docket Number 10, p. 2.

The CARA includes a provision that requires the debtor’s attorney to “provide any other legal services necessary for the administration of the case.” *Id.*, at 6. Does this include prosecuting motions to enforce the automatic stay? Yes, in contrast to this motion’s title that this matter involves services not covered by the CARA. The Court notes that at the October 24, 2016 hearing herein Attorney Woods Stokes said “[i] believe that those fees for my services were covered under the general - - under the CARA.” October 24, 2016 Transcript, p. 2.

Motions to enforce the automatic stay (or the discharge injunction) are legal services

¹ Query: Pursuant to an agreement entered into after the Court-Approved Retention Agreement was entered into? As noted herein, no subsequent agreement has been disclosed.

necessary for the administration of Chapter 13 bankruptcy cases because they deal with the attempts of creditors to access property of the bankruptcy estate, normally automobiles and homes. Debtors need their homes to live and their automobiles to travel to and from employment. What could be more important to debtors' opportunity to reorganize their debts under Chapter 13 of the Bankruptcy Code? Attorneys retained pursuant to CARA agreements are required to pursue damages and injunctions for violations of the automatic stay and the discharge injunction on behalf of Chapter 13 clients. These proceedings rarely require more than routine efforts on the part of experienced bankruptcy lawyers. It would be unfair to routinely order debtors to pay attorneys' hourly fees for these matters in addition to the standard no-look \$4000.00 fee.

When the attorneys have to engage in discovery, file complex motions or adversary proceedings and litigate such, the CARA provides "in extraordinary circumstances, such as extended evidentiary hearings or appeals, the attorney may apply to the court for additional compensation for these services." CARA, Docket Number 10, pp. 2-3. Attorney Woods Stokes took it upon herself to make this call about her compensation when she got the Motion for Damages withdrawn without asking for compensation. She can not unilaterally determine her compensation; a request has to be made to the court who then decides whether and how much compensation is justified.

The CARA also states that:

[a]ny attorney retained to represent a debtor in a Chapter 13 case is responsible for representing the debtor on all matters arising in the case unless otherwise ordered by the court. For all of the services outlined above, the attorney will be paid a fee of \$4000.00. In extraordinary circumstances, such as extended evidentiary hearings or appeals, the attorney may apply to the court for additional compensation for these services. Any such

application must be accompanied by an itemization of the services rendered, showing the date, the time expended, and the identity of the attorney performing the services. The debtor must be served a copy of the application and notified of the right to appear in court to object. CARA, Docket Number 10, pp. 2-3.

The Motion for Damages includes a request for attorney's fees, however, the attorney has not filed any updates regarding her obligation under 11 U.S.C. § 329 to file with the court a statement of compensation paid or agreed to be paid, if such agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with a case by such attorney, and the source of such compensation. Federal Rule of Bankruptcy Procedure 2016(b) also requires the disclosure of compensation paid or promised to an attorney for a debtor. That Rule includes a duty to disclose within 14 days any payment or agreement not previously disclosed. Review of the docket of this case reveals that no supplemental attorney compensation agreement has been disclosed.

Attorneys Woods Stokes' Motion for Approval herein states that 11 U.S.C. § 329 does not apply to her conduct herein because the Motion for Damages was filed two years after the case was filed. Motion for Approval of Attorney Fees, Docket Number 69, ¶ 43. Section 329 requires reporting of attorney compensation starting a year before the filing of the case, not only for a year after filing. In *In re Petrovic*, 2016 WL 6775913, * 3 (Bankr. N.D. Ill. 2016) Judge Goldgar noted that Section 329 was enacted by Congress to subject debtors' attorney fee payments to careful scrutiny to protect both debtors and bankruptcy estates.

Local Bankruptcy Rule 2016-1 requires, in part, that all agreements between debtors and their attorneys be in writing and that any agreements entered into after the filing of a Fed. R. Bankr. P. 2016(b) filing be disclosed within 14 days.

This Court's September 22, 2016 Order required Attorney Woods Stokes to supplement her F.R.B.P. 2016(b) compensation disclosure if there were additional agreements or promises made by the Debtor to compensate her. No such supplement has been filed. In her Motion For Approval of Attorney Fees at Docket Number 69, ¶ 23 Attorney Woods Stokes states that she informed the Debtor that attorneys fees would be requested as part of the Motion for Damages.

Chapter 13 attorneys who are employed under CARA agreements should note that this court's Second Amended General Order No. 11-2, adopted on September 21, 2011, states that every agreement between a debtor and an attorney must be in the form of a written document signed by the debtor and the attorney. That Order provides that flat fees will not be awarded if in addition to the CARA, the debtor and an attorney for the debtor have entered into any other agreement in connection with the representation of the debtor in preparation for, during or involving a Chapter 13 case and the agreement provides for the attorney to receive compensation or security for compensation

III. Conclusion

The Court has been told that the Motion for Damages settled for \$5200. \$3500 (\$2500 to buy a door and \$1000 for wage loss) of that amount is hereby awarded to the Debtor to replace the door that has been damaged by the mortgagee's agent and to compensate her for lost wages. Attorney Woods Stokes has the funds. She is ordered to immediately disburse \$3500 to the Debtor. The Court was told on October 24, 2016 that Attorney Woods Stokes is holding a \$1700 check from the mortgagee made out to her for attorney fees. Since she is being awarded only \$900, she is ordered to submit the remaining \$800 to Chapter 13 Trustee Thomas Vaughn on or before December 8, 2016.

The Court notes that the Seventh Circuit recently ruled that bankruptcy courts may modify Chapter 13 plans to increase a debtor's payments when the circumstances justify it. *Germeraad v. Powers (In re Powers)*, 826 F. 3d 962, 971-75 (7th Cir. 2016). Circumstances herein may justify adding the \$800 to the Plan.

Short notice of this Motion for Approval is Granted.

Dated: November 18, 2016

ENTERED:

Jacqueline P. Cox
United States Bankruptcy Judge