

NOT INTENDED FOR PUBLICATION.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:) CHAPTER 7
)
JEFFREY A. BRYAN) CASE NO. 98-81514
)
Debtor)

ORDER GRANTING MOTION FOR POSTJUDGMENT INTEREST

By order entered May 21, 2002 (the "Final Order"), the final application for compensation filed by Chamberlain, Hrdlicka, White, Williams & Martin ("CHWWM"), Debtor's special tax counsel, was approved. Previous interim applications had been approved March 23, 2000, for \$25,022.73 plus expenses of \$1,232.27; and November 6, 2000, for \$37,321.50 plus expenses of \$899.24. The final application sought additional fees of \$10,806 plus expenses of \$2,240.57. The Final Order approved those additional fees and reaffirmed approval of the interim fee applications. No payment had been made on the interim orders. Therefore, the total fees approved in the Final Order were \$73,150.23 plus total expenses of \$4,372.08, for an aggregate total of \$77,522.31.

Debtor appealed the Final Order. By order entered by the U.S. District Court September 19, 2002, the Final Order was affirmed. By order entered by the Eleventh

Circuit Court of Appeals April 21, 2003, the U.S. District Court's affirmance of the Final Order was affirmed.¹

On August 11, 2003, CHWWM filed a motion ("the Interest Motion") for postjudgment interest on the uncollected fees approved in the Final Order. CHWWM seeks interest from May 21, 2003, the date the Final Order was entered, until payment of those fees. CHWWM has shown that, pursuant to 28 U.S.C. §1961(a), the annual interest rate on the fees and expenses approved in the Final Order is 2.4%, which yields a *per diem* interest amount of \$5.09.

Hearing on the Interest Motion was held September 16, 2003. On the date of the hearing CHWWM filed a Bench Memorandum in Support of Post-Judgment Interest. Also on the date of the hearing, Debtor filed *pro se* his objection to the Interest Motion. At the hearing Debtor appeared *pro se*, James Kane appeared for CHWWM, and the Chapter 7 Trustee appeared.

The basis of Debtor's objection to the Interest Motion was that CHWWM failed to comply with BLR 7007-1 by failing to file a memorandum of law with the motion. If such a memorandum of law were required, that requirement was fulfilled by the Bench Memorandum filed by CHWWM on the day of the hearing. The title of BLR 7007-1, however, is "Filing of Motions and Responses in Adversary Proceedings." Thus, the rule is intended to apply only to motions filed in Adversary Proceedings, as they are

¹ Additionally, the Circuit Court found Debtor's appeal to have been frivolous but decline to impose any sanctions against him.

described in Fed. R. Bankr. Proc. 7001, *et seq.*² The Interest Motion was filed in the main bankruptcy case, not in any adversary proceeding. Additionally, an application for compensation, and matters relating thereto, is not an adversary proceeding within the meaning of BLR 7007-1. Therefore, the failure to file a memorandum of law with the Interest Motion did not violate BLR 7007-1, and Debtor's objection is without merit.

A professional employed under 11 U.S.C. §327 is entitled to interest on compensation and expenses awarded pursuant to 11 U.S.C. §330 from and after the date of the award. *In re Glados*, 83 F. 3d 1360 (11th Cir. 1996); *In re Caribou Partnership III*, 152 B.R. 733 (Bankr. N.D. Ind. 1993). The federal postjudgment interest rate set forth in 28 U.S.C. §1961(a) applies to such awards by the bankruptcy court. *Ocasek v. Manville Corp. Asbestos Disease Compensation Fund*, 956 F. 2d 152 (7th Cir. 1992); *In re Pester*, 964 F. 2d 842 (8th Cir. 1992). Even though the Final Order was appealed, postjudgment interest should be computed from the date of entry of the Final Order. *Wheeler v. John Deere Co.*, 986 F. 2d 413 (10th Cir. 1993).

At the hearing held September 16, 2003, the Chapter 7 Trustee raised two issues for consideration in conjunction with the Interest Motion. First, the Chapter 7 Trustee questioned whether the fees approved in the Final Order should be considered administrative expenses of Debtor's Chapter 11 case or administrative expenses of Debtor's Chapter 7 case. This case was filed as a Chapter 11 case but was converted to a Chapter 7 case by order entered August 21, 2002. The Final Order approved fees

² The term "adversary proceeding" in Fed. R. Bankr. Proc. 7001, *et seq.* is a term of art, and refers to a proceeding which is separate, but related, to the main bankruptcy case. Adversary proceedings are commenced by the filing of a complaint and are assigned by the Bankruptcy Clerk a separate adversary proceeding number. They proceed, for the most part, without regard to matters occurring in the main bankruptcy case.

for services rendered through July 15, 2001. Therefore, those fees should properly be considered administrative expenses of the Chapter 11 case. The Trustee also pointed out that any interest payable on the fees awarded in the final order should be paid only after all other claims in this case are paid in full. Accordingly, it is hereby

ORDERED that CHWWM's motion for postjudgment interest on the uncollected fees is granted. CHWWM shall be paid interest at the rate of 2.4% per annum on the total Chapter 11 administrative fees and expenses of \$77,522.31 from May 21, 2002 until the date of payment. As of March 31, 2004, the total interest accrued is \$3,456.15, with interest accruing thereafter at the rate of \$5.09 per day. This post judgment interest will be paid only after all other claims in this case have been paid in full.

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Debtor, the Chapter 7 Trustee and his attorney, the U.S. Trustee, and attorney for Chamberlain, Hrdlicka, White, Williams & Martin.

IT IS SO ORDERED, this the 30th day of April, 2004.

MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE