

4-3-08

UNITED STATES BANKRUPTCY COURT
 NORTHERN DISTRICT OF GEORGIA
 ATLANTA DIVISION

IN RE:)	CHAPTER 13
)	
BOBBY LEE ROBINSON,)	CASE NO. 07-68960-MHM
)	
Debtor.)	

SANCTIONS ORDER

On February 28, 2008, hearing was held on Debtor's objection to the proof of claim filed by the DeKalb County Tax Commission ("DeKalb"). DeKalb's attorney, Mark Thompson, appeared but Debtor's attorney, Stanley J. Kakol, failed to appear. As a result of the failure of Debtor's attorney to appear, an order was entered overruling Debtor's objection.

Additionally, an order was entered requiring Debtor's attorney to show cause why he should not be sanctioned for his failure to appear for the February 28, 2008 hearing. The show-cause hearing was held March 27, 2008 (the "Show Cause Hearing"). Debtor's attorney filed no written response to the show cause order, but he appeared at the Show Cause hearing and explained that he did not come to the February 28, 2008 hearing because DeKalb did not file a written response to the objection.

The form for notice of hearing Mr. Kakol used with the objection to claim (which was not the form of notice allowed by the local rules, which requires a written response to an objection to claim) *permitted* a written response but did not require one or provide a deadline for filing a written response. DeKalb *did* file a written response February 8, 2008 [Doc. #43], but Mr. Kakol argues that DeKalb's service was inadequate. DeKalb's certificate of service states the response to Debtor's objection to claim was served upon Debtor's attorney using the CM/ECF system, which automatically sends email notification to attorneys of record. Debtor's attorney argued that service by CM/ECF was not adequate service because he did not receive it – because he had cancelled his landline.

BLR 5005-8 – Service of Electronically Filed Documents, provides:

...[S]ervice upon a Registered User may be effected by service of a notice of electronic filing in accordance with the Electronic Case Filing Procedures and in the form set forth therein. The electronic service of such notice of electronic filing of a document shall constitute service of such document to such Registered User so that the filing party shall not be required to serve by mail or hand delivery the filed document to which the notice of electronic filing refers. By becoming a Registered User and accepting a password for participation in the Electronic Case Filing system, a Registered User waives the right to receive notice and service by mail or hand delivery, including notices described in Bankruptcy Rules 2002(a)(2)(3) and (6).

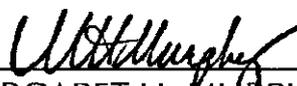
Mr. Kakol is a Registered User. Therefore, his argument about inadequate service is without merit and leaves him without excuse for his failure to appear at the hearing.

Section 329 of the Bankruptcy Code grants the bankruptcy court authority to consider whether compensation paid to a debtor's attorney exceeds the reasonable value of the attorney's services and, if it does, the bankruptcy court may require the attorney to disgorge all or part of the attorneys fee. Debtor's attorney was paid \$4425 for his services in the case, and has already been paid his full fee thru Debtor's Chapter 13 plan.

Accordingly, it is hereby

ORDERED that, within ten (10) days of the date of entry of this order, Debtor's attorney shall remit to the Chapter 13 Trustee \$200.00 in good funds. The Chapter 13 Trustee shall hold those funds in escrow for a period of 20 days to allow Debtor's attorney to determine whether a renewed objection to DeKalb's claim should be filed or whether the original objection was improvidently filed. If no renewed objection is filed within the time provided, the Chapter 13 Trustee shall distribute the \$200 in accordance with Debtor's Chapter 13 plan. If a renewed objection is filed within the time provided and successfully prosecuted, the undersigned will entertain a petition from Debtor's attorney to return the \$200.

IT IS SO ORDERED, this the 2nd day of April, 2008.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE