

ENTERED ON DOCKET
7-13-04 *lc*

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: : CASE NO. 04-70590
: :
Michael Stephen Gillespie, : CHAPTER 13
: :
Debtor. : JUDGE MASSEY
:

**ORDER DENYING MOTION FOR REFUND OF FILING FEE,
VACATING ORDER GRANTING APPLICATION TO PAY FILING FEE
IN INSTALLMENTS AND SUSPENDING GENERAL ORDER NO. 9**

King & King, P.C. moves for an order directing the clerk to refund \$144 to the firm because the firm, when filing the petition, paid the full filing fee of \$194 but had collected only \$50 from their client, who had filed an application to pay the filing fee in installments. The Court granted that application in an order entered on July 7, 2004. The application was made on the prescribed form and includes the statement by the Debtor that "I am unable to pay the filing fee except in installments." In the schedules filed with the petition, the Debtor shows that he has a good job making over \$3,000 per month, that his assets exceed his liabilities by approximately \$60,000 and that on the petition date he had \$600 in a savings account. (He also stated in on Schedule B that he had a balance of over \$18,000 in a 401k plan.) Notwithstanding his solvency, King & King, P.C. also filed a plan on behalf of the Debtor in which the Debtor proposes to pay unsecured creditors only 50% of their allowed claims.

Debtor's counsel made two serious errors in this case. The first was permitting the Debtor to file an application to pay the filing fee in installments. Because the Debtor had \$600 in a savings account, he had sufficient funds to pay the filing fee. Based upon that admission, the

Debtor's representation in his application to pay the filing fee in installments was false. Hence, the Order granting that application must be vacated and the motion for a refund of the filing fee paid by counsel must be denied. The Debtor is free to file a new application to pay filing fees in installments, but his counsel must schedule such an application for an evidentiary hearing.

The second error was filing a plan on Debtor's behalf proposing to pay only 50% of unsecured claims. Section 1325(a)(4) of the Bankruptcy Code provides that the court shall confirm a Chapter 13 if

4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date[.]

If a plan fails to meet that requirement, it cannot be confirmed. Here, the plan proposes to pay only one half of allowed unsecured claims, but the Debtor has sworn under oath that the fair value of his assets exceeds his liabilities by almost \$60,000. Even allowing for costs of sale, there is no reason to think that creditors would not be paid in full with interest in a Chapter 7 case.

King & King, P.C. has failed to demonstrate competence in filing the motion under consideration, the application to pay filing fees in installments and the plan. It follows that it makes no sense to permit the firm to be paid for doing tasks that are unnecessary and have no value. To prevent payment for worthless services, the Court will suspend General Order No. 9 and require the firm to file a fee application in this case.

Accordingly, it is

ORDERED that the motion of King & King, P.C. for Refund of Overpaid Filing Fee (document no. 4) is DENIED, the Order granting Debtor's Application to Pay Filing Fee in Installments entered on July 7, 2004 is VACATED, and General Order No. 9 is suspended in this case so that the Chapter 13 Trustee shall not make any distribution to King & King, P.C. except pursuant to an order granting a fee application. The Debtor is directed to amend his plan within ten (10) days of entry of this Order to eliminate any provision for payment of legal fees to King & King, P.C. except pursuant to an order granting a fee application and to meet the requirements of 11 U.S.C. § 1325.

This 12th day of July 2004.



JAMES E. MASSEY
U.S. BANKRUPTCY JUDGE