

ENTERED ON DOCKET
OCT 25 2010

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 13
)	
ALICE NATALIE MITCHELL)	CASE NO. 06-62937 - MHM
)	
Debtor.)	

ORDER ON SHOW CAUSE HEARING

By order entered December 4, 2009 (Doc. No. 104), Debtor and Christine Wagner ("Special Counsel") were instructed to appear and show cause why they should not be sanctioned for Debtor's failure to remit proceeds from the settlement of a personal injury claim to the Chapter 13 Trustee ("Trustee"). A Second Show Cause Order was entered February 8, 2010 (Doc. No. 107), instructing Donna Harding ("Debtor's attorney") to appear with Debtor and Special Counsel, so that Debtor's attorney could have an opportunity to explain her conduct regarding the same circumstances.

Debtor filed this March 16, 2006. The Chapter 13 Plan, confirmed June 1, 2006, provides for payments of \$695.00 per month, an applicable commitment period of thirty-six (36) months, and a one-hundred percent (100%) dividend to unsecured creditors (Doc. No. 37) (the "Plan"). Pursuant to the *Statement of Current Monthly Income* filed March 16, 2006 (Doc. No. 1), Debtor's annualized current monthly income is under the median income.

Debtor suffered personal injuries following an automobile accident on or about October 27, 2007. By order entered October 17, 2008, Debtor's motion to employ Special Counsel to represent Debtor in her personal injury claim was approved (Doc. No. 81). On February 25, 2009, Debtor filed a *Motion to Approve Compromise of Claim and for Approval of Attorney's Fees* (Doc. No. 88) seeking approval of a settlement for her personal injury claim in the amount of \$50,000.00, which she amended April 2, 2009 (Doc. No. 93) (collectively, the "Compromise Motion"). The Compromise Motion indicated that the settlement funds would be sufficient to complete all Plan payments and allow Debtor's discharge.

On May 11, 2009, an order and notice was entered that unless a party timely filed and served a written objection, the Compromise Motion would stand approved (Doc. No. 95) ("First Order"). On May 21, 2009, a corrected order was entered (Doc. No. 98) ("Corrected Order"). The First Order proposed that \$32,406.88 should be disbursed to Debtor and no proceeds contributed to the Plan, which was an error. The Corrected Order proposed to disburse \$19,853.14 to Trustee for Plan payments to creditors and to disburse the remaining net proceeds of \$12,553.74 to Debtor. Both orders were served on Debtor, Debtor's attorney, and Special Counsel.

In June or July of 2009, Special Counsel's office disbursed \$32,406.88 directly to Debtor with no disbursement to Trustee for Plan payments. On November 16, 2009, Trustee inquired of Debtor's attorney regarding the anticipated disbursement of \$19,853.14 and discovered that Special Counsel had disbursed the funds improperly.

On Trustee's Motion (Doc. No. 103), a Show Cause Order to Debtor and Special Counsel was entered December 4, 2009 (Doc. No. 104) and, as a result of representations made at the hearing held January 21, 2010, a Second Show Cause Order was entered February 8, 2010, directing Debtor's attorney to appear and show cause (Doc. No. 107). Hearing was continued to February 8, 2010, to April 1, 2010, to August 28, 2010, and concluded October 1, 2010. Debtor, Debtor's Attorney, and Special Counsel were fully heard.

Debtor testified that she has expended all of the funds she received. Debtor incurred substantial post-petition medical debt of approximately \$20,000.00 due to the personal injuries suffered in the accident, injuries that included a broken neck. Debtor suffered reduced income because she could not work. In addition to these increased expenses and reduced income, Debtor's non-filing spouse suffered a job loss. Debtor used the funds she received to purchase a replacement vehicle for the vehicle totaled, to pay post-petition mortgage payments and medical bills, and to pay other living expenses.

Special Counsel contends that she made the improper disbursement to Debtor because Debtor's attorney sent an email with instructions to make the disbursement with a copy of the First Order attached, and not a copy of the Corrected Order. Debtor's attorney and Special Counsel provided extensive testimony and documentation of their email exchanges to describe their communications with each other, but neither provided the email described by Special Counsel.

Trustee reports that as of October 1, 2010, Debtor has paid \$31,368.00 pursuant to the Plan. Debtor has paid all allowed secured claims in full and she has paid a dividend of approximately eighty percent (80%) to unsecured creditors. Debtor made regular Plan payments for more than thirty-six (36) months. Review of Debtor's scheduled assets, debts, and exemptions shows that unsecured creditors have received more than they would have received in a Chapter 7 liquidation.

Careful consideration of the testimony shows that both Debtor's attorney and Special Counsel committed error of, at least, professionalism and care. Debtor has experienced a sufficient post-confirmation change in circumstances to support a *sua sponte* modification of the Plan and reduction in dividend to unsecured creditors. For good cause shown, it is hereby


ORDERED that Debtor's attorney, Donna Harding, *shall pay* \$250.00 to Debtor on or before October 15, 2010, and provide documentation of this payment to Trustee. It is further

ORDERED that Special Counsel, Christine Wagner, *shall pay* \$750.00 to Debtor on or before October 15, 2010, and provide documentation of this payment to Trustee. It is further

ORDERED that the Plan is *modified* to reduce the dividend to unsecured creditors to the amount they have received from funds paid by Debtor on or before October 1, 2010; accordingly, Debtor has completed her Plan.

The Clerk of Court is *directed* to serve notice of this Order upon Debtor, Debtor's counsel, the Chapter 13 Trustee, and the United States Trustee, scheduled creditors and all parties in interest, including Special Counsel Christine Wagner at 4227 Pleasant Hill Road, Building 11, Suite 300, Duluth, Georgia 30096.

IT IS SO ORDERED, this the 22 day of October, 2010



MARGARETH MURPHY
UNITED STATES BANKRUPTCY JUDGE

Draft Prepared and Presented by:

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