IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

MARK A. SKODA, Appellant, v. Samuel K. Crocker, U.S. Trustee, Appellee.	)	No. 12-2666JTF/cgc Bankruptcy Case No. 11-23283jdl

ORDER AFFIRMING THE DECISION OF THE BANKRUPTCY COURT

Before the Court is an appeal of the dismissal of a Chapter 11 bankruptcy proceeding filed by Mark Skoda in the United States Bankruptcy Court for the Western District of Tennessee. Rejecting the option of appealing to the bankruptcy appellate panel, Mr. Skoda filed a timely notice of appeal to this court on July 26, 2012.[1] Mr. Skoda's brief was submitted to this Court on August 23, 2012, DE [4], and a reply brief, DE [5], was filed by the United States Trustee

1 See DE [1] of the District Court record on appeal. The underlying Bankruptcy Case Number is 11-23283. The underlying Chapter 11 Bankruptcy Proceeding documents will be identified as BCR followed by the Docket Entry number listed in the Bankruptcy case. BCR [127], Respondent/Appellant's Rejection of Bankruptcy Appellate Panel and Designation of Records for U.S. District Court. All of the court records designated for receipt by the Clerk of the U.S. District Court were not included in the record on appeal but were acquired and reviewed de novo by this Court.

on September 6, 2012.

For the following reasons, the decision of the United States bankruptcy court is AFFIRMED.

FINDINGS OF FACT

Mark Skoda attributes an investment in real property in Fairfax County, Virginia as leading to his financial difficulties. The Virginia property was foreclosed, rendering a judgment lien in favor of debtor G & G LLC against Mr. Skoda's personal residence in Tennessee.[2]

On March 31, 2011, Mr. Skoda filed a voluntary Chapter 11 bankruptcy petition.[3] The initial debtor interview occurred on April 14, 2011 and a creditors meeting ensued on May 3, 2011. Due to an inability to garner enough unsecured debt holders, the committee of unsecured creditors mandated by 11 U.S.C. 1102(a) was not formed.[4]

On June 13, 2011, Attorney William Cohn was approved by the court to serve as Mr. Skoda's counsel during the bankruptcy proceeding.[5] On July 27, 2011, Mr. Skoda filed the first motion for an extension

2 BCR [109] Exhibit A
3 BCR [1] – BCR [4], Bankruptcy Filings: Voluntary Petition with Statement of Social Security Number, Certificate of Credit Counseling, and Receipt.
4 This case was assigned to Assistant U.S. Trustee Madalyn S. Greenwood.
5 Prior to approval of his application for appointment by the bankruptcy court, Cohn proceeded to file documents on behalf of Skoda: An Amended Statement of Financial Affairs BCR[12], A Motion to Avoid Lien with Internal Revenue Service BCR [17], An Amended Schedule BCR[18], An additional Amended Statement of Financial Affairs BCR[19], and An Amended Application to Employ BCR[23]. The Application to employ Mr. Cohn was ultimately approved on June 13, 2011. See BCR[26].

of time in which to submit his disclosure statement.[6] The Trustee objected, stating Mr. Skoda had failed to file monthly operating reports as required for March, April, May and June of 2011, preventing the preparation of a disclosure statement and plan. Also, Mr. Skoda had failed to pay the mandatory quarterly fees for the first two quarters of the year.[7] A hearing was scheduled on August 17, 2011.[8] The parties entered a conditional consent order in which Mr. Skoda would have until September 7, 2011 to file his disclosure statement as long as he filed his monthly operating reports through July 2011 and paid in full the accrued quarterly fees.[9]

On September 27, 2011, G & G LLC moved to join the pending bankruptcy proceeding as a late filer creditor in order to add the amount in the Fairfax County property foreclosure.[10] G & G, LLC asserted it had not received timely notification of the pending bankruptcy proceeding prior to the July 28, 2011 creditor deadline. The court granted the creditor's motion, allowing G&G LLC's claim to be added to the bankruptcy proceeding.

The disclosure statement and reorganization plan were separately filed on December 29, 2011, to which numerous objections

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6 BCR[30]
7 BCR[33]
8 BCR[32]
9 BCR[36]
10 BCR[39-1], G&G LLC's June 9, 2009 foreclosure judgment of $1,156,381.76 on the Virginia property comprised their claim. The Collective Exhibit A shows the balance of the judgment lien to be $492,369, after the proceeds from the property's sale was applied to the outstanding balanced owed.

were filed by the Trustee and others.[11] The court scheduled the first of many hearings on the disclosure statement for January 25, 2012. Hearings on the various objections to the disclosure statement were set and continued on the following dates: March 21, 2012, April 18, 2012, May 16, 2012, and June 6, 2012. Finally, a motion to dismiss the proceeding or alternatively to convert it to a Chapter 7 proceeding pursuant to 11 U.S.C. §1112 was filed by the Trustee on June 14, 2012.[12] The bankruptcy judge entered an order on July 16, 2012, dismissing the Chapter 11 proceeding.[13] On that same date, the judge also entered an order sustaining the Trustee's objection to the interim application for attorney's fees.

The instant appeal challenges: 1) whether cause existed to dismiss the Chapter 11 proceeding and 2) whether the denial of attorney's fees by the bankruptcy court was appropriate.

JURISDICTION and STANDARD OF REVIEW

This Court has jurisdiction to hear bankruptcy appeals from final judgments, orders or decrees of bankruptcy judges pursuant to 28 U.S.C.§ 158(a)(2007); Fed. Rules Bankr. P. 8001(a) and 8013.[14]

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11 BCR[47],BCR[48],BCRs[61-63,68-69]

12 BCR[92], On June 4, 2012, Counsel filed a motion to reset the original hearing date on the motion to dismiss from July 25, 2012 based on out of town travels. The case was reset to July 5, 2012.

13 BCR[47],Disclosure Statement filed on December 29, 2011.
BCRs[33, 61-63] Objections to the Disclosure Statement
BCR[82] Amended Motion to Convert to Chapter 7 or to Dismiss
BCR[117] Order Granting Amended Motion to Dismiss

14 Fed. Rules Bankr. Proc. Rule 8013 provides: A district court may affirm, modify, or reverse a bankruptcy court's judgment or order, or it may remand with instructions for further proceedings.

On appeal, a district court applies a clearly erroneous standard of review to the factual findings of a bankruptcy court. Questions of law and jurisdictional challenges are subject to *de novo* review. See *In re Gardner*, 360 F.3d 511, 557 (6th Cir. 2004) and *In re Brown*, 248 F.3d 484, 486 (6th Cir. 2001). The court must hold a definite and firm conviction that a mistake occurred in order to conclude the bankruptcy court clearly erred. "If there are two permissible views of the evidence, the fact finder's choice between them cannot be [deemed] clearly erroneous." *Mitan v. Duval (In re Mitan),* 573 F.3d 237, 241 (6th Fir. 2009)[15] Rulings by the bankruptcy court regarding discovery and whether to convert or dismiss a Chapter 11 proceeding are all reviewed for an abuse of discretion. *Hahn v. Star Bank*, 190 F.3d 708, 719 (6th Cir. 1999) and *AMC Mortgage v. Tennessee Dept. of Revenue*, 213 F.3d 917, 920 (6th Cir. 2000).

ISSUES ON APPEAL

The appellant argues the bankruptcy court clearly erred by: 1) dismissing his bankruptcy proceeding under 11 U.S.C. §1112(b); and 2) denying the application for attorney's fees, an incorrect application of the 11 U.S.C. § 503 test.

1. The Dismissal of the Chapter 11 Proceeding

Mr. Skoda describes the bankruptcy court's dismissal of his Chapter 11 petition as punitive, unsubstantiated, premature,

15 Fed. Rules Bankr. Proc. Rule 8013

arbitrary and capricious.[16] Mr. Skoda argues the bankruptcy court abused its discretion by dismissing his case when he had in fact filed the requisite summary of his reorganization plan but had not yet filed the actual plan of reorganization. However, the bankruptcy court deemed the filings dilatory and unbeneficial to the creditors, Trustee or the Court.

This court must review the bankruptcy court's dismissal of the Chapter 11 proceeding for an abuse of discretion. *Hahn v. Star Bank*, 190 F.3d at 719; and *AMC Mortgage* 213 F.3d at 920. Dismissal of a Chapter 11 bankruptcy proceeding or conversion to a Chapter 7 proceeding is authorized by 11 U.S.C. § 1112(b)(1). Further, the Sixth Circuit has widely held that a bankruptcy court has broad discretion to dismiss a Chapter 11 case for cause and that decision will be upheld unless an abuse of discretion occurred. *Id*.

Upon a *de novo* review of the record, including the transcript of the motion to dismiss hearing, the Court finds the bankruptcy court properly found cause to dismiss this case. As such, the bankruptcy court did not abuse its discretion by dismissing the Chapter 11 petition.

> Title 11 U.S.C.A. §1112(b)(1)and (4) provides:
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> (b)(1) Except as provided in paragraph (2) and subsection(c), on request of a party in interest, and after notice and a hearing, the court

16 DE[4]

> shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

(4) For purposes of this section, the term 'cause' includes-

(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;

(B) gross mismanagement of the estate;

(C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;

(D) unauthorized use of cash collateral substantially harmful to 1 or more creditors;

(E) failure to comply with an order of the court;

(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;

(G) failure to attend the meeting of the creditors convened under section 341(a) or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure without good cause shown by the debtor;

(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any);

(I) failure to timely pay taxes owed after the date of the order for relief or to file tax

> returns due after the date of the order for relief;
>
> (J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;
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> (K) failure to pay any fees or charges required under chapter 123 of title 28;
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> (L) revocation of an order of confirmation under section 1144;
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> (M) inability to effectuate substantial consummation of a confirmed plan;
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> (N) material default by the debtor with respect to a confirmed plan;
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> (O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and
>
> (P) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

In the instant case, the Trustee moved to dismiss Mr. Skoda's Chapter 11 proceeding or alternatively to convert it to a Chapter 7 proceeding.[17] The Trustee asserted that Mr. Skoda had failed to file his monthly operating reports for January, February, March and April, 2012. Without the monthly operating reports, the Trustee was inhibited from determining the outstanding quarterly fees, whether Mr. Skoda was current on his post-petition obligations, whether he was making inappropriate payments, and whether he had sufficient

17 BCR [82] filed on May 17, 2012

income to fund a reorganization plan. The Trustee also concluded that Mr. Skoda had failed to pay the quarterly fees. The outstanding balance was $646.34 with accrued interest, and the debtor's proof of insurance on file had expired.[18] Mr. Skoda never responded to the Trustee's motion.

A hearing on the motion to dismiss was set for June 27, 2012 and continued to July 5, 2012. The bankruptcy court ultimately dismissed Mr. Skoda's Chapter 11 petition on July 5, 2012, and entered the final order on July 16, 2012. The bankruptcy court cited "an unreasonable delay prejudicial to the creditors" as the primary cause for dismissal, pursuant to 11 U.S.C.A. 1112(b). The bankruptcy court deemed the filing of Mr. Skoda's Chapter 11 petition frivolous and speculative. The factors noted were many and included: 1) failure to develop and file the reorganization plan a full year after filing of the initial bankruptcy petition; 2) disregard of numerous extensions of deadlines granted by the court; 3) failure to file timely the mandatory monthly operating reports; 4) failure to provide proof of current insurance; and 5) failure to notify all secured and unsecured debtors.[19] See *In re: Cohoes Indus. Terminal, Inc.,* 931 F.2d 222, 227 (2nd Cir. 1991) and *Carolin Corp. v. Miller*, 886 F.2d 693, 698-702 (4th Cir. 1989).

The record also shows a long history of non-compliance. For

18 BCR[82]
19 BCR[136]; DE[5] at p. 6

example, a consent order was entered giving Mr. Skoda until September 7, 2011 to file his disclosure statement.[20] The disclosure statement was not filed until December 29, 2011.[21] The second amended disclosure statement was filed on July 3, 2013, which was on the eve of the 4th of July holiday, and one day before the July 5, 2013 hearing date.[22] Objections were submitted again to this disclosure statement by Bank of America regarding discrepancies reported on the first lien of the residential property in Tennessee.[23] In addition, during the motion to dismiss hearing, it was found that Mr. Skoda failed to file the amended reorganization plan. It was supposed to be submitted with the amended disclosure statement. Finally, the monthly operating reports were still unavailable.[24]

Additional reasons for the bankruptcy court's dismissal of the petition were the Appellant's failure to comply with court orders to: 1) file the requisite documents by deadline, including the amended disclosure statement and reorganization plan, as requested by the court; 2) provide a red line version of the amended disclosure statement early enough for the court, the Trustee and counsel's review prior to the hearing; and 3) maintain proof of insurance on the estate. See 11 U.S.C. § 1112 (b)(4)(C), (E)- (H).

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20 BCR[36]
21 BCR[47]
22 BCR[108]
23 BCR[109]
24 BCR[136] at pp. 8-10

Based on objections to the disclosure statement, the bankruptcy court ordered a red lined version of the statement so that changes could be easily identified. Appellant concedes that because of discrepancies between the disclosure statement and reorganization plan, the bankruptcy court ordered the revisions.[25] Appellant asserted the changes were made but the amended disclosures were not filed because of undisclosed staffing issues. Generally, a written disclosure statement and a plan of reorganization must be filed with the court. 11 U.S.C. §§ 1121 and 1125. The failure to timely file as directed the amended disclosure statement, including the red line version, provided the court with grounds for dismissal of the petition. See *In re Lee*, 467 B.R. 906 (B.A.P. 6th Cir. 2012)(No. 11-8053).

The debtor's intent to reorganize is questionable at best, given the lack of compliance with court orders. The record reveals that the true intent of filing the Chapter 11 petition was to allow Mr. Skoda the ability to start and run a new business without pressure from old creditors. Thus, it would be in Mr. Skoda's best interest to delay the Chapter 11 proceeding as long as possible. This would explain why Mr. Skoda was always unprepared and continually asked for more time. In fact, counsel said as much on the record during the hearing when he indicated his client benefitted by having time

25 DE[5] p. 12-13; BCR[136] Transcript p. 8, 10-11

to keep his business alive for over a year while the Chapter 11 proceeding was pending.[26] Clearly, these factors show a lack of good faith in Skoda's filing of the Chapter 11 petition and valid cause for dismissal of the proceeding by the bankruptcy court. *See In re Trident Associate Ltd. Partnership*, 52 F.3d 127, 130(6th Cir. 1995).

The bankruptcy court identified many reasons for dismissal of the Chapter 11 petition. After reviewing those reasons, and the entire record, this Court finds that the bankruptcy court did not abuse its discretion in dismissing this proceeding.

2. The Denial of the Application for Attorney Fees

After the petition was dismissed, the bankruptcy court concluded that Mr. Cohn had not diligently carried out his responsibilities during the Chapter 11 proceeding. Consequently, the court denied his application for fees and declined to award any compensation. The court stated that counsel was "no closer to confirmation than you were when you started, and what there has been is delay, but that's been prejudicial to creditors and that's a problem."[27] Further, the court noted that counsel's representation resulted in no true benefit to Mr. Skoda or the estate. As such, Mr. Cohn's application for fees and expenses for services rendered during the bankruptcy proceeding was denied.[28]

26 BCR[136] at p. 22; DE[4] at p. 11
27 BCR[136] Transcript p. 24
28 BCR[90], BCR[136] Transcript p. 24

Mr. Cohn argues that the bankruptcy court abused its discretion by denying his application for attorney fees. He claims that after expending considerable time working on this case, the court improperly converted the compensation arrangement from a "fee for services arrangement" into a "contingency fee arrangement". In this way, Mr. Cohn would receive compensation only if it was shown that the estate's financial position benefitted by acquisition of a confirmed reorganization plan. Mr. Cohn further asserts the bankruptcy judge exceeded her authority by imposing extraordinary and onerous tasks such as the red line version of the amended disclosure statement.[29] Finally, counsel contends that because the bankruptcy court determined his counsel had not benefitted the estate, the request for fees was denied and the attorney-client relationship essentially transformed into a contingency fee arrangement in violation of Tennessee Supreme Court Rule 1.5.[30]

The Appellee responds that Mr. Cohn failed to meet deadlines or provide the necessary documentation to properly construct a reorganization plan and as such demonstrated a clear lack of bankruptcy experience.

The district court reviews the bankruptcy court's award or denial of attorney's fees for an abuse of discretion. See *In re Boddy*, 950 F.2d 334, 336 (6th Cir. 1991). This Court concludes the

29 BCR[128], p 2; DE[4],pp. 4-5, 7-10, 14-18
30 BCR[128], p.2; DE[4] pp. 4-5, 7-10, 14-18

bankruptcy court did not abuse its discretion by denying attorney fees to Mr. Skoda's counsel.

The transcript of the hearing indicates that counsel was asked several times about his specific efforts to provide the amended disclosure statements, how often he had conferred with his client since the last court hearing, how the Chapter 11 proceeding would benefit the estate and whether he had urged his client to provide the documents needed in the time frame required.[31]

The basic services offered a debtor in bankruptcy proceedings by counsel include planning, drafting, finalizing, and adjusting, where needed, the Creditors' Plan. There is no indication from the application that Mr. Cohn contributed significantly to the overall efforts of his client during the bankruptcy proceeding. The interim application for attorney's fees merely references that he and other members of his firm had expended many hours on behalf of the debtors.[32] From the initiation of the Chapter 11 proceeding, Mr. Cohn was delinquent in filing the monthly operating reports which prevented the final implementation of the reorganization plan. The record indicates the small business operating reports for the months of March through November of 2011 were filed on December 29, 2011.[33] The monthly operating report for December 2011 was filed on January

31 BCR[136], pp. 8-17
32 BCR[90], Counsel's Interim Application for Attorney's Fees
33 BCRs[49-57], Small Business Operating Reports (March- November 2011 MORs)

17, 2012[34], a day before the January 18, 2012 court ordered hearing on the disclosure statement. The monthly operating reports for January 2012 through June 2012 were submitted on July 3, 2012, again on the brink of a hearing set by the court on July 6, 2012. The only explanation offered by counsel to explain his numerous requests for extension and late filings was that his client was busy attempting to maintain his business. He further explained that he had sent a letter to his client requesting his cooperation, and that divulging any additional details would violate the attorney-client relationship.[35] Finally, counsel acknowledged during the July 5th 2012 hearing that, although he had fully intended to file the amended disclosure plan, it was still incomplete and he would need more time.[36]

Curiously, counsel undermines the propriety of the disclosure plans by stating the law only requires that one is filed, not that it need be "perfect or all inclusive".[37] The need for full and accurate disclosure is underscored in *In re Tenn-Fla Partners v. First Union National Bank of Florida,* 226 F. 3d 746, 748 (6th Cir. 2000). It appears from the record that Mr. Cohn's underlying strategy was to manipulate the system by filing the Chapter 11 petition with the intent to put off as long as possible the filing of a final reorganization plan. Thus, by obtaining endless and unnecessary

34 BCR[60], Small Business Operating Report (December 2011 MOR)
35 BCR[136], Transcript pp. 4-6
36 DE[4], p. 12
37 DE[4], p. 13

extensions, his client was shielded from financial distress while attempting to recover from his poor financial position. Mr. Cohn admitted as much during the July 5, 2012 hearing:

> "THE COURT: Right and, Mr. Cohn, I am taking from that, I am taking-
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> MR. COHN: I think we provided quite a bit of help for the client. We kept his business alive and his ability to go for over a year. He was able, during that time, his business was able to grow to where he could substantiate the plan of reorganization.
>
> THE COURT: How did you contribute to the growth of his business?
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> MR. COHN: Oh, to the growth of his business? I didn't contribute to it. I gave him the time, by the filing of the eleven and by going through the processes of the eleven, to give him more time.
>
> THE COURT: That's what I asked you for, remember? I said was your strategy to simply delay.
>
> MR. COHN: No.
>
> THE COURT: Confuse and frustrate –
>
> MR. COHN: No, we did not try to delay it. We came into court and asked for any extensions that we felt were appropriate. We did not attempt to delay. We complied with the rules and procedures of the Bankruptcy Code as far as I could see all the way down the line.
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> THE COURT: Well, I guess we are going to have to respectfully disagree with each other, as you have said, to find some value that was provided to this client. This case was filed March 31, 2011, more than a year ago.
>
> Mr. COHN: Correct.

> THE COURT: The disclosure statement was amended twice and it is still not capable of approval. There are drawn objections. . .
>
> As a result, as far as I can see, and that's what counts in this hearing, is that you are no closer to confirmation than you were when you started, and there has been delay, but that's been prejudicial to creditors and that's a problem."[38]

This strategy had the effect of prejudicing the creditors and preventing the Trustee from performing her duties. Such tactics demonstrate bad faith on the part of Appellant's counsel, and provides good cause for the denial of attorney's fees and compensation for services. See *Id*. and *In re Trident Associates,* 52 F.3d at 131(debtor's bad faith in filing for Chapter 11 relief is "cause" for dismissal of a Chapter 11 petition).

Mr. Cohn's argument that the bankruptcy court improperly converted his representation into a contingency fee relationship in violation of Tennessee Supreme Court Rule 1.5 is simply without merit. Similar to this case, in *In re Airspect Air, Inc.,* 385 F.3d 915, 922 (6th Cir 2004), the bankruptcy court denied payment of certain fees requested by special counsel approved to assist in litigation ancillary to a Chapter 11 proceeding. In *Airspect*, counsel had prearranged a contingency fee. The Court noted that authorization of services is separate from fee approval as required under the

38 BCR[138], Transcript pp. 22-24

reasonableness standard of 11 U.S.C.A. § 330. *Id*. at 919 *3.[39] The reasonableness standard remains the appropriate tool when a bankruptcy court approves appointment of a professional. However, this standard does not supplant the statute that governs when the court may award or deny compensation as permitted in Chapter 11 of the Bankruptcy Code. The bankruptcy provisions that regulate attorney fees are designed to protect both creditors and debtors against overreaching attorneys. *In re Kisserth*, 273 F.3d 714, 721 (6th Cir. 2001).

Finally, Mr. Cohn argues the bankruptcy court should not have applied the 11 U.S.C. §503 test in order to determine whether he was entitled to attorney fees. Title 11 U.S.C.A. §503(b)(4) authorizes payment of reasonable attorney fees as administrative expenses based on the time, nature, extent and value of the services.[40] However, a finding of entitlement to fees under 11 U.S.C.A. § 504(b)(3)(D) requires that services meet a "substantial contribution" test and is a prerequisite to payment as an administrative expense under §503(b)(4). The Bankruptcy Code does not set forth criteria or define "substantial contribution". However, the issue is whether

39 Section 330 allows the bankruptcy court to award to a professional employed by the estate "reasonable compensation for actual and necessary services." 11 U.S.C.A. §330(a)

40 The attorney fee application procedure of Sections 329, 330 and 331 must be followed whenever compensation is sought from the estate but not when the compensation is to be paid from other sources. Legal counsel for the debtor, however, must submit all of their compensation requests pursuant to Section 329 of the Code. *In Re McDonald Bros. Const., Inc*. 114 B.R. 989, 995 (N.D. Ill. 1990)and *Cohn v. Board of Professional Responsibility*, 151 S.W.3d 473(Tenn. 2004) (cited for discussion of appropriate methods for payment of attorney fees in other bankruptcy cases involving Mr. Cohn)

the applicant has shown "substantial contribution" by the party's administrative expense and will be determined on a case by case analysis. See *In re Gurley*, 235 B.R. 626, 634(W.D. Tenn. 1999) citing *Hall Financial Group, Inc. v. DP Partners, Ltd. Partnership* (*In the Matter of DP Partners Ltd. Partnership*) 106 F.3d 667, 670-71(5th Cir 1997), *cert. denied*, 118 S.Ct. 63 (1997). In *Hall*, the Court held compensation under §503 must be preserved for those rare occasions when the creditor's involvement fosters trust and enhances the administration of the estate.

In determining whether the substantial contribution test has been met, courts have traditionally applied such factors as:

1) Whether the services were rendered to solely benefit all parties in the case or just the client;
2) Whether the services provided a direct, significant, and demonstrable benefit to the estate;
3) And whether the services were duplicative of services rendered by the attorneys for the [creditors'] committee, the committee itself, or the debtor and its attorneys.

Ultimately, the courts have decided compensation under §503(b) is for those rare occasions when the creditor's involvement truly fosters and enhances the administration of the estate. *Id*. at 670-671. This approach is consistent with the Sixth Circuit's positions that 503(b) claims are to be strictly construed. *City of White Plains, New York v. A and S Galleria Real Estate, Inc*., 270 F.3d 994, 1000(6th Cir. 2001).

CONCLUSION

After reviewing the record, it is clear that Appellant's objections to the bankruptcy judge's actions are without merit. The matter had been delayed unnecessarily on multiple occasions, and after a full year of delays, it was no closer to confirmation of a plan. The bankruptcy court did not abuse its discretion when it dismissed Appellant's bankruptcy petition and denied counsel's application for attorney fees.

For the reasons stated, the Bankruptcy Court's dismissal of the Chapter 11 proceeding and the denial of attorney fees is AFFIRMED.

IT IS SO ORDERED on this 27th day of March, 2013.

s/John T. Fowlkes, Jr.
JOHN T. FOWLKES, JR.
UNITED STATES DISTRICT JUDGE