

This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.

Dated: January 28, 2014



Beth A. Buchanan

Beth A. Buchanan
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI

In re:)	Case No. 13-13445
)	
Brian E. Leicht)	Chapter 7
Debtor)	Hon. Beth Buchanan
)	U.S. Bankruptcy Judge

**ORDER DIRECTING DISGORGEMENT OF ATTORNEY FEES,
DIRECTING PAYMENT OF FILING FEES TO THE COURT,
AND SUSPENDING ECF PRIVILEGES**

This matter is before this Court on the *Motion To Determine Excessiveness Of Attorney Fees Pursuant To 11 U.S.C. § 329, For An Order Directing The Attorney To Pay The Filing Fees, And Requesting Suspension Of ECF Privileges* [Docket Number 25] (the "Motion") filed by the United States Trustee (the "UST"). H. Kevin Garrison, attorney for Debtor Brian E. Leicht, was properly served with the Motion and notice of the Motion [Docket Number 26] electronically through this Court's ECF System and by regular mail on December 11, 2013. To date, no objection or other response to the Motion has been filed with this Court.

By the Motion, the UST is requesting that this Court review the reasonableness of the attorney fees charged by Attorney Garrison in this case and, if deemed excessive, to cancel any compensation agreement between the Debtor and Attorney Garrison and order the return of the fees deemed excessive to the Debtor. In addition, the Motion requests an order directing Attorney Garrison to pay the court filing fee from funds he previously collected from the Debtor and to suspend Attorney Garrison's ECF filing privileges until such time as the filing fee is paid.

The unrefuted facts in this case show that the Debtor's girlfriend, Marie Briggs, wrote a check to Attorney Garrison on December 22, 2010 in the amount of \$1,300 to file the Debtor's bankruptcy petition. The check represented the attorney fee charged by Attorney Garrison and the court filing fee of \$306. Notwithstanding follow-up by the Debtor with Attorney Garrison, the Debtor's bankruptcy petition was not filed until July 23, 2013—more than two and one-half years after Attorney Garrison was paid to file this case. The *Disclosure of Compensation of Attorney for Debtor(s)* filed in this case by Attorney Garrison pursuant to Section 329(a) of the Bankruptcy Code and Bankruptcy Rule 2016(b)¹ inaccurately reflects that Attorney Garrison received \$699 from the Debtor within one year before the filing of the petition for his legal services. Docket Number 1. Moreover, the answer to Question 9 of the *Statement of Financial Affairs* filed in this case also inaccurately reflects that Attorney Garrison received \$699 on June 27, 2013 from the Debtor as payment related to debt counseling or bankruptcy. *Id.*

From the Motion and the exhibits attached to the Motion, it appears without contest that Attorney Garrison received funds pre-petition from Ms. Briggs to pay the court filing fee for this case but Attorney Garrison did not remit the filing fee to the Clerk of Courts when the case was

¹ Unless otherwise indicated, the terms "Bankruptcy Code," "Section" and "§" refer to Title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* References to the "Bankruptcy Rules" are to the Federal Rules of Bankruptcy Procedure.

filed. The Motion and the record in this case further reflect that the Debtor's case was dismissed without a discharge for failure to pay the court filing fee. Docket Number 20. It was only upon the motion of the UST to vacate the dismissal order that the Debtor's case was reinstated. Docket Numbers 22 and 23.

By the Motion, the UST asks this Court to review the reasonableness of the attorney fees charged by Attorney Garrison in this case pursuant to Section 329(b) of the Bankruptcy Code. Section 329(b) provides that if compensation of an attorney representing a debtor in bankruptcy "exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive" either to the bankruptcy estate under conditions not applicable in this case, or to the entity that made the payment to the attorney. 11 U.S.C. § 329(b)(1), (2). Section 329(b) requires the court to review the *reasonableness* of the amount of the attorney fees paid. However, this Court concludes that it is not necessary to review the reasonableness of the fees paid to Attorney Garrison in order to grant the relief requested by the Motion.²

Pursuant to Section 329(a) of the Bankruptcy Code and Bankruptcy Rule 2016(b), an attorney representing a debtor is required to disclose to the court the compensation paid or agreed to be paid in contemplation of or in connection with a bankruptcy case, and the source of such compensation. 11 U.S.C. § 329(a), Fed. R. Bankr. P. 2016(b). Failure by an attorney to fully and completely disclose all fee arrangements and payments in compliance with Section 329(a) of the Bankruptcy Code and Bankruptcy Rule 2016(b) is grounds for denial of compensation and disgorgement of funds already paid as a sanction for violating an attorney's

² In addition to reviewing attorney compensation pursuant to Section 329(b) of the Bankruptcy Code, a court may sanction an attorney for misconduct or other violations of an attorney's duties to his or her client or to the court pursuant to Bankruptcy Rule 9011. Fed. R. Bankr. P. 9011(c); *see also In re Koliba*, 338 B.R. 48, 51 (Bankr. N.D. Ohio 2006) (observing that violations of an attorney's duties are often sanctioned pursuant to Bankruptcy Rule 9011).

fiduciary responsibility to the court, which is central to the integrity of the bankruptcy process. See e.g., *Henderson v. Kisseberth (In re Kisseberth)*, 273 F.3d 714, 720-21 (6th Cir. 2001); *Mapother & Mapother, P.S.C. v. Cooper (In re Downs)*, 103 F.3d 472, 477-78, 480 (6th Cir. 1996).

In this case, Attorney Garrison received \$994 for his services—not \$699 as represented by Attorney Garrison in his disclosures to this Court—plus \$306 for the court filing fee. Moreover, the funds were received more than two and one-half years before the case was filed, not within one year preceding the filing of the case. Accordingly, this Court finds that Attorney Garrison’s representations to this Court pursuant to Section 329(a) of the Bankruptcy Code and Bankruptcy Rule 2016(b) regarding compensation are materially false and warrant a sanction of complete disgorgement of all fees paid to Attorney Garrison in this case. This Court further finds that the disgorged fees should be payable to Ms. Briggs as the party who made the payments to Attorney Garrison. See *In re Kisseberth*, 273 F.3d at 722 (applying the § 329(b) remittance scheme to funds ordered disgorged under § 329(a)). Moreover, it is appropriate under the facts of this case to require Attorney Garrison to pay the balance of the court filing fee in this case to the Clerk of Courts. To date, \$150 of the court filing fee has been paid, Docket Number 16, leaving a balance due in the amount of \$156.

WHEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED**.
2. Attorney Garrison shall disgorge all attorney fees paid in this case. **Within ten (10) days of entry of this Order**, Attorney Garrison shall mail a cashier’s check or money order in the amount of \$994 payable to “Marie Briggs” c/o the Debtor, Brian E. Leicht, 4151 Mt. Carmel Tobasco, Apt. 8, Cincinnati, Ohio 45255.

3. Attorney Garrison shall remit the \$156 balance of the court filing fee that is due in this case to the Clerk of Courts **within ten (10) days of entry of this Order.** Attorney Garrison's **ECF filing privileges are hereby suspended** pursuant to ECF Procedure 2(g) and (h) until such time as the court filing fee is paid in accordance with this Order.
4. Attorney Garrison shall file an affidavit with this Court **within fourteen (14) days of entry of this Order** demonstrating his compliance with Order.

SO ORDERED.

COPIES TO:

Default List plus:

Clerk of Courts, United States Bankruptcy Court for the Southern District of Ohio

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