

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE: )  
)  
WILLIAM BOLIN and ) Bankruptcy Case No. 01-31512  
MARLENIA BOLIN, )  
)  
Debtors. )  
\_\_\_\_\_)  
)  
DONALD M. SAMSON, Trustee, )  
)  
Plaintiff, )  
)  
vs. ) Adversary Case No. 03-3094  
)  
JOHN J. ALLAN, )  
)  
Defendant. )

OPINION

This matter having come before the Court for trial on Plaintiff's Amended Complaint seeking judgment against Defendant, John J. Allan; the Court, having heard arguments of counsel and reviewed the written memoranda of law submitted by the parties; makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Findings of Fact

The material facts in this matter are not in dispute, and are, in pertinent part, as follows:

1. The Debtors filed for relief under Chapter 7 of the Bankruptcy Code on April 23, 2001.

On Schedule B of the Debtors' bankruptcy petition, they scheduled a medical malpractice claim of Debtor,

Marlenia Bolin, against Alton Memorial Hospital and others as an asset. The Debtors also claimed a \$7,500 exemption in that medical malpractice claim.

2. In order to administer the medical malpractice claim as an asset of the Debtors' bankruptcy estate, the Trustee contacted Attorney John J. Allan, who was representing Marlenia Bolin, to determine if John J. Allan would represent the estate in collection of the claim. Attorney John J. Allan accepted the Trustee's offer, and an Application to Employ Attorney John J. Allan as special counsel to litigate the malpractice claim was filed. An Order was subsequently entered by the Court allowing the Trustee to hire Attorney Allan. The Order specifically indicated that Attorney Allan's fee would be a 40% contingent fee plus reimbursement of out-of-pocket expenses. The Order also stated that all attorney fees were subject to the Court's final approval.

3. Following the employment of Attorney Allan, the Trustee sent periodic requests for status reports from Attorney Allan, and received reports dated June 3, 2002; July 26, 2002; and January 15, 2003. In the January 15, 2003, report, Attorney Allan reported that the case had been settled for the sum of \$20,000, that he had taken a fee of \$5,000, and that the remaining balance of \$15,000 had been dispersed to the Debtors. The record is clear that Attorney Allan had not submitted the settlement to the Trustee to obtain approval from the Trustee, nor had he requested approval of the Bankruptcy Court of his fees or of the settlement. The Trustee received none of the funds from the settlement proceeds.

4. Under the Order which approved the employment of Attorney Allan, the bankruptcy estate would have been entitled to approximately \$4,500 of the \$20,000 settlement, after Attorney Allan's fees had been deducted and the Debtors had received their \$7,500 exempt amount.

5. Attorney Allan does not dispute that he failed to seek Court approval of either his fee or

the settlement, but, rather, offers as an excuse that he simply forgot that the Trustee was his client given his frustration in dealing with the Debtors in reaching settlement of the medical malpractice claim. Attorney Allan also argues that he had expenses of approximately \$4,000 at the time the settlement was reached.

#### Conclusions of Law

Pursuant to 11 U.S.C. § 541, property of the bankruptcy estate includes all legal or equitable interest of the debtor in property as of the commencement of a bankruptcy case. At the commencement of the Debtors' Chapter 7 case herein, Debtor, Marlenia Bolin, had a medical malpractice case which was clearly property of the bankruptcy estate. This being the case, the Trustee followed the proper procedure and sought Court approval pursuant to 11 U.S.C. § 327, to hire Attorney John J. Allan to litigate the Debtors' medical malpractice claim to its conclusion. The Order entered by the Court approving the employment of Attorney Allan was clear in that he was allowed a 40% contingent fee, plus reimbursement of out-of-pocket expenses, and that that fee was subject to the Court's final approval as was the settlement. There can be no doubt that Attorney Allan was clearly on notice of his duties and responsibilities in this matter, and that his failure to seek Court approval of the settlement of the malpractice claim and of his fees was a breach of his duty. The failure of Attorney Allan to comply with the terms of the Order approving his employment has resulted in the instant adversary proceeding.

Pursuant to 11 U.S.C. §328, the Court has the authority to approve or deny compensation of professionals. In order to earn attorney's fees, an attorney must provide a service to his client. In this case, the Trustee was the client; the \$20,000 settlement was property of the estate; and the Attorney, John J. Allan, took the Trustee's settlement and, without knowledge or consent of the Trustee or the Court, kept \$5,000 of the estate's money and paid the remaining \$15,000 over to Debtors. By taking this action,

Attorney Allan provided no service to the estate, and is not entitled to fees. Attorney Allan failed to fulfill his obligation pursuant to the Order approving his employment, and is, thus, not entitled to the compensation set forth in said Order. For these reasons, the Court finds that a judgment should be entered against Attorney John J. Allan in the amount of \$5,000, and that that judgment should accrue interest at the rate of 9% per annum until fully paid.

ENTERED: March 15, 2004.

S/Gerald D. Fines

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GERALD D. FINES  
United States Bankruptcy Judge