

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

IN RE: )  
)  
GARY D. REUSCHER, )  
)  
Debtor, )  
) No. 90-40593  
ENERGY PRODUCTS ENGINEERING, ) ADV #90-0218  
INC., WILLIAM J. BOYLE, )  
an individual, )  
and SIDNEY A. GOULD, )  
)  
Appellants, )  
)  
VS. ) Case No. 96-CV-4138-JPG  
)  
GARY D. REUSCHER, )  
)  
Appellee. )

**ORDER**

**GILBERT, Chief Judge:**

This matter comes before the Court upon the appeal of Energy Products Engineering, Inc., William J. Boyle, and Sidney Gould.<sup>1</sup> (Doc. #5). Appellee has responded to the appellants' brief (Doc. # 8) and appellants have, in turn, replied to the appellee's response. (Doc. # 10).

Appellant has argued a plethora of, at times, incomprehensible points. In essence, Mr. Gould attempts to retry the adversary proceedings of the bankruptcy court. The only issues properly before the Court are 1) whether the bankruptcy

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<sup>1</sup>Herein referred to collectively as "Appellants."

Court erred in imposing sanctions against Sidney Gould and his client, and 2) if sanctions were proper, whether the amount of sanctions was appropriate.

This matter comes before the Court from an Amended Order Imposing Sanctions. On April 26, 1995, Bankruptcy Judge Kenneth J. Meyers ordered appellants to pay sanctions in the amount of \$9,340.53. Appellants sought relief from this Court. Upon review of the decision to impose sanctions, this Court vacated and remanded the decision to impose sanctions because the bankruptcy court failed to make written findings of fact and conclusions of law supporting the sanctions against the appellants. Upon remand, the Honorable Kenneth Meyers presiding, the bankruptcy court entered written findings of fact and conclusions of law. These findings are contained in the Amended Order Imposing Sanctions dated March 29, 1996.

In the Amended Order Imposing Sanctions, Judge Meyers makes it quite clear that Mr. Gould violated Federal Rule of Civil Procedure 11(b)(2)<sup>2</sup> and 11(b)(3). Judge Meyers found that the Complaint, Amended Complaint and other pleadings and

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<sup>2</sup>Fed.R.Civ.P. 11 was amended (effective December 31, 1993), while Fed.R.Bankr.P. 9011 was not. However, since the standard under Bankruptcy Rule 9011 is virtually the same as the standard under old Fed.R.Civ.P. 11, the cases interpreting former Fed.R.Civ.P. 11 apply here. *In Re Val Poterek & Sons, Inc.*, 169 B.R. 896, 908 (N.D. Ill. 1994).

representations made to the Court did not support the non-dischargeability claim made by the appellants pursuant to Bankruptcy Code §523(a)(4) against Gary Reuscher. Further, Judge Meyers determined that no evidence was presented that indicated Mr. Reuscher committed a violation of fraud or defalcation while acting in a fiduciary capacity. Judge Meyers concludes that "[p]laintiffs and their counsel further failed to engage in reasonable discovery or other methods of inquiry during the course of this proceeding in order to insure there was a reasonable factual basis for the complaint filed against Defendant Reuscher. At the hearing on the complaint, the Plaintiffs failed to present any evidence upon which the Court could have concluded that defendant owed a fiduciary duty to the Plaintiffs." Amended Order imposing Sanctions at 2. Because appellants failed to produce any such evidence, appellants violated Rule 11(b)(3).

The Court reviews the bankruptcy court's decision regarding sanctions for abuse of discretion. *Cooler & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990); *Kovilic v. Missbrenner*, 1997 WL 50516, \*2 (7th Cir. Feb. 10, 1997). The Court must review the record to determine whether the award of sanctions is supported by the articulated reasons of the bankruptcy court. *Pacific Dunlop Holdings v. Barosh* 22 F.3d 113, 118 (7th Cir. 1994). "As

with the clearly erroneous standard, the decision of a bankruptcy court can only be set aside under the abuse of discretion standard where the reviewing court is left with a definite and firm conviction that the bankruptcy court committed a clear error of judgment in its decision." *Devries Grain & Fertilizer, Inc. v. First National Bank of Winnebago*, 1990 WL 304245, \*3 (N.D.Ill. Nov. 21, 1990), citing *In re Carter*, 100 B.R. 123, 126 (D.Me. 1989)("abuse of discretion is shown where no reasonable man could agree with the decision.").

In *Matter of Excello Press, Inc.*, the Seventh Circuit held that when reviewing a bankruptcy court's imposition of Rule 9011 sanctions<sup>3</sup> against a party the determination of whether or not a party conducted a reasonable inquiry into the law and facts of a case depends upon the circumstances of the particular case. *Matter of Excello Press, Inc.*, 967 F.2d 1109, 1112-1113 (7th Cir. 1992). The Court stated "the examination of the reasonableness of an attorney's inquiry focuses on inputs rather than outputs, conduct rather than result." *Id.* quoting focusing on "inputs" the court imposing sanctions should look to whether counsel adequately investigated the facts supporting the

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<sup>3</sup>Rule 9011 of the Federal Rules of Bankruptcy Procedure is analogous to Rule 11 of the Federal Rules of Civil Procedure. *Matter of Excello Press, Inc.*, 967 F.2d 1109, 1111 (7th Cir. 1992).

underlying claim. *Id* at 1113. Here, the bankruptcy court imposed sanctions because Mr. Gould failed to conduct an adequate factual inquiry into the circumstances supporting the claim of non-dischargeability made on his clients behalf This failure to adequately inquire into the facts resulted in an inability to offer any evidence pertaining to a breach of fiduciary duty. Appellants failed to point to any evidence in the transcripts of the bankruptcy court proceedings that would allow this Court to make a determination that the bankruptcy court abused its discretion in making this determination.

Next, appellants dispute the amount of sanctions imposed. Judge Meyers ordered the appellees to submit reasonable attorney's fees associated with this case. Upon review of this submission, Judge Meyers imposed sanctions of \$9,340.53. This Court has reviewed the amount of sanctions imposed and finds that Judge Meyers did not abuse his discretion by holding that \$9,340.53 of fees is reasonable.

After review of the record on appeal and in light of the foregoing discussion, the bankruptcy courts imposition of sanctions against Mr. Gould and his clients, Energy Products, Inc. and William Boyle is **AFFIRMED**. The bankruptcy court did not abuse its discretion when it imposed sanctions against the appellants. This determination is supported by the record on

appeal. Similarly, Judge Meyers' determination of the amount of sanctions imposed was reasonable.

**IT IS SO ORDERED.**

**DATED: March 25, 1997.**

**/s/ J. PHIL GILBERT  
CHIEF JUDGE**