

UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF PUERTO RICO

In re: :
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MIGDALIA CERPA COBIAN : Case No. 94-03846 (GAC)
: :
Debtor : Chapter 13
: :
_____ :

OPINION AND ORDER

This case is before the Court upon debtor's attorney's application for compensation and reimbursement (Dkt.# 12) and the amended application (Dkt.# 19). The debtors' attorney has requested \$2,860.00 in compensation and \$285.90 for costs.

Generally, Chapter 13 cases involve a number of routine issues which become familiar to the regular practitioner. The time involved in an average Chapter 13 case up through confirmation is ten hours. In re Lopez Rodriguez, 76 B.R. 252 (Bankr. D.P.R. 1987); see also In re Pearson, 156 B.R. 713, 717 (Bankr. D. Mass. 1993). Because the issues are routine and the time involved is roughly the same from case to case, it is common for courts to approve of a fixed rate of compensation for attorney services in a Chapter 13 case. "The practice in this district is to charge a fixed rate for the filing of a Chapter 13 petition." In re Lopez Rodriguez, 76 B.R. at 254. In In re Lopez Rodriguez, the court determined that a rate of \$460 to \$600 for the filing of a Chapter 13 petition was reasonable provided that the attorney provided the expected quality of

representation. Since Lopez was decided, the standard fee has been raised to \$900.

Attorneys may submit detailed fee applications in excess of the standard rate of \$900. In this situation, the court applies the loadstar method to determine the reasonableness of the fees requested. Under the loadstar analysis, the beginning point is the number of hours worked multiplied by a reasonable hourly rate. Reasonable hourly rates in Chapter 13 cases have been determined to be less than the rates charged in Chapter 11 cases. As previously indicated, the time and labor required in the average Chapter 13 case is ten hours. Allowing a standard fee of \$900 is an implicit determination that the reasonable hourly fee in a Chapter 13 case is \$90 per hour. This hourly rate takes into account that much of the billable time in a Chapter 13 case is spent doing tasks that are routine, administrative and paralegal in nature. For example, tasks such as preparing the bankruptcy petition and preparing the schedules are basically paralegal work and eligible for compensation at a much lower rate than other tasks.

In the present case, the debtors' attorney has indicated that he provided 23.3 hours of legal services. At a rate of \$90 per hour, this would amount to \$2097 in compensation. Accordingly, the court will begin the loadstar analysis using this amount. The allowable fee may then be adjusted upward or

downward based on a number of other factors. Some of the factors which may be considered include:

(1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorney's fees awards in similar cases.

In re Lopez Rodriguez, 76 B.R. at 253 (citations omitted). These factors all relate to the nature, extent and value of the services performed.

In the present case, the court notes that the entire amount of fees requested relate to services performed up to and including the confirmation hearing. The debtors' attorney has indicated that he has expended 23.3 hours on this case. After reviewing the file, the court finds that this case presented no novel or particularly difficult issues. Thus, the skill level required did not exceed that required in the average case. The debtors' attorney's opportunity cost would be his standard hourly rates, but the customary fee for like work would be the standard fee of \$900 adjusted by the amount of work required beyond that required in the average case. The expectations in a Chapter 13

case should always be to achieve confirmation of the case. Confirmation has not yet occurred in this case. The time limitations imposed by circumstances almost always are constricting. The base of the amended plan in this case is \$42,000. Thus, considering the foregoing factors, the court finds that a number of the factors are neutral, but others weigh in favor of a downward adjustment from the fees requested.

Looking at the fee applications themselves, the court notes that \$190 of the sum requested relates to the debtors' attorney's fees for filing documents with the court and the trustee. Each time a document was filed, the attorney charged between \$30 and \$40. Filing a document does not require the services of an attorney. It consists of presenting the document for a time and date stamp. This task is not compensable as an allowable item of attorney's fees. In other instances the application is not sufficiently detailed. There are numerous references to reviewing files with no further indication of the reason for the review. These factors would tend to suggest that the requested attorney's fees should be adjusted downward.

There were two motions objecting to confirmation and requesting dismissal. Both motions alleged that the debtor was in arrears on post-petition payments. One motion also alleged that the plan was insufficiently funded. The presence of motions to dismiss would usually indicate that additional legal services,

beyond those required in the routine Chapter 13 case, would be required. In this case, however, the file and the docket for this case reflect that neither of these motions was responded to in writing by the debtor's attorney other than to file form motions requesting an extension of time to respond to them. Thus, the fact that two motions to dismiss were filed in this case does not suggest that the allowable fees should be adjusted upward.

The debtor's attorney charged \$30 to draft a motion to vacate dismissal after the dismissal had already been ordered vacated. Fees will not be allowed for this.

The debtor's attorney did perform services related to seeking a modification of the debtors' utility deposit with the Puerto Rico Electric Power Authority. This was not contested by the utility. The debtor's attorney also performed services related to the mortgage foreclosure action that was pending at the time of the filing of the bankruptcy petition. Finally, the debtor's attorney was required to file an amended plan. The performance of these tasks would suggest that the allowable fees should be increased.

The court finds that \$2,860.00 in attorney's fees in this case is unreasonable. The court does not find that this case justifies a fee award almost four times as great as the fees awarded in the standard case. The court does find that the case

may have involved slightly more time than the average Chapter 13 case and for that reason the court will allow the standard fees of \$900 plus compensation for an additional three hours of services at the \$90 per hour rate.

Wherefore, IT IS ORDERED that the court will approve twelve hours of compensation at \$90 per hour for a total compensation award of \$1080. Debtors' attorney is also awarded \$285.90 for reimbursable expenses. The total compensation and expenses amount to \$1365.90, less the \$381 that he received from debtor. Accordingly, debtor's attorney is awarded \$984.90.

SO ORDERED.

Dated at San Juan, Puerto Rico this ____ day of March, 1995.

Gerardo A. Carlo
U.S. Bankruptcy Judge