

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH DAKOTA

ROOM 211

FEDERAL BUILDING AND U.S. POST OFFICE

225 SOUTH PIERRE STREET

PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT

BANKRUPTCY JUDGE

TELEPHONE (605) 224-0560

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July 1, 2004

Mr. Tom Harrington  
Post Office Box 195  
Waubay, South Dakota 57273

Curt R. Ewinger, Esq.  
Counsel for Debtor  
Post Office Box 96  
Aberdeen, South Dakota 57402

Subject: *In re Duane J. and Carol J. Gaikowski,*  
Chapter 13; Bankr. No. 03-10193

Dear Mr. Harrington and Mr. Ewinger:

The matter before the Court is the Application for Allowance of Attorney's Fees and Reimbursement of Expenses for Curt R. Ewinger filed by Attorney Ewinger on May 26, 2004, and the objection to the Application filed by Tom Harrington on May 28, 2004. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and accompanying order shall constitute the Court's findings and conclusions under Federal Rules of Bankruptcy Procedure 7052 and 9014(c). As set forth below, the Application will be approved.

*Summary of material facts.* Debtors Duane J. and Carol J. Gaikowski filed a Chapter 7 petition in bankruptcy on May 23, 2003. They voluntarily converted their Chapter 7 case to a Chapter 13 case on January 23, 2004. On February 19, 2004, Debtors' filed their proposed repayment plan. Objections to the plan were filed by the Farm Service Agency and the case trustee, Dale A. Wein. A confirmation hearing was held March 24, 2004. At the hearing, both the Farm Service Agency and Trustee Wein withdrew their objections and the Court confirmed Debtors' plan as it was originally filed.

Debtors' confirmed plan provides that they will make 36 monthly payments of \$262.78 and three annual payments of \$2,780.11 to Trustee Wein who will then distribute the funds to creditors. One creditor included in the plan is Debtors' bankruptcy attorney, Curt R. Ewinger. The plan states that Attorney Ewinger will be paid up to \$5,000.04 through the plan based on 36 monthly payments of \$138.89. The plan classifies

Re: Duane J. & Carol J. Gaikowski  
July 1, 2004  
Page 2

Attorney Ewinger as a priority creditor. The plan also sets forth how the claims of several secured creditors will be paid, and it states unsecured creditors will receive a small distribution from the regular payments Debtors make to the Trustee and from any disposable income Debtors may have during the three-year plan term.

Attorney Ewinger filed a fee application on May 26, 2004. On May 28, 2004, Tom Harrington filed an objection to Attorney Ewinger's fee application. He argued his claim, which is older than Attorney Ewinger's, should be paid first.

*Discussion.* Several sections of the United States Bankruptcy Code govern the payment of fees to the debtor's bankruptcy attorney. Section 507 provides that certain types of claims have priority in a bankruptcy case. Section 507(a)(1) says administrative expenses, which include the fees awarded to the debtor's attorney, have the *first* priority. In a Chapter 13 case, these administrative expenses must be paid in full during the plan term, as required by section 1322(a)(2). Section 330(a) sets forth the criteria for determining the amount of fees that the debtor's attorney can receive as an administrative expense.

The fees that Attorney Ewinger has sought for the bankruptcy work he performed for Debtors meet the criteria of section 330(a). They will be awarded as requested. Attorney Ewinger is not being paid ahead of any other creditor at Debtors' or the Court's insistence, but only as required by the Bankruptcy Code. Accordingly, Mr. Harrington's objection will not be sustained.

An appropriate order awarding Attorney Ewinger's fees will be entered.

Sincerely,

/s/ Irvin N. Hoyt

Irvin N. Hoyt  
Bankruptcy Judge

INH:sh

CC: case file (docket original; serve parties in interest)