

SIGNED.

Dated: January 7, 2013



James M. Marlar

James M. Marlar, Chief Bankruptcy Judge

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7 **UNITED STATES BANKRUPTCY COURT**
8 **DISTRICT OF ARIZONA**

9 In re:

10 THOMAS FERNANDEZ and JAMIE
11 FERNANDEZ,

Debtors.

Chapter 7

No. 0:12-bk-19916-JMM

MEMORANDUM DECISION

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13 **INTRODUCTION**

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15 Before the court is the Trustee's motion for disgorgement of excess or unreasonable fees
16 paid to Debtors' attorney (ECF No. 20). This court has the authority to review fees paid to
17 Debtors' counsel pursuant to 11 U.S.C. § 329. After notice and hearing and review of the entire
18 case, this court now rules.

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20 **PROCEDURE**

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22 This case presents a "core" proceeding to the court. 28 U.S.C. § 157(b)(2)(A).

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24 **FACTS**

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26 The Debtors filed their Chapter 7 petition on September 6, 2012.
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1 Debtors' counsel received a fee of \$2,380. The Debtors' schedules were reflective of
2 more involvement, as the Debtors owned real property, and were both employed. They owned
3 two vehicles.

4 The Trustee's concerns here deal with the allegation that the attorney assisted her clients
5 in transforming non-exempt assets into exempt assets, and then inaccurately reported the values
6 of the newly-acquired items. In addition, the Trustee ferreted out an additional--and
7 undisclosed--\$1,000 paid to the attorney, which she responds was for an unrelated civil matter.

8 The Trustee is correct on all fronts. An attorney must be candid and openly honest in all
9 matters presented to the court. The \$1,000 paid for the unrelated matter was required to be
10 disclosed in questions 3 or 9 of the statement of affairs. This was dishonest not to report it.
11 Nor was it reported in the amendments filed on October 17 and November 5, 2012 (ECF Nos.
12 18, 25).

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14 **CONCLUSION**
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16 As a sanction for non-disclosure of the \$1,000 paid for the alleged unrelated matter, the
17 court will order a sanction of \$1,000 to be paid to the Trustee, for distribution to creditors. For
18 failure to accurately describe property values, knowing about the conversion of non-exempt
19 assets to exempt ones, the Debtors' attorney is penalized \$500, as a reduction of her fee of
20 \$2,380.

21 Counsel shall disgorge \$1,500 to the Trustee within 30 days for distribution to creditors.
22 Once received, the Trustee shall file a receipt with the court. A final order will be separately
23 entered. Any appeal must be filed within 14 days after its entry on the docket. FED. R. BANKR.
24 P. 8002.

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26 DATED AND SIGNED ABOVE.
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1 To be NOTICED by the BNC ("Bankruptcy Noticing Center") to:

2 Attorney for Debtors

3 Debtors

4 Trustee

5 Office of the U.S. Trustee

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