

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:

Case No. 6:04-bk-09253-KSJ
Chapter 7

LINDA J. NOFZIGER,

Debtor.

FINDINGS OF FACT AND CONCLUSIONS OF
LAW DIRECTING MITCHEL KALMANSON TO
REIMBURSE TO THE DEBTOR DEPOSITION
COSTS OF \$385.50

In the Order Directing Mitchel Kalmanson to Reimburse Deposition Costs (Doc. No. 788), and for the reasons explained more fully in the related Memorandum Opinion (Doc. No. 809, pages 36-38), the Court directed Mitchel Kalmanson “to reimburse the debtor for all costs she incurred in taking his deposition, including all court reporter and transcription costs.” The debtor has timely submitted an affidavit (Doc. No. 807) requesting reimbursement of \$677.50.

The debtor, however, only included sufficient supporting documentation to substantiate expenses of \$385.50. Specifically, the debtor paid Zacco & Associates \$70.00 to attend Kalmanson’s deposition on October 25, 2007, \$97.50 for an original transcript of the deposition she was unable to complete due to Kalmanson’s misconduct, \$150 for the transcript of Kalmanson’s deposition taken on November 27, 2007, and \$68 in taxi costs the debtor incurred in attending the original hearing on the Court’s Order to Show Cause¹ (Doc. No. 671). All of these costs are reasonable and relate directly to the cost the debtor incurred in attempting to take Kalmanson’s deposition.

Kalmanson, in an untimely, lengthy and largely irrelevant response,² objects to reimbursing the debtor for any amount (Doc. No. 808).

¹ The hearing on the Order to Show Cause (Doc. No. 671) originally was scheduled for December 4, 2007. The hearing was continued until December 10, 2007, to be considered together with all of the other disputes between the parties during the five-day trial.

² The vast majority of Kalmanson’s response seeks reconsideration of the Court’s numerous prior rulings asking for a new trial, a new judge, and, essentially, a new forum. The Court already has addressed Kalmanson’s duplicate request for reconsideration (Doc. Nos. 164 and 165 in related Adversary Proceeding 6-35).

Kalmanson makes three relevant objections: (1) he should not have to pay costs for more than one deposition; (2) he should not have to reimburse the debtor for any travel expenses; and (3) the debtor has failed to attach sufficient documentation to obtain reimbursement.

Kalmanson first objects that he should not have to pay the cost for more than one deposition. However, it was entirely Kalmanson’s misconduct which caused the debtor’s entitlement to reimbursement. If Kalmanson had cooperated in the discovery process, he would have finished his deposition, and the debtor *would* have paid all associated costs. He did not and, now, is required to reimburse the debtor for all costs she incurred and can substantiate as a consequence of his actions.

Kalmanson secondly objects to reimbursing the debtor \$68 for the cost of a taxi to attend the original hearing on the Order to Show Cause held on December 4, 2007, arguing that the charge is unrelated to the depositions at issue. The hearing was scheduled to determine what amounts, if any, Kalmanson should pay to the debtor arising from Kalmanson’s failure to civilly complete his deposition. The de minimus travel cost is directly related to the damages the debtor suffered as a result of Kalmanson’s misconduct and is properly included in the amount he should reimburse.

Kalmanson thirdly objects that the debtor failed to fully substantiate the charges and costs she incurred in taking his depositions. The Court, in part, agrees. The debtor has provided sufficient indicia that she incurred costs of \$385.50, as listed above. She did not provide sufficient proof of any additional charges, although she likely did pay more. Therefore, the Court partially sustains this objection and will require Kalmanson to reimburse the debtor only \$385.50 of the total amount she sought.

Kalmanson specifically objects to the inclusion of a charge of \$150 incurred by the debtor in obtaining a transcript of his deposition taken on November 27, 2007. The debtor did not attach a specific invoice for this service; however, the debtor did file the resulting transcript, which was introduced during the trial as Debtor’s Exhibit Number 115. As such, the charge clearly was incurred, and the amount of \$150 seems imminently reasonable given the length of the transcript.

In conclusion, for the reasons stated above, Mitchel Kalmanson is directed to pay the debtor, Linda Nofziger, \$385.50 within 15 days of the entry of this order. A separate order consistent with this Memorandum Opinion shall be entered.

DONE AND ORDERED on August 8,
2008.

/s/ Karen S. Jennemann
KAREN S. JENNEMANN
United States Bankruptcy Judge

Copies provided to:

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