

ORDERED.

Dated: July 20, 2023



Caryl E. Delano
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
www.flmb.uscourts.gov

In re:

Case No. 2:21-bk-00123-FMD
Chapter 13

Gregory Brian Myers,

Debtor.

_____ /

ORDER (1) APPROVING UNDINE C. GEORGE, ESQUIRE'S APPLICATION FOR FINAL COMPENSATION & ADMINISTRATIVE CLAIM, AND (2) DENYING DEBTOR'S MOTION FOR DISGORGEMENT OF FEES

On January 28, 2021, Gregory Myers ("Debtor") filed this Chapter 13 case. Two years later, in January 2023, the Court dismissed the case with prejudice on the grounds that Debtor had not filed the petition or his Chapter 13 plan in good faith. After the case was dismissed, Debtor's former attorney, Undine C. George ("George") filed an *Application for Final Compensation & Administrative Claim* (the

“Application”) seeking payment of her attorney’s fees and costs as an administrative claim under 11 U.S.C. § 330(a) and 11 U.S.C. § 503(b)(2).¹

Debtor objected to the Application and also filed a motion for disgorgement of the fees paid to George.² For the reasons explained below, the Court overrules Debtor’s objections to the Application, allows George’s fees and costs in the amount requested in the Application, and denies Debtor’s motion for disgorgement.

I. BACKGROUND

Prior to filing his current Chapter 13 case, Debtor had filed three other bankruptcy cases: a Chapter 7 case in Maryland (Case No. 15-26033); a Chapter 13 case in Delaware (Case No. 19-10392); and a Chapter 13 case in Maryland (Case No. 19-17428). The Maryland Bankruptcy Court denied Debtor’s discharge in his Chapter 7 case, but the case remains an open Chapter 7 case.

On January 28, 2021, Debtor consulted with George about filing a fourth bankruptcy petition, and George agreed to represent him in the current Chapter 13 case. In George’s letter of representation, Debtor acknowledged that George had advised him regarding “the impact of filing a second chapter 13 petition after a prior dismissal of a chapter 13 action, and while having a prior chapter 7 action still open in Maryland.”³

¹ Doc. Nos. 382 and 422.

² Doc. Nos. 407, 415, 425, and 426.

³ Doc. No. 422-2, p. 1.

This Chapter 13 case was complicated from its outset, as evidenced in part by (a) Debtor's filing of an unsigned statement that he holds claims against 43 third parties and is a party in 19 lawsuits;⁴ (b) Debtor's filing of unconfirmable Chapter 13 plans, including a First Amended Plan, a Second Amended Chapter 13 Plan, and a Third Amended Plan;⁵ (c) creditors' objections to Debtor's Third Amended Plan alleging bad faith, among other grounds;⁶ (d) at least two motions to dismiss the case on the grounds that Debtor acted in bad faith;⁷ (e) Debtor's objection to every proof of claim filed in the case;⁸ (f) Debtor's unfounded motions to avoid alleged judicial liens under 11 U.S.C. § 522(f);⁹ (g) Debtor's removal of two Maryland state court lawsuits on the eve of the lawsuits' trials;¹⁰ and (h) Debtor's multiple appeals of this Court's orders.¹¹

On October 12, 2022, George filed a Motion for Leave to Withdraw as Debtor's attorney on the grounds of irreconcilable differences.¹² On October 27, 2022, the

⁴ Doc. No. 30.

⁵ Doc. Nos. 28, 76, 135, and 206.

⁶ Doc. Nos. 244, 248, 249. Objections were filed by Naples Golf and Beach Club, Inc., the Naples Property Holding Parties, and U.S. Bank National Association, as Trustee.

⁷ Doc. Nos. 58, 183, 187. Motions were filed by Brian King, Cristina King, and the Cristina and Brian King Children's Trust, and U.S. Bank National Association, as Trustee.

⁸ Doc. Nos. 69, 84, 89, 110, and 342.

⁹ Doc. Nos. 117, 131, 321, and 347. Unless otherwise stated, statutory references are to the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.*

¹⁰ Adv. Pro. Nos. 2:22-ap-048-FMD and 2:22-ap-049-FMD.

¹¹ Doc. Nos. 226, 230, 303, and 383.

¹² Doc. No. 294.

Court granted the motion to withdraw and relieved George of further responsibility in the case.¹³

On January 19, 2023, the Court held a Seventh Continued Confirmation Hearing on Debtor's Third Amended Plan.¹⁴ At that hearing, the Court denied confirmation of Debtor's Chapter 13 plan and dismissed the case, and thereafter memorialized its ruling in a written *Memorandum Opinion Denying Confirmation and Dismissing Case*.¹⁵ Generally, the Court ruled that Debtor did not file his Chapter 13 case or the Third Amended Plan in good faith, as demonstrated by Debtor's actions to frustrate his many opponents in pending state court litigation and by his failure to propose a plan that satisfies the requirements of § 1325 for confirmation.¹⁶ In light of Debtor's previous bankruptcy filings, the Court dismissed the case with prejudice, prohibiting Debtor from filing another bankruptcy case for two years.¹⁷

Shortly after the case was dismissed, George filed the Application and a supplement to the Application.¹⁸ Debtor filed an objection to the Application and two supplemental objections (together, the "Objection").¹⁹ Debtor later filed a motion for disgorgement of the fees paid to George.²⁰

¹³ Doc. No. 305.

¹⁴ Doc. No. 370.

¹⁵ Doc. No. 368.

¹⁶ Doc. No. 368, pp. 12-13.

¹⁷ Doc. No. 380.

¹⁸ Doc. Nos. 382 and 422.

¹⁹ Doc. Nos. 407, 415, and 425.

²⁰ Doc. No. 426.

II. THE APPLICATION FOR FINAL COMPENSATION

In the Application, George seeks attorney's fees of \$51,872.92 and expenses of \$671.68 for the 21-month period from January 28, 2021, to October 27, 2022. She contends that she spent 159.61 hours performing services in the case and that her written agreement with Debtor provided for her to be paid at the rate of \$325.00 per hour. George attached her billing statements to the Application, which include a breakdown of her services by date, description, and time spent.²¹

In his objection, Debtor primarily asserts that George is not entitled to an award of any fees because, he alleges, (a) she was negligent in her representation of him; (b) she was not disinterested; (c) she violated Administrative Order FLMB-2020-7 by demanding payment of \$30,000.00 as a condition of providing future services; and (d) she violated the automatic stay by representing that her firm would seek a charging lien if Debtor did not pay its invoices. In addition, Debtor asserts that George may not receive payment of her fees from the undisbursed funds held by the Chapter 13 Trustee because those funds must be refunded to him under § 349.

A. George's fees are allowable under § 330.

Under § 330(a)(4)(B), the Court may award reasonable compensation to a Chapter 13 debtor's attorney "based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section." The

²¹ Doc. No. 382, pp. 9-23.

attorney in a Chapter 13 case represents the interests of the debtor, rather than the interests of the bankruptcy estate, and a Chapter 13 debtor's attorney may be entitled to compensation even if the case is dismissed before the debtor's plan is confirmed.²² In determining reasonable compensation under § 330, courts generally consider "the nature, the extent, and the value of such services," based on relevant factors such as the time and rate charged, and whether the services were beneficial at the time that they were rendered toward completion of the case.

It is clear to the Court that George performed the services described in the Application. The Court reviewed the motions and papers filed by George on Debtor's behalf and observed George's appearances at the hearings in this case. While Debtor's positions often were only marginally supported in the law, the Court finds that George competently presented Debtor's arguments and asserted Debtor's interests.

The Court gives little weight to Debtor's claim that George did not work diligently to achieve confirmation of his Chapter 13 plan or file all appropriate motions to obtain a positive result in the case. Rather, it is the Court's perception that George undertook a difficult case – Debtor's fourth bankruptcy case – and attempted to follow Debtor's direction in the bankruptcy context.

²² *In re Nales-Perez*, 506 B.R. 328, 332 (Bankr. D.P.R. 2014).

For example, in late 2021, U.S. Bank NA, as successor trustee (the “Bank”) filed a motion for relief from the automatic stay, and George, on Debtor’s behalf, filed a written opposition to the motion.²³ On March 8, 2022, the Court entered an order granting *in rem* relief from the stay in favor of the Bank.²⁴ Under Administrative Order FLMB-2020-7, the Bank’s entitlement to *in rem* relief was unquestionable because Debtor’s Chapter 13 plan did not provide for its secured claim.²⁵ But George, on Debtor’s behalf, filed a motion for reconsideration of the order and appeared at a hearing on June 9, 2022, to present Debtor’s position for reconsideration of the Court’s ruling.²⁶ After the Court denied the motion for reconsideration,²⁷ Debtor himself – not George – filed a Notice of Appeal of the order.²⁸

Similarly, George filed a motion on Debtor’s behalf to avoid what he contended was an avoidable lien that impaired an exemption on funds on deposit in the registry of the Maryland bankruptcy court.²⁹ Debtor had deposited the funds in the Maryland bankruptcy court’s registry pursuant to that court’s order approving Debtor’s agreement with U.S. Bank National Association, as Trustee, for adequate protection pending the outcome of Debtor’s appeal of the bank’s foreclosure

²³ Doc. Nos. 122 and 132.

²⁴ Doc. No. 165.

²⁵ Administrative Order FLMB-2020-7, ¶ 9.

²⁶ Doc. Nos. 172 and 207.

²⁷ Doc. No. 217.

²⁸ Doc. No. 226.

²⁹ Doc. Nos. 131 and 160.

judgment in Florida's Second District Court of Appeals. After the bank prevailed in the appeal, Debtor contended that the funds were exempt tenants by the entireties property and the Maryland bankruptcy court order was an avoidable judicial lien under § 522(f). George appeared at hearings on the motion and effectively presented Debtor's position. However, this Court denied the motion, finding that the Maryland court's order is not a judicial lien,³⁰ and Debtor himself – not George – filed a motion for reconsideration of the Court's ruling.³¹ When the Court denied Debtor's motion for reconsideration,³² Debtor himself – not George – appealed the Court's ruling.³³ That appeal, District Court Case No. 2:22-cv-498-JES, remains pending.³⁴

Debtor's actions demonstrate that legal services performed by George in his Chapter 13 case were performed at his direction.

George has been a practicing attorney for more than 17 years and has represented clients in bankruptcy cases for more than 12 years.³⁵ The Court finds that George's hourly rate of \$325.00 is reasonable, and the 159.61 hours she spent performing services were reasonable given the number of issues she addressed at Debtor's behest. The Court finds that the total amount of fees sought, \$51,872.92, is

³⁰ Doc. No. 210.

³¹ Doc. No. 215.

³² Doc. No. 220.

³³ Doc. No. 230.

³⁴ Debtor, acting *pro se*, also filed three other Notices of Appeal in this case (Doc. Nos. 226, 303, and 383).

³⁵ Doc. No. 382, ¶ 7.

reasonable, as is the requested reimbursement of expenses of \$671.68 for the 21-month period from January 28, 2021, to October 27, 2022. Therefore, the Court overrules Debtor's Objection to the extent that it is based on George's alleged negligence and rules that George's attorney's fees and costs are reasonable and allowable under § 330.

B. Debtor did not show that George has an interest adverse to his interest.

Under § 329, the Court may cancel a fee agreement between a debtor and his attorney if the compensation exceeds the reasonable value of the attorney's services, and the existence of a conflict of interest is a relevant factor in determining the reasonableness of the attorney's fees.³⁶ However, the section does not prohibit the payment of a retainer by a non-debtor as long as the source of the funds is disclosed.³⁷

In the Application, George states that Debtor and his spouse, Barbara Ann Kelly ("Ms. Kelly"), paid George her original retainer of \$4,866.00, and that Ms. Kelly paid a second retainer of \$5,000.00.³⁸ In addition, on June 6, 2022, Ms. Kelly signed a *Personal Guaranty of Client's Spouse* (the "Guaranty") in which she guaranteed payment of the attorney's fees owed by Debtor to George.³⁹ Debtor contends that

³⁶ *In re Ezell*, 502 B.R. 798, 813-14 (Bankr. N.D. Ill. 2013).

³⁷ *In re Nunez*, 598 B.R. 696, 705 (Bankr. E.D.N.Y. 2019); *In re Gay*, 390 B.R. 562, 570 (Bankr. D. Md. 2008).

³⁸ Doc. No. 382, ¶ 1.

³⁹ Doc. No. 422-5.

George is not disinterested because of her “alleged representation of Barbara Ann Kelly’s interests” at the same time that she was representing Debtor’s interests.⁴⁰

But George disclosed early in the case that Ms. Kelly had paid the largest part of her retainer. On her February 26, 2021 *Disclosure of Compensation of Attorney for Debtor*, George stated that she had received \$9,500.00 prior to the filing of the disclosure, that \$1,000.00 of that amount was paid by Debtor, and that the balance was paid by Ms. Kelly.⁴¹

In addition, although Debtor alleged that George is not disinterested, he did not support the allegation with any showing that George represented Ms. Kelly in any matter that conflicted with his own interest. For example, Debtor did not make any factual allegation that George represented Ms. Kelly in any proceeding in which Debtor was an opposing party or that George represented Ms. Kelly in any claims that Ms. Kelly asserted against Debtor.

George disclosed the source of her retainer, and Debtor did not show that George represented Ms. Kelly in any matter that was adverse to his own interest. Therefore, the Court overrules Debtor’s Objection to the extent that it is based on George’s alleged lack of disinterestedness.

⁴⁰ Doc. No. 407, pp. 7-8.

⁴¹ Doc. No. 29.

C. George did not violate Administrative Order FLMB-2020-7.

The Court's Administrative Order FLMB-2020-7 (the "Administrative Order") is titled *Administrative Order Prescribing Procedures for Chapter 13 Cases Filed on or After August 1, 2020* and applies to Chapter 13 cases filed in the Middle District of Florida.

Paragraph 17 of the Administrative Order provides in part:

17. *Duties of Debtor's Attorney and Payment of Attorney's Fees.* . . . Debtor's counsel shall not withhold legal advice or service from Debtor because of lack of payment and may not demand payment from Debtor or any person on behalf of Debtor as a condition of providing legal advice or service.

Debtor contends that George violated the Administrative Order by sending him an email on October 5, 2022, in which she demanded payment of \$30,000.00 in exchange for her agreement not to withdraw from his case.⁴²

Based on the record, including Debtor's own filings, the events surrounding George's email are as follows: On the date of the email, October 5, 2022, Debtor wished to file a motion for reconsideration of an order granting relief from the automatic stay that the Court had entered 14 days earlier.⁴³ George wrote to Debtor on October 5 that she was unable to effectively respond to his last-minute instructions, that they had "been here before," and that:

If you can provide a \$30,000 deposit into the firm's escrow account, I will not withdraw. This is a generous suggestion because that was the

⁴² Doc. No. 407, p. 4; Doc. No. 415, ¶ 4.

⁴³ Doc. Nos. 286 and 292. Under Fed. R. Bankr. P. 9023, a motion for rehearing must be filed "no later than 14 days after entry of judgment."

balance many months ago. The funds will merely be held in escrow until a court order approving them, but we must have something in hand to keep working.⁴⁴

The following week, on October 12, 2022, George filed her motion for leave to withdraw as Debtor's attorney.⁴⁵ The Office of the United States Trustee investigated Debtor's claim that George's request for payment violated the Administrative Order⁴⁶ and did not pursue the matter.

The Court finds that George's request for a \$30,000.00 deposit did not violate the Administrative Order for at least two reasons.

First, George expressly stated in her email that the funds would be placed in her firm's escrow account and would not be applied or spent until the Court approved her fees. In other words, although George asked Debtor to make the fees available, George agreed to hold the funds in trust and return any balance to Debtor in the event that the Court approved her fees for a lesser amount.

Second, by October 5, 2022, George had provided services to Debtor for over 18 months in an unusually difficult Chapter 13 case. The record reflects 290 docket entries in the case as of October 5, 2022, including George's appearance at 12 hearings involving objections to confirmation of Debtor's plan, motions for relief from the automatic stay, motions to dismiss the case, motions to avoid alleged judicial liens,

⁴⁴ Doc. No. 415, p. 9; Doc. No. 422-6.

⁴⁵ Doc. No. 294.

⁴⁶ Doc. No. 415, p. 8.

and objections to proofs of claim.⁴⁷ Therefore, the \$30,000.00 deposit requested by George represented fees for services that she had already performed, not fees for services that she would perform in the future if Debtor made the deposit.⁴⁸

Finally, the Administrative Order provides that the Court “*may* order a reduction” in the amount of the fees requested by an attorney who does not comply with the Administrative Order’s requirements.⁴⁹ The disallowance of some or all of an attorney’s fees for violating the Administrative Order is discretionary, not mandatory.

Here, George agreed that the \$30,000.00 payment would be held in escrow pending a Court order and she had already earned the fees by the time that she requested the deposit. For these reasons, the Court rules that George did not violate the Administrative Order by requesting the \$30,000.00 payment from Debtor. In addition, even if the request did violate the Administrative Order, the Court has considered the circumstances of the request and exercises its discretion to allow the fees in the amount requested in the Application.

⁴⁷ Doc. Nos. 23, 64, 87, 88, 113, 121, 142, 143, 158, 175, 207, and 263.

⁴⁸ In fact, George wrote to Debtor on April 20, 2022, that he had incurred fees totaling \$37,146.20, of which \$30,233.70 remained outstanding. (Doc. No. 422-4.)

⁴⁹ Administrative Order FLMB-2020-7, ¶ 17 (emphasis added).

D. George did not violate the automatic stay.

Debtor contends that George violated the automatic stay by representing to him that her firm would seek a charging lien if Debtor did not pay its invoices.

On March 28, 2022, George wrote Debtor a letter with the stated purpose of amending the January 28, 2021 engagement contract.⁵⁰ George's proposed amendment, which Debtor did not sign, related to George's scope of work, the parties' relative rights and responsibilities, and payment of George's fees and expenses. In a section titled "Payment & Enforcement Terms Updates," the proposed amendment provides that, if Debtor did not pay an invoice after it was due, George's law firm "will seek an attorney's fee charging lien on all real and personal property at issue in the proceedings (including homestead property)."⁵¹ Debtor contends that the provision violates the automatic stay's prohibition against any act to obtain property of the estate.⁵²

"Section 362(a) generally prevents creditors from attempting to collect debts owing by the debtor, from the debtor or from property of the estate."⁵³ The automatic stay prohibits attempts to collect a prepetition debt owed by the debtor; the stay does not prohibit all informational communications with a debtor in bankruptcy.⁵⁴ To

⁵⁰ Doc. No. 422-4, pp. 2-6.

⁵¹ Doc. No. 422-4, p. 4.

⁵² Doc. No. 407, p. 8; Doc. No. 415, ¶ 3; Doc. No. 425, p. 2.

⁵³ *In re Kay Bee Kay Properties, LLC*, 618 B.R. 486, 491 (Bankr. E.D. Mich. 2020).

⁵⁴ *In re Schatz*, 452 B.R. 544, 548-49 (Bankr. M.D. Penn. 2011).

establish a claim for violation of the stay, a debtor must show the occurrence of an act to obtain possession or control over property.⁵⁵

Here, George did not take any steps to claim a charging lien against Debtor's property. Although the proposed amendment to the retention contract provided that George's law firm "will seek" a charging lien if Debtor defaulted on his payment obligations, the provision is only a statement of the firm's rights under the contract in the event of Debtor's future default. Debtor did not show that George ever took any act to assert a charging lien under Florida law by filing a notice of lien or pursuing a lien in the bankruptcy case.⁵⁶

The Court overrules Debtor's Objection to George's Application to the extent that it is based on George's alleged violation of the automatic stay.

E. The undisbursed funds held by the Chapter 13 Trustee may be paid to George under § 1326(a)(2).

The Chapter 13 Trustee is currently holding \$14,085.00 in funds that were paid by Debtor as preconfirmation plan payments under § 1326(a)(1) and that were not disbursed before the case was dismissed in January 2023.⁵⁷ Debtor contends that the Trustee cannot disburse the funds to George in payment of her fees, but must instead return the funds to him under § 349(b)(3).⁵⁸ That section provides that, "[u]nless the

⁵⁵ *In re Harchar*, 393 B.R. 160, 167 (Bankr. N.D. Ohio 2008).

⁵⁶ *In re Miami Beverly, LLC*, 608 B.R. 574, 581 (Bankr. S.D. Fla. 2019).

⁵⁷ Doc. No. 388.

⁵⁸ Doc. No. 425, p. 1.

court, for cause, orders otherwise,” the dismissal of a bankruptcy case “revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case.”⁵⁹

In the Middle District of Florida, the Court has “ordered otherwise” in the Administrative Order.⁶⁰ If a Chapter 13 case is dismissed before the plan is confirmed, the Administrative Order provides that the trustee shall subtract the amounts allowed for Debtor’s attorney’s fees before refunding undisbursed funds to the debtor.⁶¹

In addition, the operative statute is § 1326(a)(2), not § 349(b)(3) as Debtor suggests. As the bankruptcy court stated in *In re Nelums*, § 1326(a)(2) “more specifically governs the Trustee’s obligations regarding payments received by Debtor during the course of a Chapter 13 case when a plan is not confirmed or confirmation of a plan is denied.”⁶² Section 1326(a)(2) “expressly dictates the manner in which a chapter 13 trustee should distribute plan payments if a chapter 13 plan is not confirmed prior to dismissal.”⁶³ Under § 1326(a)(2):

If a plan is not confirmed, the trustee shall return any such payments not previously paid and not yet due and owing to creditors pursuant

⁵⁹ 11 U.S.C. § 349(b)(3).

⁶⁰ *In re Nelums*, 617 B.R. 70, 74 (Bankr. D.S.C. 2020) (“This Court has ordered otherwise by virtue of its Local Rules.”).

⁶¹ Administrative Order FLMB-2020-7, ¶ 7.

⁶² *In re Nelums*, 617 B.R. at 74.

⁶³ *In re Kirk*, 537 B.R. 856, 860 (Bankr. N.D. Ohio 2015).

to paragraph (3) to the debtor, *after deducting any unpaid claim allowed under section 503(b)*.⁶⁴

“The majority of courts have held that § 1326(a)(2) controls the disbursement of funds held by the Chapter 13 Trustee upon the preconfirmation dismissal of a chapter 13 case.”⁶⁵ “If a case has not been confirmed or converted, the trustee’s services are not terminated under § 348(e), and the trustee still has authority to disburse funds pursuant to § 1326(a)(2).”⁶⁶

Section 1326(a)(2) requires a Chapter 13 trustee to complete the administration of the case before returning funds to the debtor, and completing the administration of the estate includes payment of allowed administrative claims under § 503(b).⁶⁷ Attorney’s fees awarded to the debtor’s attorney under § 330 are administrative claims under § 503(b)(2).⁶⁸ Although the statutory scheme directs a Chapter 13 trustee to return funds to the debtor when confirmation of a plan is denied, “this is conditioned on first paying the allowed fees of the debtor’s attorney as an administrative expense under §§ 503(b) and 1326(a)(2).”⁶⁹

Therefore, if a Chapter 13 debtor’s attorney has an allowed claim for attorney’s fees under § 503(b)(2), the Chapter 13 trustee is required under § 1326(a)(2) to pay

⁶⁴ 11 U.S.C. § 1326(a)(2) (emphasis added).

⁶⁵ *In re Nelums*, 617 B.R. at 74 (citations omitted).

⁶⁶ *In re Wheaton*, 547 B.R. 490, 497 (B.A.P. 1st Cir. 2016).

⁶⁷ *In re Nelums*, 617 B.R. at 74.

⁶⁸ 11 U.S.C. § 503(b)(2).

⁶⁹ *In re Merovich*, 547 B.R. 643, 649 (Bankr. M.D. Penn. 2016) (citing *In re Brandon*, 537 B.R. 231, 235 (Bankr. D. Md. 2015)).

the allowed fees to the attorney before returning any balance to the debtor.⁷⁰ When a Chapter 13 case “is dismissed before a plan is confirmed, the Chapter 13 trustee can and must pay any allowed administrative expenses under § 503(b) [such as fees and expenses to the debtor’s counsel] before returning any accumulated plan payments to the debtor.”⁷¹ “Pursuant to § 1326(a)(2), a debtor’s attorney is entitled to payment of attorney’s fees prior to disbursement of the undistributed plan payments to debtor, if the fees constitute a § 503(b) administrative expense claim.”⁷²

The Court has considered the decisions evaluating § 1326(a)(2) and overrules Debtor’s Objection to George’s Application to the extent that it is based on Debtor’s claim that the Chapter 13 Trustee must refund the undisbursed funds to him.

III. THE MOTION FOR DISGORGEMENT

In addition to his Objection to the Application, Debtor also filed a motion asking the Court to order George to disgorge all fees previously paid to her by either Debtor or Ms. Kelly.⁷³ In the motion, Debtor asserts five “grounds for disgorgement.”

First, Debtor contends that George violated the Administrative Order by demanding the \$30,000.00 deposit as a condition of providing legal services.⁷⁴ As explained previously in this order, George’s request for the deposit did not violate

⁷⁰ *In re Nelums*, 617 B.R. at 76.

⁷¹ *In re Fairnot*, 571 B.R. 767, 771 (Bankr. E.D. Mich. 2017).

⁷² *In re Wheaton*, 547 B.R. at 499.

⁷³ Doc. No. 426.

⁷⁴ Doc. No. 426, ¶ 21.

the Administrative Order because the funds were to be placed in her escrow account and were for services that George had already performed.

Second, Debtor contends that George did not timely disclose to the Court the Guaranty signed by Ms. Kelly in June 2022.⁷⁵ Generally, § 329 requires a debtor's attorney to file a statement of the compensation paid or agreed to be paid in connection with the case,⁷⁶ and an attorney who fails to disclose an agreement for compensation may be subject to sanctions, including the disgorgement of fees received in the case. But the "particular sanction imposed should be 'commensurate with the egregiousness of the conduct' and will depend on the particular facts of each case."⁷⁷

Here, in February 2021, George disclosed Ms. Kelly's payment of a portion of her retainer. On June 8, 2022, Ms. Kelly signed the Guaranty, but there is no evidence that Ms. Kelly made any additional payments to George at that time. Four months later, in October 2022, George withdrew from the representation. In May 2023, George filed a copy of the Guaranty with the supplement to her Application. Under these circumstances, the Court concludes that George's delay in disclosing the Guaranty does not warrant disgorgement of her fees. Even if George should have

⁷⁵ Doc. No. 426, ¶ 22.

⁷⁶ 11 U.S.C. § 329(a).

⁷⁷ *In re Hackney*, 347 B.R. 432, 443 (Bankr. M.D. Fla. 2006) (quoting *In re Downs*, 103 F.3d 472, 479-80 (6th Cir. 1996)).

disclosed the Guaranty in June 2022, the record does not show that George took advantage of Debtor or Ms. Kelly or that George charged Debtor with excessive fees,⁷⁸ and George's delay in filing the Guaranty was not unreasonable given the relationship of the parties throughout the case.

Third, Debtor contends that George falsely stated in her supplement to the Application that Debtor and Ms. Kelly signed an amendment to the retention contract on June 8, 2022.⁷⁹ George's statement is not false. Ms. Kelly signed the Guaranty on June 8, 2022, as an alternative presented by George to the Amendment to Contract for Representation, and Debtor initialed the Guaranty.⁸⁰

Fourth, Debtor contends that George falsely denied to the United States Trustee that she had requested the \$30,000.00 deposit.⁸¹ The alleged denial occurred in a communication with the United States Trustee during its investigation of Debtor's claim that George violated the Administrative Order.⁸² But the details of George's communication with the United States Trustee—such as whether the statement was written or verbal and the exact contents of her statement—are not in the record, and the United States Trustee did not pursue Debtor's claim after

⁷⁸ "The purpose of § 329 is to enable bankruptcy courts to 'prevent overreaching by debtors' attorneys and give interested parties the ability to evaluate the reasonableness of the fees paid.'" *In re Jones*, 617 B.R. 77, 81 (Bankr. N.D. Miss. 2020) (quoting *In re Scott*, 531 B.R. 640, 646 (Bankr. N.D. Miss. 2015)).

⁷⁹ Doc. No. 426, ¶ 23.

⁸⁰ Doc. Nos. 422-4 and 422-5.

⁸¹ Doc. No. 426, ¶ 24.

⁸² Doc. No. 415, p. 8.

completing its investigation. Debtor did not show that George falsely denied to the United States Trustee that she had requested the \$30,000.00 deposit.

Finally, Debtor contends that George falsely represented to the Court at a hearing on May 18, 2023, that she had never sought a charging lien against Debtor's homestead property.⁸³ George's statement was not false. As explained above, in March 2022, George had proposed the Amendment to Contract for Representation [an amended retention agreement] that set out the parties' relative rights and responsibilities and that provided for George's law firm to seek a charging lien if Debtor did not pay its invoices. But George has not taken any steps to assert such a lien against Debtor's property, either by filing a notice of lien or otherwise.

The Court has determined that the fees and costs requested by George in the Application are reasonable and has allowed the fees and costs under § 330. Because the fees are allowed in the full amount requested, and for the reasons stated in this section, the Court concludes that Debtor did not establish any grounds for ordering George to disgorge the fees that she received in this case, and denies the Motion for Disgorgement.

⁸³ Doc. No. 426, ¶ 25.

IV. CONCLUSION

George filed the Application seeking an award of attorney's fees and costs for representing Debtor in this dismissed Chapter 13 case. The Court overrules Debtor's Objection to the Application because (a) George's fees are allowable under § 330; (b) Debtor did not show that George has an interest adverse to his interest; (c) George did not violate Administrative Order FLMB-2020-7; (d) George did not violate the automatic stay; and (e) the Chapter 13 Trustee may pay the undisbursed funds to George under § 1326(a)(2). In addition, the Court denies Debtor's Motion for Disgorgement because Debtor did not show a factual or legal basis to impose sanctions against George.

Accordingly, it is

ORDERED:

1. The *Application for Final Compensation & Administrative Claim* filed by Undine C. George, Esquire (Doc. Nos. 382 and 422) is **APPROVED**.
2. Undine C. George, Esquire, is awarded the sum of \$51,872.92 as attorney's fees and \$671.68 as reimbursement for costs, for a total award of \$52,544.60 under 11 U.S.C. § 330.
3. Debtor's Objection to the Application (Doc. Nos. 407, 415, and 425) is **OVERRULED**.
4. Debtor's *Motion for Disgorgement of Fees* (Doc. No. 426) is **DENIED**.

5. The Chapter 13 Trustee may disburse funds on hand to Undine C. George, Esquire.

The Clerk's office is directed to serve a copy of this Order on interested parties via CM/ECF and on Debtor by email and U.S. Mail.