

FILED

February 15, 2005

Charles R. Fulbruge III
Clerk

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 04-10461

In the Matter of : ALTMAN NURSING, INC.,

Debtor,

CLAY CAPITAL CORP; AVI DAN,

Appellants,

VERSUS

GERRIT M. PRONSKE; GERRIT M. PRONSKE PC.,

Appellees.

Appeal from the United States District Court
For the Northern District of Texas, Dallas
3:03-CV-2707-P

Before JOLLY, DAVIS, and CLEMENT, Circuit Judges.

PER CURIAM:*

In this bankruptcy appeal, the contest is between Clay Capital Corp. (Clay), a claimant in the Altman Nursing, Inc. bankruptcy proceeding, and Clay's lawyer in that proceeding, Gerrit M. Pronske

*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

(Pronske). Clay contends in this appeal that Pronske violated professional and fiduciary obligations Pronske owed to it in handling the funds Pronske was hired to collect for Clay. Although Clay asserted some of the facts underlying its claims of ethical/professional breaches in the bankruptcy court, it did not articulate the legal basis for these claims as clearly as it could have and the bankruptcy court did not consider them. The district court refused to consider these arguments because they were not adequately raised in the bankruptcy court. Because these arguments involve the alleged misconduct of a member of the bar of this court, we conclude that they deserve a hearing so that a fact finder can determine whether Pronske violated his professional duties to his client and if so, whether and in what amount Clay is entitled to recover from the sums Pronske collected.

Accordingly, we vacate the district court's judgment and REMAND this case to the district court with instructions to REMAND it to the bankruptcy court for further proceedings consistent with this opinion.

REMANDED.