

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1800
Summary Calendar

IN THE MATTER OF: BILL K. HARGIS
and MARILYN E. HARGIS,

Debtors,

PALMER & PALMER,

Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(3:91-CV-1380-R)

(October 28, 1993)

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

This dispute first arose when the bankruptcy court ordered the law firm of Palmer & Palmer ("the firm") to disgorge fees received from the debtors, Bill K. and Marilyn E. Hargis ("the Hargises"). On appeal to this Court, the bankruptcy court's order was reversed, and the bankruptcy court was ordered to refund to the firm all fees unrelated to the debtors' bankruptcy proceeding, as well as all fees related to the bankruptcy proceeding which the

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

bankruptcy court found to be reasonable, pursuant to 11 U.S.C. § 329 (1988). The firm now appeals the district court's order affirming the bankruptcy court's subsequent refund order. We reverse and remand.

I

When the Hargises filed for Chapter 11 reorganization in 1983 they owed Palmer & Palmer a substantial sum in unpaid legal fees. However, the firm continued to perform services for the Hargises and represented them in their reorganization proceeding. When Mr. Hargis died in 1984 Mrs. Hargis paid the debt to Palmer & Palmer out of the proceeds of Mr. Hargis's life insurance policy. The firm received \$56,322.69.

In 1987 the bankruptcy court learned that that sum had been paid to the firm subsequent to the filing of the Hargises' bankruptcy petition. The bankruptcy court found that the payment had not been disclosed of record in the bankruptcy case, and that no application to employ the firm as counsel had ever been filed. The bankruptcy court therefore ordered the firm to discontinue representing the Hargises and to pay to the clerk of the court all money or property received from the Hargises during the pendency of the bankruptcy case. The bankruptcy court also ordered the firm to pay a sanction in the amount of \$25,000 and dismissed the Hargises' reorganization proceeding. The firm deposited \$56,322.69, along with the \$25,000.00 sanction, with the clerk of the court.

On appeal the district court affirmed the disgorgement order but reversed the order imposing the \$25,000 sanction. On

further appeal this Court reversed the bankruptcy court's disgorgement order. *See Palmer & Palmer v. United States Trustee*, 887 F.2d 77 (5th Cir. 1989). We then granted the United States Trustee's petition for rehearing and held, pursuant to 11 U.S.C. § 329 (1988), that (1) Palmer & Palmer is entitled to a refund of all fees for services rendered for matters not associated with the bankruptcy proceeding; and (2) Palmer & Palmer is entitled to the return of all fees for services rendered in connection with the bankruptcy proceeding, subject to a determination of reasonableness by the bankruptcy court. *See Palmer & Palmer v. United States Trustee*, 895 F.2d 1025, 1025 (5th Cir. 1990).

On remand the firm filed its Application to Have Fees in Connection with Bankruptcy Reviewed for Reasonableness. *See Record on Appeal*, vol. 2, at 203. The firm divided its disgorged fees into two categories: bankruptcy-related and non-bankruptcy-related. The firm designated \$10,646.25 as fees related to the bankruptcy proceeding. *See id.* at 205. The remainder of its fees -- \$38,633.20 -- it characterized as non-bankruptcy-related. *See id.* at 204-05. The firm claimed that the \$10,646.25 in bankruptcy-related fees should be found reasonable and refunded, and that the \$38,633.20 in non-bankruptcy-related fees should be refunded as well. *See id.* at 211.

The bankruptcy court determined that, of the \$56,322.69 deposited with the clerk of the court, \$24,821.68 consisted of fees for non-bankruptcy-related matters. *See id.* at 307, 319. The bankruptcy court found that expenses attributable to non-

bankruptcy-related matters amounted to \$5,162.79. See *id.* at 307. The bankruptcy court ordered those funds -- \$29,984.47 in all -- returned to the firm.

The bankruptcy court found that \$5,000 in fees for pre-petition legal services, \$18,122.90 in fees for post-petition legal services, and \$1,334.87 for post-petition expenses were attributable to bankruptcy-related matters. See *id.* The bankruptcy court declined to determine the reasonableness of those charges or to return any of those funds to the firm, because the firm had failed to seek qualification to be employed as counsel for the debtors, and because the firm, as a creditor of the debtors, was not a disinterested party.

The firm sought a writ of mandamus in this Court, to compel the bankruptcy court to determine the reasonableness of the bankruptcy-related fees and to refund the portion determined to be reasonable. We denied the mandamus application because the firm had an adequate remedy by appeal to the district court. See *id.* vol. 1, at 54. However, we reiterated our prior holding -- that the firm is entitled to (1) the return of all fees for services unrelated to the bankruptcy proceeding, (2) a determination of the reasonableness of fees paid in connection with the bankruptcy proceeding, and (3) the return of those bankruptcy-related fees determined to be reasonable. After we denied the mandamus application, the district court remanded the case to the bankruptcy court for a determination of what portion of the firm's bankruptcy-

related fees were reasonable. *See id.* at 144. The district court ordered the reasonable fees paid to the firm. *See id.*

On remand the bankruptcy court found that no pre-petition bankruptcy-related services were performed. *See id.* vol. 2, at 359, 365. The bankruptcy court withdrew its earlier finding that \$5,000 in fees were attributable to pre-petition bankruptcy-related services. *See id.* at 365. The bankruptcy court found that the post-petition bankruptcy-related legal fees totalled \$20,099.00, *see id.* at 357, and that \$10,646.25 -- the entire amount of post-petition fees designated as bankruptcy-related by the firm in its Application -- was reasonable and refundable to the firm. *See id.* at 365. The bankruptcy court also found that \$1,300 paid to appraisers by the firm and later reimbursed by the Hargises was not a necessary expense, and therefore would not be returned to the firm. *See id.* at 354.

Palmer & Palmer appealed to the district court, which affirmed, rejecting the firm's claim that \$10,646.25 was an insufficient refund of reasonable bankruptcy-related fees. *See id.* vol. 1, at 169. The firm appeals to this Court,¹ claiming that the bankruptcy court erred by failing to (a) order the return of \$5,000, originally determined to be pre-petition bankruptcy-related fees, but later determined not to be related to the bankruptcy proceeding, (b) determine the reasonableness of post-petition bankruptcy-related fees over and above \$10,646.25, and (c) order

¹ Because the United States Trustee has withdrawn as appellee, the firm proceeds before this Court unopposed.

the refund of \$1,300 paid by the firm to appraisers and reimbursed by the Hargises.

II

A

We agree that the bankruptcy court erred by failing to return to the firm \$5,000 originally determined to be fees for bankruptcy-related services, but later determined not to be related to the bankruptcy proceeding. When this case was first remanded to the bankruptcy court, the bankruptcy court divided the firm's fees for pre-petition services into two categories: non-bankruptcy-related and bankruptcy-related. The bankruptcy court apportioned \$29,984.47 to non-bankruptcy-related fees and expenses, and \$5,000 to bankruptcy-related fees. See *id.* vol. 2, at 303, 307. In its most recent decision, however, the bankruptcy court found that no pre-petition bankruptcy-related services were performed. See *id.* at 359. The bankruptcy court therefore withdrew its earlier finding that \$5,000 in fees were attributable to pre-petition bankruptcy-related services. See *id.* at 365. The record reveals that the \$5,000 originally attributed to pre-petition bankruptcy-related services was in fact billed by the firm.² Since the bankruptcy court found that no pre-petition fees were related to the bankruptcy proceeding, it follows that the \$5,000 was non-

² The firm's fee statements indicate that \$34,984.47 was billed by the firm prior to the filing of the Hargises' petition for Chapter 11 reorganization. See Record on Appeal, vol. 2, at 228. That amount includes the \$5,000 originally designated as bankruptcy-related fees, plus the \$29,984.47 originally refunded to the firm as non-bankruptcy-related fees.

bankruptcy-related. The firm is entitled to the return of all non-bankruptcy-related fees. See *Palmer & Palmer*, 895 F.2d at 1025. Therefore, the bankruptcy court erred by failing to refund the \$5000 to the firm.

B

We also agree that the bankruptcy court erred by awarding only \$10,646.25 of bankruptcy-related fees. The firm filed in the bankruptcy court its Application to Have Fees in Connection with Bankruptcy Reviewed for Reasonableness. In its Application the firm divided its disgorged fees into two categories: bankruptcy-related and non-bankruptcy-related. The firm designated \$10,646.25 as fees related to the bankruptcy proceeding. See Record on Appeal, vol. 2, at 205. The remainder of its fees -- \$38,633.20 -- it characterized as non-bankruptcy-related. See *id.* at 204. The firm claimed that the \$10,646.25 in bankruptcy-related fees should be found reasonable and returned, and that the \$38,633.20 in non-bankruptcy-related fees should be returned as well. See *id.* at 211.

The bankruptcy court disagreed with the firm's apportionment of its fees. The bankruptcy court explicitly found that bankruptcy-related fees amounted to approximately \$20,099.00, rather than \$10,646.25. See *id.* at 357. However, the bankruptcy court did not award the entire \$20,099.00. The bankruptcy court merely stated: "[the firm] has sought, and the Court finds reasonable, its bankruptcy related fees in the amount of \$10,646.25" See *id.* at 362. The court apparently decided to confine

its award to the precise amount sought by the Application, as if Palmer & Palmer had limited their request for bankruptcy-related fees to that amount. This was error, both because the law firm did not seek to be so limited³ and because the court's ultimate finding is inconsistent with its overall analysis of the bankruptcy-related fees. Specifically, although the bankruptcy court criticized the vagueness of some time entries he also found that "all services performed post-petition were in the interests of the Estate," and "the work performed post-petition appears to be consistent with the work performed in other Chapter 11 cases." These findings essentially say that the law firm's post-petition fees were reasonable. Moreover, the bankruptcy court declined to find that any particular set of fee entries related to bankruptcy were unreasonable. We therefore modify the bankruptcy court's and district court's award of bankruptcy-related fees to the sum of \$20,099.00 which were determined to be related to the bankruptcy case and were incurred in the best interests of the Estate.

³ The firm failed to argue in its Application that the reasonableness of any fees over and above \$10,646.25 which the bankruptcy court might find to be bankruptcy-related should be determined, and the reasonable fees refunded. We do not regard the firm's failure to press that argument in its Application as a waiver of its right to reasonable bankruptcy-related fees over and above \$10,646.25. In its Application the firm prayed for the release of all fees deposited with the clerk of the court. See Record on Appeal, vol. 2, at 211. Furthermore, at the hearing on the Application Mr. Palmer argued that "the big issue here is not whether I have listed [the fees] as related or not related [to the bankruptcy proceeding], but whether or not they're reasonable. . . . I think all these fees should stand or fall on a reasonableness test." See *id.* vol. 3, at 29-30. The firm adequately presented its claim to any reasonable bankruptcy-related fees over and above \$10,646.25.

C

We also conclude that the bankruptcy court erred by disallowing the \$1,300 appraisal fee paid by the firm on behalf of the Hargises, because that sum was not a payment for legal services. The bankruptcy court determined that that expense was extraordinary and unnecessary, see Record on Appeal, vol. 2, at 354-55, and therefore did not order that the \$1,300 be returned to the firm. That ruling was erroneous, because neither our mandate nor 11 U.S.C. § 329 authorized the bankruptcy court to review the necessity or reasonableness of non-legal expenses paid by the firm on behalf of the Hargises. In our prior decision we held that, "[a]s to payment for services rendered by Palmer & Palmer in connection with the bankruptcy proceeding, . . . Palmer & Palmer is entitled to be paid for such services only to the extent that the bankruptcy court determines its fees to be reasonable." *Palmer & Palmer*, 895 F.2d at 1026 (emphasis added). Section 329 authorizes the court to order the return of "compensation . . . for services rendered or to be rendered . . . by such attorney." See 11 U.S.C. § 329(a). The quoted language refers to compensation for legal services, and not to reimbursement for non-legal expenses paid by counsel on behalf of the client. See *In re Herren*, 138 B.R. 989, 995 (Bkrcty. D. Wyo. 1992) (stating that § 329 "applies to all persons who render legal services to the debtor"); *In re Glad*, 98 B.R. 976, 977 (9th Cir. 1989) ("It is undisputed that a non-attorney will be subject to the requirements of § 329 if he engages in rendering 'legal services' to the debtor."). Because the

bankruptcy court was not authorized to withhold the \$1,300 payment for non-legal services, on remand that sum must be paid to the firm.

III

For the foregoing reasons, we REVERSE and REMAND to the bankruptcy court to (1) refund to Palmer & Palmer the \$5,000 originally determined to be fees for pre-petition bankruptcy-related services; (2) award to Palmer & Palmer \$20,099.00 as reasonable bankruptcy-related fees, and refund the amount of \$8,811.52 or whatever amount of such fees has not yet been refunded; and (3) refund to Palmer & Palmer the \$1,300 appraisal fee paid by the firm on behalf of the Hargises.

REVERSED and REMANDED with instructions.