



1 property of approximately \$895,000. Her Schedule F listed a  
2 total of \$78,349.96 of unsecured debts, of which all but \$6,734  
3 is the AAMCO judgment. With her petition, debtor also filed her  
4 proposed Chapter 13 plan, which called for payments of \$500 per  
5 month for 5 years, and proposed a 100% dividend to unsecured  
6 creditors.

7 In conjunction with the filing of her bankruptcy petition,  
8 Mr. Feldman filed his Rule 2016(b) Disclosure of Compensation  
9 form which stated he had agreed to accept \$4,000 "for legal  
10 services", of which he had received \$3,500 from the debtor. In  
11 paragraph 5, he listed the usual legal services of analysis,  
12 advice, preparation and filing of any petition, Schedules, plan,  
13 and confirmation hearing(s). Paragraph 6 stated that the quoted  
14 fee "does not include the following services: Representation in  
15 Reaffirmation Agreements". Concurrent with the petition, the  
16 firm also filed a copy of this district's "Rights and  
17 Responsibilities of Chapter 13 Debtors and their Attorney  
18 (Consumer Case)". That form sets out that the basic fee was  
19 \$2,100, and included a list of possible services with presumptive  
20 (or no-look) fees for each service. The document recognized that  
21 the initial fee charged was \$4,000. The form also notes that in  
22 the event of novel or complex motions or oppositions, the  
23 attorney may bill at hourly rates by filing a fee application.  
24 No specific hourly rate was set out.

25 Three weeks after the petition was filed, Andres  
26 Schonviesner dba Affirmative Judgment Services filed both a

1 motion to dismiss the bankruptcy, and for relief from stay. He  
2 asserted debtor did not have sufficient liquidity to make the  
3 payments called for. Moreover, he claimed the AAMCO judgment had  
4 been recorded prepetition, so was a secured debt, and the amount  
5 of the debt was \$103,056.39. The relief from stay motion sought  
6 to be able to foreclose on debtor's real properties as necessary  
7 to satisfy the judgment.

8 Mr. Feldman filed an opposition to the stay relief motion,  
9 mainly arguing that Mr. Schonviesner was not an attorney and  
10 could not appear in court representing any interest AAMCO might  
11 continue to hold in the judgment. Mr. Feldman asked the Court to  
12 require Mr. Schonviesner to establish his authority to press the  
13 AAMCO judgment. Subsequently, Mr. Feldman acknowledged that Mr.  
14 Schonviesner had filed a proof of claim and had standing on that  
15 basis. This Court denied the stay relief motion for the reasons  
16 stated on the record. Meanwhile, the Chapter 13 trustee objected  
17 to confirmation of debtor's proposed plan. Subsequently, so did  
18 Mr. Schonviesner.

19 The hearing on the motion to dismiss was continued to allow  
20 production of documents concerning the assignment of the  
21 judgment. Debtor filed a formal objection to Mr. Schonviesner  
22 representing any interest of AAMCO in the judgment. The Court  
23 sustained that objection, and Mr. Schonviesner arranged for  
24 counsel.

25 In April, 2012 Mr. Feldman objected to the claim Mr.  
26 Schoviesner filed on the grounds he had no authority to file it

1 on behalf of AAMCO's interest, and therefore it should be  
2 declared invalid. Mr. Schonviesner's counsel renewed the motion  
3 to dismiss, which debtor opposed through counsel.

4 In late May, 2012 debtor filed a modified plan, with  
5 significant step-ups in payments. The trustee objected on  
6 multiple grounds. Debtor filed a declaration in support of the  
7 modified plan, and explained how she intended to generate  
8 sufficient revenue to support the plan. After the modified plan  
9 drew objections, in August, 2012 debtor filed a further modified  
10 plan, making clear that the debt to Mr. Schonviesner was secured  
11 and would be paid in full. A few days later, debtor filed an  
12 amended objection to Mr. Schonviesner's claim, asserting AAMCO  
13 still held rights to 70% of any recovery and therefore AAMCO had  
14 to file its own proof of claim. A few weeks later, counsel for  
15 AAMCO filed a ratification of the claim filed by Mr.  
16 Schonviesner. The Court overruled the debtor's objection to the  
17 claim for the reasons stated on the record.

18 After hearing the objections of both the trustee and Mr.  
19 Schonviesner to the second modified plan, the Court gave debtor  
20 yet another chance to submit a confirmable plan, with a deadline  
21 and the sword of dismissal looming. The deadline was met, and  
22 the trustee withdrew his objection. Mr. Schonviesner filed his  
23 own objection, which the Court found to be untimely, and  
24 overruled.

25 All of which leads to the present dispute. On March 1, 2013  
26 Mr. Feldman filed a final fee application seeking \$12,850.50 in

1 attorney fees after crediting a 40% discount to hourly fees  
2 cumulated to \$21,417.50 at \$325 per hour. Mr. Feldman set out 6  
3 categories for fees:

4	1. Objection to the Proof of Claim	
	13.7 hours	4,452.50
5		
6	2. Opposition to Relief from Stay	
	9.2 hours	2,990.00
7		
8	3. Opposition to Motion to Dismiss	
	28.7 hours	9,327.50
9		
10	4. Objection to Schonviesner's	
	Representation of AAMCO	
	10.4 hours	3,380.00
11		
12	5. Litigation: Production of Documents	
	3 hours	975
13		
14	6. Litigation: Rule 2004 Exam	
	.9 hours	292.50

14 After receiving a copy of Mr. Feldman's fee application debtor  
15 filed a written objection with the Court. Based on that  
16 objection, the Court set the matter for evidentiary hearing.  
17 Upon conclusion of the hearing, the matter was taken under  
18 submission.

19 The debtor made a central point at the hearing. She  
20 testified that Mr. Feldman knew throughout how little monthly  
21 income she generated, which directly limited how much she could  
22 pay the trustee each month. Her declaration filed with the Court  
23 on June 11, 2012 reiterated that point. She could not afford to  
24 add thousands of dollars to the debts she intended to pay through  
25 her plan.

26 ///

1 Mr. Feldman countered with a copy of the Rights and  
2 Responsibilities, and argued that debtor understood her estate  
3 would be liable for fees in excess of basic services. He argued  
4 that it was understood such fees would accrue at \$325 per hour,  
5 although the Court has not found any reference to such a rate  
6 either in the Rule 2016 statement or the Rights and  
7 Responsibilities form. Nor is it in the form agreement of Mr.  
8 Feldman's office provided to the debtor on August 31, 2011.  
9 Regardless of whether such a rate was mentioned in writing to the  
10 debtor, the Court views Chapter 13 fees, initially, through the  
11 prism of the Rights and Responsibilities form and *In re Eliapo*,  
12 468 F.3d 592 (9<sup>th</sup> Cir. 2006).

13 Examining the fees sought by category, the first is the  
14 objection to the proof of claim, for which the firm seeks  
15 \$4,452.50. Under the Rights and Responsibilities the presumptive  
16 fee for a contested objection is \$300 with a hearing. To be  
17 sure, unusual or out of the ordinary proceedings may justify  
18 more. Here, however, the only grounds for objection were that no  
19 copy of the state court judgment was included (although debtor  
20 acknowledged there was a judgment both in Schedule F and in her  
21 Statement of Financial Affairs), and that Mr. Schonviesner was  
22 engaging in the unauthorized practice of law by pressing AAMCO's  
23 claim while he is a non-lawyer. There was no attack on the  
24 merits of the judgment or the resulting proof of claim.  
25 Moreover, at one point the firm included as a ground that no  
26 proof of claim had been filed, when in fact it had but counsel

1 looked in the wrong place in the court records for it, and had to  
2 withdraw that argument.

3       Much more troubling to the Court is that no strategy to  
4 reduce or eliminate the Schonviesner claim has ever been  
5 revealed, other than the standing/ownership arguments. Yet  
6 counsel had to recognize that the amount of equity in real estate  
7 set out on Schedule A meant debtor would have to pay all  
8 codebtors in full, including the Schonviesner/AAMCO claim, to the  
9 extent it was an allowed claim. So it would seem the issues are  
10 how to do that while maintaining assets. Indeed, the first plan  
11 proposed on filing was a 100% plan, although at \$500 per month  
12 for 60 months would not pay even half the originally scheduled  
13 debt.

14       The second category is relief from stay, for defending  
15 against counsel wants \$2,990, while the presumptive fee was \$450  
16 for real property. Here, counsel did not have to do the  
17 traditional items of defense, such as valuation, payment history,  
18 and the like.

19       Third, the firm seeks \$9,327.50 or opposing Mr.  
20 Schonviesner's motions to dismiss. Again, the essence of the  
21 firm's opposition was Mr. Schonviesner's standing, as well as  
22 arguing it was not the proper way to object to confirmation of a  
23 plan.

24 ///

25 ///

26 ///

1           The fourth category is largely redundant, focusing on Mr.  
2 Schonviesner's purported representation of AAMCO, with the same  
3 arguments subsumed in the other categories.

4           The fifth and sixth categories are routine litigation facets  
5 of a case, and warrants little additional compensation.

6           In the Courts's last analysis, it appears to the Court the  
7 only thing achieved by the firm's expensive efforts was to buy  
8 the debtor some time. The firm did not attempt to challenge the  
9 merits of the primary creditor to be paid under any plan. The  
10 firm had to have known that all debts would have to be paid in  
11 full over the life of a plan because of the significant real  
12 property equity.

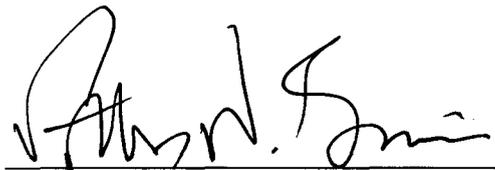
13           Based on the Court's memory of the case as it proceeded,  
14 coupled with a full review of the file and the evidentiary  
15 hearing, the Court finds and concludes that the firm earned the  
16 \$4,000 originally agreed upon, and allowed in the Order on  
17 Confirmation entered April 5, 2013. In addition, the Court  
18 authorizes: 1) \$300 for a contested claim objection; 2) \$450 for  
19 opposing relief from stay; 3) \$450 opposing the motion to  
20 dismiss; 4) \$0 for opposing Schonviesner's purported  
21 representation of AAMCO; and \$0 for categories 5 and 6 as  
22 subsumed within the basic \$4000 fee (which is over and above the  
23 \$2100 recognized in the Rights and Responsibilities for the basic  
24 legal services).

25           As noted, the firm received \$3,500 prior to filing, and the  
26 trustee was authorized to pay \$500 more upon confirmation. In

1 addition, the firm is authorized to receive from the trustee  
2 \$1200 more, as set out herein. No more than that amount shall in  
3 any way be recovered by the firm from the estate, the debtor, or  
4 property of the debtor.

5  
6  
7 IT IS SO ORDERED.

8 DATED: SEP - 3 2013

9  
10 

11 PETER W. BOWIE, Judge

12 United States Bankruptcy Court  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26