

FILED & ENTERED

JUN 29 2012

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY bakchell DEPUTY CLERK

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re

DBI HOUSING, LLC,

Debtor(s).

Case No. 2:11-bk-38517-RK

Chapter 11

**MEMORANDUM DECISION GRANTING
MOTION FOR ORDER DISALLOWING
CLAIM FILED BY NATE BERNSTEIN &
ASSOCIATES**

DATE: June 5, 2012
TIME: 2:30 p.m.
PLACE: Courtroom 1675
255 E. Temple St.
Los Angeles, CA 90012

This matter came on for hearing before the undersigned United States Bankruptcy Judge on June 5, 2012 on a Motion for Order Disallowing Claim Filed by Nate Bernstein & Associates (the "Motion"). Roksana D. Moradi appeared on behalf of DBI Housing, LLC (the "Debtor"). Nate Bernstein appeared on behalf of Nate Bernstein & Associates ("NB&A"). After hearing oral argument, the court took the matter under submission and now enters this memorandum decision.

BACKGROUND

The relevant facts are undisputed. The Debtor filed a voluntary Chapter 11 petition on July 1, 2011. David and Blanca Irias are the only members of the Debtor.

1 The Debtor's dba's are Ortiz Produce, Bambi Fashion and Tacos Ortiz. The Debtor also
2 owns three residential properties that generate rental income.

3 The Debtor retained the services of NB&A prepetition to handle a dispute that
4 arose between the Debtor, King City Check Cashing ("KCCC") and KCCC's principal,
5 Jaime Sandoval. The Debtor and KCCC entered into a business arrangement where the
6 Debtor would cash KCCC's customers' checks for a fee of 1% per check. KCCC
7 apparently gave the Debtor a large number of checks that bounced, and KCCC was
8 supposed to collect from its customers the amount of the bounced check plus the fees
9 charged to the Debtor by the bank for returned checks. KCCC never paid the Debtor for
10 those returned checks, and eventually, KCCC came to owe the Debtor approximately
11 \$80,000.

12 As of November 5, 2010, the Debtor had paid approximately \$63,473.52 to NB&A
13 for services rendered.

14 NB&A obtained a judgment against KCCC and its principal, Jaime Sandoval, for
15 \$80,000 plus interest and penalties. Thereafter, KCCC and its principal, Jaime Sandoval,
16 appealed the court's decision. Around that time, the Debtor started to run out of money.
17 NB&A continued to work for them, but the Debtor did not make payments to NB&A due to
18 its financial situation. The appeal was ultimately dismissed, but the Debtor did not remit
19 future payment to NB&A.

20 On December 2, 2011, NB&A filed a Proof of Claim in the amount of \$30,001.36
21 for unpaid attorney's fees. Attached to the Proof of Claim, NB&A included detailed billing
22 statements and a copy of the attorney-client agreement.

23 DISCUSSION

24 A claim for prepetition attorneys' fees "may be allowed only to the extent they are
25 reasonable as determined under federal law." *The Margulies Law Firm, APLC v. Ontson*
26 *Fitzgerald Placide (In re Placide)*, 459 B.R. 64, 71-72 (9th Cir. BAP 2011); 11 U.S.C.
27 § 502(b)(4). "[S]ection 502(b)(4) covers unpaid claims for services of an attorney
28 'whether or not the services were rendered in contemplation of the filing of the petition or,

indeed, whether those services had even anything to do with bankruptcy or the debtor's financial affairs.” *In re Placide*, 459 B.R. at 72, *quoting* 4 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 502.03[5][c][I] (2009). Under § 502(b)(4), “the claimant attorney or insider bears the burden of proof on the question of reasonableness of compensation for services.” *Id.* at 72.

“In the Ninth Circuit, the primary method used to determine a reasonable fee in bankruptcy cases is to calculate the lodestar.” *Id.* at 73. “Absent unusual circumstances, an attorney must scale his or her fee at least to the reasonably expected recovery.” *Id.*, *quoting* *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (9th Cir. BAP 1992). “A claim for attorneys fees is unreasonable under federal law to the extent the attorney seeks fees that are disproportionate to the likely recovery.” *Id.*, *quoting* *Schoenmann v. Bach Constr., Inc. (In re Segovia)*, 387 B.R. 773, 779 (Bankr. N.D. Cal. 2008), *aff’d*, 2008 WL 8462967, at *6 (9th Cir. BAP 2008).

In the Proof of Claim, NB&A seeks payment of \$30,001.36. This amount, plus the \$63,473.52 the Debtor has paid, equals a total amount of \$93,474.88. The Debtor argues that this amount is unreasonable given that they have, what it calls, an “uncollectable” judgment for \$80,000.

NB&A, on the other hand, argues that the full amount on the judgment has grown to over \$100,000 because of post-judgment interest. However, there is no evidence that amount—or any amount of the judgment—is actually collectable.

Mr. Bernstein dedicates most of the brief and his declaration explaining the nature and extent of the services provided. If the court were to rely exclusively on the lodestar method, then Mr. Bernstein's supportive documentation would be helpful in evaluating the reasonableness of the claimed fees. The court, however, must also consider the proportionality of the attorney's fee relative to the potential recovery. Given that the maximum possible recovery is \$80,000 plus interest, NB&A's fees of \$93,474.88 is entirely disproportionate and unreasonable.

1 In *Kitchen Factors*, the court held that because the claimant-attorney failed to
2 scale back his services so that the estate were to receive a benefit if it prevailed, "the
3 bankruptcy judge was correct in doing so after the fact by limiting the allowable fees to
4 50% of the recovery." *In re Kitchen Factors, Inc.*, 143 B.R. at 563. In this case, the
5 \$63,473.52 that the Debtor has paid represents roughly 80% of the judgment amount.
6 Even if NB&A were able to show that the full \$100,000 is collectable, then the current
7 amount paid to NB&A would result in over 60% of the potential recovery. This
8 percentage is well above the 50% recovery allowed in the *Kitchen Factors* case. Thus,
9 the court holds that NB&A's claim should be disallowed because it failed to scale its
10 services to any expected recovery.

11 **CONCLUSION**

12 In sum, NB&A has failed to show that its entire fee is reasonable. The court finds
13 that allowance of the Claim would result in an attorney's fee that is disproportionate to
14 any potential recovery, and thus unreasonable. Therefore, the court hereby **GRANTS**
15 the Motion and disallows the Claim.

16 Counsel for the Debtor is ordered to submit a proposed order within 30 days of
17 entry of this memorandum decision.

18 ###
19
20
21
22

23 
24

25 DATED: June 29, 2012

United States Bankruptcy Judge
26
27
28

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*) **Memorandum Decision Granting Motion for Order Disallowing Claim Filed by Nate Bernstein & Associates** was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner indicated below:

I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served on the following person(s) by the court via NEF and hyperlink to the judgment or order. As of **June 29, 2012**, the following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below:

- Marc Andrews sandra.g.mcmasters@wellsfargo.com
- Nate Bernstein natebernstein@netzero.net
- J Sheldon Capeloto jcapeloto@capelotolaw.com
- Barry S Glaser bglaser@swjlaw.com
- M Jonathan Hayes jhayes@hayesbklaw.com, roksana@hayesbklaw.com;rosario@hayesbklaw.com
- Wendy A Loo wendy.loo@lacity.org
- Alvin Mar alvin.mar@usdoj.gov
- Peter F McAndrews pfm@mamlawfirm.com
- Christopher M Missick cmissick@frankel-tennant.com
- James Mortensen pimmsno1@aol.com
- Douglas G Tennant dtennant@frankel-tennant.com
- Michael D Testan mtestan@frankel-tennant.com
- Susana B Tolchard susana@tolchardlaw.com
- United States Trustee (LA) ustpreregion16.la.ecf@usdoj.gov

II. SERVED BY THE COURT VIA U.S. MAIL: A copy of this notice and a true copy of this judgment or order was sent by the clerk of the court by United States Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the address(es) indicated below:

DBI Housing, LLC
4808 West Washington Blvd.
Los Angeles, CA 90016

III. TO BE SERVED BY THE LODGING PARTY: Within 72 hours after receipt of a copy of this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy bearing an "Entered" stamp by U.S. Mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following person(s) and/or entity(ies) at the address(es), facsimile transmission number(s), and/or email address(es) indicated below: