

**UNITED STATES BANKRUPTCY APPELLATE PANEL
FOR THE FIRST CIRCUIT**

**BAP Nos. MW 00-068
MW 00-069**

**IN RE: RONALD P. MORSE AND LEEANN T. MORSE,
Debtors.**

**RONALD P. MORSE AND LEEANN T. MORSE,
Appellants,**

v.

**MARLBOROUGH COOPERATIVE SAVINGS BANK and
DENISE PAPPALARDO, CHAPTER 13 TRUSTEE,
Appellees.**

**Appeal from the United States Bankruptcy Court
for the District of Massachusetts
(Hon. James F. Queenan, U.S. Bankruptcy Judge)**

**Before
GOODMAN, DE JESÚS, VAUGHN, U.S. Bankruptcy Judges**

Steven A. Kressler and Lisa M. Read of Kressler & Kressler, P.C., for the Appellants.

**Joseph H. Baldiga and Christine E. Devine of Mirick, O'Connell, DeMallie & Lougee, LLP,
for the Appellees.**

February 12, 2001

Per Curiam.

Procedural Background

Debtors appeal from the order by the bankruptcy court denying their objection to the attorney fees and costs contained in Marlborough Cooperative Savings Bank's (the Bank) claim, secured by a mortgage on debtors' residence, and from the order granting the Bank's objection to the confirmation of the proposed Chapter 13 plan, as it did not provide enough funds to pay the Bank's secured arrears contained in the allowed claim. Debtors ask that both rulings be reversed because the bankruptcy court abused its discretion by ruling without first scheduling these objections for an evidentiary hearing. Because we find debtors waived their rights to an evidentiary hearing by demanding it for the first time in this appeal, we affirm.

Appellate Jurisdiction and Scope of the Review

This Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 158(a) and (c), and Rule 8001-1(d)(1) of the Local Rules for the Bankruptcy Appellate Panel for the First Circuit. 28 U.S.C. §§ 158(a) and (c) (1988 & Supp. 1998); 1st Cir. B.A.P. R. 8001-1(d)(1) (1998).

The main question before the bankruptcy court concerned the allowance of a specific amount of attorney fees and costs in a secured claim. The denial of confirmation was a consequence of that pivotal ruling. There is no indication in the record that the

debtors were able to, or intended to file an amended plan. The ruling is therefore final and appealable. See In re Saco Local Development Corporation, 711 F.2d 441 (1st Cir. 1983) see also In the Matter of Barte, 212 F.3d 277 (5th Cir. 2000).

Debtors claim reversible error because the Judge ruled without first scheduling the objections for an evidentiary hearing, somehow undermining the ensuing rulings. Hence, we review applying the abuse of discretion standard. In Re I Don't Trust, 143 F.3d 1 (1st Cir. 1998).

Discussion

Before the bankruptcy court were two related matters: debtors' objection to the Bank's claim and the Bank's objection to the confirmation of the proposed plan, both pertaining to the Bank's attempts to collect attorney's fees and costs incurred by its efforts to collect a mortgage loan in this third consecutive bankruptcy petition filed by the debtors. The bankruptcy court consolidated the two matters and scheduled these for oral argument at a non evidentiary hearing. Counsel for debtors did not request that these matters be scheduled for an evidentiary hearing. Indeed, during the hearing Counsel for the debtors stated he was not "seeking an evidentiary hearing this morning", proceeding to "point out to the Judge... some billing practices" which he found difficult and thought should be disallowed as excessive, or duplicative. Appellants' App. pp. 12-16. When oral argument was

concluded, the Judge thanked the parties, indicating he would go through the papers thoroughly and took the matter under advisement. Counsel for debtors did not indicate he was dissatisfied with this procedure, and never once raised the need for an evidentiary hearing at this level.

Under these circumstances, we find debtors waived any right they might have had to an evidentiary hearing and affirm the bankruptcy court's ruling. In the Matter of Andy Frain Services, Inc., 798 F.2d 1113 (7th Cir. 1986).