

**UNITED STATES BANKRUPTCY APPELLATE PANEL  
FOR THE FIRST CIRCUIT COURT OF APPEALS**

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**BAP No. PR00-088**

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**IN RE: JULIO C. SANTOS MONTALVO,  
Debtor.**

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**MODESTO BIGAS MENDEZ,  
Appellant,**

**v.**

**JULIO C. SANTOS MONTALVO, AND  
JOSE R. CARRION, CHAPTER 13 TRUSTEE,  
Appellees.**

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**Appeal from the United States Bankruptcy Court  
for the District of Puerto Rico  
(Hon. Sara E. DeJesus, U.S. Bankruptcy Judge)**

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**Before  
HAINES, HILLMAN & FEENEY, U.S. Bankruptcy Appellate Panel Judges**

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**Modesto Bigas Mendez, on brief for the Appellant.**

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**June 6, 2001**

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**Per Curiam.**

**I. Background**

The matter before the Panel is an appeal filed by Modesto Bigas Mendez ("Bigas" or the "Appellant") from an order of the United States Bankruptcy Court for the District of Puerto Rico dated September 11, 2000, through which the bankruptcy court denied the Appellant's request for enhancement of professional fees for services rendered as counsel to the Chapter 13 debtor.

Bigas, counsel to the Chapter 13 Debtor,<sup>1</sup> filed an Application for Interim Compensation in which he requested a total of \$11,542.50 in fees for legal services rendered, \$447.50 for reimbursement of expenses, plus a bonus of \$6,800. The Appellant based his request for a fee enhancement on the quality of his services and his success in obtaining a stipulation reducing a secured claim from \$118,293.12 to \$55,000.

The Debtor and the Chapter 13 Trustee filed objections to the Application. The Appellant filed a response to the objections. The bankruptcy court held a hearing and denied the request for a fee enhancement, approving the Application in the sum of \$9,301.75. Thereafter, on September 11, 2000, the bankruptcy court issued a separate order memorializing its bench

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<sup>1</sup>The Debtor filed a Chapter 11 petition on May 7, 1999. The bankruptcy court authorized the Debtor to employ Bigas in June of 1999. On October 6, 1999, the court converted the case to a case under Chapter 13. The court authorized Bigas's withdrawal as attorney to the Debtor on February 16, 2000. Bigas rendered services as counsel to the Debtor from January 7, 1999 to April 14, 2000.

order and adopting as reasons for the denial of a fee enhancement the Chapter 13 Trustee's assertions that the Application lacked sufficient information and documentation.

On appeal, the Appellant argued that the bankruptcy court misperceived the basis of his request for a fee enhancement, mistakenly believing that his bonus request related to his services rendered in connection with a sale of assets. He maintained that he is entitled to a bonus because of the savings to the estate resulting from his exceptional services in obtaining a voluntary reduction by a secured creditor of its claim.

## **II. Standard of Review**

Appellate review of an order of the bankruptcy court is governed by Fed. R. Bankr. P. 8013, which provides that findings of fact shall not be set aside unless clearly erroneous. Conclusions of law are reviewed *de novo*. Smith v. Marshall (In re Hot Tin Roof, Inc.), 205 B.R. 1000 (B.A.P. 1<sup>st</sup> Cir. 1997). An appellate court reviews the award of attorneys' fees for an abuse of discretion, which occurs if the judge fails to apply the proper legal standard, fails to follow proper procedures in making the determination or bases an award upon findings of fact that are clearly erroneous. In re El San Juan Hotel Corp., 239 B.R. 635, 645 (BAP 1<sup>st</sup> Cir. 1999), citing Electro-Wire Prods. v. Sirote & Permutt, P.C. (In re Prince), 40 F. 3d. 356 (11<sup>th</sup> Cir. 1994) . When an appellate court has a definite and firm

conviction that the lower court made a clear error of judgment or exceeded the bounds of permissible choice in the circumstances, it should find an abuse of discretion and reverse. Gray v. English, 30 F. 3d 1319, 1324 (10<sup>th</sup> Cir. 1994).

### **III. Discussion**

A bankruptcy court has the authority to award a premium in addition to reasonable compensation based upon time spent and customary hourly rates when the benefit conferred on the estate is particularly great. 3 L. King, *Collier on Bankruptcy*, ¶33.04[5][e], at 330-55 (15<sup>th</sup> ed. Rev. 2001). A fee enhancement is appropriate only in rare and exceptional circumstances. Blum v. Stenson, 465 U.S. 886, 889 (1984); In re UNR Industries, Inc., 986 F. 2d 207 (7<sup>th</sup> Cir. 1993). In Grant v. George Schumann Tire & Battery Co., 908 F. 2d 874 (11<sup>th</sup> Cir. 1990), the United States Court of Appeals for the Eleventh Circuit upheld the denial of a fee enhancement requested by a trustee's attorney as he had failed to demonstrate that the results achieved were unusual and the services rendered did not involve particularly complex issues. The court explained that even if the results were exceptional, a bonus was not warranted because there was no specific evidence in the record to show that the quality of the representation was superior to that reasonably expected in light of the customary rate charged. Id. at 880.

Applying these principles to the facts of the present case, we conclude that the bankruptcy court did not abuse its

discretion in denying the Appellant's request for a fee enhancement. As the bankruptcy court's findings were sparse, the Panel has conducted a thorough and independent review of the record of proceedings before the bankruptcy court. Based upon this review, the Panel finds that the Appellant has not shown, either below or on appeal, that his services were so rare and extraordinary that a premium should have been awarded. The Appellant has not shown that the enhancement was justified by virtue of the presence of complex legal issues, time-consuming litigation, or risk factors. He has failed to demonstrate that the quality of the services was superior to that reasonably expected in light of the usual customary charge. The Appellant has not shown that the award made by the bankruptcy court did not fairly compensate him for the services rendered. We find that the bankruptcy court was justified in denying an upward fee adjustment on grounds of quality. Accordingly, the order of the bankruptcy court is **AFFIRMED**.