

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT



In re:

**GLENN PRIOR and
JOANNE PRIOR,
Debtors.**

**Case # 02-10332
Chapter 13**

ORDER
DETERMINING ATTORNEY'S FEES,
OVERRULING DEBTORS' OBJECTION TO ATTORNEY'S FEES
AND DIRECTING AMENDMENT OF CHAPTER 13 PLAN

This matter came before the Court on Debtors' Objection to the Claim by Banknorth (doc. #7) for its attorneys' fees regarding the commencement of a foreclosure action against the Debtors (that was the impetus for Debtors filing this bankruptcy case). The Debtors argue that the legal fees claimed by Banknorth are excessive. After a hearing on Debtors' Objection, at which Debtor's counsel, Banknorth's counsel, and the Chapter 13 Trustee presented their positions on the subject attorney's fees, the Court ordered Banknorth to produce attorney time sheets for the Court's consideration, see doc. #12. Thereafter, Banknorth's counsel, Ward, Kelley & Babb, timely filed an Affidavit of Attorney's Fees (doc. #14). In the Affidavit of Attorney's Fees Banknorth's counsel reduced its legal fees and costs from \$2,057.70 to \$1,797.73.

In re S.T.N. Enterprises, Inc., 70 B.R. 823 (Bankr. D. Vt. 1987) is the controlling case in this jurisdiction regarding applications for attorney's fees; and Vermont Rule of Civil Procedure 80.1(f) provides further guidance regarding the instant issue in that it sets forth a cap that may apply to the amount of attorney's fees a creditor may claim, under certain circumstances, in a foreclosure action.

The Court finds that the Affidavit of Attorney's Fees incorporates the reductions that would have been required by In re S.T.N., 70 B.R. at 844 (e.g., eliminating a \$15 overhead charge; reducing travel time over one hour by half). The Court further finds that this reduced amount (\$1,797.73) is consistent with the terms of the underlying mortgage in question. Having carefully examined the time sheets corresponding to the claimed amount of legal fees and costs, the Court finds Banknorth's claim for legal fees and costs to be reasonable.


The Court further finds that since the filing of Debtors' bankruptcy case stayed Banknorth's state court foreclosure action against the Debtors, no default judgment could have been entered against the Debtors in that state court action. Therefore, V.R.C.P. Rule 80.1(f) was not triggered, and the two percent cap on attorney's fees is not applicable in this instance.

Therefore, IT IS HEREBY ORDERED that

1. the Debtors' Objection to the Claim by Banknorth regarding legal fees is OVERRULED;
2. the total arrearage due Banknorth is **\$9,297.73** (i.e., \$7,500, as stated in Debtors' confirmed Plan, *plus* \$1,797.73); and
3. the Debtors shall modify their chapter 13 Plan to reflect this amount within 10 days of entry of this Order.

SO ORDERED.

August 17, 2003



Colleen A. Brown
United States Bankruptcy Judge