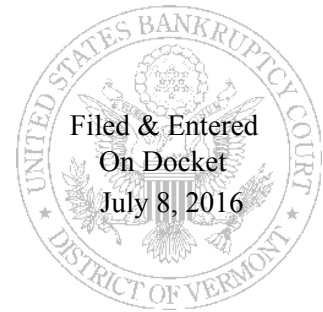


**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**



In re:

**Thane R. Isaacs
and Julie R. Isaacs
Debtors.**

**Chapter 13 Case
15-10303**

ORDER
DISALLOWING MORTGAGEE'S POST-PETITION FEES AND CHARGES

On March 8, 2016, Federal National Mortgage Association c/o Seterus, Inc. (the "Creditor") filed a notice of post-petition mortgage fees, expenses, and charges (doc. # 39, the "Notice"). According to the Notice, the Creditor incurred (1) \$350 on November 30, 2015 for "plan review" and (2) \$60 for property inspection fees during the period from September to December 2015.¹

On May 24, 2016, the Trustee filed a motion to disallow post-petition fees (doc. # 42, the "Motion to Disallow"), arguing that the fees sought appear to be unreasonable and not subject to reimbursement because (1) the plan review occurred after the Court entered an order confirming the Debtors' Chapter 13 plan on October 30, 2012, and (2) there was no basis for the property inspection fees since they were incurred shortly before and after the plan was confirmed, and at a time when the Debtors were engaged in the mortgage mediation process.² The Trustee further argued the fees should be disallowed because the Creditor had not filed a proof of claim. The Trustee also pointed out that the Debtors were consistently making plan payments which were regularly distributed to the Creditor.

The Creditor did not respond to the Motion to Disallow. The Court held a hearing on the Motion to Disallow on July 8, 2016, at which the Creditor did not appear. The Debtors represented they had had no communication regarding the requested fees with the Creditor, and the Trustee reiterated the arguments he had presented in the Motion to Disallow.

The confirmed plan does not list any pre-petition arrearages owed to the Creditor, and as of July 8, 2016, the Creditor has not filed a proof of claim.

¹ The specific dates of these fees incurred are: 9/10/15, 10/15/15, 11/12/15, and 12/17/15.

² The Court entered an order granting mortgage mediation with the Creditor on August 24, 2015 (doc. # 20), which was before the time the property inspection occurred.

The Court begins its analysis of this issue with the Notice itself. There, the Creditor offers no explanation for the fees requested and no reason for the gaps in timing of the charges it incurred.

Unlike a proof of claim, a Notice of Post Petition Expenses is not entitled to a presumption of *prima facie* validity. See Fed. R. Bankr. P. 3001(f) & 3002.1; In re Trevino, 535 B.R. 110 (Bankr. S. D. Tex. 2015) (“A 3002.1(c) notice is filed as a supplement to the holder's proof of claim...[and it] is not afforded the *prima facie* validity of the proof of claim itself”). Thus, the burden is on the Creditor to establish a right to these expenses and the reasonableness of the expenses:

[S]imply including ‘Review of Plan’...on the 3002.1 Notice...does not necessarily explain to the debtor, the trustee, or the Court why the services of an attorney were needed, whether the charges are reasonable on the particular facts of the case, who performed the work, the time spent on the task, the rate charged, etc...Without any response, testimony, or other evidence presented by [the creditor] to supplement the insufficient 3002.1 Notice and to demonstrate that the requested fees are allowable...there is insufficient information for a finding that the requested fees for the services are permissible.

In re Hale, No. 14-04337, 2015 WL 1263255, at *3 (Bankr. D.S.C. Mar. 16, 2015).

Since the Creditor has presented no explanation or justification for the expenses it seeks to have reimbursed, and failed to appear at the July 8th hearing, THE COURT FINDS the Creditor has not met its burden of proof for allowance of the fees and charges set forth in the Notice.

Based upon the record in this case and the foregoing finding, IT IS HEREBY ORDERED that the post-petition fees identified by the Creditor in the Notice are disallowed.

SO ORDERED.

July 8, 2016
Burlington, Vermont



Colleen A. Brown
United States Bankruptcy Judge