

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**



In re:

**Berton Frye
and Virginia Frye,
Debtors.**

**Chapter 7 Case
15-10242**

Appearances: *Jacob O. Durell, Esq.
Stevens Law Office
Stowe, VT
For the Debtors*

*Kevin Purcell, Esq.
Office of the United States Trustee
Albany, NY
For the United States Trustee*

*Eunice Hudson, Esq.
U.S. Department of Justice
Washington, D.C.
For the United States*

ORDER

**REJECTING THE DEBTORS' CLAIM THAT § 329 IS UNCONSTITUTIONAL AND
GRANTING, IN PART, THE U.S. TRUSTEE'S MOTION FOR DISGORGEMENT OF ATTORNEYS' FEES**

For the reasons set forth in the memorandum of decision of even date, THE COURT HEREBY
FINDS:

1. The Debtors have failed to meet their burden of proof that § 329 of the Bankruptcy Code is unconstitutionally overbroad or vague.
2. (a) The fees Attorney Durell received from Jeffrey Frye and the Debtors, totaling \$19,500, were for services rendered either "in contemplation of" or "in connection with" the Debtors' bankruptcy case, and therefore, he was required to timely disclose all of those fees to this Court, pursuant to § 329 of the Bankruptcy Code and Bankruptcy Rule 2016(b).
(b) The fees Attorney Stevens received from the Debtors, in the amount of \$1,000, were for services rendered "in connection with" the Debtors' bankruptcy case, and therefore, either he or Attorney Durell (the lead bankruptcy counsel), was required to timely disclose those fees to this Court, pursuant to § 329 of the Bankruptcy Code and Bankruptcy Rule 2016(b).

3. In balancing Attorney Durell's failure to fulfill his obligation to disclose all fees paid in this case, against the unusual circumstances and access to justice pressures of this case, it is just to require Attorney Durell to disgorge one-half of the total fees paid.

Accordingly, IT IS HEREBY ORDERED

- A. The Debtors' claim that § 329 of the Bankruptcy Code is unconstitutional, as overbroad or vague, is rejected as without merit, and the United States' objection to the Debtors' claim of unconstitutionality is sustained.
- B. All of Attorney Durell's arguments disputing the obligation to disclose all fees he and Attorney Stevens received from the Debtors or Jeffrey Frye are overruled.
- C. The U.S. Trustee's motion for an order determining the fees Attorney Durell received were excessive is denied.
- D. The U.S. Trustee's motion for an order directing disgorgement of the fees received in this case, based upon Attorney Durell's failure to properly disclose fees, as required by § 329 of the Bankruptcy Code and Bankruptcy Rule 2016(b), is granted in part.

IT IS FURTHER ORDERED that within 30 days of entry of this Order, Attorney Durell shall disgorge \$10,250 to the Debtors and Jeffrey Frye, *pro rata*, according to the amount each has paid, *i.e.*, \$1,230 to the Debtors (12%) and \$9,020 to Jeffrey Frye (88%).

SO ORDERED.

April 12, 2017
Burlington, Vermont



Colleen A. Brown
United States Bankruptcy Judge