

TBBA

Calendar of Events

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We are still in the process of putting together a full history of the TBBA to share with you. Meanwhile, one part of the story just won't wait.

It seems that after the organizers of the current incarnation of the TBBA had drafted and approved the initial By-laws, they proceeded to nominate and elect the initial Board of Directors and Officers. The By-Laws provided for the annual election of the President-Elect, the Secretary, and the Treasurer. In the next year, the President Elect would automatically become President, and the President would become Past President. For the first year, of course, since there was no previous President-Elect, a President would have to be elected. The By-laws further provided that the first vote would also choose the initial Past President.

When it came time to elect the initial Past President, Jonathan Hauser stepped forward and was selected. To this day, if you check Jonathan's listing with Martindale Hubbell, you will find the following, "Member: Norfolk-Portsmouth and Virginia Beach Bar Associations; Tidewater Bankruptcy Bar Association (Past President)." Jonathan told me it was a tough job, but somebody had to do it!

Again, if anyone has other interesting anecdotes about the formation and history of this organization, please let me know.

In this issue you will find an article submitted by the Office of the U.S. Trustee. The article focuses on the continuing efforts of that Office and of the Bankruptcy Fraud Working Group to identify and prosecute those who commit crimes associated with the bankruptcy process and those who have warranted civil action to stop questionable or illegal practices. Please take a few minutes to read and digest this article. Also, please be aware that very good things can come out of enforcement situations.

In the case of the petition preparers, MKL, Inc., and Michael K. Lewis, et al., there were several debtors who were thrust into bankruptcy without any thought having been given to how they could best benefit from filing, or whether they needed to file a petition at all. When confronted with imminent automatic dismissals for ten or so cases, the Office of the U.S. Trustee filed motions to have the automatic dismissals delayed so that each debtor could be afforded the opportunity to consult with an attorney for real advice on bankruptcy.

At that point, the TBBA contacted numerous of its members to see if they would help with this project. The response was overwhelmingly positive. The debtors victimized by Mr. Lewis and his associates all received nearly instant free consultations with members of our association. Some cases were redone in a professional manner and others were allowed to be dismissed because the cases should never have been filed in the first place. The ease and speed with which all this took place was wonderful to see, and I thank all of you who assisted.

As to the future, please mark December 3, 2004 as the date for the Thirteenth Annual Tidewater Bankruptcy Conference. Steve Richards and Dan Blanks are busy putting the finishing touches on the line-up, and we should be able to let you know the details of the program shortly. Judge Adams and Judge St. John have agreed to discuss selected topics in Ethics, and Morgan King will be coming from California to fill us in on the various tax questions and decisions that need to be considered in chapter 7 and chapter 13 cases. I hope all of you will attend... and bring a friend!

From the Office of the U.S. Trustee

by Robert B. Van Arsdale

The last eighteen months have been busy at the Office of the U.S. Trustee. As a matter of national policy, there has been increased emphasis on civil enforcement matters and on criminal referrals. The criminal cases have all been channeled through the Bankruptcy Fraud Working Group. This group consists of representatives from the U.S. Attorney's Office, the Office of the U.S. Trustee, the F.B.I., and the I.R.S. The cases detailed below represent only part of the activity that has come through our office.

Civil. On January 21, 2004, the United States Bankruptcy Court in Norfolk, VA imposed a permanent injunction against Michael K. Lewis of Upper Marlboro, MD, Gralian Ceasar of Randallstown, MD, and Lakishia Phillips of Hampton, VA, barring them forever from acting as petition preparers and from engaging in the unauthorized practice of law in the Commonwealth of Virginia.

The Court found that the defendants had engaged in a scheme to prey upon poor people and that their services were worthless. Using radio and television ads, the defendants lured people in desperate financial straits to a hotel in Hampton, VA and advised them to file bankruptcy. The defendants then prepared skeletal filings, which would have been dismissed under the Local Rules, but for the intervention of the U.S. Trustee. The victims testified about their dealings with the defendants and their monetary losses. Some victims testified that the defendants sold them insurance as well. Members of the local bankruptcy bar have stepped in to represent most of the victims and salvage their cases if appropriate.

The Court ordered the defendants to disgorge all fees paid by the victims, which totaled \$2,831.00. The Court also imposed fines of \$21,000.00 (the maximum authorized by statute) against the defendants jointly and severally, for their violations of 11 U.S.C. § 110.

To date, none of the defendants have complied with the sanction Order, and the Office of the U.S. Trustee has filed a Motion for Contempt against all of them.

Criminal. On March 31, 2003, the United States District Court for the Eastern District of Virginia, Norfolk Division, sentenced Franklin D.R. Hargrove to 18 months in prison followed by 3 years of probation on his jury conviction on 7 counts of bankruptcy fraud, false declarations, and false statements. In his 1999 bankruptcy petition, Mr. Hargrove did not list numerous assets on his schedules, including a number of antique automobiles, which were titled in the name of defunct corporations owned solely by him. He also did not testify truthfully about the automobiles at his § 341 meeting. In addition, he did not testify truthfully about the automobiles before the bankruptcy court at the trial on the complaint to deny discharge filed by the U.S. Trustee. The debtor's sentence was enhanced from the base offense level by two levels for his perjurious testimony. The case was referred by the Norfolk, VA U.S. Trustee's office, and the Assistant U.S. Trustee testified at the criminal trial.

On April 25, 2003, Edward Thomas Fodrey pleaded guilty in the Eastern District of Virginia to one count of false declaration under penalty of perjury under 18 U.S.C. §152(3) and one count of false representation under 18 U.S.C. §1001(a)(2). Mr. Fodrey did not disclose at least \$34,470.00 in income from the operation of his business, Complete Home Improvement Corporation, in the year before he filed bankruptcy. In addition, he falsely represented to the Social Security Administration that he was unable to work and had not done work pertaining to

walking, sitting, or climbing stairs since a 1993 surgery. The U.S. Trustee's office received information from one of Mr. Fodrey's home improvement business customers (also a creditor in the bankruptcy), who successfully objected to his discharge. Mr. Fodrey was ultimately sentenced to 6 months confinement, 5 years supervised release, and ordered to pay \$13,608.00 in restitution.

Starting in January, 2001, the U.S. Trustee's Norfolk, VA office helped in the prosecution of a Virginia Beach, VA man who had filed for bankruptcy at least 10 times since 1994 to stop foreclosure on his real property. Once the foreclosure was stayed, Samuel M. Monroe allowed each case to be dismissed. To thwart detection, Monroe used variations of his name and transposed numbers in his Social Security number. He also obtained an Employee Identification Number, altered a photo identification card, and used the card when he applied for a new mortgage. The financial analyst from the U.S. Trustee's Norfolk, VA office retrieved and reviewed all of Monroe's archived petitions, and charted relevant information, including the various names and Social Security numbers that he used. The Norfolk Assistant U.S. Trustee then explained to prosecutors how Monroe was taking advantage of the bankruptcy system, and helped recommend an appropriate restitution amount by calculating the victims' losses. Monroe pleaded guilty in the Eastern District of Virginia to bankruptcy fraud and making a false statement. Mr. Monroe was sentenced to 24 months confinement, 3 years supervised release, and ordered to pay restitution in the amount of \$28,713.00. Mr. Monroe then fled the jurisdiction. He was recently located in New York and was returned to Virginia to begin serving his original sentence and for further proceedings. He was sentenced on April 8, 2004 to additional confinement for his flight to avoid commencing his original sentence.

On July 24, 2003, Cynthia Adams of Hampton, VA pleaded guilty in the Eastern District of Virginia, Norfolk Division, to one count of bankruptcy fraud under 18 U.S.C. section 157(3). Theron Adams, Cynthia Adams' husband, filed a petition under chapter 13 on May 15, 2001. Mr. Adams fell behind in his payments to the Chapter 13 Trustee, who filed a motion to dismiss. At the hearing on the motion to dismiss held on December 20, 2002, Theron Adams testified and produced the front and back of checks written on a SunTrust Bank account to verify his plan payments. The Chapter 13 Trustee called an officer of SunTrust Bank to testify, who explained that the front and back photocopies did not match, and that some previous payment check "backs" had been substituted on new fronts. Mr. Adams also testified that Mrs. Adams took care of the finances in the home and had provided him with the copies of the cancelled checks. When interviewed by an FBI Agent, Mrs. Adams confessed to changing the check "backs" to make it appear that payments had been made. Ms. Adams was sentenced as a first-time offender to 24 months supervised release.

More recently, the grand jury in the Norfolk Division of the United States District Court for the Eastern District of Virginia returned a five-count indictment against Charles L. Hope of Hampton, VA during its June term. Mr. Hope filed three chapter 7 petitions within 10 months, using two different social security numbers. Mr. Hope was charged with four counts of obtaining something of value by falsely representing his Social Security Number in violation of 41 U.S.C. § 408(a)(7)(B) and one count of devising a scheme to defraud in violation of 18 U.S.C. § 157(3) and (2).

Noah White of Hampton, VA was indicted during the June term of the Grand Jury sitting in the United States District Court for the Eastern District of Virginia, Newport News Division. Mr. White was charged with violating 18 U.S.C. § 152(3) by making false declarations under penalty of perjury by failing to list the Dodge Ram 2500 Truck in his schedules, and by stating in the statement of financial affairs that the truck had been left in New York and he did not know its whereabouts. He was also charged with violating (i) 18 U.S.C. § 152(2) by falsely testifying under oath at the § 341 meeting that his truck had been missing for about two years and that he was current on his child support payments, and (ii) 18 U.S.C. § 152(1) by concealing the Dodge truck. At all relevant times, Mr. White was in possession of and operating the Dodge truck. The U.S. Trustee's Norfolk, VA office made the referral of this matter based on information provided by a creditor.

John Wesley Hodges, Jr., of Newport News, VA, was charged in a superseding indictment in the United States District Court for the Eastern District of Virginia, Newport News Division, with violating 18 U.S.C. §152, False Oaths in Connection with Bankruptcy. This charge stemmed from his failure to disclose secured debts totaling in excess of \$53,000.00 on a motorcycle and an automobile, and from his failure to reveal a period of self-employment. He was also charged with False Representation of Social Security Number in violation of 42 U.S.C. § 408(a)(7)(B), Identity Theft, in violation of 18 U.S.C. § 1028(7), and Use of an Unauthorized Access Device in violation of 18 U.S.C. § 1029(a)(2), all relating to fraudulent use of credit cards issued in his father's name.

Lastly, please note that the Office of the U.S. Trustee will present a seminar entitled "Navigating Effectively Through Bankruptcy Waters." The seminar has been approved for 3 hours of CLE credit (0 hours of ethics), and is FREE. The Norfolk session of the seminar will be held on September 22, 2004 in the hearing room at the Norfolk Federal Building. The Newport News session will be held on September 29, 2004 in the Newport News hearing room on Diligence Drive. Both seminars will start at 2:00 p.m. and end at 5:00 p.m. There will even be snacks. The seminar will benefit all bankruptcy practitioners, and staff is also encouraged to attend.

Word on the Street

Congratulations to Dave and Sherry McCormick on their adoption of Taya and Roman.

If you have any congratulations that we may have overlooked or suggestions on how we can serve and inform you better, please let us know. E-mail kstegall@wilsav.com or icalderon@dmmlegal.com.

Changes to the Local Rules

Below is a summary of the Court-approved technical revisions to the Local Bankruptcy Rules for the United States Bankruptcy Court for the Eastern District of Virginia, effective July 1, 2004, which are available online at www.vaeb.uscourts.gov.

Local Bankruptcy Rule 1006-1 Fees: Installment Payments – (B) Schedule of Payments. LBR 1006-1(B) is amended by means of a technical revision to the "1 Month After Filing" column, at the Chapter 11 line, by changing the stated figure from \$400.00 to \$409.00.

Local Bankruptcy Rule 3015-2 Chapter 13 Plan Requirements – (C) Dismissal of Case for Defects with Chapter 13 Plan and Related Motions and Notice of Chapter 13 Plan and Related Motions – (2) Dismissal of Case Upon Denial of Confirmation. LBR 3015-2(C)(2) is amended by means of a technical revision clarifying that a previously filed and court-approved plan remains in full force and effect should the court deny confirmation of a subsequently filed modified plan and that the options set forth in the rule would not be available under such circumstances.

Local Bankruptcy Rule 4001(a)-1 Relief from Automatic Stay – (B) Caption. LBR 4001(a)-1(B) is amended by means of a technical revision to conform the rule provision to the current practice of not requiring the assignment of contested matter numbers with respect to motions for relief from stay.

Need CLE credit?

If you attended either of the February or May TBBA luncheon seminars and have not received a Certification of Attendance form to complete to obtain your CLE credit from the Virginia MCLE Board of the Virginia State Bar, please contact Steven Richards for more information at: (757) 431-8665 or stevenrichards@cs.com.

The Office of the U.S. Trustee will present a seminar entitled "Navigating Effectively Through Bankruptcy Waters." Significantly, the seminar has been

approved for 3 hours of CLE credit (0 hours of ethics). Most importantly, however, snacks will be provided, and admission is free. The Norfolk session of the seminar will be held on September 22, 2004 in the hearing room at the Norfolk Federal Building. The Newport News session will be held on September 29, 2004 in the Newport News hearing room on Diligence Drive. Both seminars will start at 2:00 p.m. and end at 5:00 p.m. The seminar will benefit all bankruptcy practitioners, and staff is also encouraged to attend.