

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Martin R. Barash, Presiding
Courtroom 303 Calendar**

Wednesday, January 31, 2024

Hearing Room 303

1:00 PM

1: -

Chapter

#0.00 All hearings on this calendar will be conducted in Courtroom 303 at 21041 Burbank Boulevard, Woodland Hills, California, 91367. All parties in interest, members of the public and the press may attend the hearings on this calendar in person.

Additionally, (except with respect to evidentiary hearings, or as otherwise ordered by the Court) parties in interest (and their counsel) may connect by ZoomGov audio and video free of charge, using the connection information provided below. Members of the public and the press may only connect to the zoom audio feed, and only by telephone. Access to the video feed by these individuals is prohibited.

Parties in interest may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Members of the public, the press and parties in interest may participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate remotely and there are no fees for doing so. No pre-registration or prior approval is required.

The audio portion of each hearing will be recorded electronically by the Court and that recording will constitute its official record. Recording, retransmitting, photographing or imaging Court proceedings by any means is strictly prohibited.

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Judge Barash seeks to maintain a courtroom in which all persons are treated with dignity and respect, irrespective of their gender identity, expression or preference. To that end, individuals are invited to identify their preferred pronouns (he, she, they, etc.) and their preferred honorific (Mr., Miss, Ms., Mrs., Mx, M, etc.) in their screen name, or by advising the judge or courtroom deputy.

Docket 0

Tentative Ruling:

- NONE LISTED -

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1:15-13134 Mohammad Sadegh Namazikhah

Chapter 7

#1.00 Continued hearing on final application for fees and expenses for Law Offices of Raymond H. Aver

fr. 11/28/23

Docket 611

Tentative Ruling:

Tentative Ruling for January 31, 2024

The Court held its initial hearing and heard oral argument on the final application for compensation of the Law Offices of Raymond H. Aver ("Application" and "Applicant") on November 28, 2023. Since then, the Court has had the opportunity to study the Application, the objections and the extensive record in this case, and to consider the arguments of the parties, in greater detail. Based on that review, the Court concludes that it requires a more fulsome evidentiary record to adjudicate the Application.

In the papers and at oral argument, one of the principal arguments of the objecting parties was that Applicant prolonged the proceedings in such a way as to benefit only the Debtor and not the estate. The objecting parties contend that although Applicant appears to have performed various services, those services did not result in a beneficial outcome for the estate. Instead, they argue, those services prolonged the case in such a way as to benefit only the Debtor—who lived in the Lachman Lane residence without paying the costs of doing so, thereby eroding the equity in the property by as much as \$700,000, at the expense of unsecured creditors.

Applicant responds arguing that counsel for a debtor in possession is not the guarantor of the outcome of a case. Applicant argues they provided substantial services in pursuit of a chapter 11 reorganization, although that effort was not successful. Applicant argues that services must be assessed, at the time they are provided, to determine whether they were "reasonably likely to benefit the debtor's estate." 11 U.S.C. § 330(a)(4)(A)(ii).

Applicant is correct to the extent that the Bankruptcy Code bars recovery for services

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that were not reasonably likely to benefit the Debtor's estate. But to the extent Applicant suggests that *any* services nominally provided in pursuit of a chapter 11 reorganization are entitled to compensation, Applicant would be incorrect. Services may not be reasonably likely to benefit the estate where they are not timely and diligently performed, are not performed with adequate skill and diligence, or are ill conceived (e.g., not reasonably likely to achieve their purported objective).

Looking at the case through this analytical lense, the Court has concerns about the compensation sought here. For instance, it appears that for the first year of the case, Applicant provided services pertaining to the filing of the case, disclosure and compliance issues. But it does not appear that any substantial steps were taken towards developing a plan of reorganization or other resolution of the case. Why not? During that year alone, equity in the property was substantially reduced. In the second year of the case, it appears that efforts were made to seek a loan modification on behalf of the Debtor, but it appears that little or nothing happened towards the development of a plan until that loan modification was denied by the lender. Why not? Was a loan modification even realistic? Would it have made a difference here in terms of developing a plan given the extent of the unsecured claims?

In not so many words, the objecting parties suggest that Applicant was assisting the Debtor in slow playing the case and going through the motions of a chapter 11 case without any real prospect of success. The first plan of reorganization was denied confirmation after the last of a series of continuances was denied and Debtor got to the confirmation hearing with no evidence to support confirmation of the plan. The Court later declined to confirm an amended plan that contemplated a sale of the Lachman Lane residence by an unachievable date, coupled with an open-ended process that would not bring a timely and definitive resolution to the case. That amended plan was effectively dead-on-arrival. Under the circumstances presented, how were these efforts—although nominally aimed at plan confirmation—reasonably likely to benefit the estate?

Another very significant issue is Debtor and Applicant's failure to provide notice of the bankruptcy to the Ghorbanian parties. The Debtor and Applicant did not even *attempt* to do so until nearly two years into the case. That belated attempt failed because Applicant served a former lawyer for the Ghorbanian parties who had long since substituted out of the state court action in which those claims were first asserted.

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Moreover, the Debtor and Applicant do not appear to have served the Ghorbanian parties themselves. Many more months went by before the Ghorbanian parties got notice of the bankruptcy case and began to participate. By failing to timely serve them, the debtor and Applicant deprived them of the knowledge of the case and the ability to participate. Had they received timely notice, it stands to reason they might have advocated greater diligence by the Debtor and Applicant in prosecuting the case. Despite this issue being raised and discussed throughout the case, Applicant has never offered an explanation for his failure to notice the Ghorbanian parties earlier, his failure to properly notice them when he eventually sought to do so, or the steps he undertook to conduct diligence in these matters. These factual matters are relevant to the Application and the objecting parties' opposition to the Application. The Court believes that development of a better factual record in this regard is necessary to adjudicate the Application.

Accordingly, before the Court rules conclusively on the Application, the Court wants to give Applicant an opportunity to supplement the record and give the objecting parties an opportunity to examine Mr. Aver.

Accordingly, the Court intends to order the following:

1. Applicant may file and serve on the objecting parties a supplemental declaration or declarations in support of the Application no later than February 16, 2024. The declaration or declarations may address any matter relevant to the Application.
2. The declarant in each such supplemental declaration or declarations shall appear for examination at a continued, in-person hearing on the Application on February 28, 2024, at 10:00 a.m.
3. Regardless of whether Applicant files a supplemental declaration or declarations, attorney Raymond Aver shall appear for examination in this matter on February 28, 2024, at 10:00 a.m. To be clear, examination of Mr. Aver will not be limited to cross-examination. Counsel for the objecting parties may examine Mr. Aver on any matter relevant to the

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Mohammad Sadegh Namazikhah
Application.

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4. At the conclusion of the presentation of evidence, the Court will hear further argument on the Application. The Court does not intend to order additional legal briefing in advance of the evidentiary hearing. At the conclusion of oral argument, the parties and the Court can discuss whether additional legal briefing is warranted.

At the hearing on January 31, 2024, the Court intends to discuss scheduling, i.e., the dates proposed above for the filing of any supplemental declarations and the evidentiary hearing. The Court does not intend to hear argument on the merits of the Application on January 31, 2024.

Ruling for November 28, 2023

Granted as to the fee apps of the Trustee, Menchaca & Co and Zamora & Hoffmeier. Trustee has permission to, in his discretion, make distributions to priority and general unsecured creditors provided funds are reserved for Aver's fees.

Continued to January 31, 2024 at 1:00 p.m. on the fee application of Raymond Aver only.

Party Information

Debtor(s):

Mohammad Sadegh Namazikhah

Represented By
Raymond H. Aver
Simon J Dunstan

Trustee(s):

David Seror (TR)

Represented By
Nancy H Zamora