



**UNITED STATES BANKRUPTCY COURT**  
**Western District of New York**

**Paul R. Warren**  
Clerk of Court

**Buffalo**  
**Rochester**

**(716) 551-4130**  
**(585) 613-4200**

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**NOTICE REGARDING MOTIONS TO REDEEM PROPERTY  
AND PROCEDURAL REQUIREMENTS FOR THE  
DISCLOSURE OF COMPENSATION BY COUNSEL  
FOR CASES FILED IN ROCHESTER AND WATKINS GLEN**

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No. 04-03

June 16, 2004

Please take notice that the Rochester Division of the Bankruptcy Court has issued an Order establishing procedural requirements to be followed by counsel representing a debtor or debtors with respect to an application to redeem property, where counsel is receiving compensation, in any form, from a source other than or in addition to the debtor(s). This Order is effective immediately. A copy of the Order is attached.

Please direct questions regarding motions to redeem property and the procedural requirements for the disclosure of compensation to the Rochester Clerk's Office at (585) 613-4200

PAUL R. WARREN

CLERK OF COURT

**UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF NEW YORK**

In re: )  
 ) Chapter 7  
Franklin L and Robin D. Castle ) Case No. 03-25000  
 )  
Debtor(s). )  
\_\_\_\_\_ )

**ORDER REQUIRING DEBTORS' COUNSEL TO DISCLOSE COMPENSATION**

This matter came before the Court on the Debtors' Motion to Redeem property. The United States Trustee filed a letter in lieu of an objection, noting, inter alia, that an amended 2016(b) statement had not been filed in this case and that there may be a conflict of interest problem in that counsel for the debtors was receiving compensation from the lender, which may have not been disclosed to the debtors. Counsel for the debtors responded via letters, stating that 1) he did not believe he was required to disclose the commission from the lender at the time he filed the redemption motion because the loan had not been signed yet by his clients, 2) that he was not receiving additional compensation from the debtors with regard to this redemption motion, and 3) that in the future he would have his clients sign a Lending Disclosure and Waiver statement, outlining the dual representation, the anticipated commission, the interest rate, benefits of the loan etc. . . .

On April 21, 2004, this court held a hearing on the matter, at which hearing the United States Trustee appeared but counsel for the debtor did not. UPON CONSIDERATION of the United States Trustee's letter and argument, counsel for the debtors' letters, the Bankruptcy Code and Rules and the New York Code of Professional Responsibility, it is by the United States Bankruptcy Court for the Western District of New York,

ORDERED, that counsel for the debtor is required to file immediately an amended Rule 2016(b) statement, which may be in the form of a letter, disclosing any and all compensation, fees, commissions, etc. . . . received or anticipated to be received from any source, including the lender. This statement or letter shall be served on the United States Trustee, the debtor, and other parties in interest; and it is further

ORDERED that in all future cases, an amended 2016(b) statement or letter shall be filed in conjunction with the filing of a redemption motion, if one has not been filed already

pursuant to the Bankruptcy Code and Rules, when counsel has an agreement to receive compensation, commission(s) or fee(s), anticipates receiving any compensation, commission(s) or fee(s), or has received compensation, commission(s) or fee(s) from any source, whether or not, counsel is required to apply for compensation; and it is further

ORDERED, that the total fees received will be subject to review by the court, the United States Trustee, the debtor, and creditors under a reasonableness standard; and it is further

ORDERED, that counsel for the debtor shall file with his motion to redeem a 722 Lending Disclosure Statement and Waiver, which clearly sets forth the following:

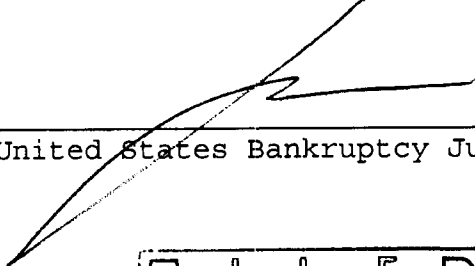
1. That the debtor is free to finance the redemption through any source, not just the source being presented by counsel;
2. That if the debtor chooses to use the lender presented by bankruptcy counsel, that a referral fee or commission will be paid directly from the lender to bankruptcy counsel and that these funds will be obtained from the proceeds of the loan taken out by the debtor, if this is the case;
3. The total amount of the anticipated fee, commission, or compensation received or anticipated from the lender;
4. That this referral fee, commission, or compensation may be in addition to any fees charged to the debtor for filing the redemption motion;
5. The interest rate charged by the lender being recommended by counsel;
6. The benefit, if any, to the debtor in obtaining the new loan, i.e., counsel needs to clearly outline why there is a financial benefit to the debtor in taking this new loan and if there is no financial benefit, to explain this;
7. That there is a possible conflict of interest present in a bankruptcy attorney representing both the lender and the borrower in a transaction;
8. That the debtor has waived any conflict of interest by clearly stating such with the debtor's signature attached.

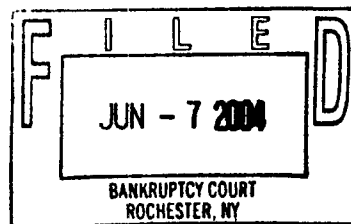
This 722 Disclosure and Waiver Statement shall be attached to all 722 motions as an exhibit; and it is further

ORDERED, the failure to file the 722 Lending Disclosure and Waiver Statement and the amended 2016(b) statement shall be grounds for denial of the Motion.

DATED: \_\_\_\_\_

6/7/04

  
\_\_\_\_\_  
United States Bankruptcy Judge



cc: All parties in interest