

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

**In Re: DENNIS M. TEARS and
LORI ANN TEARS,**

Debtors.

BK. NO. 92-20754

CHAPTER 13

In Re:

ROBERT L. TYO,

Debtor.

BK. NO. 92-20813

CHAPTER 13

DECISION AND ORDER

BACKGROUND

Since the issue of whether unpaid attorney's fees incurred in connection with a prior bankruptcy case would be allowed as an administrative expense in a subsequent bankruptcy case was presented in each of these cases, the parties requested that the matters be heard and decided together.

On December 27, 1989 Dennis M. Tears and Lori Ann Tears (the "Tears") filed a petition initiating a Chapter 7 case. On April 11, 1990 a Discharge Order was entered and on May 18, 1990 the Chapter 7 was closed. On April 22, 1992 the Tears filed a petition initiating a Chapter 13 case which was designated as case number 92-20754. In their Schedules, the Tears listed unsecured liabilities of \$8,960.44, which were all incurred subsequent to December 1989, including obligations of \$721.84 to Douglas J. Lustig, P.C. for legal services in their prior Chapter 7 case and \$5,907.54 to Big Apple Credit Corporation for a deficiency resulting from a January 19, 1991 repossession and sale of an automobile.

On December 11, 1989 Robert L. Tyo ("Tyo") filed a petition initiating a Chapter 13 case. No plan was ever confirmed in his Chapter 13 case which was converted to a Chapter 7 case on April 5, 1990. On July 18, 1990 a Discharge Order was entered and on August 22, 1990 the Chapter 7 case was closed. On March 27, 1992 Tyo filed a petition initiating a Chapter 13 case which was designated as case

number 92-20813. In his Schedules, Tyo listed unsecured claims of in excess of \$26,000, which were all incurred subsequent to December 1989, including an obligation of \$700.00 to Douglas J. Lustig, P.C. for legal services in his prior bankruptcy case.

Douglas J. Lustig, P.C. filed a Request for the Payment of its unpaid attorney's fees as an Administrative Expense in both the Tears and Tyo Chapter 13 cases, and the Chapter 13 Trustee objected to the requests. The Court heard arguments on June 17, 1992, and on August 6, 1992 Douglas J. Lustig, P.C. submitted a Memorandum of Law in support of its requests.

DISCUSSION

11 U.S.C. § 503¹ provides for the allowance of various administrative expenses, including the actual, necessary costs and expenses of preserving the estate (11 U.S.C. §503(b)(1)(A)) and compensation and reimbursement awarded to professionals under Section 330(c)(a) (11 U.S.C. §503(b)(2)). Section 541(a) provides that, "the commencement of a case under Section 301, 302 or 303 of this Title creates an estate." It is the estates created by the commencement of the Tears' Chapter 13 case on April 22, 1992 and Tyo's Chapter 13 case on March 27, 1992 which this Court must consider in determining whether under Section 503(a)(1)(A) there is an allowed administrative expense for the actual, necessary costs and expenses of preserving that estate. The unpaid attorney's fees due to Douglas J. Lustig, P.C. for services rendered in the prior Chapter 7 cases of the Debtors, which were closed nearly two years prior to the commencement of the pending Chapter 13 cases, are not costs and expenses of preserving the pending Chapter 13 estates as contemplated by Section 503. See In re Jartran, Inc., 886 F.2d 859, 871 (7th Cir. 1989). In those prior Chapter 7 cases, the Debtors obtained a discharge and a "fresh start," the full relief contemplated by the Bankruptcy Code for a Chapter 7 debtor. The prior Chapter 7 cases and pending Chapter 13 cases are clearly separate and distinct proceedings. No argument has or can be made that the

¹§503. Allowance of administrative expenses.

(a) An entity may file a request for payment of an administrative expense.

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including -

(1)(A) the actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case . . .

(2) compensation and reimbursement awarded under section 330(a) of this title;

