

SO ORDERED.

SIGNED this 7th day of February, 2023.



Dale L. Somers

Dale L. Somers
United States Chief Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:

Kyle Lee Kinderknecht
Chasity Dawn Kinderknecht,

Debtors.

Case No. 17-12530-13

Order Granting Fee Award

In a Memorandum Opinion and Order issued January 18, 2023,¹ the Court granted the motion to determine mortgage payment and motion for sanctions of Debtors Kyle and Chasity Kinderknecht. In the Memorandum Opinion and Order, the Court concluded the mortgage creditor Golden Belt Bank failed in its duties under Federal Rule of Bankruptcy Procedure

¹ Doc. 136.

3002.1(b) to provide notice of needed changes to Debtors' mortgage escrow account, and related notice of interest rate changes.² Under Rule 3002.1(i)(1), the Court excluded evidence from Golden Belt Bank that there was an escrow deficiency. Under Rule 3002.1(i)(2), the Court prohibited Golden Belt Bank from assessing fees related to the matter and indicated an intent to award fees to Debtors incurred in association with litigating the failure to notify under Rule 3002.1.

Debtors have now filed an itemization of the fees they are requesting.³ Debtors' counsel reports fees surrounding the matter total \$3920. An initial consultation with counsel was billed at a flat rate, and then the remaining time spent by counsel was billed at \$275 per hour. Based on the Court's experience and knowledge of the hourly rates charged by bankruptcy professionals in this geographic area, the Court concludes the hourly rate is reasonable for attorneys specializing in Chapter 13 consumer debtor work.

After the initial consultation, Debtors' counsel spent 2.68 hours communicating with counsel for Golden Belt Bank, filing the initial motion on the matter, attending the initial hearing on the matter, and communicating with Debtors. Debtors' counsel then spent 9.6 hours

² All further references in the text to "Rule" shall be to the Federal Rules of Bankruptcy Procedure.

³ Doc. 139.

preparing Debtors' portion of the stipulation of facts and Debtors' legal brief for this matter and attending one subsequent Court hearing. The description for much of this time is a simple "prepared brief."

Rule 3002.1(i)(2) permits a court to award "reasonable expenses and attorney's fees" caused by a creditor's failures to provide any information required under the Rule. An award under Rule 3002.1(i)(2) is discretionary.⁴ It is difficult to estimate what is reasonable for fees in this situation. The Court has located only a couple of cases stating an amount, indicating fee awards of \$770 and \$2025.⁵ The Court concludes that under the circumstances of this case, an award of \$3095 in attorney's fees is appropriate.⁶

Most of what is requested is reasonable. Golden Belt Bank failed to comply with the terms of its own Agreed Order requiring the Bank to notify Debtors of future changes to mortgage payments with a "proper Notice of Mortgage Payment Change pursuant to Rule 3002.1."⁷ Golden Belt Bank also did not comply with Rule 3002.1(b) regarding changes to payment amount

⁴ *Jama v. Immigration & Customs Enft*, 543 U.S. 335, 346 (2005) ("The word 'may' customarily connotes discretion"); *In re Roe*, No. 18-50046, 2021 WL 2946167, at *4 (Bankr. W.D. Mo. July 13, 2021) (noting the imposition of consequences under Rule 3002.1(i) is a discretionary decision).

⁵ *In re LeGare-Doctor*, 634 B.R. 453, 464 (Bankr. D.S.C 2021) (\$770); *In re Navarro*, No. 15-10301-SMG, 2020 WL 2843033, at *4 (Bankr. S.D. Fla. May 29, 2020) (\$2025).

⁶ This is a reduction of three hours (at \$275) per hour, from the requested amount.

⁷ Doc. 55 p. 2 ¶ 4.

concerning escrow and interest rate. In addition, Golden Belt Bank did not respond to the Chapter 13 Trustee's Notice of Final Cure Mortgage Payment, as required by Rule 3002.1(g). If the Bank had notified Debtors, the Chapter 13 Trustee, or the Court as required, at any of these steps, this issue could have been addressed in a more timely manner. Golden Belt Bank did not give a reason for not complying throughout Debtors' Chapter 13 case and after its errors were pointed out by Debtors litigated extensively to avoid the consequences of failing to follow the Rules. Golden Belt Bank also did not take the time to dig through and address the Debtors' loan transaction history.

There is no reason to be punitive.⁸ There is no evidence Golden Belt Bank is a habitual offender, as the Bank is not a major player in the local mortgage industry. As far as the Court is aware, Golden Belt Bank is a small operation that has presumably not encountered this situation before.⁹

⁸ There is debate in the case law concerning awards of sanctions and punitive damages as "other appropriate relief" under Rule 3002.1(i)(2), *see, e.g., PHH Mortg. Corp. v. Sensenich (In re Gravel)*, 6 F.4th 503, 514-15 (2d Cir. 2021) (concluding "other appropriate relief is limited to "compensatory forms of relief"), *In re Blanco*, 633 B.R. 714, 754 (Bankr. S.D. Tex. 2021) (concluding Rule 3002.1(i) permits the award of sanctions and punitive damages if merited), and *In re Tollstrup*, No. 15-33924, 2018 WL 1384378, at *5 (Bankr. D. Or. Mar. 16, 2018) (concluding punitive monetary sanctions are not permitted), but because the Court does not find punitive damages necessary, the Court need not decide the issue.

⁹ *See, e.g., In re Owens*, No. 12-40716, 2014 WL 184781, at *4 (Bankr. W.D.N.C. Jan. 15, 2014) (declining to award fees under Rule 3002.1(i)(2) because it was a matter of first impression with that mortgage lender, but indicating the court "may consider awarding relief" if the issue came up again).

Further, Debtors benefited from Golden Belt Bank's failures on a dollar-for-dollar basis. The amount credited to Debtors' escrow account is money that they would have paid out during the course of their Chapter 13 bankruptcy case if the Bank had followed the Rules. Ultimately, the Court reduces the amount awarded from the full amount requested because the itemization does not break down the time spent drafting Debtors' brief and gives very little information to the Court about the extent of the research and investigation needed. Considering the limited complexity of the issues at hand and the required investigation and research thereon, the Court concludes a fee award of \$3095 is reasonable.

The Court therefore awards attorneys' fees to Debtors under Rule 3002.1(i). Under Rule 3002.1(i)(2), a court "may" award "appropriate relief, including reasonable expenses and attorney's fees" caused by a mortgage creditor's failures under Rule 3002.1. The Court concludes the requested total fee of \$3095 for Debtors' counsel is reasonable and appropriate and awards the same. Golden Belt Bank is required to pay \$3095 to Debtors' counsel within thirty days of the date of this Order.

It is so Ordered.

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