

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

Case No. 19-30177
Chapter 13

Manuel Maldonado, and
Marion A. Maldonado,

Debtors.

**Order Reducing Post-Petition Attorney and Proof of Claim Fees
Payable to Quicken Loans, Inc.**

On May 3, 2019, Attorney Paul Scott Huntington filed a Notice of Postpetition Mortgage Fees, Expenses and Charges on behalf of secured creditor Quicken Loans, Inc. (“Quicken Loans”) as a supplement to Claim no. 5. Debtors objected (Doc. 32) and the court held a hearing on July 16, 2019. Jessica Grady, Esq. appeared on behalf of Debtors, Attorney Keith Young appeared as local counsel for Quicken Loans and Attorney Lynn Harper Wilson appeared for the chapter 13 trustee.

The fees sought include: “Attorney fees” of \$650.00, for “Plan Review (\$150.00)” and “Plan Objection (\$500.00)” and an additional \$500.00 for Quicken Loans’ “03/19/19 Proof of Claim”. Postpetition fees sought total \$1,150.00.

Debtors assert that these fees are excessive and seek a reduction and a total allowance of \$500.00. The court agrees that a reduction is warranted and reduces the fees to \$500.00.

Debtors filed this case on February 20, 2019 and on the same date filed their chapter 13 plan. *See* Doc. 2. The plan lists pre-petition arrears owing on Quicken Loans' secured claim of \$9,500.00 and ongoing monthly installment payments of \$1,129.00. As standardized in this District's Chapter 13 Local Form Plan, the plan includes the following specific language:

Unless otherwise ordered by the court, the amounts listed on a proof of claim filed before the filing deadline under Fed R. Bankr. P. 3002(c) control over any contrary amounts listed below as to the current installment payment and arrearage.

Part 3, Sec. 3.1 Doc. 2. Quicken Loans timely filed their proof of claim on March 19, 2019. It states the monthly installment at \$12.98 more than as stated in Debtor's plan (\$1,141.98) and prepetition arrears at \$422.78 more (\$9,922.78). Pursuant to the plan terms, the amounts stated in the proof of claim trumped the amounts stated by the Debtors in their proposed plan. Accordingly, by March 19, 2019, Quicken Loans had taken all the steps required to protect its secured position.¹ Quicken Loans then proceeded to file an objection to the plan on April 11, 2019, which served only to reiterate the amounts contained in its proof of claim: \$1,141.98 as the ongoing monthly installments and arrears of \$9,922.78. Doc. 22.

A mortgage holder is entitled to seek reasonable post-petition fees, expenses and charges incurred in connection with a claim. *See e.g., In re Conde-Dedonato,*

¹ Quicken Loans did subsequently amend its claim on May 6, 2019, to increase the total amount of its claim, which was still deemed timely filed, as it related back to its March 19 initial filing.

391 B.R. 247, 251-52 (Bankr. E.D.N.Y. 2008) (citing 11 U.S.C. § 506(a)); *see also* Fed. R. Bankr. P. 3002.1. Debtors do not contest Quicken Loans' entitlement to fees. Debtors do, however, challenge the reasonableness of the fees charged. *See* Doc. 32. The court finds the fee of \$150.00 for plan review reasonable² but the \$500.00 fee for filing the proof of claim excessive, as has been found by other courts. *See e.g. In re Winston*, 416 B.R. 32, 44 (Bankr. N.D.N.Y. 2009) (holding that \$150.00 for plan review and \$150.00 for preparing the proof of claim related to a mortgage were reasonable); *see also In re Mandeville* 596 B.R. 750, 766 (Bankr. N.D. Ala. 2019) (holding that \$300.00 related to a mortgage proof of claim was reasonable, and disallowing any fees above that amount); *In re Polly*, No. 15-31834(1)(13), 2016 WL 3004439, at *2 (Bankr. W.D. Ky. May 17, 2016) (holding that a fee of \$650.00 for filing a proof of claim was excessive, and reducing the amount to \$200.00); *In re Conde-Dedonato*, 391 B.R. at 251-52 (holding that \$200.00 for plan review and \$150.00 for preparing the proof of claim related to a mortgage were reasonable).

As noted at the hearing, proofs of claim similar to the claim here are typically prepared by clients, with the attorney subsequently reviewing and filing the claim. *See e.g. In re Obasi*, No. 10-10494 SHL, 2011 WL 6336153, at *7 (Bankr. S.D.N.Y.

² In doing so, however, the court questions the quality of services relating to plan review in the instant case as the essential plan provision relating to the treatment of secured claims vis-à-vis timely-filed proofs of claim was missed entirely or overlooked.

Dec. 19, 2011) (explaining that mortgage proofs of claim are typically completed and signed by clients in preparation for review by an attorney). To the extent that filing a proof of claim calls for administrative work, these tasks could be completed by a non-attorney. *See e.g. In re Polly*, No. 15-31834(1)(13), 2016 WL 3004439, at *2 (Bankr. W.D. Ky. May 17, 2016) (“The Court agrees with Debtors that much of the work detailed is administrative work...”). Based on this review, the court affirms the fee of \$150.00 for plan review but reduces the \$500.00 fee for the proof of claim to \$200.00.

The court also finds the \$500.00 fee charged for filing the objection to the plan unreasonable in this instance as it was completely unnecessary. As noted above, the language of the standard plan adopted by this District specifies that the amounts stated in a secured creditor’s timely-filed proof of claim control over the terms proposed in the plan, absent further court order.³ *See* Chapter 13 Local Form Plan, Section 3.1; Local Bankruptcy Rules of the Northern District of New York (“LBR” or the “local rules”) Appendix VI; LBR 3015-1. This language was clearly stated in Debtors’ chapter 13 plan. *See* Doc. 2. Attorney Grady took no issue with the amounts listed in Quicken Loans’ proof of claim and stated her acceptance of its numbers at the hearing. Quicken Loans’ position would have been recognized

³ Such an order would follow after a hearing on an objection to claim, of which the secured creditor would have due notice.

simply by virtue of its timely-filed proof of claim. Counsel for the creditor is, of course, at liberty to proceed to file an objection to confirmation and may have done so at the client's direction. Absent the necessity for doing so, however, the court will not recognize as reasonable shifting the costs and charging the Debtors \$500.00.

The court recently found \$500.00 to be a reasonable fee for reviewing a chapter 13 plan, filing a mortgage proof of claim and objecting to the plan. *See In re Gettler*, Case No. 18-30818, Doc. 29 (reducing post-petition fees of \$1,400.00 sought to be charged—\$650.00 for filing a proof of claim, \$250.00 for reviewing the plan and \$500.00 for filing an objection to the plan—to \$500.00). There is nothing in this case to warrant higher fees. The court awards \$150.00 for filing the objection. In addition to the \$150.00 for plan review and \$200.00 for filing the proof of claim, Quicken Loans is allowed total post-petition fees of \$500.00.

In response to Debtor's objection, Quicken Loans cites the Fannie Mae Allowable Bankruptcy Attorney Fees (the "Fannie Mae Guidelines" or "Guidelines") which specify \$650.00 as a reasonable fee for combined "proof of claim preparation" and "plan review" in a chapter 13 case. *See* Doc. 38, Exhibit A. Generally, courts are not bound by attorneys' flat fee structured arrangements. *See, e.g., In re Okafor*, 595 B.R. 903, 909 (Bankr. W.D. Mo. 2018) (holding that a flat fee of \$900.00 for filing a proof of claim and reviewing a plan was excessive—"These fees were likely flat fee amounts but the Court is not bound by an attorney's

flat fees.”). The Fannie Mae Guidelines, although not controlling, may be “Instructional” as to what may be considered reasonable. *See In re Palmer*, 386 B.R. 875, 878 (Bankr. N.D. Fl 2008). They cannot be considered dispositive, however, and the underlying facts must be viewed on a case-by-case basis. Furthermore, the Fannie Mae Guidelines state that the listed fee amounts are the *maximum allowable limits*. At best, absent extenuating circumstances, the Guidelines provide a ceiling beyond which counsel should not charge. Quicken Loans relied solely on the Fannie Mae Guidelines in its responsive pleading and offered no further explanation nor support for its position such as time entries or attorney hourly rates. *See Doc. 38*.

The court discourages overzealous litigation practice. Quicken Loans’ plan objection could easily have been resolved with a telephone call to Attorney Grady or a discussion with local counsel familiar with the District’s Local Bankruptcy Rules which inform local court practice. The court takes judicial notice of Quicken Loans’ national presence and geographical breadth and the fact that Quicken Loans must appear in numerous bankruptcy court jurisdictions across the country. The court stresses the importance for parties appearing before this court to become familiar with local rules and customs. *See, e.g., In re Starbrite Properties Corp.*, No. 11-40758 CEC, 2012 WL 2050745, at *9 (Bankr. E.D.N.Y. June 5, 2012) (“attorneys are required to become familiar with the Rules before they may be admitted to practice in this District.”); *In re Lyman*, 254 B.R. 517, 520 (Bankr. D.

Conn. 2000) (“it is the responsibility of [a party] and its counsel to be familiar with the rules of procedure.”); *In re Zuniga*, 332 B.R. 760, 774 (Bankr. S.D. Tex. 2005) (“It is this Court's view that all counsel of record...should be familiar with and adhere to the various local rules and procedures of this District.”). A better understanding of local practice would have positively informed and streamlined Quicken Loans’ approach to the case.

For the foregoing reasons, the court considers the fees charged excessive. At the close of hearing, counsel informed the court of Quicken Loans’ request for an evidentiary hearing. The court finds that pressing for an evidentiary hearing on the present fee issue would do little to promote judicial economy and would prejudicially overburden the parties in relation to the relief sought. Nevertheless, if upon review of the court’s reasoning stated above, Quicken Loans wishes to present further evidence of its entitlement to the fees noticed, it shall file a request in writing within fourteen (14) days of this Order. Otherwise, the allowance of \$500 in postpetition fees to Quicken Loans shall be final.

So Ordered.

Dated: August 6, 2019
Syracuse, New York

/s/ Margaret Cangilos-Ruiz
Margaret Cangilos-Ruiz
United States Bankruptcy Judge