

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of :  
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FINLEY F. MONDIA : Case No. 91-1768-D H  
d/b/a FINCO, : Chapter 13  
 :  
Debtor. :  
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**ORDER--CONFIRMATION OF PLAN**

The continued hearing on confirmation of amended plan and objection thereto came on for hearing on November 14, 1991. Debtor appeared by his attorney of record, Rush M. Shortly, and the Chapter Trustee, Joe W. Warford appeared pro se.

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, and 28 U.S.C. § 157(b)(2)(L).

**FACTS**

The debtor filed an Amended Chapter 13 Base Plan. This amended plan provides:

The Debtor shall pay to the trustee the total sum of \$1,015.30 each quarter beginning October 31, 1991, of which \$92.30 shall be for the Trustee's minimum fee under 11 U.S.C. § 330(c) and the remaining \$923.00 shall be for distribution by the Trustee for costs of administration, the payment in full of all claims entitled to priority as defined in 11 U.S.C. § 507, and upon allowed unsecured claims.

Debtor's total payments under the plan shall not be less than \$12,178.00, including all trustee's fees.

Debtor's plan further provides for direct payments to the holders of allowed secured claims. Any arrearages are to be paid by the Debtor through the Chapter 13 Trustee and shall include an additional payment equal to ten percent of the arrearage paid for the Trustee's minimum fee under 11 U.S.C. § 330(c). Distribution on unsecured claims are to be made by the Trustee from the payments made to the Trustee.

Joe W. Warford has been appointed as the standing Chapter 13 Trustee within this district pursuant to 28 U.S.C. § 586(b). The standing Chapter 13 Trustee's percentage fee has been fixed at ten percent pursuant to 28 U.S.C. § 586(e)(1)(B).

The Chapter 13 Trustee objects to confirmation of the plan in that the Trustee's fee is incorrectly stated in the plan. Trustee's position is that pursuant to 28 U.S.C. § 586(e)(2) the Trustee is to collect the percentage fee "from all payments received by the Trustee under the plan." Trustee maintains that these payments include plan payments to secured creditors, priority creditors, unsecured creditors, Debtor's attorney, Clerk's fees, administrative expenses, and the Trustee's percentage fee.

#### **DISCUSSION**

Under 28 U.S.C. § 586(b) the United States Trustee may appoint a standing trustee if the number of Chapter 13 cases

in a district so warrants. If a standing trustee has been appointed, the Attorney General, after consultation with the U.S. Trustee, fixes a maximum annual compensation and a percentage fee pursuant to 28 U.S.C. § 586(e)(1)(A) & (B). Joe W. Warford has been appointed as the standing Chapter 13 Trustee within this district pursuant to 28 U.S.C. § 586(b) and his percentage fee has been fixed at ten percent pursuant to § 586(e)(1)(B).

28 U.S.C. § 586(e)(2) provides that the percentage fee is collected "from all payments received by [the Chapter 13 Trustee] under plans in the cases under Chapter 12 or 13 of title 11 for which such individual serves as standing trustee." Contrast this language with the language of 11 U.S.C. § 326(a) providing that in Chapter 7 and 11 cases the percentage fee is based upon "all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims." 11 U.S.C. § 326(b) limits compensation for a trustee's services under § 330 to five percent upon all payments under a Chapter 12 or 13 plan, where the trustee is appointed under § 1202(a) or 1302(a).

Debtor's Amended Chapter 13 Base Plan provides for quarterly payments in the amount of \$923.00 with Trustee's fees of \$92.30, ten percent of the plan payment. This is an incorrect calculation of the Trustee's fees. Pursuant to 28

U.S.C. § 586(e)(2) the Trustee's percentage fee is calculated and collected "from all payments received" by the Chapter 13 Trustee. Administrative expenses--including the Trustee's percentage fee--are payments under the plan, and this percentage fee must be included in the amount upon which the percentage fee is calculated. That is, the full amount of any payment made to or through the trustee--a plan payment--is the payment upon which the percentage fee is calculated.

Accordingly, the Trustee's objection must be sustained and confirmation of the plan denied.

IT IS SO ORDERED.

Dated this 4th day of June, 1992.

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RUSSELL J. HILL  
U.S. Bankruptcy Judge