



of the Bankruptcy Code, the Court should disallow the Application until Mathison repays alleged preferential payments he received.<sup>1</sup> The Trustee has filed an adversary proceeding against Mathison, styled as Mukamal v. Mathison, Adv. No. 06-1336-BKC-RAM-A, to recover these preferential transfers which allegedly total \$67,581.08. Count II seeks to avoid the payments as preferences under 11 U.S.C. § 547; Count III seeks recovery of the payments under 11 U.S.C. § 550. The other two counts relate to the Mathison Application. Count I is an objection to the Application seeking disallowance under § 502(d) pending repayment of the alleged preference. Count IV seeks declaratory relief allowing the Trustee to offset the administrative expense against Mathison's liability to repay the preferential payments. At the March 29th hearing, the Trustee did not present any legal basis justifying Count IV of the Complaint and therefore, the Court dismisses it with prejudice.

As to Count I of the Complaint, several courts have grappled with the issue of whether an administrative expense claim is subject to § 502(d) with the result being a split in the case law. See Microage, Inc. v. Viewsonic Corp. (In re Microage, Inc.), 291 B.R. 503 (9th Cir. B.A.P. 2002)(section 502(d) applies to administrative expense claims not yet allowed by the court); Tidwell v. Atlanta Gas Light Co. (In re Georgia Steel, Inc.), 38 B.R. 829 (Bankr. M.D. Ga.

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<sup>1</sup>Section 502(d) states:

[T]he court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title.

11 U.S.C. § 502(d)(2006).

1984)(administrative expense claims subject to § 502(d)); In re Roberds, Inc., 315 B.R. 443 (Bankr. S.D. Ohio 2004)(section 502(d) not a barrier for administrative expense claim); In re Durango Georgia Paper Co., 297 B.R. 326, 331 (Bankr. S.D. Ga. 2003) (section 502(d) does not apply to administrative expense claims allowable under § 503 of the Code); In re Lids Corp., 260 B.R. 680 (Bankr. D. Del. 2001)(administrative expense claims not subject to § 502(d)); Camelot Music, Inc. v. MHW Adver. and Pub. Relations, Inc. (In re CM Holdings, Inc.), 264 B.R. 141 (Bankr. D. Del. 2000)(administrative expenses not subject to § 502(d) defense). This Court has reviewed each of these opinions and strongly agrees with the courts which concluded that § 502(d) does not apply to administrative expense claims allowable under section 503 of the Bankruptcy Code.

The statutory analysis in Durango, Lids and CM Holdings is compelling. The structure of § 502 indicates that the only claims to which subsection (d) applies to are prepetition claims or those post-petition claims, such as rejection claims or contribution claims, which are treated like prepetition claims in § 502(e) through (i) and are expressly subject to § 502(d). Durango, 247 B.R. at 330. Moreover, the policy considerations underlying the reason for administrative expenses and their corresponding priority in the context of a bankruptcy case, further compel a finding that § 502(d) does not act as a bar. See Lids, 260 B.R. at 684 (stating that “extension of [502(d)] to administrative claims could have devastating effects on a debtor's ability to reorganize.”). Therefore, it is--

**ORDERED** as follows:

1. The Application is granted. Mathison shall be allowed an administrative expense in this bankruptcy case in the amount of \$15,037.10 which the Trustee shall pay upon finality of this Order.

2. Count I and IV of the Complaint in Adv. No.06-1336-BKC-RAM-A are dismissed with prejudice.

3. A copy of this Order shall be docketed in Adv. No. 06-1336-BKC-RAM-A.

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