

[UNPUBLISHED ORDER]

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

In re
VICTOR JAVIER SANCHEZ-ALZCORBE
and CLAUDIA SANCHEZ-ALZCORBE,

CASE NO. 00-19384-BKC-RAM
CHAPTER 13

Debtors.

ORDER SUSTAINING USA
GROUP LOAN SERVICES OBJECTION TO CHAPTER 13 PLAN

The Court conducted a hearing on February 13, 2001, on the Objection to Chapter 13 Plan ("Objection") filed by Creditor, U.S.A. Group Loan Services, Inc. ("USA Group"). Specifically, USA Group objects to that portion of the Debtors' proposed Chapter 13 plan which provides for discharge of any administrative costs, expenses, and penalties arising out of the Debtors' obligation to USA Group on a student loan. The Debtors acknowledge that the principal and interest owed on the loan is excepted from discharge under 11 U.S.C. §523(a)(8).

The Court took the matter under advisement to determine whether it would follow the only case cited by the Debtors supporting their attempt to discharge the collection costs, In re Fears, 247 B.R. 219 (Bankr. W.D.Ky. 2000). In Fears, the bankruptcy court held that student loan creditors were not authorized to add attorneys fees and other collection costs to the amount of claims asserted in Chapter 13 cases.

On February 6, 2001, the United States District Court for the Western District of Kentucky issued an opinion reversing the bankruptcy court's decision in Fears. See In re Fears, 2001 WL 114935 (W.D.Ky. 2001). The district court disagreed with the bankruptcy court's analysis and concluded that §506(b) does not preclude an unsecured creditor's claim for reasonable fees, costs and charges. The district court in Fears further held that the bankruptcy court erred in not allowing collection costs to be included in the student loan creditor's proof of claim.

This Court disagrees with the bankruptcy court's decision in Fears, and agrees with the district court's decision, a decision consistent with several other rulings on this issue. See In re Featherston, 238 B.R. 377 (Bankr. S.D.Ohio 1999) (student loan collection costs are not dischargeable except upon showing of undue hardship); In re Claxton, 140 B.R. 565 (Bank. N.D.Ok. 1992). See also Transouth Financial Corp. of Florida v. Johnson, 931 F.2d 1505 (11th Cir. 1991) (prevailing creditor in §523(a)(2) proceeding can recover and except from discharge attorneys fees provided for in loan documents). Therefore, upon consideration of the record, including the Debtors' proposed Chapter 13 plan, the Objection, and applicable case law, it is -

ORDERED as follows:

1. USA Group's Objection is sustained.
2. The Debtors shall file an amended plan which deletes the language purporting to discharge "any administrative costs,

expenses, and penalties" arising out of the Debtors' student loan obligation to USA Group.

ORDERED in the Southern District of Florida, this February, 2001.

ROBERT A. MARK
Chief U.S. Bankruptcy Judge