



IT IS ORDERED as set forth below:

Date: August 21, 2008

**Paul W. Bonapfel
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

IN THE MATTER OF:	:	CASE NUMBER: 08-40879-PWB
	:	
JOSEPH TRAVIS SANDERS and	:	CHAPTER 13
HOPE LANE SANDERS,	:	
	:	JUDGE BONAPFEL
Debtors.	:	

ORDER

On June 5, 2008, this Court entered its “Order to Attorney Roderick H. Martin (1) to File Written Response and (2) to Appear at Hearing with Regard to Representation of Debtor and to Show Cause Why Fees Should Not Be Disallowed, Reduced, or Postponed and Why Sanctions Should Not Be Imposed” (the “June 5 Order”). [Docket 17]. A hearing with regard to the issues addressed in the June 12 Order was held on August 20, 2008. For reasons announced at the hearing, the issues addressed in the June 5 Order are resolved as follows:

1. Within 10 days from the date of entry of this Order, Roderick H. Martin, shall pay \$250 to the Chapter 13 Trustee.
2. Within 60 days from the date of entry of this Order, Roderick H. Martin, shall consult with his attorney, William L. Rothschild, for not less than two hours with regard to the professional

responsibilities of an attorney representing Debtors in cases in this Court and the practices and procedures that Chapter 13 Trustees, creditors, and the Court appropriately expect from an attorney representing Chapter 13 Debtors in this Court. Mr. Martin shall file a certification that he has complied with this Order after such consultation.

END OF ORDER

DISTRIBUTION LIST

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William L. Rothschild
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Atlanta, GA 30303-3424



IT IS ORDERED as set forth below:

Date: June 04, 2008

**Paul W. Bonapfel
U.S. Bankruptcy Court Judge**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

IN RE:	:	
	:	Chapter 13
JOSEPH TRAVIS SANDERS and	:	
HOPE LANE SANDERS,	:	
	:	Case No. 08-40879-pwb
Debtors.	:	
	:	

**ORDER TO ATTORNEY RODERICK H. MARTIN (1) TO FILE
WRITTEN RESPONSE AND (2) TO APPEAR AT HEARING WITH
REGARD TO REPRESENTATION OF DEBTORS AND TO SHOW CAUSE
WHY FEES SHOULD NOT BE DISALLOWED, REDUCED, OR POSTPONED
AND WHY SANCTIONS SHOULD NOT BE IMPOSED**

This case came before the Court for a hearing on confirmation on May 21, 2008. Present at the hearing were Brandi Kirkland, attorney for the Chapter 13 Trustee; the Debtors; and Keith Williams, attorney for Family Savings Federal Credit Union. Roderick H. Martin, the attorney for the Debtors, was not there.

Ms. Kirkland reported that confirmation was not possible because the Debtors had not funded the plan as required and because the § 341(a) meeting of creditors had not been held.

With regard to the latter issue, she reported that the § 341(a) meeting originally scheduled for April 21, 2008 had been rescheduled for May 5 but that it could not be conducted at that time because of an absence of acceptable proof of social security numbers.¹

With regard to the confirmation hearing, Ms. Kirkland reported that, on the day before the hearing, she had received an email message from a legal assistant in Mr. Martin's office that the hearing would need to be reset and that the Debtors would be at the hearing. Similarly, the Debtors stated that they had received instructions from Mr. Martin's legal assistant to attend the confirmation hearing and request rescheduling of the confirmation hearing.

Fortunately for the Debtors, the attorneys for both the Chapter 13 Trustee and First Family had no objection to the rescheduling of the § 341(a) meeting and of the confirmation hearing. (The Court has to wonder what the Debtors could or would have done in the face of a party's insistence that the case be dismissed in these circumstances.) When this happens, the usual practice is that the attorney for the debtor prepares and serves appropriate notice of the rescheduling of these events, but Mr. Martin's absence precluded that procedure here. The Chapter 13 Trustee's office was required to assume this responsibility.

. The report of Ms. Kirkland and the statements of the Debtors at the hearing indicate that Mr. Martin decided that the Debtors could appropriately attend a proceeding before this Court and obtain the necessary rescheduling, with no involvement whatsoever on his part. It would appear from the statements at the hearing that Mr. Martin never personally communicated with the Chapter 13 Trustee or her attorney prior to the hearing about its rescheduling, that no

¹It is not clear why the § 341(a) meeting was not rescheduled again, and prior to the scheduled confirmation hearing, when this problem arose.

one on behalf of the Debtors made any attempt to determine whether the Trustee or any other party had an objection to the rescheduling, that Mr. Martin did not worry at all about how or when the matters would be rescheduled, and that Mr. Martin did not personally communicate with the Debtors about the situation. Of course, because Mr. Martin was not at the hearing, the Court has heard no explanation for any of the foregoing.

If true, the facts as they appear reflect a shocking and disturbing approach to the practice of law in this Court. The idea that a lawyer would send a client to a judicial proceeding alone, when the very purpose of having a lawyer is to have an advocate before the court, is stunning. The Court cannot imagine how any lawyer could come to the conclusion that this could possibly be appropriate. It is, indeed, unthinkable.

Beyond this, the notion that the lawyer need not personally communicate with the Trustee is disturbing. The confirmation hearing is obviously a critical, perhaps the most critical, event in the case. Dismissal in circumstances like these is normally assured unless the debtors or their counsel take some action to convince the Trustee and any creditors at the hearing, or, failing that, the Court, that it is appropriate to permit the case to go forward instead of dismissing it. Yet the facts here indicate that Mr. Martin's legal assistant simply sent a message to the Trustee that a rescheduling would be necessary, with no effort on anyone's part on behalf of the Debtors to follow up or concern for the consequences. The situation leaves the Court with the impression that Mr. Martin did not care about whether his clients' case would be dismissed; he apparently had things to do that did not include representing them.

Mr. Martin's failure to attend the confirmation hearing and the circumstances described above raise questions concerning whether he is providing competent representation to the

Debtors, whether his fee should therefore be reduced, disallowed, or postponed until all creditors have been paid in accordance with the plan, whether he is in contempt of court, and whether sanctions should be imposed. In addition to reduction, disallowance, or postponement of payment of Mr. Martin's fee, potential sanctions may include: (1) requiring Mr. Martin to reimburse the Chapter 13 Trustee's office \$250 as compensation for fees and expenses incurred in providing notice of the rescheduled § 341(a) meeting and the hearing on confirmation; (2) requiring Mr. Martin to reimburse the Debtors for any lost wages or expenses incurred as a result of his failure to represent them properly in connection with the confirmation hearing and the problems that arose prior thereto with regard to the § 341(a) meeting; and (3) suspending Mr. Martin from practice in this Court with respect to the filing of new cases on behalf of a debtor for a period of up to six months. The Court will also consider whether this matter should be referred to the State Bar of Georgia for such disciplinary action, if any, as it deems appropriate.

The Court's consideration of suspension of Mr. Martin from practice in this Court arises from the very fact that the Court has to address, as a matter of professional responsibility, the basic duty to appear on the client's behalf. The facts as recited here do not reflect an appearance by represented clients without their lawyer due to an oversight or a misunderstanding as to whether the clients must appear; rather, if true, they show a conscious decision by Mr. Martin not to appear and to send clients to court without the representation for which the clients retained him. The Court is concerned, therefore, as to whether, if the facts are as indicated above, Mr. Martin fully understands and takes seriously the fundamental professional responsibility of a lawyer to represent his clients. If he does not, he should not be permitted to practice in this Court.

The Court will direct Mr. Martin to explain why he did not appear and the circumstances surrounding his representation of the Debtors in two ways. First, on or before July 25, 2008, Mr. Martin shall file, and serve on the Chapter 13 Trustee and the Debtors, a response to this Order. The Court invites Mr. Martin to point out any inaccuracies or omissions in this Order's description and characterization of the facts and circumstances and to advise the Court of any additional facts and circumstances he desires to present that explain, justify or mitigate his conduct. Further, to the extent that Mr. Martin determines that he has not met required standards of professional responsibility with regard to representation of the Debtors in this case, he may (but is not required to) explain what he should have done in the proper representation of his clients and may (but is not required to) suggest what, if any, remedial measures he thinks are appropriate. Second, the Court will direct Mr. Martin to appear at a hearing scheduled as set forth herein with regard to these matters so that he has a fair and full opportunity to respond to this Order and to the potential imposition of sanctions.

In accordance with the foregoing, it is hereby **ORDERED and ADJUDGED** that **Roderick H. Martin**, attorney for the Debtors, (1) **shall file a response to this Order**, as set forth above, and shall serve a copy of same on the Chapter 13 Trustee and the Debtors, **on or before July 25, 2008**; and (2) **shall personally be and appear at a hearing** to be held in connection with confirmation of the Debtors' plan in this case **at 9:30 a.m. on July 30, 2008, in Courtroom 326, 600 East First Street, Federal Building, Rome, Georgia, 30161**. At such hearing, Mr. Martin shall show cause as to why he is not in contempt of court and why the Court should not enter an Order or Orders:

(1) Reducing, disallowing, or postponing payment of Mr. Martin's attorney's fees due

to failure to provide adequate representation to the Debtors;

(2) Requiring Mr. Martin to pay \$250 to the Chapter 13 Trustee's office as compensation for preparing, filing, and mailing notice of the rescheduled § 341(a) meeting of creditors and hearing on confirmation;

(3) Requiring Mr. Martin to reimburse the Debtors for any lost wages or expenses incurred as a result of his failure to represent them properly in this case and his failure to attend the confirmation hearing; and

(4) suspending Mr. Martin from practice in this Court with respect to the filing of new cases on behalf of any debtor for a period of up to six months.

Mr. Martin shall also show cause as to why the Court should not refer this matter to the State Bar of Georgia for such disciplinary action, if any, as it deems appropriate.

The Clerk is directed to mail a copy of this Order to the Chapter 13 Trustee, the Debtors, the United States Trustee, and Mr. Martin.

END OF ORDER