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JUDGE: M. A. Mahoney

PARTIES: Partial Hospital Institute of America, Inc., Judy A. Barrios, Lonnie L. Mixon

CHAPTER: 7

ATTORNEYS: C. M. Smith, A. R. Maples, Jr.

DATE: 4/23/99

KEY WORDS:

PUBLISHED:

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re:

PARTIAL HOSPITAL INSTITUTE OF AMERICA, INC.

Case No. 97-13178-MAM-7

Debtor.

**ORDER OVERRULING OBJECTION OF TRUSTEE TO
CLAIM OF JUDY A. BARRIOS AND ALLOWING SUCH
CLAIM AS UNSECURED IN THE AMOUNT OF \$4,246.00**

C. Michael Smith, Mobile, Alabama, Attorney for Debtor
A. Richard Maples, Jr., Mobile, Alabama, Attorney for Trustee
Judy A. Barrios, Mobile, Alabama, pro se

This matter came before the Court on the objection of Lonnie L. Mixon, as trustee, to the claim filed by Judy A. Barrios. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 1334 and 157 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and the Court has the authority to enter a final order. For the reasons indicated below, the Court finds that the claim was timely filed and it is allowed as an unsecured claim in the amount of \$4,246.00.

FACTS

1. On September 5, 1997, Partial Hospital Institute of America, Inc. filed for relief pursuant to chapter 7 of the Bankruptcy Code. This case was consolidated with *In re James Samuel Harrold, Jr.*, Case No. 97-13177-MAM-7 (Bankr. S.D. Ala.) on March 26, 1998.

2. Judy A. Barrios was employed by Partial Hospital Institute and Dr. Harrold (debtor in *In re Harrold*).

3. Prior to the filing of this bankruptcy case, a civil action was brought against Dr. Harrold. Ms. Barrios was named as a co-defendant. Eventually, she was dismissed from the case. The action against Dr. Harrold was concluded prior to the commencement of this case.

4. Prior to the filing of this bankruptcy case, Dr. Harrold had agreed to reimburse Ms. Barrios for any legal fees she incurred in defending the civil action. Ms. Barrios incurred \$4,246.00 in legal fees.

5. Creditors were notified that claims against debtor must be filed on or before January 5, 1998 (“the bar date”). Ms. Barrios was not sent this notice.

6. On or about March 11, 1998, a former co-employee of Ms. Barrios notified her of these bankruptcy proceedings. Prior to this, Ms. Barrios had no notice or knowledge of these proceedings.

7. On March 11, 1998, Ms. Barrios filed an administrative claim in the amount of \$4,246.00.

8. Ms. Barrios received the March 28, 1998 notice regarding the consolidation of these cases. The notice was sent to her former address which was listed on her March 11, 1998 proof of claim form. On December 3, 1998, she filed a letter requesting that any future notices be sent to her new address.

LAW

A.

The list of creditors to be notified of the claims bar date did not include Ms. Barrios. She did not receive any notice of this bankruptcy case until on or about March 11, 1998. Therefore, notwithstanding the January 5, 1998 bar date, the Court deems the claim filed by Ms. Barrios on March 11, 1998 to be timely. The objection of the trustee is overruled.

B.

Ms. Barrios classified her claim as an administrative expense on her proof of claim form. The Court finds that the claim is an unsecured claim, not an administrative claim. The claim arose from the promise made by Dr. Harrold on behalf of Partial Hospital Institute to repay Ms. Barrios' legal expenses. Both the promise and the civil action in which Ms Barrios incurred the legal fees occurred prior to the filing of this case. The claim of Ms. Barrios is a classic example of an unsecured claim based on the breach of an obligation incurred by debtor prior to filing bankruptcy. It does not qualify for treatment as an administrative expense.

THEREFORE IT IS ORDERED:

1. The objection to claim filed by Lonnie L. Mixon, as trustee is OVERRULED.
2. The claim of Judy A. Barrios is allowed as an unsecured claim in the amount of \$4,246.00.

Dated: April 23, 1999

MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE