

**Condominium Late Fees Entitled to a Presumption of Reasonableness and Attorney's Fees
Need not be Proportionate to the Underlying Claim**

By: Joanne Vos
Greenbaum, Rowe, Smith & Davis LLP

In re Passarella, 2011 Bankr. LEXIS 53 (2011)

In this recent bankruptcy case, the court considered whether the late fees and attorneys' fees assessed in connection with the collection of monthly condominium maintenance fees were reasonable. The court's decision was two-fold. First, with respect to the late fees, the court determined that the authority to assess late fees is expressly granted by the law and further, that late fees are entitled to a presumption of reasonableness. Second, with respect to the attorneys' fees, the court determined that although attorneys' fees must be reasonable, they need not be proportionate to the amount of the underlying claim prosecuted by the attorney. The facts of this case are as follows:

Debtor owned a condominium in the Society Hill at Hamilton II Condominium Association. Debtor's particular unit was one of 80 affordable units within the Association. As such, her monthly maintenance fees were only \$56.53 which amount represented 1/3 of the regular fees assessed to market unit owners. Debtor filed a bankruptcy petition and in response, the Association moved for relief from the automatic stay in order that it could collect post-petition maintenance fees in the amount of \$791.42 plus late fees, fines, and attorneys' fees. Ultimately, the Debtor and the Association agreed to roll the arrearages into the Debtor's bankruptcy plan as an administrative claim. The consent order which set forth the agreement allowed Debtor to subsequently challenge the reasonableness of both types of fees. Thereafter, the Association filed its claim in the amount of \$4,688.14. Of the amount claimed, only \$1,131.52 represented arrearages and late fees. The remainder of \$3,556.62 represented attorneys' fees incurred in connection with the collection of the arrearages. Debtor objected the reasonableness of the late fees and attorneys' fees.

Late Fees

Debtor argued that the late fee was unreasonable. Specifically, she argued that the late fee of \$25 per month assessed by the Association against all unit owners should not have been assessed against her since it failed to be proportionate to her reduced monthly maintenance fee of \$56.53. To be proportionate to her reduced monthly maintenance fee, she asserted that the late fee assessed against her should have been approximately \$8.00 per month. The court opined that the assessment of late fees is expressly permitted by N.J.S.A. 46:8B-15(e) which provides that Associations may levy and collect assessments including interest, "late fees, and reasonable attorneys' fees." Notably, while the law requires attorneys' fees to be reasonable, there is no such requirement for late fees. Rather, late fees are entitled to a presumption of reasonableness pursuant to the New Jersey Supreme Court's decision in Metlife Capital Financial Corp. v. Washington Avenue Associates, LP, 159 N.J. 484 (1999). Debtor's argument that the late fee

assessed was not proportionate to the reduced monthly maintenance fee was deemed by the court to be insufficient to overcome the presumption.

Attorneys' Fees

Generally, the assessment of whether attorneys' fees are reasonable includes an analysis of "the amount involved and the results obtained." See Staiano v. Cain, 192 F.3d 109, 123 (3rd Cir. 1999). Debtor argued that the amount of attorneys' fees incurred was unreasonable since they far outweighed the amount of the underlying claim. Specifically, the attorneys' fees of \$3,556.62 were \$2,425.10 higher than the arrearages owed by Debtor in the amount of \$1,131.52. Regardless, the court held that proportionality alone is not a reason to reduce a fee award. If the fees represent a "proper calculation of a reasonable market rate multiplied by the number of hours reasonably expended on the matter", then the attorneys' fees are reasonable. As such, the court awarded the Association 100% of the legal fees (minus one duplicative billing entry), even though the attorneys' fees were roughly three times the amount of the underlying claim.

In conclusion, while attorneys' fees must be deemed reasonable in order to be awarded to a litigant, late fees are entitled to a presumption of reasonableness. Additionally, neither late fees nor attorneys' fees need to be proportionate to the underlying amounts at issue in order to be awarded.