In cases that are either dismissed or converted to Chapter 7 prior to confirmation of a Chapter 13 plan, the Supreme Court's recent decision in *Harris v. Viegelahn* does not preclude the Bankruptcy Court from entering orders directing Chapter 13 Trustees to pay undistributed funds in their possession to debtor's counsel on account of debtor's counsel's allowed attorneys' fees.

***In re Brandon*, 2015 Bankr.Lexis 3051 (Bankr.D. Md. September 10, 2015) (Rice, J.)**

Summary by Justin P. Fasano, McNamee, Hosea, Jernigan, Kim, Greenan& Lynch, P.A.

This opinion addressed four Chapter 13 cases which were either dismissed or converted to Chapter 7 prior to confirmation of a Chapter 13 plan. In each case, counsel for the debtor or debtors agreed to accept a $4,500 fixed fee deemed presumptively reasonable under Appendix F of the Local Bankruptcy Rules. In each case, counsel agreed to accept a portion of the fee in advance, with the balance to be paid through the Chapter 13 plan. In two of the four cases, counsel's retainer agreement provided that the debtor assigned to counsel any interest he or she had in undistributed funds in the event that the case was dismissed or converted prior to confirmation.[1] In each case, counsel for the debtors filed a motion for an order directing the Chapter 13 trustee to make payment of the undistributed funds to counsel for the debtors on account of unpaid attorneys' fees. In each case, that motion was unopposed.

The Court approved each motion. The Court found that the Supreme Court's ruling in *Harris v. Viegelahn*, 135 S. Ct. 1829 (2015) did not apply in cases which were dismissed prior to confirmation of a Chapter 13 plan.[2] In such cases, 11 U.S.C. § 1326(a)(2) mandated that the Chapter 13 trustee deduct administrative expenses before returning undistributed funds to the debtor. Those administrative expenses included allowed debtors' attorneys' fees.

The Court also found that the ruling in *Harris v. Viegelahn* did not apply in cases which were converted to Chapter 7 prior to confirmation of a Chapter 13 plan.Although this scenario was closer to *Harris v. Viegelahn*, the Court found that section 1326(a)(2) still applied, even though the Chapter 13 trustee's services were terminated pursuant to 11 U.S.C. § 348(e).

The Court also found that in the two cases where the debtors had assigned their interest in undistributed funds to their counsel as part of their retainer agreements, such assignments provided an independent basis to approve the motions to direct payment. The Court found that

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[1]For instance, one of the retainer agreements included a clause which read: "You irrevocably assign to us your interest in all payments made to the Chapter 13 Trustee, to the extent of any balance due, subject to Court approval. If your case is dismissed, denied or converted before our fees are paid in full, you agree to allow the Chapter 13 trustee to pay the balance due to us directly from funds that would otherwise be returned to you, subject to Court approval."

[2]In *Harris v. Viegelahn*, the Supreme Court ruled that in cases which were converted to Chapter 7 *after* a Chapter 13 plan had been confirmed, all undistributed funds in the possession of the Chapter 13 trustee should be distributed to the Chapter 7 debtor and not the Chapter 7 trustee.

to hold otherwise would have a chilling effect on the willingness of the consumer bar to represent Chapter 13 debtors.