

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ALASKA**

In re:

JAMES WORTH BAXTER,

Debtor.

Case No. A04-01154-DMD
Chapter 7

**Filed On
8/31/07**

**MEMORANDUM REGARDING CLAIM
OF ROBERT EDELEN**

The trustee's objections to the amended claim of Robert Edelen came before the court for hearing on August 28, 2007. Mr. Edelen filed an amended claim on July 18, 2007 in the amount of \$94,208.93. He filed a supplemental claim on August 24, 2007 for an additional \$6,383.20.

The trustee has objected to two portions of the amended claim. Edelen seeks an additional \$13,590.00 as penalty for unpaid wages. A.S. 23.15.140(d) provides:

(d) If an employer violates (b) of this section by failing to pay within the time required by that subsection, the employer may be required to pay the employee a penalty in the amount of the employee's regular wage, salary, or other compensation from the time of demand to the time of payment, or for 90 working days, whichever is the lesser amount.

Nothing in this language indicates that an injured party can recover two penalties. The trustee's argument has merit and Edelen is not entitled to additional liquidated damages of \$13,590.00 as set forth in his amended claim.¹

The trustee has also objected to Edelen's claim of \$28,800.00 for "administrative" fees and expenses. Edelen has not supplied the court or the trustee with any authority for such an award. Ordinarily the American rule applies to bankruptcy proceedings. Under that rule attorney's fees are not recoverable absent an agreement or specific statutory authority.² Edelen's request for fees is for time spent acting as his own attorney are not compensable.

Finally, the trustee has agreed that Edelen's supplemental claim should be allowed as part of the amended claim. After making the appropriate deductions and credits, Edelen's claim will be allowed in the sum of \$35,439.92. An order will be entered. Mr. Edelen is not to receive any payment from the estate until he has removed all of his claimed liens, however.

¹In a similar case, *Metcalf Investments, Inc. v. Garrison*, 919 P.2d 1356 (Alaska 1996), the Alaska supreme court reversed a trial court's award of treble damages for a failure to pay wages.

²*Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240 (1975).

DATED: August 30, 2007.

BY THE COURT

/s/ Donald MacDonald IV
DONALD MacDONALD IV
United States Bankruptcy Judge

Serve: C. Christianson, Esq.
Robert Edelen, Pro Se Creditor
K. Battley, Trustee
U. S. Trustee

08/31/07