

Dated: September 21, 2021
The following is ORDERED:



M. Ruthie Hagan
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re:
Darrel Keith Gibson
Debtor

Case No. 20-24901
Chapter 13

MEMORANDUM OPINION AND ORDER REGARDING
OBJECTION TO CLAIM NOS. 3, 7-19 AND 21

This matter comes before the Court upon Darrel Keith Gibson's ("Debtor") Objections to Claim #3 by Allergy and Asthma Care PLC [DE 48], #7 by Medical Financial Services [DE 34], #8 by Medical Financial Services [DE 35], #9 by Medical Financial Services [DE 36], #10 by Medical Financial Services [DE 37], #11 by Medical Financial Services [DE 38], #12 by Medical Financial Services [DE 39], #13 by Medical Financial Services [DE 40], #14 by Medical Financial Services [DE 41], #15 by Medical Financial Services [DE 42], #16 by Medical Financial Services [DE 43], #17 by Medical Financial Services [DE 44], #18 by Medical Financial Services [DE 45],

#19 by Medical Financial Services [DE 46], and #21 by Medical Financial Services [DE 47] (“Claim Objections”) filed on July 4, 2021. No response was filed by either creditor and a hearing was held on August 17, 2021 on these matters. The Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1334, and this is a core matter under 28 U.S.C. § 157. Pursuant to FED. R. CIV. P. 52, which is made applicable to this matter by FED. R. BANKR. P. 7052, the Court makes the following findings of fact and conclusions of law.

FACTUAL BACKGROUND

1. On October 12, 2020, Debtor filed a petition for relief under Chapter 13 of the Bankruptcy Code.
2. With her petition, Debtor also filed her schedules and statements (“Schedules”). Debtor’s schedules and statements do not list a debt or other claim held by Medical Financial Services or Allergy and Asthma Care PLC. *See* DE 1.
3. On October 13, 2020, the Court issued a Notice of Chapter 13 Bankruptcy Case, which set the deadline for filing proofs of claim in Debtor’s bankruptcy case for December 21, 2020. *See* DE 6.
4. Allergy and Asthma Care PLC filed its Proof of Claim No. 3 on October 21, 2020 [Claim No. 3].
5. Medical Financial Services filed its Proof of Claims Nos. 7-19 on November 6, 2020 [Claim Nos. 7-19] and Proof of Claim No. 21 on January 22, 2021 [Claim No. 21].
6. On July 4, 2021, Debtor filed his Objections to Claim No. 3 filed by Allergy and Asthma Care PLC [DE 48] and Claim Nos. 7-19 and 21 filed Medical Financial Services [DE 34-47].

EVIDENTIARY BURDEN AND ALLOWANCE OF CLAIMS

In general, the burden of establishing the validity and amount of a bankruptcy claim shifts between the parties. Rule 3001 of the Federal Rules of Bankruptcy Procedure governs the form and content of a proof of claim and provides that if the claim is filed in accordance with the bankruptcy rules, the claim shall have *prima facie* evidence of validity and amount. FED. R. BANKR. P. 3001(f); *Stancill v. Harford Sands, Inc. (In re Harford Sands Inc.)*, 372 F.3d 637, 640 (4th Cir. 2004)(citations omitted). However, in circumstances where FED. R. BANKR. P. 3001 requirements are not met and the claim lacks *prima facie* evidence of validity and amount, the burden is on the claimant to establish the validity and amount of the claim. *See In re Devey*, 590 B.R. 706, 721 (Bankr. D.S.C. 2018); *In re Mazyck*, 521 B.R. 726, 732 (Bankr. D.S.C. 2014)(citations omitted); *In re Gilbreath*, 395 B.R. 356, 364 (Bankr. S.D. Tex. 2008). In such circumstances in which the claim lacks the *prima facie* presumption, the objecting party only needs to raise a basis for disallowance under § 502(b) to satisfy its burden, such as a dispute as to the amount, validity or enforcement of the claim. *In re Brown*, 603 B.R. 786, 791-92 (Bankr. D.S.C. 2019); *see In re Armstrong*, 320 B.R. 97, 106 (Bankr. N.D. Tex. 2005) (The failure to attach or provide the required documentation under Rule 3001 will result in the loss of the proof of claim’s *prima facie* validity.).

Upon determining the parties’ evidentiary burdens, the Court turns to whether creditor’s claims should be allowed. Section 502 of the Bankruptcy Code governs the allowance of claims in a bankruptcy case. Section 502(a) provides that “[a] claim . . . is deemed allowed, unless a party in interest ... objects.” Section 502(b) provides that “if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim ... as of the date of the filing of the petition” 11 U.S.C. § 502(b).

Debtor filed his objections to Claims 3, 7-19 and 21 on the basis that the claims lacked attachments and do not have proper supporting documentation to evidence that Debtor owes the debts. *See* relevant objections, at ¶2.

It is important to note that neither FED. R. BANKR. P. 3001(c)(2)(D)(i) nor (ii) include disallowance of a claim as a permissible remedy. However, FED. R. BANKR. P. 3001(c)(2)(D)(ii) does introduce a note of ambiguity when it allows a court the discretion to “award other appropriate relief...” Under customary rules of construction “other appropriate relief” is construed to allow a remedy of the same character as the specifically enumerated example of “reasonable expenses and attorney’s fees caused by the failure.” *Dept. of Labor v. Perini N. River Assocs.*, 459 U.S. 297, 327, 103 S.Ct. 634, 74 L.Ed.2d 465 (1983)(dissenting opinion) (“[O]ne of the oldest and most respected rules of statutory construction teaches us that general terms should be construed in the light of the specific examples that are expressly identified as included therein.”). Claim disallowance falls outside the ambit of any permissible interpretation of the scope of a court’s discretion under FED. R. BANKR. P. 3001(c)(2)(D)(ii). The Rules Advisory Committee Note explains FED. R. BANKR. P. 3001(c)(2)(D) as follows:

Subparagraph (D) of subdivision (c)(2) sets forth sanctions that the court may impose on a creditor in an individual debtor case that fails to provide information required by subdivision (c). *Failure to provide the required information does not itself constitute a ground for disallowance of a claim. See § 502(b) of the Code.* But when an objection to the allowance of a claim is made or other litigation arises concerning the status or treatment of a claim, if the holder of that claim has not complied with the requirements of this subdivision, the court may preclude it from presenting as evidence any of the omitted information, unless the failure to comply with this subdivision was substantially justified or harmless. The court retains discretion to allow an amendment to a proof of claim under appropriate circumstances or to impose a sanction different from or in addition to the preclusion of the introduction of evidence.

FED. R. BANKR. P. 3001 Advisory Committee Note (2011) (emphasis added).

Therefore, FED. R. BANKR. P. 3001 “makes it clear that a creditor who fails to fully comply with the documentation requirements of Rule 3001(c), primarily faces the *evidentiary* sanction of being precluded from introducing its documents at a subsequent hearing on a substantive objection to its proof of claim under § 502(b).” *In re Reynolds*, 470 B.R. 138, 145 (Bankr. D.Colo. 2012). The Rule itself does not give authority for this Court to deny a creditor’s claim based solely on its failure to attach documentation to its proof of claim under FED. R. BANKR. P. 3001(c).¹ *Id.* In other words, there must be a substantive objection under § 502(b). *Id.* (“Because claim disallowance falls outside of the remedies enumerated under Rule 3001(c)(2)(D), the rule precludes such a remedy.”); *see also Travelers Casualty & Surety Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 449, 127 S.Ct. 1199, 1200, 167 L.Ed.2d 178 (2007) (under § 502(b), the bankruptcy court shall allow a creditor’s claim except to the extent that the claim implicates any of nine enumerated exceptions); *Sears v. Sears (In re Sears)*, 863 F.3d 973, 979 (8th Cir. 2017) (“A claimant’s failure to comply with Rule 3001(c)(2)(A) or Official Form 10, however, is not by itself a reason to disallow a claim. Section 502(b) enumerates the grounds on which a proof of claim may be disallowed, and non-compliance with Rule 3001 is not one of them. The bankruptcy court has authority to sanction a creditor who fails to submit supporting information as directed by

¹ *See* 11 Norton Bankr. L. & Prac. 3d, Fed. R. Bankr. P. 3001, Advisory Committee Note (2011) (“Failure to provide the required information does not itself constitute a ground for disallowance of a claim. *See* § 502(b) of the Code.”); *In re Ollis*, No. 18-04549, 2019 WL 1313397 at *4 n.7 (Bankr. D.S.C. Mar. 21, 2019) (“[Rule 3001(c)(2)(D)] does not arise to the disallowance of the claim, which is limited to the reasons set forth under § 502(b).” (citation omitted)); *Casamatta v. Resurgent Capital Servs., L.P. (In re Freeman-Clay)*, 578 B.R. 423, 445 (Bankr. W.D. Mo. 2017) (“It is well-established that ‘other appropriate relief’ does not include the disallowance of a claim.”)(citations omitted); *In re Davenport*, 544 B.R. 245, 250 (Bankr. D.D.C. 2015) (“The debtor’s view of Rule 3001(c)(2)(D)(i) as permitting disallowance of a claim based on a violation of Rule 3001(c)(2)(B) is an erroneous view.”); *In re Reynolds*, 470 B.R. 138, 144 (Bankr. D. Colo. 2012) (“Neither Rule 3001(c)(2)(D)(i) nor (ii) include disallowance of the claim as a permissible remedy. . . .”); *see also In re Gorman*, 495 B.R. 823, 832-35 (Bankr. E.D. Tenn. 2013) (analyzing the two competing views on the basis for disallowing claims, the majority, exclusive view and the minority, non-exclusive view).

the rules of procedure. But a failure to itemize interest in accordance with the rules means only that the proof of claim is not *prima facie* evidence of the claim’s validity and amount.”)(citations omitted); *Campbell v. Verizon Wireless (In re Campbell)*, 336 B.R. 430, 436 (B.A.P. 9th Cir. 2005) (non-compliance with Rule 3001(c) is not one of the statutory grounds for disallowance)(citations omitted); *In re Cluff*, 313 B.R. 323, 331 (Bankr. Utah 2004) (“Courts have no discretion to disallow claims for reasons beyond those stated in the statute.”)(citation omitted).

The Court finds that Debtor’s objections do in fact go beyond merely asserting a failure to provide documentation under Rule 3001. As mentioned above, the Debtor’s Schedules show no debt or claim owed to either creditor.² *In re Freeman–Clay*, 578 B.R. at 450–52. Therefore, the Court will construe the relevant objections to fall within the ambit of § 502(b)(1), which provides that a claim must be disallowed if “such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured.” 11 U.S.C. § 502(b)(1).

In addition, such creditors’ failure to supply the documents as required or respond to this proceeding³ is an indication that there may be no basis for the claims. *See In re Freeman–Clay*, 578 B.R. at 450-52. While each of the creditors at issue in this case had the ability to amend their proof of claims, no amendments were ever filed. Therefore, the Court disallows Claim Nos. 3, 7-19 and 21.

ATTORNEY’S FEES

² Claim No. 21 was untimely under § 502(b)(9).

³ The Notice of Objection to Claim issued by the Clerk of the Court makes clear that if the creditor does not respond, the creditor’s claim **may be reduced, modified or eliminated**. (emphasis added). *See* DE 49-63.

Debtor requests that this Court award his reasonable and necessary attorney's fees and costs caused by creditors' failure to provide the required information. FED. R. BANKR.

P. 3001(c)(2)(D)(ii). Rule 3001 states:

(D) If the holder of a claim fails to provide any information required by this subdivision (c), the court may, after notice and hearing, *take either or both* of the following actions:

(i) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or

(ii) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

FED. R. BANKR. P. 3001(c)(2)(D). Courts have discretion to determine whether to bar claimants from using the omitted information in any contested matter or adversary proceeding, or to impose other appropriate relief after notice and hearing. *In re Harris*, 492 B.R. 225, 228 (S.D. Tex. 2013).

Debtor in this proceeding requests an award of attorney's fees under Bankruptcy Rule 3001(c)(2)(D)(ii). The rule has two requirements: first, the fees incurred by Debtor were "caused" by the creditor's failure to provide information; and second, fees and expenses to be awarded must be reasonable. *In re Dunlap*, No. 12-20710, 2013 WL 5497047, at *2 (Bankr. D. Colo. Oct. 3, 2013); *see also In re Vega*, No. 15-34014, 2017 WL 2954762, at *4 (Bankr. S.D. Tex. 2017)(citation omitted).

The Court recognizes that Debtor incurred attorney's fees and expenses objecting to Claim Nos. 3, 7-19 and 21 caused by Medical Financial Services' and Allergy and Asthma Care PLC's failure to comply with Rule 3001(c). *In re Jimenez*, 487 B.R. 543, 549 (Bankr. D. Colo. 2013); *see also In re DePugh*, 409 B.R. 125, 135-36 (Bankr. S.D. Tex. 2009) ("This Court does not believe that the Supreme Court contemplated that creditors could ignore Bankruptcy Rule 3001's requirements unless and until a debtor complains and then cry 'no harm no foul' by producing

documents that should have been produced to begin with.”). The Court therefore finds that the Debtor is entitled to reasonable attorney’s fees and expenses in connection with Medical Financial Services’s and Allergy and Asthma Care PLC’s failure to comply with Rule 3001(c). *Derby v. Portfolio Recovery Assocs., LLC (In re Derby)*, No. 17-34385, 2020 WL 1696099, at *6–7 (Bankr. E.D. Va. March 31, 2020); *Maddux v. Midland Credit Mgmt., Inc. (In re Maddux)*, 567 B.R. 489, 501 (Bankr. E.D. Va. 2016); *see* FED. R. BANKR. P. 3001(c)(2)(D)(ii) (A court may “award other appropriate relief, including reasonable expenses and attorney’s fees caused by the failure” of a claimholder to provide information requested under FED. R. BANKR. P. 3001.).

CONCLUSION

For the reasons stated in this Memorandum Opinion, Debtor’s Objections to Claim Nos. 3, 7-19 and 21 are **SUSTAINED**. It is further **ORDERED** that as an additional sanction, under Rule 3001(c)(2)(D)(ii), (a) Medical Financial Services and (b) Allergy and Asthma Care PLC will pay to Debtor’s counsel an amount to be determined by the Court for attorney fees and expenses incurred in connection with the Debtor’s Objections. Debtor’s counsel shall file two separate affidavits reflecting attorney’s fees and expenses incurred in connection with Debtor’s Objections to Claims filed by (a) Medical Financial Services and (b) Allergy and Asthma Care PLC. Said affidavits shall be filed by September 30, 2021 and the amount specified therein shall be awarded unless an objection is filed by October 15, 2021. If a timely objection is filed, a hearing on the amount of the award of attorney’s fees and expenses shall be held on October 20, 2021, at 10:00 AM.

The Bankruptcy Court Clerk shall cause a copy of this Order and Notice to be sent to the following interested persons:

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