

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of

CUSTOM WOODCRAFTERS COMPANY,  
Debtor.

Case No. 87-1583-C  
Chapter 7

ORDER ON APPLICATION FOR APPOINTMENT OF ATTORNEY

At Des Moines, in the Southern District of Iowa, on the 10th day of May, 1988.

The above named debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code on June 12, 1987. On March 29, 1988, over nine months later, the debtor filed an application for appointment of attorney seeking to employ Michael J. Moon of the Cartwright, Druker, & Ryden law firm. The affidavit of the proposed attorney was submitted on April 5, 1988. Neither the application nor the proposed order appointing attorney for debtor seeks appointment retroactive to the date the petition was filed. The case was converted to a Chapter 7 case on May 4, 1988.

The employment of professional persons is controlled by 11 U.S.C. section 327 and Bankruptcy Rule 2014(a). The importance of receiving prompt authorization of employment is underscored by the requirements of 11 U.S.C. sections 330 and 331, which provide for the interim and final compensation of a professional person only after court approval of his or her employment pursuant to section 327. Without such prior approval, subsequent applications for fees are denied

and funds received are ordered returned to the estate.

A debtor's attorney is not precluded by bankruptcy statute or rule from seeking nunc pro tunc authorization of employment. Such authorization, however, is limited to cases where extraordinary circumstances are present. See generally, Matter of Independent Sales Corp , 73 B.R. 772 (Bankr. S.D. Iowa 1987) (and cases cited therein). The debtor's application does not attempt to establish the existence of exceptional circumstances that would warrant a nunc pro tunc order of appointment. Moreover, the attorney's Rule 2014(a) statement indicates that he has represented the debtor company and its principals over the course of the last ten years. Such dual representation is an impermissible conflict of interest pursuant to 11 U.S.C. section 327(a). See In re Roberts, 46 B.R. 815, 840-842, 848-850 (Bankr. D. Utah 1985) (and cases cited therein). Accordingly, this court must deny the debtor's application for appointment of attorney in its Chapter 11 case.

Finally, the above provisions regarding appointment and compensation for work done during a case must be distinguished from 11 U.S.C. section 329 which addresses prepetition general retainers. A retainer obtained by the attorney for the debtor prior to filing the petition for relief is held in trust to the extent it is for services to be rendered or for costs to be incurred during the pendency of the case and until allowed

pursuant to 11 U.S.C. sections 330 and 331. Only to the extent a prepetition general retainer is or

services performed and costs incurred before the case commences is there no requirement of prior appointment pursuant to section 327 nor of approval by the court pursuant to sections 330 and 331. However, as indicated by section 329, even compensation drawn for such prepetition services and costs is subject to court scrutiny.

The attorney's Rule 2016(b) statement filed in this case reveals that the debtor agreed to pay Mr. Moon \$1,500.00 for legal services rendered or to be rendered in contemplation of or in connection with this case. Although prior court appointment is not required for compensation of services performed and costs incurred prepetition, the reasonableness of the compensation paid should be reviewed under the circumstances. An itemization of services performed and costs incurred should satisfy the specificity requirements of Rule 2016 and relevant caselaw. See Matter of Pothoven, et al., 86-2039-C, slip op. (Bankr. S.D. Iowa, March 2, 1988).

THEREFORE, IT IS ORDERED that the debtor's application for appointment of attorney in its Chapter 11 case is hereby denied.

IT IS FURTHER ORDERED that Mr. Moon shall submit an itemization of services regarding the \$1,500.00 retainer to the court, to the U.S. Trustee and to the panel trustee by May 20, 1988.

LEE M. JACKWIG  
CHIEF U.S. BANKRUPTCY JUDGE