

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of	
ROSE WAY, INC.,	Case No. 89-1273-C H
DOUBLE-D LEASING, INC.,	89-1274-C H
DOUBLE-D, INC.,	89-1275-C H

Debtors. Chapter 11

ORDER- -AMENDED APPLICATIONS FOR INTERIM ALLOWANCE  
OF FEES AND EXPENSES FOR ATTORNEYS FOR DEBTORS

On February 13, 1990, the amended applications for interim allowance of fees and expenses by Frederickson and Byron, P.A., and William I. Kampf, (hereinafter "Frederickson Firm"), attorney for Debtors, and the amended application for interim fees and expenses by Ahlers, Cooney, Dorweiler, Haynie, Smith and Allbee, and Elizabeth A. Nelson (hereinafter "Ahlers Firm"), attorney for Debtors, came on for hearing. The following appearances were entered: William I. Kampf and Elizabeth A. Nelson for Debtors; Terry L. Gibson, Assistant U.S. Trustee; Douglas Coy, President of Sternco, Inc., Chapter 11 Trustee; Donald F. Neiman for Exchange National Bank; Kevin R. Query for the Internal Revenue Service; Gary R. Hassel for Associates Leasing, Inc.; Roger Kuhle for NCNB Leasing Corp.; Mark Abendroth for MDFC Equipment Leasing and Eaton Leasing Corp.; Frank L. Burnette, II, for FBS Leasing/FBS Business and Textron Financial; Peter S. Cannon for Signal Capital Corp., Mark Walz for Greyhound Financial Corp.; Robert Taha for Mellon Financial; David Rosenberger.

This is a core proceeding pursuant to 28 U.S.C. §157(b) (2) (A). The Court, upon review of the applications, responses thereto and

the arguments of counsel, now enters its findings and conclusions pursuant to Fed.R.Bankr.P. 7052.

#### **FINDINGS OF FACT**

1. On June 8, 1989, Rose Way, Inc., Double-D Leasing, Inc., and Double-D, Inc. filed voluntary Chapter 11 petitions.

2. On August 23, 1989, an application was filed by the Frederickson Firm, lead counsel for Debtors, requesting that the Court approve an interim allowance of \$49,237.10 as compensation for services rendered by said firm during the period of June 14, 1989, through July 31, 1989, and \$1,312.20 as reimbursement of expenses incurred during said period.

3. On August 23, 1989, an application was filed by the Ahlers Firm, local counsel for Debtors, requesting that the Court approve an interim allowance of \$23,466.00 as compensation for services rendered during the period of June 16, 1989, through August 19, 1989, and \$3,709.92, as reimbursement of expenses incurred during said period.

4. David C. Rosenberger advanced \$10,000.00 of his personal funds to the Frederickson Firm as a retainer. This payment was in the form of two \$5,000.00 checks. One of these checks has been returned because of insufficient funds.

5. Pursuant to order of June 15, 1989, the Frederickson Firm has received \$15,000.00 from Debtors as a retainer. This retainer is being held in trust account subject to court order.

6. David C. Rosenberger advanced \$2,500.00 of his personal funds to the Ahlers Firm as a retainer on June 19, 1989.

7. Pursuant to order of July 11, 1989, the Ahlers Firm has received \$10,000.00 from Debtors as a retainer. This retainer is being held in a trust account subject to court order.

8. Pursuant to order of the Court dated November 9, 1989, the Court allowed the Frederickson Firm reimbursement of the \$1,312.00 in expenses incurred June 14 through July 31, 1989. The award was to be applied against the retainer earlier received.

9. Pursuant to order of the Court dated November 9, 1989, the Court allowed the Ahlers Firm reimbursement of \$3,709.92 in expenses incurred from June 16, 1989 through August 19, 1989. The award was to be applied against the retainer earlier received.

10. The November 9, 1989 Order deferred allowance of compensation to the Frederickson Firm and the Ahlers Firm, pending the filing of corrected bankruptcy schedules and further information by which the Court could evaluate and assess the value to Debtors' estate of services performed by the Frederickson Firm and the Ahlers Firm.

11. On December 4, 1989, an application was filed by the Frederickson Firm, requesting that the Court approve an interim allowance of \$50,428.80 as compensation for services rendered by the Frederickson Firm during the period of August 1, 1989 through November 9, 1989. The application also requested \$3,991.08 as reimbursement for expenses incurred during said period. Further, the application requested payment of \$49,237.10 for services rendered by the Frederickson Firm during the period of June 14, 1989 through July 31, 1989. Finally, the application requested the

Court to allow the Frederickson Firm to continue to hold the sum of \$15,000.00 in client funds as a retainer for future services.

12. On December 4, 1989, an application was filed by the Ahlers Firm, requesting that the Court approve an interim allowance of \$25,961.50 as compensation for services rendered during the period of August 20, 1989 through November 16, 1989, and \$4,119.15 as reimbursement for expenses incurred during said period. The application also requested payment of \$23,466.00 for services rendered by the Ahlers Firm during the period of June 16, 1989 through August 19, 1989. Finally, the application requested the Court to allow the Ahlers Firm to hold the sum of \$8,790.08 in trust as a retainer for future services.

13. Pursuant to a December 27, 1989 stipulation consent order, the Frederickson Firm has received \$2,189.84 as of February 1, 1990, in payment for attorneys' fees and the Ahlers Firm has received \$2,329.00 as of February 1, 1990, in payment for attorneys' fees.

14. In the application for approval of employment of attorney filed January 4, 1990, by Sternco, Inc., Chapter 11 Trustee for Debtors, the Chapter 11 Trustee requests that the estate of Debtors pay an advance retainer of \$10,000.00 to the Frederickson Firm and \$5,000.00 to the Ahlers Firm in consideration of the services to be rendered. The Frederickson Firm and the Ahlers Firm assert that the Trustee seeks to transfer retainers of \$10,000.00 for the Frederickson Firm and \$5,000.00 for the Ahlers firm from Debtors' account, rather than Debtors advancing new funds to the

Frederickson Firm and Ahlers Firm as retainers. The Frederickson Firm and the Ahlers Firm intend to apply the balance of all funds paid by the Rosenbergers and Debtors to the fees allowed herein.

15. From June 14, 1989 through November 9, 1989, the Frederickson Firm has rendered professional services including: a) preparation of statements of affairs and schedules; b) preparation of amended statements of affairs and schedules; c) preparation of stipulation for use of cash collateral; d) numerous telephone conferences and office conferences with Debtors' representatives regarding reorganization and negotiation with creditors; e) negotiations with major creditors and creditor attorneys involving telephone conferences and office conferences; f) review of financial documents, leases and other operating agreements for acceptance/rejection decisions, enforceability and negotiation issues; g) preparation of necessary motions, objections and resistances; h) research regarding relevant issues of law; i) preparation and drafting of agreements with creditors and other interested parties regarding settlement of issues and preparation and drafting of motions for court approval where necessary; j) attendance at hearings and motions by Debtors and others; k) conferences, research and drafting regarding reorganization strategies and plans; l) preparation of a disclosure statement and plan of reorganization; m) correspondence with Debtors and other interested parties regarding all of the above; and n) attendance at the initial and continued meeting of creditors.

16. From June 16, 1989 through November 16, 1989, the Ahlers Firm has rendered professional services including: a) attendance at various meetings with Debtors, its officers and members of the Board of Directors; b) attendance at hearings in Des Moines on behalf of Debtors and participation in telephone hearings for Debtors; c) review and drafting of various pleadings in this matter; d) attention to various legal proceedings that have been filed against Debtors in various states including Oregon, Washington, New York, and California; e) contact with various wage claimants for Debtors concerning questions regarding wages and filing proofs of claim; f) contact with other creditors regarding their claims and collateral; g) attendance at the reconvened first meeting of creditors; h) assistance in the preparation of the amended statement of affairs and schedules of all assets and liabilities for the Debtors; i) attention to various insurance matters on behalf of the Debtors; j) advise the Debtors with respect to local procedure and practices before the U.S. Bankruptcy Court for the Southern District of Iowa; and k) assistance in the preparation and filing of the plan and disclosure statement for Debtors.

17. The services performed by the Frederickson Firm and the Ahlers Firm are more fully described on the August 23, 1989 and December 4, 1989 applications.

18. The Frederickson and Ahlers firms came into these cases as substitute counsel after the petitions were filed on June 8, 1989.

19. Financial records of the Debtors were in disarray and substitute management replaced existing management shortly before filing of the petitions.

20. The volume of information generated and complexity of the tax and bankruptcy issues involved in Debtors' Chapter 11 cases has necessitated the professional services of firms with the depth and breadth of experience of the Frederickson Firm, as lead counsel, and the Ahlers Firm, as local counsel.

21. Counsel for Debtors have had to deal with extremely difficult problems regarding management of Debtors in view of the conflicts within management between the past president, Michael Favilla, and the 100% shareholders, the Rosenbergers.

22. By a combination of negotiation and litigation, counsel for Debtors have enabled Debtors to have the continued use of the tractors and trailers which are necessary for Debtors to maintain their operations.

23. Counsel for Debtors negotiated and obtained Court approval of financing which permitted Debtors to continue in operation to the current date.

24. Debtors have entered into an agreement with Exchange National Bank whereby Debtors agree that payment of fees shall be made from funds subject to the availability requirements of the cash collateral order of September 12, 1989.

**DISCUSSION**

Under §331, interim compensation may be allowed upon application to the court. Application may be made "not more than once every 120 days after an order for relief" in the case, or more often if permitted by the court. The essential purpose of this section is to relieve counsel and others from the burden of financing lengthy and complex bankruptcy proceedings. Matter of Mansfield Tire & Rubber Co., 19 B.R. 125 (Bankr. N.D. Ohio 1981).

Bankruptcy Rule 2016 requires an applicant seeking interim or final compensation for services from the estate, or reimbursement of necessary expenses, to provide a detailed statement of services rendered, time expended, expenses incurred, and the amounts requested. The adequacy of a fee application in this district is governed by those guidelines set forth in In re Pothoven 84 B.R. 579 (Bankr. S.D. Iowa 1988).

The application for interim compensation should be examined using the same criteria applicable to applications for final compensation awards under §330. Vol. 2, COLLIER ON BANKRUPTCY, 15th ed., §331.03, p. 331-7.

An attorney can only be compensated for services which are actual and necessary professional services for the trustee based on "the nature, the extent, and the value..." of the services; "the time spent on" the services; and "the cost of comparable services" in a case other than bankruptcy. The awarded compensation must be "reasonable." §330(a) (2). The court may also award "reimbursement for actual, necessary expenses." §330(a) (2).



The value of services are those services rendered which are beneficial to the debtor's estate. Matter of Urban American Development Co., 564 F.2d 808 (8th Cir. 1977); In re Tamarack Trail Co., 25 B.R. 259 (Bankr. S.D. Ohio 1982); In re Rosen, 25 B.R. 81 (Bankr. D.S.C. 1981); In re Zweig, 35 B.R. 37 (Bankr. N.D. Ga. 1983); In re Jordan, 53 B.R. 864 (Bankr. D.R.I. 1985). Attorney compensation should be reasonable based upon the complexity of the matter and the compensation to be expected for comparable non-bankruptcy services. In re McComb, 751 F.2d 286 (8th Cir. 1984).

In the case *sub judice*, the Frederickson Firm and the Ahlers Firm have rendered significant professional services to Debtors, including those services specifically described in the facts supra. The volume of information generated and complexity of the tax and bankruptcy issues involved in Debtors' Chapter 11 cases has required the professional services of firms with the depth and breadth of experience of the Frederickson Firm, as lead counsel, and the Ahlers Firm, as local counsel. Counsel for Debtors have had to deal with extremely difficult problems regarding management of Debtors in view of the conflicts within management between the past president, Michael Favilla, and the 100% shareholders, the Rosenbergers. By a combination of negotiation and litigation, counsel for Debtors have enabled Debtors to have continued use of the tractors and trailers which are necessary for Debtors to maintain their operations. Counsel for Debtors negotiated and obtained Court approval of financing which permitted the Debtors to continue in operation to the current date. Therefore, the Court finds that the services set forth on the fee

applications of the Frederickson Firm and the Ahlers Firm were beneficial to the Debtors' estate and reasonable. Further, the Court finds that the services are actual and necessary professional services based on the nature, the extent, and the value of the services; the time spent on the services; and the cost of comparable services in a case other than bankruptcy. The Court further finds that the respective applications meet the requirements of Rule 2016 and the Pothoven standards, with the exception of \$117.89 in computer research expense listed on the Frederickson Firm application. Finally, the Court finds that with the exception of the computer research expense, the respective applications list actual and necessary expenses.

Counsel for Debtors request the Court to shorten the application period under §331. Professional persons employed under §327 or §1103 may apply for interim compensation under §331 more often than once every 120 days if the court permits. See §331; In re International Horizons, Inc., 10 B.R. 895 (Bankr. N.D. Ga. 1981) (attorneys for debtors-in-possession allowed to apply for interim compensation on a monthly basis in view of the size of the reorganization cases, the complexity of the issues involved, and the time required on the attorneys' part in providing services necessary to achieve a successful reorganization of debtors). In Debtors' cases, the Court shall shorten the application period for professionals applying for compensation under §331 from once every 120 days to once every 60 days. Further, applications for interim compensation in Debtors' cases shall be set for hearing immediately upon filing of the application.

Counsel for Debtors and Debtors' Chapter 11 Trustee seek to transfer retainers from Debtors' account to the Chapter 11 Trustee's account, rather than applying the retainers against fees and expenses allowed in this order. Payment for interim compensation and expenses under §331, §330 should be made first from retainer. In re Kinderhaus Corp., 58 B.R. 94, 97 (Bankr. D. Minn. 1986). The Court denies the request of counsel for Debtors and Debtors' Chapter 11 Trustee to hold funds as continued retainers against future services as attorneys for the Chapter 11 Trustee, and the retainers should be applied against fees and expenses allowed in this order.

IT IS ACCORDINGLY ORDERED, as follows:

1) The Frederickson Firm's December 4, 1989 application is granted. Therefore, the Court allows \$99,665.90 in fees and \$3,873.19 in expenses. All payment of fees and expenses shall be made from funds subject to the availability requirements set out in the stipulation and agreement for financing and use of cash collateral approved by the Court on September 12, 1989. All funds received from Debtors or David Rosenberger as a retainer must be applied against the fees and expenses allowed in this order.

2) The Ahlers Firm's December 4, 1989 application is granted. Therefore, the Court allows \$49,427.50 in fees and \$4,119.15 in expenses. All payment of fees and expenses shall be made from funds subject to the availability requirements set out in the stipulation and agreement for financing and use of cash collateral approved by the Court on September 12, 1989. All funds

received from Debtors or David Rosenberger as a retainer must be applied against the fees and expenses allowed in this order.

3) The application period for professionals applying for compensation under §331 in Debtors' cases is shortened from once every 120 days to once every 60 days. Applications for interim compensation in Debtors' cases shall be set for hearing immediately upon filing of the application.

Dated this 1st day of March, 1990.

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Russell J. Hill  
U.S. Bankruptcy Judge

