

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of :
FITNESS WORLD WEST, INC., : Case No. 90-3112-C H
Debtor. : Chapter 11

ENROLLED ORDER--APPLICATION OF DEBTOR-IN-POSSESSION
TO USE CASH RESERVES OF ESTATE, CASH COLLATERAL
OF ESTATE, PROPERTY OF ESTATE, AND TO INCUR
INDEBTEDNESS UP TO AND INCLUDING THE AMOUNT OF
\$200,000.00 TO POST APPELLATE BOND

Debtor-in-Possession's Application to Use Cash Reserves, Cash Collateral, Property of Estate and to Incur Indebtedness came on for hearing on April 16, 1991. Debtor-in-Possession (herein "Fitness World") appeared by Richard M. LaJeunesse, Dreher, Wilson, Simpson, Jensen, Sellers, Harvey, Butters, Adams and Kaiser, P.C.; the U.S. Trustee appeared by John Waters, attorney for U.S. Trustee; Brenton National Bank of Des Moines and Metropolitan Federal Bank, F.S.B. (herein "Banks") appeared by Elizabeth E. Goodman, Davis, Hockenberger, Wine, Brown, Koehn and Shors, P.C.; Paul From appeared by James L. Spellman, Neiman, Neiman, Stone and Spellman, P.C.; and, the United States of America on behalf of the Internal Revenue Service (herein "IRS") appeared by Kevin R. Query, Assistant U.S. Attorney.

Fitness World prays that this Court enter an order permitting Fitness World, to use estate assets, including cash collateral, to obtain a \$200,000.00 supersedeas bond. The

Court orally denied this application at the conclusion of the hearing and now enters its enrolled order.

FACTS

1. Fitness World West, Inc. is a fitness and athletic club located in West Des Moines, Iowa.

2. Fitness World filed a voluntary petition under 11 U.S.C. Chapter 11, on December 6, 1990, and an order for relief was issued on the same day.

3. Fitness World leased a building it currently occupies from Paul From.

4. On December 5, 1990, the Iowa District Court, Polk County entered a Decree of Forcible Entry in favor of Paul From, together with a warrant of removal and forcible entry and detainer against Fitness World.

5. As stated, Fitness World filed for protection under Chapter 11 on December 6, 1990.

6. On January 3, 1991, Fitness World filed a Notice of Appeal in the Iowa District Court.

7. Fitness World filed an Appeal Bond Secured by Cash in the amount of \$300.00, on January 7, 1991.

8. This Court entered an order on March 4, 1991, granting Paul From's motion for relief from stay which enabled Paul From to proceed further with the state court proceedings

for forcible entry and detainer.

9. On March 13, 1991, a hearing was held in Iowa District Court on Paul From's application to increase the supersedeas bond. The Iowa District Court entered a ruling that the \$300.00 supersedeas bond would continue to stay the proceedings under the forcible entry and detainer decree until April 15, 1991. That court then went on to rule that the stay would lift on April 15, 1991, unless Fitness World filed a \$200,000.00 supersedeas bond with sureties.

10. On April 9, 1991, the Iowa Supreme Court denied Fitness World's Application for Stay and ruled that a \$200,000.00 supersedeas bond was appropriate.

11. Fitness World asserts that it has approximately \$86,000.00 in post-petition receivables which would be available for use in posting a supersedeas bond. Fitness World is requesting authority to use estate assets in order to secure additional monies to post the supersedeas bond. In the meantime, Fitness World prays that a stay be imposed to give it the opportunity to secure a supersedeas bond.

12. Metropolitan Bank is the largest secured creditor and has a blanket security interest in Fitness World's assets.

It opposes this application on the basis that it is not given enough information concerning Fitness World's business, including audited financial reports, and its plan to reorganize.

13. Brenton National Bank, another secured creditor, also opposes this application.

14. The IRS has statutory tax liens in the approximate sum of \$103,000.00 and a blanket interest in Fitness World's property. The IRS opposes the present application.

ISSUES

The issue is whether the Court should issue an order, pursuant to 11 U.S.C. §§ 363 and 364, authorizing Fitness World to utilize cash reserves of the estate, cash collateral of the estate, property of the estate and incur indebtedness in the amount of \$200,000.00 for a supersedeas bond.

CONCLUSIONS OF LAW

Section 363(c)(2) provides that a trustee, herein the Debtor-in-Possession or Fitness World, cannot use cash collateral unless the interested party, i.e., the secured creditor, consents or the court authorizes the use of it after notice and hearing. The court may authorize the use of cash collateral only if the secured party is adequately protected against loss.

Section 364(a) provides that the trustee may obtain unsecured credit and incur unsecured debt in the ordinary course of business. Section 364(b) provides that the court, upon notice and hearing, may authorize the obtaining of

unsecured debt other than in the ordinary course of business.

Section 364(c)(1) provides that the court, after notice and hearing, may authorize the obtaining of secured credit and incurred debt with a priority under certain circumstances. A court order is required.

The burden is upon Fitness World to show that estate assets should be used other than in the ordinary course of business. Obtaining a supersedeas bond is not the ordinary course of business for Fitness World.

Fitness World's application is very vague. Fitness World either cannot or will not divulge the name or names of possible lenders. Further, the application does not reveal whether funds are to be borrowed, and, if so, whether the loan is unsecured or secured, or the terms of the loan.

Fitness World has failed to disclose the cash collateral or other property which it proposes to use and what creditor holds an interest therein. Fitness World has failed to show how the interest of creditors will be adequately protected.

IT IS ACCORDINGLY ORDERED that Fitness World's application to use cash reserves, cash collateral, property of estate and to incur indebtedness is denied.

FURTHER, the Court refuses to stay these proceedings further and the stay previously ordered is terminated.

Dated this 17th day of April, 1991.

RUSSELL J. HILL
U.S. BANKRUPTCY JUDGE