

IN THE UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of _____ :

JOHNSON COUNTY ABSTRACT & _____ : Bankruptcy No. 90-1000-D
TITLE GUARANTEE COMPANY

_____ : Chapter 11
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ORDER ON APPLICATION FOR INTERIM ALLOWANCE
OF ACCOUNTANT'S FEES AND EXPENSES

On July 26, 1991, a telephonic hearing was held on Greenwood and Crim's Application for Interim Allowance for Compensation for Services of Accountant and the U.S. Trustee's objection thereto. Patricia C. Kamath appeared on behalf of Greenwood and Crim, and John Waters appeared for the U.S. Trustee. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). The court having heard the arguments of counsel and having reviewed the file now enters its findings and conclusions pursuant to Fed.R.Bankr.P. 7052.

FINDINGS OF FACT

1. The Debtor filed its voluntary Chapter 11 petition on April 12, 1990 and has continued operating as debtor-in-possession.

2. On June 30, 1990, the Debtor filed an application to employ Greenwood and Crim, P.C., as its accountant. The court entered an order approving debtor's application pursuant to 11 U.S.C. § 327 on August 28, 1990.

3. At the hearing on confirmation of debtor's plan March 13, 1991, debtor conceded funds had been paid to

Greenwood and Crim, P.C., without prior court approval pursuant to 11 U.S.C. §§ 330 & 331. The court ordered confirmation be continued pending submission of a fee application by Greenwood and Crim.

4. On April 8, 1991, Greenwood and Crim, P.C., filed its application for fees for services rendered from May 4, 1990 through September 26, 1990. The application indicates debtor made unauthorized payments totaling \$1,597.00. The total amount of fees for services for the period following the bankruptcy petition filing and before the submission of the application to employ is \$1,404.75.

5. Neither Greenwood and Crim, P.C., nor the debtor have applied for a nunc pro tunc order for approval of compensation for services performed nor have extraordinary circumstances warranting such an order been shown.

DISCUSSION

Generally, compensation may not be awarded to professionals representing a Chapter 11 debtor-in-possession unless the court has approved their employment pursuant to 11 U.S.C. § 327. Prior to receiving any compensation, professionals approved pursuant to § 327 must also receive prior approval for the payment of fees or expenses pursuant to 11 U.S.C. §§ 330 & 331. Lavender v. Wood, 785 F.2d 247, 248 (8th Cir. 1986). A professional who wishes to be compensated for services performed prior to debtor's application to employ

should file an application for a nunc pro tunc order. See In re All Iowa Transp. Servs., Inc., No. 85-364-C slip op. at 4 (Bankr. S.D. Iowa Apr. 7, 1988) (#20 in Judge Hill's Decision Book). An application for employment nunc pro tunc will be granted only upon a showing of extraordinary circumstances. Id. (citing Matter of Indep. Sales Corp., 73 B.R. 772, 777 (Bankr. S.D. Iowa 1987)). Extraordinary circumstances exist where prior approval would have been appropriate and the delay in seeking approval was due to hardship beyond the professional's control. Id.

In the case at bar, extraordinary circumstances warranting a nunc pro tunc order authorizing compensation for services performed prior to approval of employment were not shown. Thus, compensation for pre-application services will be denied. Compensation for post-application services are reasonable and comply with the standards enunciated in Matter of Pothoven, 84 B.R. 579 (Bankr. S.D. Iowa 1988), and will therefore be allowed.

CONCLUSION AND ORDER

IT IS ACCORDINGLY ORDERED that the U.S. Trustee's objection to application for allowance of accountant's fees and expenses shall be sustained to the extent the fees were incurred prior to the date of the application to employ accountant.

IT IS FURTHER ORDERED that fees incurred on and after the date of the application to employ accountant will be allowed.

The fees already paid shall be applied as a credit against any fees to be paid for post-employment application services.

Dated this 18th day of December 1991.

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Court

JUDGE RUSSELL J. HILL
United States Bankruptcy