

UNITED STATES BANKRUPTCY COURT

For the Southern District of Iowa

In the Matter of

STADIUMS UNLIMITED, INC.,

Case No. 88-786-C

Debtor.

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ORDER ON APPLICATION TO APPROVE EMPLOYMENT OF ATTORNEYS

At Des Moines, in the Southern District of Iowa on the 27th day of May, 1988.

On May 13, 1988 the attorneys for the petitioning creditors that filed the above named case as an involuntary Chapter 7 filed an application to approve the employment of Jerrold Wanek and Dennis D. Ashby to represent the petitioning creditors. For the reasons stated below the application is denied as it is unnecessary.

The application refers to no provision from the Bankruptcy Code or Rules supporting the entry of an order approving appointment of attorneys for petitioning creditors. The court presumes that the application is based on the provisions of 11 U.S.C. subsections 503(b)(3)(A) and (b)(4) which state:

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including--

(3) the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (4) of this subsection, incurred by--

(A) a creditor that files a petition under section 303 of this title;

....

(4) reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under paragraph (3) of this subsection, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant;

Neither of the above subsections require prior court approval. Rather, upon application and after notice and hearing petitioning creditors shall be allowed actual and necessary expenses, and attorneys for petitioning creditors shall be allowed reasonable compensation and actual and necessary expenses incident to the filing of an involuntary petition. See 3 Collier on Bankruptcy, § 503.04 at 503-40 - 503-51 (15th ed. 1987). Section 503(b)(3)(B) appears to be the only subsection that requires any kind of prior court approval and applies where a creditor recovers any property transferred or concealed by the debtor for the benefit of the estate. See In re Monahan, 73 B.R. 543 (Bankr. S.D. Fla. 1987); In re Johnson, 72 B.R. 115 (Bankr. E.D. N.C. 1987).

The application to approve employment of attorneys does not indicate that the petitioning creditors seek to recover property transferred or concealed by the debtor. Moreover, the professional services identified as necessary are far more expansive than those incident to the filing of the involuntary petition. See Matter of Seatrain Lines, Inc., 21 B.R. 194 (Bankr. S.D. N.Y. 1982).

Accordingly, the court need not, but also, will not authorize the appointment of attorneys under the terms stated in the application.

THEREFORE, the application to approve employment of attorneys is hereby denied.

LEE M. JACKWIG

CHIEF U.S. BANKRUPTCY JUDGE