

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF )  
 )  
SIDNEY MANUFACTURING CORP., ) CASE NO. BK77-0-1049  
 )  
BANKRUPT )

MEMORANDUM OPINION

The matter now before the Court is the application for fees and expenses by Thomas M. Sonntag for services rendered as attorney for the debtor-in-possession.

On October 4, 1977, an involuntary petition was filed against Sidney Manufacturing Corporation. On October 7, 1977, Sidney Manufacturing Corporation filed its petition in the involuntary proceeding under Chapter XI. The first meeting of creditors in the Chapter XI proceeding was set for November 10, 1977. On November 10, 1977, the debtor in the Chapter XI proceeding was adjudicated a bankrupt and straight bankruptcy liquidation followed. Mr. Sonntag served as the attorney for the debtor-in-possession during the thirty-one days of the Chapter XI proceeding. A separate attorney was retained to represent the debtor during the Chapter XI proceeding. Following adjudication, Mr. Sonntag did prepare schedules for use in the straight bankruptcy proceeding and filed a supplemental application for those services and expenses related thereto.

Mr. Sonntag's original application itemizes fifty-one hours of legal services and \$152.24 in expenses. Contained in that application is three and one-half hours for attendance at a seminar at Creighton University together with \$15.00 for registration at that seminar which the Court concludes are non-compensable in this proceeding. Mr. Sonntag's supplemental application lists an additional five and three-fourths hours of services together with \$2.95 in expenses. The Court's conclusion is that only fifty-three and one-fourth hours are compensable services.

Mr. Sonntag seeks an allowance of \$5,844.81 in fees and reimbursement of \$155.19 in expenses. Mr. Sonntag did not appear at the hearing on the application for fees and, accordingly, it is necessary to examine the files in this matter to obtain relevant information.

Mr. Sonntag filed a disclosure of compensation paid or promised which discloses that he received a retainer of \$6,000.00 and was promised an additional \$1,500.00 in the future. However, the trustee's final report discloses that Mr. Sonntag received a total payment of \$7,000.00 but that the trustee recovered a refund from Mr. Sonntag of \$2,000.00. I conclude that the trustee's report is probably more reliable and the net result is that Mr. Sonntag has previously received a \$5,000.00 payment in the nature of a retainer.

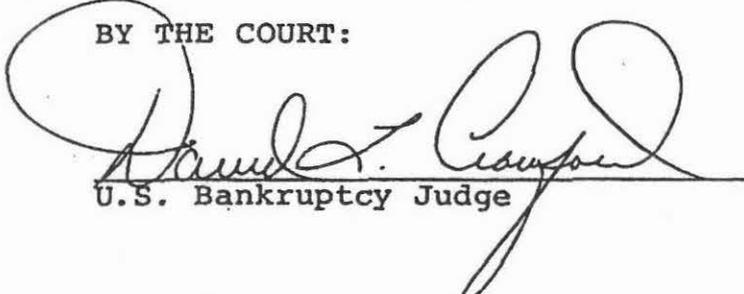
Attorneys for debtors who unsuccessfully attempt to formulate an arrangement in general simply are not compensated as much as if an arrangement is confirmed. In re Aaron Ferer & Sons Co., 12 CBC 701 (D. Neb. 1977). The fee application, if approved as filed, would allow the applicant an hourly rate of \$102.99 per hour. To allow that rate for a Chapter XI proceeding which aborted within approximately one month seems excessive.

Having concluded that only fifty-three and one-fourth hours are compensable and only \$140.19 in expenses are reimbursable, this Court concludes that an hourly rate more in line with that allowed the creditors' committee in this proceeding is more appropriate. The attorneys for the creditors' committee in this proceeding were allowed a rate of \$50.00 per hour. Given that rate, Mr. Sonntag is entitled to an allowance of \$2,662.50 in fees and \$140.19 in expenses. Pursuant to Bankruptcy Rule 220 as incorporated by Bankruptcy Rule 11-32, Mr. Sonntag will be ordered to repay to the trustee the sum of \$2,197.31.

A separate order is entered in accordance with the foregoing.

DATED: December 17, 1979.

BY THE COURT:

  
U.S. Bankruptcy Judge

Copies mailed to each of the following:

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