

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

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William L. Olson, Clerk

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UNITED STATES BANKRUPTCY CLERK CV. 85-0-1904
FOR THE DISTRICT OF NEBRASKA BK. 79-0-1045
OMAHA

IN THE MATTER OF:

SILVER MONARCH OIL & GAS COMPANY, INC.,

Debtor.

ORDER

On September 30, 1985, Judge Timothy J. Mahoney, United States Bankruptcy Judge, approved the receiver's final report and granted discharge to Silver Monarch Oil & Gas Company, Inc., BK. 79-0-1045. In doing so, Judge Mahoney overruled an objection to the final report raised by John D. Sykora, attorney for the debtor and debtor-in-possession. The Bankruptcy Court's ruling on Mr. Sykora's objection is the subject of this appeal.

By order of this Court, the parties submitted briefs soon after the appeal was filed. The record on appeal compiled by the United States Bankruptcy Court for the District of Nebraska, however, was not filed with the United States District Court for the District of Nebraska until March 10, 1987. A review of the record on appeal indicates it is incomplete because the transcript of the hearing held September 30, 1985, has not been submitted to the District Court. Nonetheless, given the prolonged period involved here, the Court shall rule on Mr. Sykora's appeal. If a transcript of the hearing does indeed exist and if the transcript contains grounds for reconsideration

of this order, the parties herein shall be granted reasonable opportunity to file a motion for this Court's reconsideration of this order.

Given the fact no transcript has been submitted, the Court will look to the respective parties' briefs for the uncontroverted facts underlying this appeal. The Chapter 11 bankruptcy petition for the debtor, Silver Monarch Oil & Gas Company, Inc., was filed on August 31, 1979. Simultaneous with the filing, orders were entered by the Bankruptcy Judge authorizing the debtor to continue in business as debtor-in-possession and authorizing the general retainer of appellant, John D. Sykora as attorney for the debtor and debtor-in-possession. Appellee states that Mr. Sykora was allowed a \$9,950 retainer. Appellant has continued as attorney of record for the debtor throughout these proceedings. The debtor, however, lost its debtor-in-possession status in 1982 or 1983.

Appellee states that on February 16, 1982, the debtor in possession had not filed a Plan of Arrangement and was replaced by the appellee-receiver. Thereafter, the receiver proposed a Plan of Arrangement and filed a Disclosure Statement on July 16, 1982. The Plan was confirmed by the Bankruptcy Court on December 20, 1982. Appellant, on the other hand, asserts Eugene Chamberlain was appointed receiver of the debtor in 1983 and in 1984, the receiver filed a Plan of Arrangement on the debtor's behalf which was subsequently confirmed.

Once the receiver fully administered the estate in accordance with the Plan, he filed a Final Report and Accounting, a Report of Distribution and a Request for Discharge. In connection with these filings, the receiver also filed a petition for allowance of fees and expenses. A hearing regarding each of these matters was set for September 30, 1985. Notice of the hearing was mailed on September 10, 1985, to all interested parties, including the appellant. The notice of hearing included the following provision:

No evidence shall be received at the hearing; the issues will be ascertained and a determination made of whether the matter can be resolved on the merits; if the matter cannot be resolved on the merits at the hearing, a procedure to final resolution shall be established.

Appellant apparently filed a written "Objection to Final Report and Closing of Estate" soon after the notice of hearing was sent, although the record on appeal contains no such written objection. Mr. Sykora's objection was overruled during the September 30, 1985, hearing and the receiver's final report, petition for allowance, distribution and discharge were all approved.

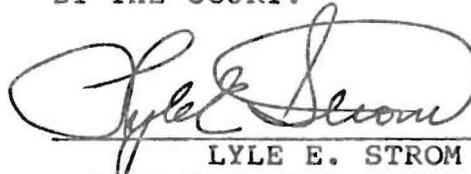
On appeal, appellant contends the Bankruptcy Court denied him an opportunity to make application for fees and expenses as attorney for the debtor and debtor-in-possession prior to the closing of the estate. Mr. Sykora's overruled objection was predicated upon the fact that he had a claim for professional services rendered to the estate in excess of \$35,000. He apparently argued that he had not filed an

Given the fact he performed little if any service to the debtor during this period, he should have made his application during that period. Moreover, once he received notice that a hearing would be held on the receiver's application for fees and expenses, Mr. Sykora clearly should have filed a similar application of his own. This is so even though the Court may not have set a date for fee application, the receiver and his attorney have indicated the estate did not have sufficient funds to cover the application and appellant was ill from 1984 through May, 1985. The September 10 notice gave him ample reason and opportunity to file his application prior to the September 30 hearing. Accordingly,

IT IS HEREBY ORDERED that September 30, 1985, bankruptcy court order overruling appellant's objection shall be affirmed.

DATED this 15th day of April, 1987.

BY THE COURT:



LYLE E. STROM
UNITED STATES DISTRICT JUDGE