

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
HY-GAIN ELECTRONICS CORPORATION,) CASE NO. BK78-0-25
HY-GAIN DE PUERTO RICO, INC., and) CASE NO. BK78-0-26
HY-GAIN ELECTRONICS SYSTEMS CORP.,) CASE NO. BK78-0-81
)
BANKRUPTS)

MEMORANDUM AND ORDER

Before me is the motion filed by the trustee in bankruptcy and Citibank, N.A., for an order directing Touche, Ross & Company to make certain documents available for inspection and copying. At the hearing, Citibank, N.A., the trustee and Touche, Ross & Company filed a stipulation which provided that the accounting records involved would be turned over to Arthur Andersen & Co., Citibank's auditors, by order of the Court. The stipulation provided other matters. The bankrupt corporations objected in writing to the entry of such an order.

The objection apparently is based upon a claimed accountant-client privilege which is derived from Section 1-168 R.R.S. 1943. However, in my view, that statute does not create an accountant-client privilege but simply prohibits an accountant from selling, transferring or bequeathing accounting records to third parties.

As stated in 12 Collier on Bankruptcy Paragraph 205.17 at p. 2-96:

"The bankrupt may at any time be ordered to produce his books, papers and documents for examination and be examined concerning them. After adjudication, title to all these documents is vested in the trustee and the bankrupt cannot refuse to turn them over to the trustee if requested. A subpoena duces tecum is not necessary in this regard; an order of the bankruptcy judge is sufficient.

"A witness other than the bankrupt may be compelled to produce such books, papers and documents as are within the scope of a Rule 205(a) examination as set forth in subdivision (d) of Rule 205. The latitude of such an inquiry is wide, although the books and papers sought must have some relation to or bearing upon the inquiry. However, the applicant for an examination cannot obtain evidence by means of Rule 205(e) which have to do with transactions with which the bankrupt was not connected. The fact that the records sought are personal does not prohibit their being subpoenaed; what is important is whether they are reasonably relevant to the proper scope of inquiry under Rule 205 "

Resulting from the foregoing is the conclusion that the joint motion should be sustained and the documents ordered produced. It, therefore, hereby is

ORDERED that the joint motion for order directing Touche, Ross & Co., to make certain documents available for inspection and copying is hereby sustained; and it is further

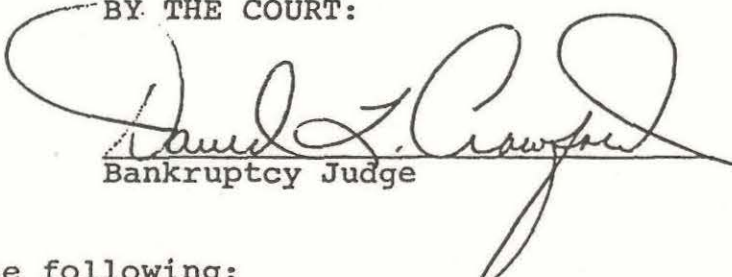
ORDERED that in accordance with the stipulation entered herein the subpoenas previously issued herein to Roger Hermson and Gary Yocum are hereby quashed without prejudice; and it is further

ORDERED that the stipulation previously referred to be, and the same hereby is, approved; and it is further

ORDERED that Touche, Ross & Co., is directed to produce the documents provided for in the joint motion and the stipulation.

DATED: January 31, 1979.

BY THE COURT:


Bankruptcy Judge

Copies mailed to each of the following:

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