

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

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

Appearances: Arnold M. Quittner, Attorney
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for Citibank, N.A.,
as agent bank for
Citibank, N.A., Citibank
International, Los Angeles,
Security Pacific National Bank and
Columbia Union Bank and Trust Co.

Thomas D. Stalnaker, Attorney
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and
Wm. E. Morrow, Attorney
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and
Thomas C. Lauritsen, Attorney
3535 Harney Street
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for Joseph H. Badami, Trustee
in bankruptcy

Joseph H. Badami, Attorney
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Lincoln, Ne. 68508
pro se

MEMORANDUM OPINION

Before me is the motion by Citibank, N.A.,
Citibank International Los Angeles, Security Pacific National
Bank, and Columbia Union Bank and Trust Company for an order
allowing them attorneys' fees and costs. The motion seeks taxation
of costs against the trustee, the trustee's attorneys, and the

These bankruptcy proceedings began as Chapter XI proceedings and later were converted to straight bankruptcy proceedings. During the Chapter XI proceeding, the debtors filed an application to use inventory and accounts receivable which were claimed as security for loans by the secured banks referred to above. After a trial on the merits, this Court denied permission for the debtors to use the inventory and the accounts receivable. That decision occurred February 6, 1978. Thereafter, the debtors and the secured banks agreed to a compromise agreement whereby the debtors were given until March 30, 1978, to pay off secured banks' entire debts for an option price of \$10,842,000.00 plus interest and attorney fees. The option price was approximately 50% of the total indebtedness due the secured banks. The compromise agreement was approved by this Court on March 10, 1978. Debtors were unable to obtain the necessary money and the secured banks took possession of their collateral pursuant to the compromise agreement and the debtors were adjudged bankrupts on April 4, 1978.

On January 26, 1979, the trustee filed his motion to set aside the order dated March 10, 1978, which had approved the compromise agreement. This Court on June 22, 1979, denied the trustee's motion. The foregoing facts are set out in more detail in this Court's memorandum opinion filed June 22, 1979.

The present motion seeks taxation of attorneys' fees for defense of the trustee's motion to set aside the compromise agreement.

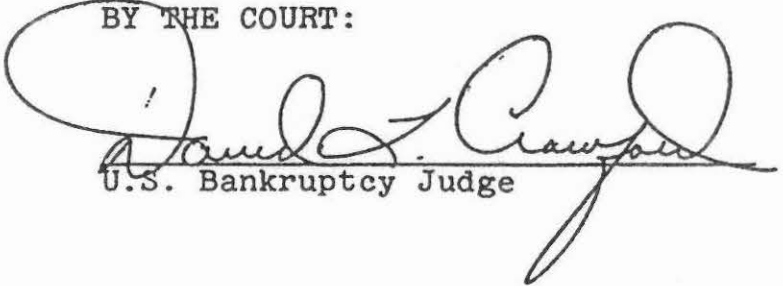
It is true that the trustee was unsuccessful in his attempt to set aside the compromise agreement. Nevertheless, this Court is unable to conclude that the trustee's motion was in bad faith.

Conversely, I am persuaded that the trustee felt that it was necessary to attack the compromise agreement because that was in the best interests of the unsecured creditors. I am not persuaded that the motion to set aside the compromise agreement was made for vexatious or oppressive reasons. I am persuaded that to award attorneys' fees from either the estate or the attorneys for the trustee would have a chilling effect on aggressive bankruptcy liquidation in this district. I should add that at the hearing on the motion for taxation of costs, the secured banks withdrew their request for taxation of attorneys' fees and costs against the trustee personally.

A separate order is entered in accordance with the foregoing.

DATED: December 28, 1979.

BY THE COURT:


U.S. Bankruptcy Judge

Copies mailed to attorneys who entered appearances and a copy also mailed to Douglas Duchek, Attorney, 1900 First Nat'l. Bank, Lincoln, Nebraska 68508