

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
R & S HARDWARE, INC.,) CASE NO. BK77-0-77
)
BANKRUPT)

MEMORANDUM OPINION

The final meeting of creditors in this bankruptcy proceeding has been held. At issue is the application for fees filed by Thompson, Crouse & Pieper as attorneys for the trustee in bankruptcy.

The final report of the trustee shows total receipts in this bankruptcy proceeding of \$20,798.18 and total disbursements for expenses of \$133.40, leaving a balance on hand for distribution of \$20,664.78.

The bulk of the money which the trustee presently holds, \$19,936.17, are the proceeds of a recovery by the trustee from a lawsuit prosecuted by the law firm of Thompson, Crouse & Pieper. The applicant law firm represented the trustee in two separate lawsuits in the District Court of Douglas County, Nebraska. Following consolidation of those cases for trial, the trustee received an adverse judgment and appealed to the Nebraska Supreme Court where he obtained a favorable result. The details of that litigation are set forth in Southwest Bank of Omaha vs. Moritz, 203 Neb. 45, N. W. 2d (1979) and need not be set forth herein. The result is that because of the efforts of the attorneys for the trustee, this minimal asset case has been turned into an estate in excess of \$20,000.00. Unfortunately, the application for fees by Thompson, Crouse & Pieper is in the amount of \$22,516.00 for fees and \$689.16 for expenses, more than remains in the hands of the trustee. In addition, the receiver has applied for fees of \$347.88 and the trustee has applied for fees of \$620.96 and expenses of \$106.40. There are expenses of administration, liens and priority claims totalling \$1,857.12 which must be paid in advance of any dividend to general creditors. There are claims by general creditors totalling \$40,447.53.

The former sole stockholder of the bankrupt corporation has objected to the allowance of fees and expenses as applied for because they will consume the entire estate. The former sole stockholder has standing in this proceeding because if certain tax claims which are priority claims are not paid from assets of this bankruptcy estate, the former sole stockholder has personal liability to the taxing authorities.

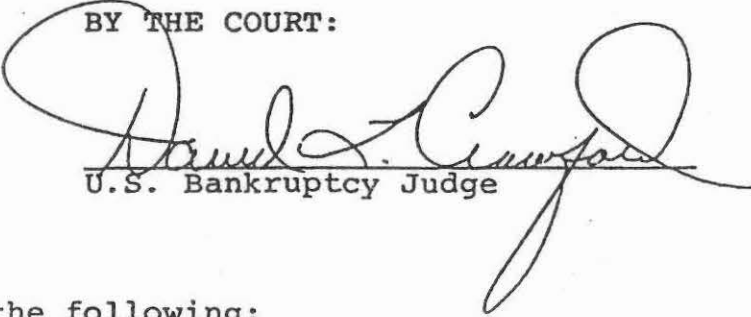
While I am aware of the fact that the attorneys for the trustee are responsible for the bulk of the money of this estate being in the estate, I am also aware that one of the criteria in determining a reasonable attorney fee is the result obtained. In addition, hours expended are not the sole criteria for determining a reasonable attorney fee. See, for example, In re Aaron Ferer & Sons Co., 12 CBC 701 (D. Neb. 1977).

Having reviewed the file in this proceeding, the litigation in which the attorneys for the trustee participated, and having heard the argument of counsel, it is this Court's conclusion that a reasonable attorney fee for the firm of Thompson, Crouse & Pieper is \$12,000.00. In addition, their expenses will be allowed in the amount for which they applied. The applicant law firm has previously, by order dated October 17, 1979, been allowed an interim fee of \$10,000.00 which must be applied on the \$12,000.00 fee which they will be allowed, leaving a balance due in fees of \$2,000.00 plus the expenses previously mentioned. The fees of the receiver and the fees and expenses of the trustee will be allowed as applied for.

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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