

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

IN RE:) CHAPTER 7
)
ANAMET INDUSTRIAL, INC. and) CASE NO. 98-31608 (ASD)
GLEN ELLEN REALTY, INC.,) CASE NO. 98-31609 (ASD)¹
) Jointly Administered under
DEBTORS.) CASE NO. 98-31608 (ASD)
)
) RE: Doc. I.D. No. 800

**BRIEF MEMORANDUM AND ORDER ON FINAL APPLICATION
OF BERNARD W. COSTICH , ACCOUNTANT,
FOR THE ALLOWANCE AND PAYMENT OF COMPENSATION
AND EXPENSES**

The Final Application of Bernard W. Costich, CPA Accountant to the Official Committee of Unsecured Creditors, the Chapter 11 Trustee, and the Chapter 7 Trustee for Final Allowance and Payment of Compensation and Reimbursement of Expenses and Charges Pursuant to Bankruptcy Code Section 330 (hereafter, the "Application"), Doc. I.D. No. 800, together with the United States Trustee's Objection to [the Application] (hereafter, the "UST Objection"), Doc. I.D. No. 809, and the Objection of Chapter 7 Trustee to [the Application] (hereafter, the "Trustee Objection"), Doc. I.D. No. 810, (hereafter, collectively, the "Objections"), and the Response of Bernard W. Costich, CPA Accountant to [the Objections] (hereafter, the "Response"), Doc. I.D. No. 816, came on for a hearing before this Court on September 14, 2004 (hereafter, the "Hearing") at which the Court, *inter alia*, received evidence, documentary and testimonial, related to the necessity and reasonableness of the fees and expenses of Bernard W. Costich in connection with his

¹Bankruptcy Case 98-31609 was closed on June 8, 2004.

employment as an accountant as particularized hereafter. Following the Hearing the Court received and considered the Joint Post-Hearing Brief of the Chapter 7 Trustee and the United States Trustee to [the Application] (hereafter, the “Joint Post-Hearing Brief”), Doc. I.D. No. 829, and the Movant’s Post-Hearing Brief Regarding Final Application of Bernard W. Costich, CPA for Final Compensation (hereafter, the “Movant’s Post-Hearing Brief”), Doc. I.D. No. 830.

Through the Application, Bernard W. Costich (hereafter, the “Applicant”) seeks final approval for fees and expenses for the period of September 11, 1998 through March 15, 2004 as accountant for (i) the Unsecured Creditors’ Committee, (ii) the Chapter 11 Trustee, and (iii) the Chapter 7 Trustee. The Application seeks compensation in the total amount of \$117,054.69 (\$115,574.23 for fees and \$1,480.46 for expenses). Of this amount \$71,949.13 was allowed, and \$54,466.32 was paid, on the basis of interim applications and orders.² In the Objections, the United States Trustee and the Chapter 7 Trustee Roberta Napolitano³ (hereafter, the “Trustee”), request the Court to limit approval of the Application to the amount already paid (\$54,466.32)⁴ by denying allowance with regard to the entire interim balance not paid (\$17,482.81) and an additional \$44,815.00 in fees and \$290.56

²Familiarity with the procedural background of these jointly administered cases, the Applicant’s employment and fee application history, and the amounts as discussed herein, which are not the subject of significant dispute, is presumed. See, e.g., *Response*, pp 2 - 7; for summary, in chart form, see *Joint Post-Hearing Brief*, page 4.

³Roberta Napolitano also served as Chapter 11 trustee.

⁴The United States Trustee’s and Trustee’s urging the Court to deny the Application in the amount of its “unpaid” portion would have this Court employ an allowance calculus nowhere authorized by the Bankruptcy Code or Rules.

in expenses not subject to any interim application or order, totaling 62,588.37.⁵

The United States Trustee and the Trustee maintain that the unpaid fee component of the Application should not be allowed for essentially three reasons – the Application (i) seeks compensation for legal services as opposed to accounting tasks, (ii) seeks an excessive amount of fees given the tasks performed and the alleged limited benefit to the bankruptcy estates, and (iii) does not comply with U. S Trustee Guidelines prohibiting “lumping” of time entries. See UST Objection, p. 1.

At the outset the Court notes the Applicant’s services were initially sought due to his unique background as an attorney and accountant with extensive experience in bankruptcy reorganizations and related matters. The services performed by the Applicant were within the scope of the retention applications, and related court orders. In addition, the services performed for the Creditors’ Committee and the Trustee were done under the supervision and direction of Attorney Douglas Skalka,⁶ who initially served as the Committee’s counsel, and later as the Trustee’s counsel. And while the United States Trustee currently objects to allowance on the basis that the Applicant’s services were legal, not accounting, in nature, the attorney representing the United States Trustee, at a March 10, 1999 hearing on the Applicant’s first interim application for fees and expenses,

⁵\$54,466.32 (paid) + \$17,482.81(interim balance outstanding) + \$44,815.00 (new fees) + \$290.56 (new expenses) = \$117,054.69 (total compensation and expenses) .

⁶The lack of communication between the Applicant and the Trustee is troubling. However, under the circumstances, *see Movant’s Post-Hearing Brief*, pp. 5-7, the Applicant was justified in communicating with, and relying on, Attorney Skalka, the Trustee’s counsel.

defended the Applicant's First Report, giving it glowing marks as an accounting product,⁷ thereby, *inter alia*, encouraging similar work as the case progressed.⁸ In light of the need for an accountant with the Applicant's qualifications, it is not surprising to find legal elements in the Applicant's work product. His services were what the estate needed and wanted, and, moreover, were within the scope of the applications for his retention, and related orders. Accordingly, to the extent that the Objections seek to deny compensation approval for the rendering of alleged legal services, the Objections are overruled.

With regard to the second ground for disallowance – the amount of requested fees

⁷With regard to the controversial First Report, now alleged to be the “spark that fueled a fire” fatal to a reorganization, *see Joint Post-Hearing Brief* at 20, the following exchange occurred between the Court and counsel for the United States Trustee:

THE COURT: So you think it's a great report, not necessarily a brief, even though it contains a reference to – presumably contains a reference to a lot of –

MR. COSTA: And I informed the Court we handed that report to the bankruptcy analyst, the accounting person in my office, and she gave me glowing marks on that report as an accountant would read it.

THE COURT: All right.

MR. COSTA: – and she's not an attorney. I'm an attorney. And, I would just state to the Court that there is no bright-line test between what an accountant does and what an attorney does in terms of a fraudulent or preferential analysis. You just its almost hand in glove and

THE COURT: Well, there's no bright-line limit.

MR. COSTA: Right.

THE COURT: – I mean – but it very well may be that when viewing this report in the light, it will be clear that a significant portion of it is something a lawyer should be doing –

MR. COSTA: Well –

THE COURT: not an accountant. You're suggesting that's not the case, that's not the inference I'll draw, but –

MR. COSTA: I would argue, your Honor, that assuming, *arguendo*, you do draw that inference, I would tell your Honor there aren't many lawyers who would turn down a report like this from an accountant because the accountant has teed it up for the – attorney, Mr. Skalka –

Tr. At 40-41.

⁸At the March 10, 1999 interim allowance hearing, this Court noted that “it's clear to the Court that there is a legal analysis woven into his report . . . indeed, in some significant respects. However, I note that he was retained for this because of his particular background and experience, which included his legal background, and he acted in reliance on the retention order.” Tr. At 81.

proportionate to the alleged limited benefit to the bankruptcy estates – the United States Trustee, and the Trustee, rely, in part, on the testimony of the Debtor’s original counsel, Attorney Eric Henzy, a seasoned, competent bankruptcy attorney, who opined as to his opinion of lack of any “benefit” to the Applicant’s engagement testifying that it imperiled the prospects for a reorganization. However, Attorney Skalka, also a seasoned, competent bankruptcy attorney, did not share Attorney Henzy’s opinion, and testified as to a multiplicity of factors and constituents impacting reorganization, and in a manner otherwise supportive of the Application. After reviewing all the evidence the Court is not convinced that the Applicant’s First Report was the principal factor which precluded a reorganization, but rather, at most, was but one of a significant number of such factors .

The Trustee also argues, *inter alia*, that “Costich seeks compensation of over \$115,000 for his role in inciting [litigation settled by the Trustee for \$100,000]. Trustee Objection, p. 2, ¶ 3. See also Movant’s Post-Hearing Brief, pp. 23-24. The Trustee, however, unilaterally settled the relevant litigation prior to discovery completion for an amount below her own attorney’s opinion of the relevant claim’s value, and well below the view of the Applicant. In view of the above, and because the other arguments of the United States Trustee and the Trustee are insufficient to convince the Court that the benefit to the bankruptcy estates of the Applicant’s services deem his fees excessive given the tasks performed, the Objections, to the extent they assert excessive fees as a basis for disallowance, are overruled.

Finally, to the extent the Objections alleged “lumped” entries in violation of United States Trustee Guidelines, the Applicant’s revised entries, see Response pp. 17 - 19, coupled with his testimony at the Hearing, Tr. At 165 -167, provide sufficient detail to permit

a meaningful review of the services represented.

CONCLUSION AND ORDER

The services performed by the Applicant, and the subject of the Application, were within the scope of the relevant retention applications, and were actual, reasonable, necessary and beneficial to the Debtors' estates. Accordingly,

IT IS HEREBY ORDERED that the Objections are **OVERRULED**, and

IT IS FURTHER ORDERED that the Application is **Approved** – Compensation for services and reimbursement of expenses is allowed in the full and final total amount of \$117,054.69, subject to adjustment for interim allowances approved *and* paid totaling \$54,466.32 pursuant to Orders of the Court dated March 11, 1999, and October 25, 2000.

Dated: March 13, 2006

BY THE COURT


Albert S. Dabrowski
Chief United States Bankruptcy Judge