

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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IN RE:

C.E. CHAPPELL & SONS, INC.

CASE NO.92-00142

Debtor

Chapter 11

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APPEARANCES:

FUST, CHARLES CHAMBERS & HARFOSH  
Certified Public Accountants  
Accountants to Debtor  
5786 Widewaters Parkway  
Dewitt, New York 13214

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Attorneys for Debtor  
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10 Broad Street  
Utica, New York 13501

STEPHEN D. GERLING, U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

The Court has before it the Second Interim Application ("Second Application") for fees filed by Debtor's accountants, Fust, Charles, Chambers & Harfosh ("Fust, Charles") on December 9, 1992.

The Second Application covers the period August 30, 1991 through October 16, 1992. Interestingly, the Second Application pertains to a period of time pre-petition and, in fact, pre-dates the first interim application filed by Fust, Charles on June 25, 1992.

The Second Application was scheduled for a hearing before this Court on January 12, 1993. The only parties appearing at the hearing were Debtor's counsel and the United States Trustee ("UST").

While no written objections to the Second Application were filed, both the Court and the UST raised concerns directed to the Application and the Court reserved decision.

Both the Court and the UST commented on the methodology employed by Fust, Charles in preparing contemporaneous time records to support the Second

Application. Additionally, the Court requested an explanation of a "progress payment" in the sum of \$16,250 reflected on Fust, Charles' Invoice #3828.

Subsequent to the January 12, 1993 hearing, Fust, Charles submitted an explanation of various audit programs, as well as an explanation through Debtor's attorneys that the "progress payment" was paid pre-petition "pursuant to the audit engagement agreement between the debtor and Fust, Charles, Chambers & Harfosh." (Letter to the Court from Jeffrey A. Dove, Esq. dated February 3, 1993). No additional time records have been submitted.

The Court perceives that the defect in Fust, Charles' Second Application is not a lack of supporting documentation, but the method of presentation to both the Court and creditors.

The Second Application is supported by four separate "invoices" prepared by Fust, Charles which reflect the individuals performing services, the nature of those services and the hours consumed. The problem in analyzing these invoices stems from Fust, Charles' omission on at least two of the invoices to indicate the hourly rates of these individuals. Additionally different hourly rates are ascribed to the same individual apparently depending upon the task being performed. Finally, on one of the invoices, the individuals are identified only by initials.

While Fust, Charles may believe the invoices are sufficient for their internal purposes of billing the client, they cause this Court unwarranted time and effort in analyzing the accuracy of total hours times hourly rate.

It is strongly suggested that in the future Fust Charles prepare daily time records which concisely reflect the person performing the service, that person's hourly rate for that service and the number of hours consumed.

With regard to the so-called "progress payment", the Court is unable to accept the proffered explanation. The only enforceable audit agreement between the Debtor and Fust, Charles is the one approved by this Court by its Order dated January 22, 1992. That Order does not approve any pre-petition progress payment. In fact, the Affidavit of Henry W. Fust, CPA filed in support of the application for appointment at paragraph 8 affirms that no retainer has been received from Debtor. Thus, it is unclear as to the origin of the \$16,250.

The Court will, therefore, treat the progress payment as a pre-

petition retainer with admonishment that in the future, Fust, Charles is prohibited from obtaining payment for services rendered to this Debtor in the absence of an order of the Court approving same.

In summary, the Court will approve the fee request of \$61,786 and reimbursement of expenses in the sum of \$626.69.

IT IS SO ORDERED.

Dated at Utica, New York

this        day of April, 1993

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STEPHEN D. GERLING  
U.S. Bankruptcy Judge