

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

HOTEL SYRACUSE, INC.

CASE NO. 90-02921

Debtor

Chapter 11

APPEARANCES:

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SCHWARTZ, P.C.

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STEPHEN D. GERLING, U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT,

CONCLUSIONS OF LAW AND ORDER

This contested matter comes before the Court on the Application of Debtor's counsel, Shaw, Licitra, Esernio & Schwartz, P.C. ("Shaw Licitra") for approval of an interim fee and ancillary matters.

The Application seeks a fee of \$119,336.25 and reimbursement of expenses of \$10,301.55, less an interim payment of \$10,000 approved by the United States Bankruptcy Court for the Southern District of New York, simultaneously with that Court's transfer of venue of the case to this Court on November 14, 1990. Shaw Licitra also seek authorization to accept the sum of \$90,000 from the Debtor to replace a pre-petition retainer check which was returned for insufficient funds.

The Application, which covers the period October 26, 1990 through February 28, 1991, was noticed for a hearing at a motion term of this Court held at Syracuse, New York on April 16, 1991. At the hearing, the United States Trustee ("UST") and the attorney for the Official Creditors' Committee appeared and filed objections to the Application.

The Objection of the UST focuses primarily on the hourly rate sought by Shaw Licitra for its partners, associates and paralegals as being in excess of hourly rates for comparable professional services performed by bankruptcy attorneys in the Northern District of New York. The UST further objects to Shaw Licitra's request for reimbursement of certain expenses in accordance with Rule 17(b) of the Local Bankruptcy Rules for the Northern District of New York ("L.R.") Finally, the UST contends that the Debtor's operating reports suggest that rehabilitation seems improbable and it is unclear from what source professional fees will be paid.

The Creditors' Committee, while asserting the same local hourly rate concerns as that

of the UST, also includes other concerns in its objections which do not properly address the Application. The Creditors' Committee asserts that the Debtor is paying pre-petition unsecured creditors post-petition in order to protect the Debtor's principal, who has personally guaranteed the Debtor's obligations to those creditors.

While there would be merit to the Creditors' Committee's assertions if it could establish that in fact such payments were being made by the Debtor and further that they were made upon the advice of or with the knowledge and consent of Shaw Licitra, unsupported allegations contained in the Committee's Affirmation in opposition are insufficient as a matter of law, nor do they provide any basis to delay payment to Shaw Licitra until some unknown future date.

At the closing of the April 16th hearing, the Court asked the parties to address the hourly rate issue in memoranda, submitted within two weeks. In accordance with that request, the Court has received an Affidavit of Joseph M. Murphy ("Murphy Affidavit"), Debtor's principal, sworn to the 25th day of April, 1991, and a Memorandum of Law. Neither the UST nor the Creditors' Committee has submitted any memoranda or other papers.

DISCUSSION

The Murphy Affidavit contends that while the Debtor sought competent bankruptcy counsel in the City of Syracuse, it was unable to retain any local firm due to the fact that all of those firms already represented various creditors of the Debtor. The Murphy Affidavit goes on to recite the fact that since Murphy's principal place of business is in the New York metropolitan area, he selected Shaw Licitra for their bankruptcy expertise.

Neither the UST nor the Creditors' Committee have filed any response to the Murphy

Affidavit and, therefore, the Court will accept the facts stated therein as binding for purposes of this contested matter.

Shaw Licitra has cited this Court to several cases which support their contention that absent available competent local counsel, the Court should not reduce the hourly rate of non-local counsel retained by the debtor in fairly complex Chapter 11 cases. See In re Public Service Co. of New Hampshire, 86 B.R. 7 (Bankr. D.N.H. 1988); In re Yankton College, 101 B.R. 151 (Bankr. D.S.D. 1989); In re Washington Mfg. Co., 101 B.R. 944 (Bankr. M.D.Tenn. 1989).

The Court agrees that Shaw Licitra's contention, as supported by the aforecited cases, is correct and as applied to the facts herein warrants the approval of full compensation at the hourly rates set forth in the Application.

With regard to the expenses for which Shaw Licitra seeks reimbursement, the Court believes that L.R. 17(b) has been complied with, with the exception of items generally described as "Corporate Fees - \$242.00" and "Staff Services - \$178.00" and as to those expenses, Shaw Licitra offered an acceptable explanation at the time of the April 16, 1991 hearing.

Accordingly, it is

ORDERED that the Application For First Interim Allowance filed with the Court on March 21, 1991 by Shaw Licitra is approved in the sum of \$119,336.25, less a retainer of \$10,000 previously approved by the United States Bankruptcy Court for the Southern District of New York on November 14, 1990, and it is further

ORDERED that said Application is further granted in the sum of \$10,301.55 as reimbursement for expenses necessarily incurred in accordance with L.R. 17(b), and it is finally

ORDERED that payment of said professional fees and reimbursement of expenses be made only in accordance with a subsequent order of this Court based upon a stipulation by and

between the Debtor, Manufacturers Hanover Trust Co., the City of Syracuse Industrial Development Agency and the City of Syracuse Economic Development Corporation, or their respective attorneys, to be filed herein within twenty days of the date of entry of this Order.

Dated at Utica, New York

this day of May, 1991

STEPHEN D. GERLING
U.S. Bankruptcy Judge