

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

MEGAN-RACINE ASSOCIATES, INC.

CASE NO. 92-00860

Debtor

Chapter 11

APPEARANCES:

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Hon. Stephen D. Gerling, Chief U.S. Bankruptcy Judge

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

Debtor, by its attorneys Menter, Rudin & Trivelpiece, P.C. ("Menter"), seeks the Courts reconsideration of its Memorandum-Decision, Findings of Fact, Conclusions of Law and Order dated February 1, 1995 ("February Order"). That Order reduced the fee request of Nixon, Hargrave, Devans & Doyle, Esqs. ("Nixon

Hargrave"), Debtor's special litigation counsel, by \$9,180 because it concluded that Nixon Hargrave had exceeded the scope of its authority in representing the Debtor in connection with a certain adversary proceeding pending before this Court. The Court, however, approved the balance of the fee at \$40,533.75.

The Court heard argument at its motion term held in Syracuse, New York on March 7, 1995. There was no appearance in opposition to the motion to reconsider.

JURISDICTIONAL STATEMENT

The Court has core jurisdiction of this contested matter pursuant to 28 U.S.C. §§1334(b), 157(a)(b)(1) and (b)(2)(A).

DISCUSSION

The issue presented for reconsideration is whether or not Nixon Hargrave exceeded the scope of its appointment by joining with Menter in representing the Debtor in an adversary proceeding commenced by Niagara Mohawk Power Corporation which seeks to set aside a so-called Power Sales Agreement between Debtor and NIMO ("NIMO litigation").

In its February Order, the Court concluded that the initial Order appointing Nixon Hargrave, as well as subsequent orders expanding that appointment, did not authorize its participation in the NIMO litigation and, therefore, it could not be compensated for the time actually devoted to that matter.

In the motion for reconsideration, Menter argues that the NIMO litigation may properly be viewed, in part, as a regulatory matter involving areas in which Menter has no expertise and for which NIMO was, inter alia, appointed. In support of the requested relief Nixon Hargrave presents the Court with a letter dated February 28, 1995 for its in camera inspection which details its involvement with the NIMO litigation specifically in an effort to settle same.¹

Menter observes that by utilizing a combination of Nixon-Hargrave and itself in connection with the NIMO litigation, the Debtor's estate is actually conserving assets, since Menter's hourly rates are significantly less than those charged by Nixon Hargrave's Washington, D.C. office. While that is an enticing argument, it smacks of the end justifying the means. If Nixon Hargrave exceeded the scope of its appointment by involving itself in the NIMO litigation under the guise of it somehow being a regulatory matter, any savings experienced by the estate is irrelevant.

The Court understands that this is a "cash rich" Debtor and the view may prevail amongst the professionals that there will always be enough money to pay administrative expenses. That, however, does not justify payment for services rendered beyond the scope of the professional's authority.

As this Court observed in its February Order, it is strange that Nixon Hargrave, which on two prior occasions had

¹ The Nixon Hargrave letter is submitted for an in camera inspection in order to allegedly protect the attorney-client privilege.

sought to clarify and expand the scope of its appointment in this case, involved itself so significantly in the NIMO litigation without first seeking a similar expansion of its authority.

The Court, therefore, finds no basis upon which to reconsider its February Order. If Nixon Hargrave intends to continue its involvement with Menter in the NIMO litigation, it will have to once again seek an expansion of its role as special litigation counsel.

IT IS SO ORDERED.

Dated at Utica, New York

this day of

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge