

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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IN RE:

SAGE DEY, INC., et al  
Debtors

CASE NOS. 92-63598  
through 92-63600  
(Jointly Administered)

Chapter 11

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APPEARANCES:

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STEPHEN D. GERLING, U.S. Bankruptcy Judge

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

Presently before the Court is the Second Application for Interim Allowance of Compensation and Reimbursement of Expenses of Hebb & Gitlin, P.C. ("H&G") ("Second Fee Application") filed with the Court on August 5, 1993.

A hearing on the Second Fee Application was held before the Court on August 31, 1993. At the hearing, the Court requested that H&G file a further affidavit detailing its efforts in connection with the adversary proceeding entitled Debtors v. West Farms Associates, Adv. Pro. No. 92-70228A, and related litigation.

On September 23, 1993, H&G filed a Supplemental Affidavit. In

addition, H&G also filed an Amendment to the Second Fee Application to correct an error in the requested reimbursement of expenses.

No specific objections were filed in opposition to H&G's Second Fee Application, however, a general objection to all fee applications before the Court at the August 31, 1993 hearing was interposed by Poly-Commodity Corp., an unsecured creditor.

The Court requested a further explanation of H&G's Second Fee Application insofar as it sought fees for services rendered in connection with H&G's representation of the Debtors in Adv. Pro. No. 92-70228A, and the ultimate benefit conferred on Debtors' estate as a direct result of those services.

The Court's inquiry focused on the actual role of H&G in Adv. Pro. 92-70228A since it was the Court's perception that the bulk of the services rendered in that adversary proceeding were provided by Menter, Rudin & Trivelpiece ("Menter").<sup>1</sup> The Court's perception was grounded upon the various pre-trial court appearances made in the adversary proceeding, most of which were made by a member of the Menter firm.

H&G, in its Supplemental Affidavit, indicates that it "coordinated its efforts with Menter, the Debtors' Chapter 11 counsel, throughout the application period in order to prevent unnecessary duplication of services between H&G and Menter and to preserve the assets of Debtors' estates." (Affidavit of Lisa Kelly Morgan sworn to September 21, 1993 ¶13). H&G further asserts that as a result of its services rendered on behalf of the Debtors "as supplemented by the coordinated efforts of Menter, the controversy was resolved by means of a settlement yielding benefits to the Debtors' estates in the approximate amount of \$1,000,000." (Id. at ¶12).

Presumably, the foregoing provides an explanation for the frequent appearances of Menter and the infrequent appearances of H&G during the pre-trial phase of the adversary proceeding.

The Court has reviewed both the docket of the adversary proceeding and H&G's time records and concludes that it finds no reasonable basis to reduce

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<sup>1</sup> Menter is the Debtors' general counsel in the Chapter 11 cases.

H&G's Second Fee Application insofar as it reflects services rendered in connection with preparation for the trial of the adversary proceeding.

The Court does note, however, that the Second Fee Application includes some 67 hours devoted to the preparation of fee applications, for which H&G seeks \$9,713. The Court, while not adverse to compensating a professional for time consumed in the preparation of its fee application, will reasonably limit that compensation in this case to \$2,500. Additionally, the Second Fee Application includes some 40 hours of travel time which this Court, absent special circumstances, will allow at one-half of the hourly rate of the particular professional.

Thus, the Court will reduce H&G's Second Fee Application by a total of \$7,213 (preparation of Application) and \$2,842 (travel time) and will approve for payment a fee of \$74,641.

Turning to H&G's request for reimbursement of expenses in the corrected amount of \$16,699.64, the Court notes that, with exception of "Transcripts", there is no appropriate itemization of those expenses in accordance with Rule 17(b) of the Local Rules of this Court. Thus, the Court will approve reimbursement of the \$3,251.88 "Transcript" expense, but disallow, without prejudice, the remaining expenses pending submission of the appropriate itemization in accordance with Local Rule 17(b).

Finally, the Court will credit the Debtors with the balance of H&G's retainer in the sum of \$6,307.82, as set forth in ¶6 of the Second Fee Application and direct that it be applied to the fee awarded herein.

IT IS SO ORDERED.

Dated at Utica, New York  
this        day of October, 1993

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STEPHEN D. GERLING  
U.S. Bankruptcy Judge