

January 16, 1997

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Re: Brass Restaurant & Vertigo Lounge, Inc.
Case No. 96-60874 Chapter 11

LETTER DECISION AND ORDER

On August 19, 1996, Young And Paniccia ("Y&P") filed a first application seeking fees and disbursements in connection with its representation of the Debtor.

The first interim application sought fees of \$3,985.50 and recovery of disbursements in the sum of \$963.22, for the period March 4, 1996 through August 12, 1996.

A hearing on the first application was held in Binghamton, New York on September 9, 1996. At that hearing the Court reduced the fee request to \$2,231 which amount represented fees for services rendered between May 17, 1996, the effective date of Y&P's appointment and August 12, 1996. At the same time the Court denied the request for recovery of disbursements because Y&P's request did not comply with Local Rule 216.1(b) of the Local Rules of this Court. The Court

directed Y&P to submit an amended request for disbursements in compliance with Local Rule 216.1(b).

Rather than comply with the Court's direction, Y&P filed an amended application on September 18, 1996, seeking fees in the sum of \$4,721.50 and request for additional disbursements in the sum of \$169.71 again for the period commencing March 4, 1996, but now continuing through September 12, 1996.

It appears that the amended application indirectly seeks to convince the Court to reconsider its oral order of September 9, 1996 with regard to the effective date of Y&P's appointment so as to authorize fees to Y&P for services dating back to March 4, 1996, the day before the Chapter 11 case was filed.

The Second Application apparently contends that Y&P initially submitted its application for appointment for review by the United States Trustee ("UST") on March 19, 1996. Some three weeks later the UST advised Y&P by letter that because of a potential conflict of interest it should file a motion seeking appointment on notice to creditors. On or about May 17, 1996, Y&P filed and noticed the necessary motion which was subsequently granted on August 19, 1996, making Y&P's appointment effective May 17, 1996, the date of the filing of the motion. Y&P did not appeal from the Order of Appointment or otherwise seek reconsideration at that time, thus, the effective date of Y&P's appointment was May 17, 1996.

This Court consistently applies the so-called "*per se*" rule prevailing in the Second Circuit in connection with payment of professional fees and disbursements in a bankruptcy context. *See In re Robotics Resources R2Inc.*, 117 B.R. 61, 62 (Bankr. D.Conn. 1990); *In re French*, 111 B.R. 391, 394 (Bankr. N.D.N.Y. 1989); *contra In re Piecuil*, 145 B.R., 777 (Bankr. W.D.N.Y. 1991).

Thus, a professional will not be compensated for services rendered prior to the effective date of that professional's employment.

Here the Court awarded Y&P the sum of \$2,231 on the first application for services rendered between May 17, 1996 and August 12, 1996. The Court withheld approval of disbursements pending compliance with Local Rule 216.1(b), that compliance has not occurred.

The Court will further consider the second application to the extent that it seeks additional fees of \$736 for the period August 12, 1996 through September 12, 1996¹ and approves same together with \$169.71 in disbursements. The balance of both first and second applications beyond what is approved herein, including the disbursements of \$963.22, is denied.

IT IS SO ORDERED.

Dated at Utica, New York

this 16th day of January 1997

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge

¹The Court notes that 11 U.S.C. § 331 prohibits interim fee applications more frequently than every 120 days absent approval of the Court.