

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION**

In re:
Champion Auto Stores, Inc.,
Debtor.

**Bky. No. 98-32743
Chapter 7 Case**

ORDER

A hearing was held on June 16, 1999 on the final applications of Rider, Bennett, Egan & Arundel, LLP (Rider Bennett), and, Kane, Russell, Coleman, & Logan, P.C. (Kane Russell), for allowance and payment of compensation and reimbursement of expenses. Both firms served as counsel for the Official Unsecured Creditors' Committee in the pre-conversion Chapter 11 case; Kane Russell as national counsel and Rider Bennett as local counsel.

The Chapter 7 Trustee joins the U.S. Trustee in objecting to certain aspects of these fee applications. Appearances are noted on the record, and based on the files herein and the arguments of counsel, the Court now issues the following **ORDER** pursuant to the Federal and Local Rules of Bankruptcy Procedure:

I. FACTS

The Debtor filed the voluntary petition commencing this case under Chapter 11 on May 4, 1998. The Court received notice from the U.S. Trustee on May 21, 1998 of the appointment of the Official Unsecured Creditors' Committee (UCC). This Court entered orders on: June 16, 1998 approving the employment of Kane Russell as national counsel for the debtor; and, July 1, 1998 approving the employment of Rider Bennett as local

counsel for the Debtor.

Mr. Coleman, attorney for Kane Russell, concedes that early in this case it was clear to the UCC that the case would convert to Chapter 7. On October 6, 1998 the Court held a hearing which, among other things, allowed the Debtor to sell substantially all assets and reject its warehouse services agreement. Champion Auto was well into the liquidation phase of its bankruptcy. On November 19 the Court granted the motion to convert this case to Chapter 7, and an order was entered November 30 making the conversion effective December 11, 1998.

Kane Russell seeks \$25,738.50 in fees and \$9,572.21 in costs and expenses for the period October 1, 1998 through March 31, 1999¹. Kane Russell was previously allowed \$104,018 fees and \$22,924.33 expenses for services from April 27 to September 30, 1998.

Rider Bennett seeks \$6705.50 in fees and \$929.60 in reimbursement of expenses. The Court previously approved fees and expenses of \$15,458.29 for services from June 2 to October 28, 1998. Those amounts have been paid.

II. ANALYSIS

The U.S. Trustee's objections require these applicants to establish an entitlement to fees.

¹Kane Russell originally sought \$16,572.21 in costs and expenses. The U.S. Trustee objected to \$7000 in expenses claimed to reimburse payments made to Altschuler, Melvoin & Glassner, LLP, CPAs. At the June 16 hearing Mr. Coleman conceded that the expense was not reimbursable and noted that the amount was included in the original fee request in error. Kane Russell subsequently filed a revised proposed order reducing the requested reimbursement of costs and expenses by \$7000 to \$9,572.21.

It is well-known that matters concerning fee applications require the applicant to carry the burden of proof. In re Grenoble Apartments, II, 145 B.R. 43, 45 (Bankr.D.S.D.1992); In re Fox, 140 B.R. 761, 763 (Bankr.D.S.D.1992), citing In re Yankton College, 101 B.R. 151, 157-58 (Bankr.D.S.D.1989). In re Gage, 151 B.R. 522, at 529 (Bankr.D.S.D. 1993).

Post Conversion Fees and Expenses

Creditor committees appointed under 11 U.S.C. § 1102 are authorized, “with the court’s approval[,]” to employ “one or more attorneys . . . to represent or perform services for such committee.” 11 U.S.C. § 1102. Payment of those attorneys’ fees are governed by 11 U.S.C. § 330(a) which states:

330. Compensation of officers

(a)(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103--

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses. 11 U.S.C. § 330(a).

A threshold question is whether any fees or expenses can be allowed for services or expenses provided or incurred by these attorneys after the conversion of this case to Chapter 7 on December 11, 1998. Both Kane Russell and Rider Bennett argue they are entitled to post-conversion compensation because their actions provided substantial value to the estate under 11 U.S.C. § 330(a)(3)(C). But, § 330(a) only applies to professionals “employed under section 327 or 1103[.]” Id. Creditors are allowed to elect a representative committee in the converted case under § 705, but §330(a) does not allow for the compensation of such a committee’s attorney.

Since the Chapter 7 Trustee has made no effort to have either law firm approved

under §327, the only basis for the requested compensation can be §1103, which details the “[p]owers and duties” of committees appointed under § 1102. 11 U.S.C. § 1103. Sections 1102 and 1103 relate exclusively to committees appointed under Chapter 11 of the Code. Section 348 of the Code discusses the “Effect of conversion” but makes no allowance for the continuation of a creditors’ committee under § 1102 UCC. 11 U.S.C. § 348.

Courts in Virginia and Illinois have reviewed this same question and concluded that compensation post-conversion is not allowed under the Code in these circumstances:

Since SCKG was never authorized to act as counsel for the Trustee, and never served in any official capacity in this Case other than as counsel to the Chapter 11 Creditors' Committee, SCKG's right to compensation from the estate terminated along with the existence of such Chapter 11 Creditors' Committee. In re Energy Cooperative, Inc., 95 B.R. 961 at 964 (Bankr.N.D.Ill. 1988).

[T]his Court must find that the conversion to Chapter 7 and the ensuing termination of the Chapter 11 Order for Relief results in the dissolution of any committee appointed under 11 U.S.C. § 1102 and similarly prevents any award of attorneys' fees from the estate for postconversion services. . . . [S]tatutory authority for granting the Applicant's request for compensation after the entry of a conversion order does not exist and that the Applicant's award must be limited for services rendered prior to the conversion. In re Kel-Wood Timber Products Co., 88 B.R. 93 at 94-95 (Bankr.E.D.Va. 1988).

Fees claimed post-conversion, \$7,011.50 for Kane Russell, and \$2,712.50 for Rider Bennett, cannot be approved by the Court. The post-conversion expenses of \$83.79, sought by Rider Bennett, are also disallowed.

Itemization of Preconversion Expense Categories

Despite the objections filed by the U.S. Trustee, Kane Russell has not provided the additional detail needed to determine which expenses were pre or post-conversion.

Unless that evidence is provided at an evidentiary hearing the Court cannot approve any of the expenses requested by Kane Russell.

Any evidentiary hearing to determine allowable expenses must also provide greater detail than the monthly billing statements provided in Exhibit E of the fee application. Local Rule 2016-1, "Compensation of Professional Persons" requires that all motions for compensation filed in Chapter 11 cases: "Provide a detailed itemization of all expenses, including unit costs where applicable." Local R. Bankr. P. 2016-1(c)(9). The only detail provided in this fee application is monthly subtotals of expenses by ten categories: copying, federal express, hotel, long distance telecopy, outside copy, parking, research, taxi cabs, telephone, travel-airfare. This is simply insufficient detail to determine if these expenses are reimbursable expenses. For any reimbursement of expenses Kane Russell will need to provide unit costs, as well itemizations of expenses incurred. All expenses sought by Kane Russell are disallowed without prejudice. Kane Russell has twenty days to schedule an evidentiary hearing to establish a right to payment for any legitimate, pre-conversion expenses consistent with the requirements stated herein.

Pre-conversion Fee Objections

The U.S. Trustee raises two other objections to pre-conversion fees sought by Kane Russell. First, the U.S. Trustee objects to work billed by attorney Andrea Nation for "Claims Administration and Objections" from October 19 to October 30, 1998. The November 5, 1998 invoice provided as part of the fee application shows 21.3 hours² for a total of \$3,834.

²The invoice also lists an additional five hours of work on this subject which was not billed.

Second, The U.S. Trustee objects to the amount³ billed by Kane Russell for preparation of its fee request. Both objections require the court to conduct a similar analysis after an evidentiary hearing.

“The Supreme Court has made it clear that the lodestar method of fee calculation is the preferred method by which federal courts should determine reasonable attorney's fees under federal statutes which provide for such fees.” Chamberlain v. Kula (In re. Kula), 213 B.R. 729 at 736 (B.A.P. 8th Cir. 1997). Here, the Trustee makes no objection to the hourly rate charged, but to the general necessity of the work done. Determining the work reasonably required, and the number of hours reasonably expended, requires an evidentiary hearing. See Sytje’s Pannekoeken Huis, Ch. 7 Case No. 96-31250 (Minn. Bankr. December 2, 1992), citing Chamberlain v. Kula (in re Kula), 213 B.R. 729 (B.A.P. 8th Cir. 1997).

UCC Amended Application

Finally, the U.S. Trustee objects to the \$1,403 in fees sought by Rider Bennett for filing a motion for an amended order directing the Chapter 7 Trustee to pay the expenses of the UCC members previously allowed by the Court. At the June 16, 1999 hearing both the U.S. Trustee and Chapter 7 Trustee conceded that their objections to the motion were unfounded. Neither trustee addressed Rider Bennett’s arguments in support of allowing these fees and the objections are deemed waived.

³The U.S. Trustee objects to the \$2033 claimed by Kane Russell for fee application preparation on its November 5, 1998 invoice. The U.S. Trustee is silent on the additional \$2303 claimed in the December 9, 1998 invoice.

III. DISPOSITION

Based on the forgoing, it is hereby **ORDERED**:

1. Fees for post-conversion services, in the amount of \$7,011.50, claimed by Kane Russell are disallowed.
2. Fees for post-conversion services, in the amount of \$2,949.50 claimed by Rider Bennett, are disallowed.
3. Expenses of \$9,572.21, claimed by Kane Russell are disallowed unless, within twenty days from the entry of this order, Kane Russell schedules an evidentiary hearing to determine what, if any, portion of the claimed expenses were allowable pre-conversion.
4. Expenses for post-conversion services, in the amount of \$83.79, claimed by Rider Bennett, are disallowed.
5. Fees of \$3,834, claimed by Kane Russell for work done by attorney Andrea Nation on "Claims Administration and Objections" from October 19 to October 30, are disallowed unless, within twenty days from the entry of this order, Kane Russell schedules an evidentiary hearing to determine what amount of time spent by Ms. Nation on "Claims Administration and Objections" are allowable fees.
6. Fees of \$2,033, claimed by Kane Russell for preparation of its fee application, as detailed on its November 5, 1998 invoice, are disallowed unless, within twenty days from the entry of this order, Kane Russell schedules an evidentiary hearing to determine what amount of time spent preparing the fee application are allowable fees.
7. Kane Russell is allowed compensation in the amount of \$12,860 for services rendered prior to conversion.
8. Rider Bennett is allowed compensation in the amount of \$3,993 and reimbursement of expenses in the amount of \$845.81, for a total of fees and expenses in the amount of \$4,838.81 for services rendered and costs incurred prior to conversion.

Dated: August 3, 1999.

By the Court:

/e/ Dennis D. O'Brien
Dennis D. O'Brien
Chief U.S. Bankruptcy Judge

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NOTICE OF ELECTRONIC ENTRY AND FILING ORDER OR JUDGMENT Filed and Docket Entry made on 8/3/99 Patrick G. De Wane, By DLR

309E

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I, Doretta Raymond, hereby certify: That I am the Judicial Assistant for Chief Judge Dennis D. O'Brien of the United States Bankruptcy Court for the Third Division of the District of Minnesota, at St. Paul, Minnesota; that on August 3, 1999, true and correct copies of the annexed **ORDER** were placed by me in individually stamped official envelopes; that said envelopes were addressed individually to each of the persons, corporations, and firms at their last-known addresses appearing hereinafter; that said envelopes were sealed and on the day aforementioned were placed in the United States mails at St. Paul, Minnesota, to:

U. S. TRUSTEE
1015 U. S. COURTHOUSE
300 SO. 4th street
MINNEAPOLIS, MN 55415

BEN G. CAMPBELL, ESQ.
333 S. 7TH ST., 2000 METROPOLITAN CTR.
MINNEAPOLIS, MN 55402

JOSEPH COLEMAN, ESQ.
1601 ELM STREET, STE 3700
DALLAS, TX 75201

MICHAEL F. McGRATH, ESQ.
80 SO. 8TH ST., #4545 IDS CENTER
MINNEAPOLIS, MN 55402

MICHAEL FADLOVICH, ESQ.
UNITED STATES COURTHOUSE
300 S 4TH STREET, RM 1015
MINNEAPOLIS, MN 55415

MARY JO A JENSEN-CARTER, ESQ.
101 E 5TH ST RM 1614
ST PAUL MN 55101

CHAMPION AUTO STORES, INC.
9353 JEFFERSON HIGHWAY
MAPLE GROVE, MN 55369

and this certificate is made by me.

/e/Doretta Raymond

Filed On August 3, 1999
Patrick G. De Wane, Clerk
By dlr, Judicial Assistant
(Circulated)