UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In Re: CHAPTER 11
ROS Stores, Inc.,
f/k/a Red Owl Stores,
Debtor. Bky. 3-92-3833

ORDER

This matter came on for hearing on the 26th day of March, 1993, on application of Fredrikson & Byron and William Kampf for final allowance of fees and expenses for services rendered and costs incurred on behalf of the Debtor in connection with the Chapter 11 case. The United States Trustee responded unfavorably to the application. Appearances are noted in the record. The Court, having heard argument, reviewed the application and the file generally, and now being fully advised in the matter, makes this ORDER pursuant to the Federal and Local Rules of Bankruptcy Procedure.

This case was filed as an involuntary case under Chapter 7 on June 11, 1992. It was thereafter converted to a case under Chapter 11 on July 10, 1992, and a plan was confirmed on February 22, 1993. Total fees and expenses sought by Fredrikson & Byron and William Kampf, attorneys for Debtor in the case, exceed $124,000. The United States Trustee does not support the application, apparently because he feels that the fees are excessive.(FN1)

ROS Stores, Inc. ("Debtor") has been a client of Fredrikson & Byron (F&B) since 1986, when F&B represented the present management of the company in a leveraged buy-out. At the time of the purchase, the company owned several large wholesale warehouses and scores of retail grocery stores in a five-state area. Over a period of time, the assets of the company were sold to reduce the debt incurred at the time of the purchase.

A large sale was accomplished in 1988 when Debtor's primary warehouse and corresponding business were sold to Super Valu pursuant to a complicated purchase agreement that resulted in a series of escrows involving future contingencies. The last of these escrows terminated during the course of the bankruptcy case. From the time of the sale through January 1993, F&B negotiated various contingencies that affected the escrowed amounts, including contingencies arising out of leases that were assigned as a part of the sale to Super Valu.

The Debtor subsequently sold most of its remaining retail locations, and assigned the corresponding real estate leases, to various other parties. By mid-1991, the Debtor's only remaining operating stores were two in Michigan. These stores remained open because they were subject to union contracts with respect to which there existed a substantial Multi-Employer Pension Plan (MEPPA) underfunding liability.

In 1991, MEPPA liability was asserted against the Debtor by the Retail Employees' Pension Fund (the Fund) in an amount of approximately $6.0 million. Although the matter was initially litigated, Debtor engaged in intensive negotiations, leading to a settlement with the Fund.(FN2) Under the settlement agreement, Debtor granted a security interest to the Fund in all of the Debtor's assets in return for the Fund agreeing to reduce the amount it would accept to $2.3 million, and to accept payments over a period of time. The agreement was reached in June 1991.

At that time, the members of the Creditors Committee (Committee) were individually engaged in various stages of litigation with the Debtor. They did not become aware of the perfection of the Fund's security agreement until more than 90 days had passed. Upon learning of the settlement, they filed an involuntary bankruptcy petition under Chapter 7, which was subsequently converted by the Debtor to a case under Chapter 11. Debtor's counsel was active in numerous matters since the initial filing.

During the course of this case, Debtor's counsel was required to deal with a number of leases that Debtor had previously attempted to assign to Super Valu in the sale. Debtor had substantial exposure under the leases, and a significant amount of time was spent successfully protecting the estate from potential liability resulting from them.

The Debtor had a potential liability of approximately $200,000 arising from claims under a union contract in North Dakota. This potential liability was settled, as part of the plan of reorganization, for $32,000.

Additionally, the Debtor had liabilities arising out of the same North Dakota union contract involving health benefits for pension retirees, which had to be reconciled with Section 1114 of the Bankruptcy Code. All of these matters were handled under counsel's invoice heading "General Case Administration," which totalled no more than $30,000.

Two novel legal issues were raised and litigated regarding two of the leases. Additionally, counsel for the Debtor preserved certain assets of the Debtor, including a note from Marketown Foods, a marginally solvent grocery store in Mankato, Minnesota. As a result, from only $4,000 in attorneys' fees, the estate will gain $100,000 payable from Fairway Foods, a highly solvent wholesale grocer, whose liability for the note had not been previously established. Finally, litigation against Seal & Schirmer, will result in an immediate payment of $10,000 to the estate, and future payments totalling $30,000.

In light of: the complexity of the matter and the nature of

services rendered; the initial hostility of the Creditor's Committee;(FN3) and, the fact that confirmation was achieved through a consensual plan, without dissent, the fees and expenses are reasonable. Additionally, Mr. Kampf demonstrated a high degree of professionalism and exceptional ability in appropriately and effectively dealing with myriad problems in the context of this reorganization. His professional expertise, effort and contribution resulted in maximizing the return to the estate and its creditors.

Accordingly, notwithstanding the U.S. Trustee's lack of support, the application should be allowed in its entirety. Therefore, it is hereby ORDERED: the Supplemental Application for Final Allowance of Fees and Expenses for Attorneys for Debtor by Fredrikson & Byron is allowed in the total amount of $41,597.76.

Dated: March 31, 1993. By The Court:

DENNIS. D. O'BRIEN
U.S. BANKRUPTCY JUDGE

(FN1) The attorney for the Trustee recites in his response to the application:Given the fact that it is a 100 percent plan, the U.S. Trustee does not believe it is appropriate to object to the application for allowance of fees and expenses sought. Conversely, the case was commenced by the filing of an involuntary petition and releif was ordered on July 9, 1992. The reorganization plan was confirmed less than nine months later on February 22, 1993. The total fees and expenses sought by counsel to the Debtor exceed $124,000.00. Given the large amount of fees over the relatively short duration of the case, the U.S. Trustee does not feel that he can fully support the application. [The] United States Trustee does not take a position on the application....

(FN2) The settlement was later approved by the bankruptcy court, both as part of the cash collateral agreement and later as part of the plan of reorganization.

(FN3) Apparently, the Committee members, who had been in various stages of litigation with the Debtor prior to the bankruptcy filing, were displeased that they did not learn of the settlement with the Fund until after the 90 day preference period had run. They considered the Debtor's failure to inform them earlier of the settlement to be bad-faith dealing. The Committee was not in a cooperative mood early in the case.