

# In the United States Bankruptcy Court

## for the Northern District of Iowa

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J-TEC ASSOCIATES, INC.

Debtor.

Bankruptcy No. L91-01507C

Chapter 11

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### ORDER RE: WESTERN ENGINEERING OBJECTION TO DEBTOR'S CLAIMS REPORT

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The matter before the court is an objection to the debtor's >Claims Report filed by Western Engineering. Hearing on the Report and the Objection was held by telephone on December 10, 1992. John Titler appeared on behalf of the debtor. Carl Nyman appeared on behalf of himself, as he is a sole proprietor doing business as "Western Engineering." For purposes of this decision, the objector-claimant will be referred to as NYMAN.

Nyman filed a proof of claim in the amount of \$2,915.00, asking that the claim be treated as a priority claim in the amount of \$1,845.00, a secured claim in the amount of \$600.00, and an unsecured claim in the amount of \$470.00. In its claims Report filed September 29, 1992, the debtor objected to these treatments and recommended allowance of the claim as unsecured in the amount of \$2,195.00. Debtor admits that the latter figure was recommended in error and that the correct amount of the claim is \$2,915.00. Debtor maintains that the claim should not be given priority or secured status.

Nyman is a manufacturer's representative who sold debtor's products under a written contract. He earned a percentage commission on his sales based upon the amount paid to debtor by the purchaser. Nyman does not claim that he was an employee of the debtor. Nonetheless, Nyman claims that under 11 U.S.C. 507(a)(3), he should have a priority claim for "commissions ... earned by an individual within 90 days before the date of the filing of the petition. 11 U.S.C. 507(a)(3) (A). Although there may be some dispute as to when the commission in this case was earned, it does not need to be resolved, because under the cited Code section, Nyman is not entitled to priority treatment for his claim.

The priority treatment for wages or commissions was intended to protect employees of the debtor--those in a true master-servant relationship--not independent contractors such as Nyman. In re Grant Industries, Inc., 133 B.R. 514, 515 (Bankr. W.D. Mo. 1991); In re Saint Joseph's Hospital, 126 B.R. 37 (Bankr. E.D. Pa., 1991); In re American Shelter Systems, Inc., 40 B.R. 793 (Bankr. W.D. La. 1984).

Nyman argues that he is entitled to a secured claim in the amount of \$600.00 because debtor paid him by check which was later dishonored. This dishonor, however, did not create a security interest in any property of the debtor, either by agreement or by operation of the law. Moreover, Nyman is not holding any property of the debtor which could be said to be pledged to Nyman to secure the payment of the check.

### CONCLUSIONS OF LAW

Carl Nyman has an unsecured claim against the debtor in the amount of \$2,915.00. This claim is not entitled to priority or secured status.

### ORDER

IT IS ORDERED that the claim of Carl Nyman, d/b/a Western Engineering, is allowed as unsecured in the amount of \$2,915.00. Nyman's claim for priority and secured status is denied.

SO ORDERED ON THIS 14TH DAY OF DECEMBER, 1992.

William L. Edmonds  
Chief Bankruptcy Judge