

In the United States Bankruptcy Court

for the Northern District of Iowa

ALVIN E. HOLST and L. MARIBELLE HOLST
Debtors.

Bankruptcy No. X91-02043F
Chapter 12

ORDER RE: APPLICATION FOR ATTORNEY FEES

The matter before the court is the final fee application filed by debtors' former counsel, David A. Sergeant (SERGEANT). The application was filed on February 16, 1993. The only objection was filed by the debtors, Alvin and Maribelle Holst (HOLSTS or DEBTORS). Hearing was held on June 15, 1993.

Holsts retained Sergeant in October, 1991. He discussed with them their financial problems and their options. Holsts filed a chapter 12 bankruptcy petition on November 12, 1991. Holsts' schedules filed after the petition showed eight secured creditors and six unsecured creditors. At least two secured creditors were active in the case in opposing debtors' attempts to reorganize--First American State Bank (BANK) and Phoenix Mutual Life Insurance Co. (PHOENIX). Both objected to debtors' initial proposal. Eventually, debtors were able to negotiate an acceptable plan. They obtained confirmation on October 9, 1992.

The confirmed plan involved a takeover of Phoenix's mortgage position to the extent of \$190,000.00 by Bank. The balance of Phoenix's claim was withdrawn, and it received no other distributions. Holsts say they were responsible for negotiating this aspect of the plan with Bank. Bank's treatment under the plan was complex, and the court does not believe the debtors could have negotiated or considered these terms without the aid of their attorney. The plan also had the effect of avoiding a judgment lien held against the Holsts' farm by other creditors--Stephen and Maris Doster. According to the representation of Sergeant, the plan enabled Holsts to rid themselves of at least \$85,000.00 in debt to Bank and Phoenix. Confirmation also prevented adverse tax consequences which would have been experienced had Dosters completed their state court proceedings to sell the Holsts' farm to satisfy their judgment.

Because of their dissatisfaction with Sergeant, debtors did not object to Sergeant's May 28, 1993 application to withdraw as their counsel. The application was granted on June 18, 1993.

Sergeant filed one interim fee application in April, 1991. He sought interim fees of \$9,032.95 and reimbursement of expenses in the amount of \$305.00. Prior to the case, he had taken a retainer of \$2,070.00, and during the case, he received additional payments totaling \$2,938.05. On June 24, 1992, the court permitted Sergeant to apply the retained funds in the amount of \$5,008.05. Hearing on the interim application was held July 8, 1992. The court permitted additional fees of \$3,574.90. The court disallowed five per cent of the fee portion because of the attorney's "lumping" of time entries. The costs were allowed. Because of a mathematical error by the court, \$303.36 of the interim application remains unpaid and will be allowed.

Sergeant's final application for fees covers the period from April 25, 1992 to February 10, 1993. He asks for compensation for an additional 95.14 hours at his normal hourly rate of \$85.00 for a total of \$8,086.90. He asks for reimbursement of \$66.95 in expenses. Notice of Sergeant's application was served on all creditors. Only Holsts objected (docket no. 136). Holsts say that Sergeant caused delay in the case, including the seeking of extensions to take personal vacations. They also object that the legal fees were more than Sergeant originally estimated. They also contend that the final negotiations with the Bank were conducted by them, not Sergeant, and that when they asked him to talk directly to the Bank, he did not. They believe they have paid him enough money already.

The court has examined the fee application. Considering both the final and interim applications, Sergeant has sought

total fees of \$17,119.85. This is a substantial amount of money, and people generally do not enjoy paying it to lawyers. However, debtors were able to reorganize, which prevented loss of their farm with attendant adverse tax consequences. They also were relieved of a substantial amount of debt (\$85,000.00). In examining the file, the court cannot find instances of continuances because of Sergeant's vacation plans. Most delays appeared to be caused by the complexity of the case and the negotiations with creditors. That the fee may have been more than Holsts expected is unfortunate, but Sergeant would not have been able to predict with certainty a fee dependent to a great extent on the positions creditors took in the case. As to Sergeant's failure to deal directly with the Bank, rather than its lawyer, Sergeant was prevented from doing so by ethical considerations. Considering the course of the case and the result, the court does not find Sergeant's fee request unreasonable. Under the Bankruptcy Code, he is entitled to reasonable compensation.

The court will make two minor disallowances. Both involve Sergeant's work to obtain his own fees. The time involved was .25 hours on May 26, 1992, and 1.75 hours on July 8, 1992. The court does not, except in extraordinary circumstances, allow fees for an attorney's work on his fee application.

Sergeant will be compensated 93.14 hours at the rate of \$85.00 per hour for total final compensation of \$7,916.90. He will also be allowed reimbursement of expenses in the amount of \$66.95. He will also be allowed \$303.36 as the remaining balance of his interim application. Total fees and expenses allowed as an administrative claim is, therefore, \$8,287.21.

ORDER

IT IS ORDERED that David A. Sergeant is allowed an administrative claim for professional fees and expenses of \$8,287.21.

SO ORDERED ON THIS ____ DAY OF JULY, 1993.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on _____ I mailed a copy of this order and a judgment by U. S. mail to: Debtors, David Sergeant, 2002 List and U. S. Trustee.

United States Bankruptcy Court for the Northern District of Iowa

ALVIN E. HOLST and L. MARIBELLE HOLST
Debtors.

Bankruptcy No. X91-02043F
Chapter 12

ORDER RE: DAVID SERGEANT'S MOTION TO AMEND ORDER RE HOLSTS' "MOTION TO AMEND OR FOR NEW TRIAL"

The court issued its Order on July 26, 1993, regarding the final fee application of David Sergeant, debtor's former attorney. On August 4, 1993, Sergeant filed a Motion to Amend Order seeking clarification of the final allowance. Holsts, acting without counsel, sent a letter to the court dated August 2, 1993 (docket no. 153). The letter complains about the work done by Sergeant on their behalf and about the benefits obtained in the bankruptcy proceeding. It

complained also of overcharges by Sergeant. Although the letter made no request for relief, the court, by its Order of August 10, 1993, indicated it would treat the Holst letter as a motion to amend judgment or a motion for new trial. Holsts' and Sergeant's motions were set for hearing. The matters came before the court on September 21, 1993 in Fort Dodge.

In the July 26 order (docket no. 150), the court allowed Sergeant professional fees as an administrative expense in the amount of \$7,916.90 for work done between April 25, 1992 and February 12, 1993, plus expenses of \$66.95 plus professional fees of \$303.36 from a prior period. In two prior orders, the court had allowed interim fees and expenses of \$5,008.05 (docket no. 85) and fees in the amount of \$3,574.90 (docket no. 96). Sergeant contends that the court's Order of July 26 does not clearly articulate that he remains entitled to the unpaid balance of his prior allowances.

Holsts contend Sergeant spent too much time on the case, did not do a good job, and made charging errors. Specifically, Holsts say that Sergeant agreed to charge them \$70.00 for the initial conference, which they paid. They say the fee application charges them an additional \$57.50 for the same meeting. At the hearing on the post-trial motions, Sergeant had difficulty in refuting this claim by Holsts. However, in a supplemental response filed September 24, 1993, Sergeant says his arrangement was for \$85.00 per hour which rate was charged for the initial conference which lasted in excess of one hour. Sergeant's letter, however, is in the nature of factual evidence, and it is offered too late. It will be disregarded. Also, Sergeant admitted at trial that a typographical error in charging for June 22, 1992, resulted in a one-hour overcharge to the Holsts.

Holsts' arguments contain nothing new or the arguments are ones which could have been made prior to the court's issuing its decision. Their motion will be overruled except so far as is necessary to give them credit for the initial conference overcharge and the typographical error. Therefore, as to Sergeant's final fee application, the court will amend its order to reduce the allowed fees by \$142.50 (\$57.50 for the overcharge error on the initial conference and \$85.00 for the typographical error for the time entry of June 22, 1992).

The court will attempt to clarify its Order.

In its Order of June 24, 1992 (docket no. 85), Sergeant was allowed interim professional fees in the amount of \$4,703.05 plus reimbursement of expenses in the amount of \$305.00.

A subsequent Order dated July 8, 1992 (docket no. 96) allowed additional interim professional fees of \$3,574.90.

For professional work done and expenses incurred subsequent to April 25, 1992 (the final application), the court amends its order to allow as administrative expenses fees in the amount of \$7,774.40 plus reimbursed expenses in the amount \$66.95. The court also allows professional fees in the amount of \$303.36 which the court had inadvertently failed to allow from Sergeant's interim application.

There may be a dispute as to how much has been paid by Holsts. Sergeant says he has been paid \$5,724.20. (Final Application, docket no. 130, page 2, paragraph 6.) Holsts say they have paid Sergeant \$6,755.30. (Holst letter dated September 3, 1993, docket no. 157.) However, Sergeant's application states that debtors paid him \$981.10 which was used to cover costs not charged by him. (Application, paragraph 6.) If the debtors included this amount in their figure, the difference is only \$50.00. In any event, the court does not consider that the unpaid balance of the interim allowance is an issue before it for decision.

The professional fees and expenses awarded pursuant to 11 U.S.C. § 330(a) by this order are an administrative expense of the case under 11 U.S.C. § 503(b)(2) and a priority claim under 11 U.S.C. § 507(a)(1).

Considering the interim and final applications,

IT IS ORDERED that the total allowance to David Sergeant for professional fees in this chapter 12 case is \$16,355.71 plus reimbursement of expenses in the amount of \$371.95. This final allowance includes all prior allowances and is not in addition to them. These allowed fees and expenses are an administrative expense of this bankruptcy case under 11 U.S.C. § 503(b)(2) and is a priority claim under 11 U.S.C. § 507(a)(1). Judgment shall enter accordingly.

SO ORDERED ON THIS 1st DAY OF OCTOBER, 1993.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on _____ I mailed a copy of this order and a judgment by U. S. mail to: David Sergeant, Debtors, Carol Dunbar and U. S. Trustee.