

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

GERALD D. JOHNSON and
JUDITH K. JOHNSON

Bankruptcy No. 95-50511XS

Debtor(s).

Chapter 13

ORDER RE: ATTORNEY FOR DEBTORS' INTERIM FEE APPLICATION

The matter before the court is the interim application filed by John Harmelink, Esq. seeking professional compensation for work done as debtors' attorney. The interim application was filed July 27, 1995 and amended August 14. State Bank of Alcester objects to the fees. Hearing was held October 5, 1995. John Harmelink appeared as applicant and for debtors; Richard H. Moeller, Esq. appeared for Bank.

Gerald and Judith Johnson filed their joint chapter 13 petition on March 27, 1995. They paid Attorney Harmelink a retainer of \$1,000.00 prior to filing and \$100.00 during the case. Harmelink was to charge Johnsons \$100.00 per hour, but with their agreement that they would pay him any subsequent increases in his regular hourly rate. For work done after May 19, 1995, Harmelink raised his hourly rate to \$125.00.

Johnsons first contacted Harmelink for legal services on August 12, 1994. They discussed financial matters. They met again four days later to discuss filing bankruptcy. However, much of the work done prior to the filing of their chapter 13 petition appears to have involved disputes and litigation with the State Bank of Alcester. Because much of the pre-petition work was distant in time from the filing and related to litigation and not to bankruptcy, the court will not allow administrative compensation as part of the bankruptcy case. The court will allow compensation for pre-petition work totaling 4.75 hours and \$475.00 relating to the following dates: 8/12/94, 8/16/94, 8/30/94, 9/6/94, 9/27/94, 10/11/94, and 2/7/95. For legal work done after March 27, 1995, the court will allow compensation at the rates requested with one exception. On June 12, 1995, Attorney Harmelink spent one hour working on a motion to continue a valuation hearing scheduled for June 27, 1995. The conflict was due to his schedule, not his clients'. He should not bill his clients for such work. Post-petition work totaling 22.41 hours valued at \$2,356.25 will be allowed. The total interim allowance for bankruptcy work is \$2,831.25. Mr. Harmelink requests reimbursement of actual, necessary expenses in the amount of \$496.27. The court will disallow those pre-petition expenses which do not appear to have related to the chapter 13 filing:

8/17/94 telephone expense re: call to client

re: pending meeting 1.20

8/18/94 FAX - (8) received from Dougherty re:

settlement agreement. 3.52

9/27/94 Telephone expense re: call to Register
of Deeds with regard to mortgages. .80

9/30/94 FAX - (2) received re: '93 loan document. .88

9/30/94 Telephone expense re: call to client re:
settlement offer. 1.20

11/4/94 Photocopies - (1) cc: letter from Myron
Toering re: settlement offer. .04

11/4/94 Postage .29

11/8/94 Telephone expense re: call to Dougherty
re: answer to complaint. 3.20

11/9/94 Photocopies - (11) defendant's answer to
complaint (State Bank of Alcester vs.
Johnson). .44

11/9/94 Postage. 1.39

11/16/94 Telephone expense re: call to attorney
for Judith. 1.40

11/17/94 Photocopies - (2) letter to clients re:
meeting at First National Bank. .08

11/17/94 Postage. .58

11/22/94 Photocopies - (8) documents to Elizabeth
Rosenbaum per her request. .32

11/22/94 Postage. .52

1/20/95 Photocopies - (24) Motion for Summary
Judgment and Notice of Hearing. .96

1/20/95 Postage 1.01

1/26/95 Telephone expense re: call to Attorney

Beth Rosenbaum, First State Bank, Attorney

Trotzig, Gerald Johnson and Roger McKel-

lips with regard to sale of real property 8.40

2/6/95 FAX - (1) received from Mary Mitchell re:

closing statement. .04

2/10/95 Mileage - (50) travel to Sioux Falls to

meet with Pat Dougherty, attorney for

state Bank of Alcester re: negotiated

settlement. 14.50

2/24/95 Photocopies - (1) cc: settlement offer

from Dougherty. .04

2/24/95 Postage. .32

2/27/95 FAX - (1) received from Dougherty. 1.00

2/27/95 Photocopies - (2) cc: fax from Dougherty. .04

2/27/95 Postage. .64

The court will also disallow the expenses relating to the copying and services of the motion to continue in the amount of \$9.01. Disallowed expenses total \$51.82. Allowed expenses total \$444.45. The court will allow interim fees and expenses totaling \$3,275.70. Attorney Harmelink may apply the \$1,100.00 in his trust account to the interim allowance. Such application leaves unpaid allowed interim fees and expenses of \$2,175.70. Compensation of that amount must await confirmation of a plan. If Attorney Harmelink seeks immediate payment of that amount, he may seek a hearing with notice to the chapter 13 standing trustee, the U.S. Trustee and counsel for State Bank of Alcester.

IT IS ORDERED that John Harmelink attorney for debtors, is allowed interim professional compensation and reimbursed expenses in the amount of \$3,275.70. He may apply \$1,100.00 held in his trust account to the interim allowance. Payment of the remaining interim allowance may be made only on further order of this court.

SO ORDERED THIS 24th DAY OF OCTOBER 1995.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on I mailed a copy of this order by U.S. mail to: John Harmelink, 2002 List, Carol Dunbar and U. S. Trustee.