

In the United States Bankruptcy Court

for the Northern District of Iowa

JUNKMANN FARMS LIMITED
Debtor.

Bankruptcy No. 93-30783XF
Chapter 7

DECISION RE: TRUSTEE'S FINAL REPORT, FEE APPLICATION OF COUNSEL FOR DEBTOR

The matter before the court is the Final Report and Account filed by the Trustee, David A. Sergeant, which contains a proposal to pay professional fees to Kurt T. Pittner, counsel for the debtor. Pittner did not file an application with the court as required by Fed.R.Bankr.P. 2016(a). His itemization of fees and expenses was included in the Trustee's final report. Notice of the final report was served on all parties, and the notice included Pittner's "request" for compensation in the amount of \$1,785.75. No party objected to the final report. The matter was set for telephonic hearing at the court's direction. Hearing was held November 22, 1995. Kurt T. Pittner appeared on his own behalf; David A. Sergeant appeared as trustee; John F. Schmillen appeared for the U. S. Trustee.

In mid-January 1993, Pittner was contacted by Mervin and Geraldine Junkmann regarding their personal financial problems. Junkmanns were farmers. They operated through a farm corporation named Junkmann Farms, Ltd. Junkmanns retained Pittner to file a chapter 7 case on their behalf. They paid him a retainer of \$2,000.00. The filing fee and other costs and expenses were to be paid from this amount. Their personal petition was filed on March 19, 1993. It was determined that Junkmanns' farm corporation would also have to file a chapter 7 case. It was agreed between Pittner and Junkmanns that the retainer would apply to both cases. The corporate chapter 7 case was filed May 5, 1993. On that date, Pittner received an additional \$500.00 retainer. Pittner's work on the cases merged. The final report in the personal case was approved in August 1993. It was not an extraordinary case. There were only \$300.00 in assets. Pittner did not make a fee application in the Junkmanns' case. He says that his professional fees and expenses in that case were less than \$2,500.00.

In the corporate case, the trustee obtained \$9,871.00 in deficiency payments through settlement of a dispute with a creditor. However, under the settlement, the trustee agreed to pay the creditor \$3,948.40 in recognition of its claim to a security interest in the payments. The trustee was required to file corporate tax returns for pre- and post-petition tax years. Debtor's counsel aided that effort and in effectuating the settlement with creditor.

Trustee filed his final report and account in September 1995. He proposes to pay Pittner \$1,785.75 in professional fees and for reimbursement of expenses. Pittner concedes that if that amount is paid, he would have been paid in excess of his billings for the two cases. In support of payment of some amount, Pittner has filed a combined itemization of time and expenses for the two cases (docket no. 19).

For cases filed after October 22, 1994, it has been held that amended 330(a) of the Code does not permit compensation of a debtor's counsel from a chapter 7 estate including a pre-petition retainer. In re Friedland, 182 B.R. 576, 579 (Bankr. D. Colo. 1995). This court has not decided that issue and does not need to reach it in this case, as the amendment to 330(a) of the Code does not apply to cases filed prior to October 22, 1994. In cases prior to that date, this court has permitted counsel for chapter 7 debtors to be compensated from the estate for certain functions: analyzing debtor's financial condition; advising on whether to file bankruptcy; preparing and filing necessary petition, schedules and other documents; representing the debtor at the 341 meeting. In re Burmester, Bankr. No. 86-00710M, slip op. at 2-3 (Bankr. N.D. Iowa Dec. 11, 1987). Other work might also be compensated if it is performed to benefit the estate.

Pittner has represented three debtors in two cases and has aided the trustee in the recovery of assets and in the preparation of tax returns. Pittner will be permitted to exhaust the \$2,500.00 retainer by its chronological application in the combined cases. From an examination of the combined itemization and by the court's calculation, the retainer was exhausted by fees and expenses when Pittner completed a phone call to a person named Mark on May 28, 1993 (docket no. 19, page 3). For the balance of his work on the cases, Pittner seeks compensation from the corporate case estate. This is not unfair in that it appears that all work after May 28, 1993, to the extent it is possible to determine, was in the corporate case. But to be compensated, the work done must have benefited the estate and not been merely for the benefit of the debtor or the Junkmanns. The court has examined the combined itemization and has identified time and cost entries which appear to relate to compensable work for the debtor or to work which benefited the estate. The following entries will be compensated from the estate:

June 7, 1993	341 meeting	4/6 hr.
June 10, 1993	call to trustee	1/6
June 10, 1993	prepare amendment to statement of affairs, letter and amendment to Junkmann	5/6
June 16, 1993	receive amendment and file	2/6
August 4, 1993	review final report	1/6
August 24, 1993	letter re tax return	2/6
September 7, 1993	call trustee re taxes	1/6
March 3, 1994	review materials from trustee	2/6
March 3, 1994	letter re trustee to McLaughlin	2/6
April 25, 1994	call from trustee	2/6
October 28, 1994	letter from trustee	1/6
November 1, 1994	letter from trustee	2/6
September 22, 1995	letter from U.S. Trustee	2/6
September 25, 1995	call from U.S. Trustee	1/6
September 27, 1995	letter from trustee	2/6
Total		5.0 hrs.

Pittner will be allowed compensation from the estate for 5.0 hours at the rate of \$75.00 per hour and the \$6.90 in costs associated with the above entries. The total allowance from the estate is \$381.90. The balance of the request is denied.

IT IS ORDERED that the trustee's final report and account and recommendation to pay professional fees is approved except as to the proposed payment of debtor's counsel.

IT IS FURTHER ORDERED that debtor's counsel is allowed \$381.90 as compensation payable from the estate. The request to compensate the debtor's counsel in excess of that amount is denied.

SO ORDERED THIS 6th DAY OF DECEMBER 1995.

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: Kurt Pittner, David Sergeant and U.S. Trustee.