

In the United States Bankruptcy Court

for the Northern District of Iowa

CHARLES ANDREW BLINKS

Debtor(s).

Bankruptcy No. 95-10100KC

Chapter 7

ORDER RE: TRUSTEE'S FINAL REPORT AND PROPOSED DISTRIBUTION

This matter came on for hearing before the undersigned on April 2, 1996 on Trustee's Final Report and Proposed Distribution. Trustee Thomas McCuskey appeared along with Wes Huisinga as Attorney for the Trustee. Thomas Fiegen represented Debtor Charles Blinks. Ray Terpstra represented Eastern Iowa Livestock Commission, Inc. After the presentation of evidence and arguments of counsel, the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), (O).

STATEMENT OF THE CASE

Trustee's Final Report lists the allowed claim of Eastern Iowa Livestock as \$8,399.49. Eastern Iowa Livestock filed a Proof of Claim in this amount on May 5, 1995. Debtor objects to the allowance of this claim in this amount. He argues that at the time of filing the petition, the claim amounted to approximately \$7,000 principal and interest. He asserts that only the principal amount should be allowed.

The Final Report also lists an administrative expense claim of \$3,933.75 for fees for attorneys for Trustee. Debtor objects to the allowance of this claim. He argues that some of the work performed by the attorney for the Trustee should have been performed by the Trustee himself as part of his duties under 11 U.S.C. § 704.

Eastern Iowa Livestock's claim arises from the assignment of Farmers Savings Bank's claim on approximately April 6, 1996. See Exhibit #1. The assignment lists the amount assigned as \$8,399.49. This amount arises from note #10173 in the principal amount of \$5,500 and note #9520 in the principal amount of \$1,747.02, plus accrued interest. According to Exhibit #2, accrued interest was calculated to 1-24-95, the date Debtor filed his Chapter 7 petition. The accrued interest on note #9520 to that date is \$285.39 and is \$867.08 for note #10173. Adding these amounts to the principal amounts totals \$8,399.49.

At the hearing, Debtor disputed whether any balance remained owing on note #9520. He stated that this note was collateralized by a 1986 Oldsmobile which he has since sold. He asserted that he had paid the note in full and believed he had the original of the note back at home. Eastern Iowa Livestock, however, produced the original of note #9520 which was admitted into evidence as Exhibit #3. This document shows assignment of the note to Eastern Iowa Livestock in the amount of \$1,747.02 plus accruing interest. The Court accepts the document as proof that this amount remains unpaid on note #9520.

OBJECTION TO ALLOWANCE OF CLAIM

An objection to a proof of claim may be filed at any time. In re Thompson, 965 F.2d 1136, 1147 (1st Cir. 1992). Section 506(b) provides for the disallowance of claims upon objection by a party in interest, notice, and hearing. In re Strangis, 67 B.R. 243, 245 (Bankr. D. Minn. 1986); Fed. R. Bankr. P. 3007. Objection to a final report does not constitute proper procedure for objecting to the allowance of a claim. Strangis, 67 B.R. at 245. In Chapter 7, the debtor is generally not a party in interest with standing to object to allowance of claims. In re Weeks, Thomas & Lysaught, 97 B.R. 46, 47 (D. Kan. 1988); In re Kapp, 611 F.2d 703, 707 (8th Cir. 1979) (construing "party in interest" standing to object to claims in

Bankruptcy Act). There are two exceptions to this general rule where (a) no trustee is appointed or (b) a surplus will exist after distribution which gives the debtor a pecuniary interest in allowance of claims. In re Coleman, 131 B.R. 59, 60-61 (Bankr. N.D. Tex. 1991). In this case, Debtor has no standing to object to the allowance of Eastern Iowa Livestock's claim. A trustee has been appointed in this case. No surplus is available to Debtor after distribution, whether the Court reduces Eastern Iowa Livestock's claim as Debtor requests, or not.

Despite the foregoing, the premise upon which Debtor seeks relief is unsupported by the record. See Strangis, 67 B.R. at 245. Under § 502(b)(2), unmatured interest is not allowable as a claim against a bankruptcy estate. In re Hanna, 872 F.2d 829, 830 (8th Cir. 1989). This provision generally prevents creditors from receiving postpetition interest on their claims in bankruptcy. Id. It does not, however, adversely impact on prepetition interest charges. In re Orsa Assocs., Inc., 106 B.R. 418, 424 (Bankr. E.D. Pa. 1989). The amount of an unsecured claim is fixed at the time of the filing of the petition. In re Ridder, 171 B.R. 345, 346 (Bankr. W.D. Wis. 1994). The amount will be for principal and unpaid interest accrued as of that date. Id.

The Court concludes that Trustee's Final Report correctly allows Eastern Iowa Livestock's claim in the amount of \$8,399.49. Exhibits #1 and #2 establish that this is an accurate total for the principal and accrued interest to the date of the petition, January 24, 1995. This amount does not include any unmatured or postpetition interest. Debtor's objection to allowance of this claim is without merit.

FEES FOR TRUSTEE'S ATTORNEY

Trustee Tom McCuskey received Court approval to employ himself, Jeff Taylor and Wes Huisinga as attorneys for the estate for specific purposes. Under § 328(b), if the Court authorizes the Trustee to serve as an attorney for the estate,

the court may allow compensation for the trustee's services as such attorney . . . only to the extent that the trustee performed services as attorney . . . for the estate and not for performance of any of the trustee's duties that are generally performed by a trustee without the assistance of an attorney.

A plethora of cases has held that the attorney for the estate may not be compensated for tasks which are properly the statutory responsibilities of the Trustee. In re Spungen, 168 B.R. 373, 376 (N.D. Ind. 1993).

This Court extensively examined the standards for compensating an attorney for the estate who is also the trustee in In re Gary Fairbanks, Inc., 111 B.R. 809 (Bankr. N.D. Iowa 1990).

[The] demarcation between the trustee's services and the attorney's services [must] be clear and distinct in the attorney's application. . . . The function of an attorney for the trustee is to render to the estate services which cannot and should not properly be performed for compensation by one not licensed to practice law. . . . The burden is on the trustee to demonstrate that services for which attorneys fees are sought are not duties generally performed without the assistance of counsel. . . . [W]here an application fails to reveal unusual difficulties or extraordinary legal effort on behalf of the trustee, . . . fees for counsel should be denied.

Id. at 811 (citations omitted). In Gary Fairbanks, the Court held that the trustee should not be compensated as an attorney for preparing and filing a form document regarding sale of property of the estate and notice. Id. at 813. The Court further stated, however, that it could "foresee situations in which such a sale may be sufficiently complicated to require professional services." Id.

The Court has reviewed the statement of fees for legal services rendered by the attorneys for Trustee which is attached to Trustee's final report, comments of the parties at the hearing and the listing of trustee duties contained in § 704. Upon such consideration, the Court concludes that this is the situation foreseen in Gary Fairbanks where sale of property of a Chapter 7 estate requires professional services. The proposed sale and subsequent settlement agreement required the services of the attorneys in order to ascertain the extent of the interests of the various parties involved. Attorney Huisinga's services in preparing the estate's tax return were necessary considering the transfers involved. The Court concludes that Trustee has met his burden to demonstrate that the services rendered by the attorneys are not duties

generally performed by trustees without the assistance of counsel. As such, the attorney fees requested will be approved in full.

WHEREFORE, Debtor's Renewed Objection to Trustee's Final Report is OVERRULED.

FURTHER, the total amount of Eastern Iowa Livestock, Inc.'s claim is \$8,399.49 as reported by Trustee.

FURTHER, fees for attorney for Trustee of \$3,933.75 are approved in full.

SO ORDERED this 19th day of April, 1996.

Paul J. Kilburg
U.S. Bankruptcy Judge