

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

DONALD W. STEINKE and MARY V. STEINKE

Debtors.

Bankruptcy No. 93-51968XS

Chapter 7

DECISION AND ORDER RE: APPLICATION FOR ADMINISTRATIVE EXPENSE

The matter before the court is an application for allowance and payment of an administrative expense. William A. Gress asks that his costs of examining the debtors be allowed and paid as an administrative claim. Hearing on the application was held on January 7, 1997. James B. Cavanagh appeared for Gress; Donald H. Molstad appeared as trustee. This is a core proceeding. 28 U.S.C. 157(b)(2)(A) and (B).

Donald W. and Mary V. Steinke filed their chapter 7 case on December 7, 1993. Donald H. Molstad was appointed trustee. William A. Gress, a creditor, retained James B. Cavanagh as counsel to represent him against Steinke's. On December 27, 1994, Cavanagh examined debtors pursuant to Fed.R.Bankr.P. 2004. The exam took four hours for which Cavanagh billed Gress \$500.00. The court reporter fees were \$322.60.

During the exam, the debtors, among other things, disclosed the pre-petition transfer of money to their son. Cavanagh sent the transcript to Molstad. Prior to receiving the transcript, Molstad had begun his own investigation of the case. He had asked for debtors' bank statements and canceled checks, and upon receiving them, he had asked debtors' attorney for an explanation of the transfer of funds to debtors' son. By December 20, 1994, Molstad had learned from debtors' attorney that debtors claimed the transfer of funds was a gift.

The trustee represents to the court that by the time he read the exam transcript sent by Cavanagh, he had already learned of the transfer. He says he did not use the evidence from the exam to support any other theory in actions brought by him against the debtors.

Molstad forwarded the exam and the information independently obtained by him to the U.S. Trustee for the purpose of filing criminal charges. Steinke's waived presentation to a grand jury and pled guilty to criminal charges. To Molstad's knowledge, the documents forwarded to the U.S. Trustee formed the basis of the criminal prosecution.

Gress asks for allowance of his examination costs as an administrative expense under 11 U.S.C. 503(b)(3)(B) and (C). These subsections provide for the allowance as administrative expenses the actual necessary expenses of "a creditor that recovers, after the court's approval, for the benefit of the estate any property transferred or concealed by the debtor"

(503(b)(3)(B)) and of "a creditor in connection with the prosecution of a criminal offense relating to the case or to the business or property of the debtor." (503(b)(3)(C)).

Section 503(b)(3)(B) does not aid Gress as he did not, after obtaining court approval, recover property of the estate. The trustee, not Gress, brought the action to set aside the conveyance of money to the son.

There was a criminal prosecution of Steinke's. Molstad used Gress' examination transcript as part of the documentation supporting the prosecution. Section 503(b)(3)(C) should be used as a vehicle to encourage those with knowledge of possible criminal activity by a debtor to bring it to the attention of the appropriate authorities. Therefore, because the

transcript was submitted to such authority by the trustee, Gress is entitled to some allowance under 503(b)(3)(C).

The difficult question is "how much?" Gress asks allowance of the entire cost. There is no evidence as to how much of the examination was related to the fraudulent conveyance. I am unpersuaded in this case that because a portion of the exam related to criminal activity, the entire cost to Gress should be paid by the estate. No doubt Gress had his own purposes for taking the exam relating to his claims against the debtors. It is only to the extent that the exam revealed criminal activity that the expenses were necessary to the criminal prosecution. Based on the evidence, there is no precise way to gauge what the allowance should be, but I do not consider that because of the imprecision, the application should be completely disallowed. Accordingly, I will allow Gress an administrative expense in the sum of \$275.00, approximately one-third of the costs.

IT IS ORDERED that Gress' application for allowance of an administrative expense is allowed to the extent of \$275.00. Judgment shall enter accordingly.

SO ORDERED THIS 9th DAY OF JANUARY 1997.

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: Don Molstad, Wil Forker, James Cavanagh, 2002 List and U. S. Trustee.