IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

IN RE:	§	
	§	
AMRESCO, INC., et al.,	§	CASE NO. 01-35327-SAF-11
	§	
D E B T O R (S).	§	

MEMORANDUM OPINION AND ORDER

Robert C. Howard, Steven Chantelois, Craig Whitten and Troy Shreves move the court for the allowance of an administrative expense. J. Gregg Pritchard, the trustee of the Amresco Creditor Trust, opposes the motions. The court conducted an evidentiary hearing on the motions on January 30, 2003.

The determination of administrative expenses to be paid by a bankruptcy estate constitutes a core matter over which this court has jurisdiction to enter a final order. 28 U.S.C. §§ 157(b)(2)(A) and 1334. This memorandum opinion contains the court's findings of fact and conclusions of law. Bankruptcy Rules 7052 and 9014.

The movants, all former Amresco employees, assert that they are entitled to the payment of retention bonuses authorized by the court. The trustee responds that their motions are untimely, that Amresco did not terminate their employment, that the

purchaser of Amresco's assets assumed Amresco's obligations to the movants and that the purchaser paid them their bonuses.

The Amresco plan of reorganization, confirmed by this court, established a bar date of September 8, 2002, for all administrative expense requests. Chantelois, Whitten and Shreves filed their motions on December 19, 2002. Howard filed his motion by a proof of claim on February 22, 2002. The court construes Howard's proof of claim as a motion for payment of administrative expense. Howard's motion is timely.

The motions by Chantelois, Whitten and Shreves are late. However, they have established excusable neglect to allow the court to consider them as if timely filed. Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 386-97 (1993). Whitten and Shreves looked to Chantelois, an attorney, to file the motions. Chantelois testified that he suffered from cancer and received treatment around the time of the bar date. His illness constitutes excusable neglect for the late filing.

The court approved a retention bonus program. In pertinent part, the retention program reads:

> [T]he one-time Retention Payments would be paid to Key Employees on March 31, 2002. If the Key Employees' positions are terminated prior to March 31, 2002 other than by voluntary resignation or by the Company for cause, the Retention Payments would be paid within fifteen days of the date of termination. A list of Key Employees and their Retention Payments is attached to the Motion as Exhibit "B." The aggregate amount

> of the Retention Payments shall not exceed $325,000.

Order signed Aug. 10, 2001, ¶13 (docket entry no. 119). The list of Key Employee Retention Payments regarding the movants reads: "Troy S. Shreves, VP-IT, $35,000; Steven D. Chantelois, Deputy General Counsel, $25,000; and Craig Whitten, Accountant, $15,000." The parties stipulate that Howard would receive a $15,000 retention bonus. Stipulation re: Howard, ¶6.

The movants contend their employment with Amresco had been terminated without cause in December 2001 entitling them to payment of the retention bonus within 15 days. Amresco did not make the payment within 15 days, so the movants seek payment as an administrative expense. The trustee responds that Amresco did not terminate their employment in December 2001.

The movants testified that they were terminated from Amresco and forced to work for NCS I LLC, the purchaser of Amresco's assets. Howard testified that he did not voluntarily resign from Amresco. Howard testified that his supervisor Ron Kirkland required him to assume employment with NCS, the purchaser of Amresco's assets, in order to maintain his severance and retention bonus. As of December 21, 2001, Howard testified that his employment with Amresco ended. Similarly, Chantelois testified that he stayed with Amresco during the Chapter 11 case because he had twelve years of service with accrued severance. Chantelois testified that his boss told him: "you are fired," and

that he had to take the job at NCS or he would lose his severance and retention bonus. Chantelois further testified that he was told he had to work for three months and then he would get paid. Whitten and Shreves did not testify but stated that they would testify to the same operative facts as Chantelois.

In effect, Amresco did terminate Howard, Chantelois, Whitten and Shreves. After December 2001 none of them were employed by Amresco. Amresco sold its assets and thus had no further need to employ the movants. However, the inquiry in this matter does not end there. When NCS purchased Amresco's assets, it required the services of Amresco's employees. NCS assumed the responsibilities of Amresco, including the retention bonus payment plan. The movants each accepted employment with NCS. NCS provided continued, uninterrupted employment for the movants.

By assuming Amresco's obligations under the retention bonus program, the trustee argues that NCS assumed Amresco's obligation to pay the retention bonuses if the movants continued to work for NCS until March 31, 2002. The trustee argues that this arrangement allowed NCS to receive the continued benefits of the movants' employment, assuring the continuity of services that supported the adoption of the program and the fulfillment of the program's function. Howard, Chantelois, Whitten and Shreves all accepted employment with NCS. NCS paid each one of them their

salaries for the months of January, February and March 2002. All four worked for NCS through March 31, 2002.

NCS paid Howard his bonus amount on March 31, 2002. Similarly, pursuant to the stipulation of facts, on March 31, 2002, NCS paid $25,000 to Chantelois, $15,000 to Whitten and $35,000 to Shreves as retention bonuses pursuant to the court-approved retention bonus program assumed by NCS. Stipulation re: Chantelois, Whitten & Shreves, ¶15-17.

The movants argue that NCS paid them bonuses for work done for NCS but those payments do not relieve the Amresco estate from paying the bonuses following termination of employment without cause in December 2001. The trustee argues that the movants are attempting to collect their bonuses twice.

The court agrees with the trustee. While Amresco in effect terminated their employment without cause in December 2001, NCS provided continued employment, and assumed the retention bonus payment program. The movants worked for Amresco during the bankruptcy case, in part, upon the expectation of the payment of the bonus if they stayed with Amresco through March 31, 2002. They stayed with Amresco until Amresco sold its assets, and then they worked for the buyer of the assets until March 31, 2002. On March 31, 2002, the buyer of the assets paid the bonuses. The movants fulfilled their obligations under the retention bonus program and received their bonuses on March 31, 2002. That the

bonuses were paid by NCS rather than Amresco puts form over substance. The substance is the bonus due March 31, 2002. The movants received their payments. If the court awarded them an additional bonus because of the timing of the sale of assets by Amresco, the movants would be paid twice for the same benefit.

The court empathizes with the movants concerning the manner that Amresco handled the transition. Amresco's callousness cannot, however, be visited on the plan trustee and Amresco's unpaid creditors.

Based on the foregoing,

IT IS ORDERED that the motions for payment of administrative expenses are **DENIED**.

Signed this 31ST day of March, 2003.

Steven A. Felsenthal
United States Bankruptcy Judge