

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

|                         |   |                             |
|-------------------------|---|-----------------------------|
| IN RE:                  | § |                             |
|                         | § |                             |
| ALFORD REFRIGERATED     | § | CASE NO. 01-39371-SAF-11    |
| WAREHOUSES, INC.,       | § |                             |
|                         | § |                             |
| CADIZ PROPERTIES, INC., | § | CASE NO. 01-80459-SAF-11    |
|                         | § | (Jointly Administered Under |
| DEBTORS.                | § | Case No. 01-39371-SAF-11)   |

**MEMORANDUM OPINION AND ORDER**

Hance Scarborough Wright Ginsberg & Brusilow, L.L.P. (HSWGB), has filed a final application for allowance of fees and reimbursement of expenses for representing the debtor, Alford Refrigerated Warehouses, Inc. HSWGB requests fees of \$311,330.50, expenses of \$34,116.32 and \$2,000 for the preparation of the application. HSWGB has received payment of \$45,000. Consequently, HSWGB requests that the court order Alford to pay \$302,446.82. General Electric Capital Business Asset Funding Corporation objects to the application. The court held a hearing on the application on January 21, 2003.

The determination of compensation and reimbursement of expenses under § 330(a) for professional persons employed under § 327 constitutes a core matter over which this court has jurisdiction to enter a final order. 28 U.S.C. §§ 157(b)(2)(A) and

(O) and 1334 (2002). This memorandum opinion contains the court's findings of fact and conclusions of law required by Bankruptcy Rules 7052 and 9014.

To determine reasonable compensation under § 330(a) for the professional services rendered, the court must determine the “nature and extent of the services supplied by” the professional persons. 11 U.S.C. § 330(a)(3)(2002); In re First Colonial Corp. of Am., 544 F.2d 1291, 1299 (5th Cir.), *cert. den.*, 431 U.S. 904 (1977). The court must also assess the value of the services. These two factors comprise the components for the lodestar calculation. See Cobb v. Miller, 818 F.2d 1227, 1231 (5th Cir. 1987). Generally, the lodestar is calculated by multiplying the number of hours reasonably expended by reasonable hourly rates. Hensley v. Eckerhart, 461 U.S. 424 (1983). The court may then adjust the compensation based on the factors of § 330(a)(3) and (4) and the Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974), factors. Blanchard v. Bergeron, 489 U.S. 87, 91-92 (1989). The Johnson factors may be relevant for adjusting the lodestar calculation but no one factor can substitute for the lodestar. Id. Rather, the lodestar shall be presumed to establish a reasonable fee with adjustments made when required by specific evidence. Pennsylvania v. Delaware Valley Citizens Council for Clean Air, 478 U.S. 546, 554-55 (1986).

GE does not contest the reasonableness of the hourly rates. The hourly rates reflect the prevailing rates in the community for similarly experienced attorneys. Missouri v. Jenkins, 491 U.S. 274, 286 (1989).

GE contends, however, that counsel spent an inordinate amount of time pursuing futile attempts to sell the debtor's assets. GE argues that the debtor deferred presenting a liquidating plan for the Dallas facility while it attempted to sell its assets at prices above

the market value. That effort merely delayed the inevitable filing of a liquidation plan for the Dallas facility. To have time to pursue possible sales, the debtor filed several motions regarding use of cash collateral and payment of utilities that would have been unnecessary had the debtor proceeded to file a liquidating plan earlier in the case. GE further argues that the debtor's strategy forced it and other secured creditors to file motions to lift the automatic stay that may not have been necessary had Alford pursued its plan earlier in the case. GE requests that the court disallow 20% of the requested fees to account for this delay and unnecessary litigation.

HSWGB concedes that the debtor's efforts to sell assets basically did not succeed. Counsel asserts, however, that the chief executive officer of the debtor had requested that the sales efforts at the targeted prices be pursued. Counsel states that it took some time for the CEO to be persuaded to abandon that strategy. GE recognized the role of the debtor's CEO in the strategy pursued. HSWGB also suggests that the state of the Dallas economy made its sales' efforts more difficult. In addition, HSWGB did draft several versions of the plan, which it had to negotiate with several secured creditors.

Yet, no other creditor has objected to the fees. That is significant in this case because GE will be paid in full under the plan, including its expenses and its legal fees. Thus, to the extent the debtor delayed filing a plan that provided for liquidation for the Dallas facility by pursuing a futile sales strategy, any fees and expense incurred as a result by GE will be paid pursuant to the plan.

The debtor cannot pay fees awarded by this court in full upon entry of this order. Counsel has agreed to be paid over time. Counsel therefore has a risk that it will not fully recover its fees.

On this record, even if this court concluded under the lodestar factor of reasonable hours that HSWGB should have presented the plan earlier in the case without the need for several motions, the court would consider the risk of payment, the anticipated payment in full of GE, and the lack of an objection by other creditors as offsetting Johnson factors. Accordingly, the court overrules the objection.

Based on the foregoing,

**IT IS ORDERED** that the application of Hance Scarborough Wright Ginsberg & Brusilow, L.L.P., is **GRANTED**.

Signed this \_\_\_\_\_ day of February, 2003.

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Steven A. Felsenthal  
United States Bankruptcy Judge