

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

RICHARD P. CECERE, INC.

Case No. 88-11332 K

Debtor

Pursuant to a notice dated November 14, 1995, the Court heard applications to pay the Trustee, his counsel and certain accountants. At hearing on December 12, 1995, the Trustee also advised that a fee application of the Debtor's counsel has been under submission since April of 1991.

Checking on that, it was discovered that there are a number of procedural problems here. First, by Order of July 12, 1991, Judge Creahan ruled that no further hearing on allowances in either this case or the V.J. Gautieri, Inc. case will be set "until all applications for allowances and expenses are before the Court and the trustees have filed final reports." In context, it is clear that Judge Creahan believed that allowance applications in the Gautieri case must be compared with applications in the Cecere case. This Judge agrees.

The Moot and Sprague applications of January, 1991 should have been deemed "denied, without prejudice" as a consequence of that Order, and it will now be so ordered.

Second, the Court has been advised by phone call to chambers that the Damon and Morey firm was expecting an opportunity to make an application in this case.

Third, the Moot and Sprague firm, which is represented

in the Gautieri case by Hodgson, Russ, Andrews, Woods & Goodyear, Richard Dopkins, Esq., of counsel, has not renewed its application nor responded to the objections thereto filed in June of 1990 and renewed in response to the January, 1991 resubmission by Moot & Sprague.

Fourth, no final report has been filed in the Gautieri case.

In all, it is not yet time to pass on counsel fees. As to the accountants, however, we are dealing with work done in 1991 and earlier (as to Battaglia, Andrews & Moag) and 1993 and early 1994 (as to Michael J. Buccieri).

The Buccieri application (\$478.75) is awarded in full and may be paid.

The U.S. Trustee notes that the Battaglia firm was not appointed by the Court to represent the Chapter 7 Trustee; rather, Mr. Buccieri was. At hearing, the Trustee explained that he did request the Battaglia firm to complete the work in progress at the time of conversion, and that the completion of those tax matters enabled the Trustee to recover assets; and that if the Battaglia firm didn't do the work, then Buccieri would have had to. When that is reduced to writing, it will suffice as a "Piecuil" showing, if not contradicted.

The U.S. Trustee also objects to lumped entries, and the Battaglia firm provided supplemental information at hearing in that regard.

The following is ORDERED:

1. The \$478.75 request by Buccieri is approved and may be paid.

2. The \$1072.35 request by the Battaglia firm for pre-conversion work is approved and may be paid.

3. Of the \$3781.89 request by the Battaglia firm for post-conversion work, \$1500.00 may be paid, subject to disgorgement if retroactive appointment is not ultimately approved. Hence, no portion of the \$3781.89 is presently approved.

4. Final consideration of that firm's request for post-conversion work must await proper application, notice, and hearing regarding retroactive employment by the Chapter 7 Trustee. And if that firm seeks compensation in the Gautieri corporate case as well, then the Court will not further entertain the firm's request in the case for post-conversion work until its time sheets in the Gautieri corporate case are filed.

5. Moot & Sprague and Cohen Swados applications are denied without prejudice, and will have to be re-filed and affirmatively renewed when, in accordance with Judge Creahan's order, the Gautieri corporate case has reached a state of completion at which all fee applications in that case have been filed and the extent of its assets are known. The new applications should directly address the 1990 and 1991 objections. To provide notice of this provision, Notice of Entry

of this Order shall be sent to Richard Dopkins, Esq., at the Hodgson firm and Richard Mugel, Esq., at the Cohen, Swados firm.

6. If Trustee Douglas Marky at any time believes that it is necessary and appropriate to resolve compensation matters in this case before he files a Final Report in the Gautieri corporate case, he may apply to the Court for a bar date for fee applications in the Gautieri corporate case, so that the purposes of Judge Creahan's order may be fulfilled.

7. For tracking purposes, the hearing on the Final Report and on allowances is hereby reopened and set for Report Back (on the progress of the Gautieri case) on February 13, 1996 at 2:30 p.m. at Batavia. (No one need appear.)

8. Any compensation and reimbursement requests still pending and not otherwise resolved by this Order (for example, Mr. Marky's own request) are similarly continued.

SO ORDERED.

Dated: Buffalo, New York
December 14, 1995

/s/Michael J. Kaplan

U.S.B.J.