

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

N.A. CARY, LTD.

BK 89-11392 K

Debtor

INTERLOCUTORY DECISION AND ORDER

After hearing on October 22, 1991, the matter of the trustee's objection to claim #13, and having heard the testimony of claimant, Robert W. Anderson, and of Neil Cary, and the arguments of the trustee, Don Iwanicki, Esq., I reserved decision to consider whether Robert W. Anderson was, from June 18, 1989, to August 11, 1989, a "professional person" as that term is used in 11 U.S.C. § 327(a).

I find that Mr. Anderson performed consultant services for the debtor during the time in question and specifically in connection with the formulation of a plan of reorganization. On the basis of a multitude of cases, of which *Sea Train*, 13 B.R. 980 (Bkrty. S.D.N.Y. 1981) and *Johns-Manville*, 60 B.R. 612 (Bkrty. S.D.N.Y. 1986) are only two, I find that he was a "professional person" for section 327 purposes.

I find that the Court approval required by section 327 was never obtained, and that Mr. Anderson knew that such approval was necessary, but that Mr. Anderson might have been of the reasonable belief that it had been obtained.

I find that circumstances might exist to warrant nunc pro tunc approval of Mr. Anderson's employment, but a genuine dispute exists as to the value of those services.

I direct that a hearing be held on notice to all parties whose distribution could be affected by the outcome of this matter to consider:

Whether nunc pro tunc approval should be granted, and if so, to consider the reasonable value of the services performed by Mr. Anderson.

SO ORDERED.

Dated: Buffalo, New York
November 5, 1991

/S/ MICHAEL J. KAPLAN

U.S.B.J.