

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In re:

**PERK DEVELOPMENT CORPORATION
BRAMBURY ASSOCIATES,**

**CASE NOS. 98-21910
98-21909**

DECISION & ORDER

Debtors.

BACKGROUND

Perk Development Corporation and Brambury Associates each filed a petition under Chapter 11 of the Bankruptcy Code on May 19, 1998. A single Creditors Committee (the "Committee") was appointed by the United States Trustee on June 2, 1998 to serve in these jointly administrated cases. The Committee currently consists of eight Members: William J. Delaney - Sysco Food Services, Fred P. Lucy, II - Fleet National Bank, George Pietropalo - Accelerated Revenue, John R. Reidman - Reidman Insurance Corp., Samuel A. Yacono (now deceased) - Unified Commercial Credit, Donald Alves, Daniel De Jesus - Upstate Farms Cooperative, Inc., and Rose Gramza - Perry's Ice Cream (the "Committee Members").

The Committee held meetings in Rochester, New York on June 9, 1998, June 23, 1998, and August 18, 1998 (the "Committee Meetings"). Some Committee Members also attended the Debtors' initial Section 341 Meeting on June 23, 1998.

On November 24, 1998, counsel to the Committee submitted a request for the allowance of an administrative expense for the expenses incurred by the Committee Members. William J.

Delaney, Chair of the Committee and the Sysco Food Services representative, submitted a request for the reimbursement of expenses in the amount of \$4,398.31, which consisted of AT&T conference call services, along with traveling costs to attend the Committee Meetings and the Section 341 Meeting. Fred P. Lucy, II, Vice-Chair of the Committee and the Fleet National Bank representative, submitted a request for the reimbursement of expenses in the amount of \$828.59 for his traveling costs to attend the June 9, 1998 and August 18, 1998 Committee Meetings. In addition, Fleet Financial Group submitted a request for the reimbursement of expenses for two representatives who are not designated Committee Members: (1) Peggy Peckham, in the total amount of \$1,320.44, for attendance at the June 9, 1998 and June 23, 1998 Committee Meetings, and the June 23, 1998 Section 341 Meeting; and (2) John P. Bowen, in the total amount of \$1,195.27, for his attendance at the June 9, 1998, June 23, 1998 and August 18, 1998 Committee Meetings and the June 23, 1998 Section 341 Meeting.

On December 23, 1998, the Office of the United States Trustee (the "US Trustee") filed an "Objection" to the allowance of the expenses of Ms. Peckham and Mr. Bowen, except for the expenses of Mr. Bowen for his attendance at the June 23, 1998 Committee Meeting and Section 341 Meeting which Mr. Lucy was unable to attend. The Objection asserted that since Mr. Lucy attended the other Meetings, the attendance of Ms. Peckham and Mr. Bowen was unnecessary and their expenses were unnecessary and unreasonable.

DISCUSSION

Section 503(b)(3)(F) provides for the allowance of an administrative expense for the actual and necessary expenses of a Committee Member incurred in the performance of that Member's duties.¹ Under this Section, it appears that: (1) only actual Committee Members may be reimbursed for their expenses; (2) if a different representative of a corporate, partnership or other business entity creditor is substituted for a Committee Member at a particular meeting or case related proceeding, that substitution and attendance must be justified as necessary; and (3) where a corporate, partnership or other business entity creditor wishes to send a representative to a Committee Meeting or case related proceeding in addition to its designated Committee Member representative, the expense must be borne by that creditor.

CONCLUSION

¹ Section 503(b)(3)(F) provides that:

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including-

(3) the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (4) of this subsection, incurred by-

(F) a member of the committee appointed under section 1102 of this title, if such expenses are incurred in the performance of the duties of such committee.

11 U. S. C. § 503(b)(3)(F).

Mr. Delaney's request for the reimbursement of expenses in the amount of \$4,398.31 is granted, as he is an actual Committee Member. Mr. Lucy's expense request for the reimbursement of expenses in the amount of \$828.59 is also granted, as he is an actual Committee Member.

The requests for the reimbursement of expenses for Ms. Peckham and Mr. Bowen are denied. Fleet National Bank has failed to provide any explanation as to why it may have been necessary to send a substitute representative in place of Mr. Lucy to the June 23, 1998 Committee and Section 341 Meetings.² Fleet National Bank may reapply for the reimbursement of the costs of sending either Ms. Peckham or Mr. Bowen to the June 23, 1998 Meetings if it provides justification as to why actual attendance was necessary by someone other than the designated Committee Member. As to the attendance of Ms. Peckham and Mr. Bowen at the Meetings where Mr. Lucy was in attendance, their expenses for attending were not necessary under Section 503(b)(3)(F), and therefore that portion of the requested is denied with prejudice.

IT IS SO ORDERED.

_____/s/_____
HON. JOHN C. NINFO, II
U.S. BANKRUPTCY JUDGE

Dated: January 5, 1999

² Could Mr. Lucy have participated in the Committee Meeting by telephone? Were there any votes taken at the Meeting? Could he have been sufficiently updated so that he could perform his future fiduciary duties if he simply received a copy of the Meeting minutes or a short oral or written report from the Chairman or another attending Committee Member?