UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

RAMA GROUP OF COMPANIES, INC. — Case No. 00-12654 K

Debtor

Consistent with this Court's earlier decision, this matter is back before the Court for quantification of Gottesman's equitable lien. A number of alternative theories and arguments were placed on the record in open court on May 9, 2001, and the Court will not reiterate them in this decision.

After considering all of the arguments, the Court now states the issue to be this: At what dollar amount may it be said that there is no "unjust enrichment" of either Gottesman or of the creditor body?

The Court finds the answer in the form agreement used by Gottesman Company. In that agreement, Gottesman uses a schedule of fees which, though not a model of clarity,[1] seems to provide that in a transaction in excess of $10 million (and this, of course, was a transaction for less than $10 million) the Gottesman fee would be *5* percent of the first $10 million plus 4 percent of the excess above $10 million up to $20 million, and then 3 percent of the excess above $20 million up to $30 million, plus 2 percent of the excess over $30 million up to $40 million, plus 1 percent of any amount over $40 million. Taking a $100 million.

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[1] Compare the schedule with the statement of how trustee commissions are to be computed under 11 U.S.C. § 326.

transaction, then, for illustration, one sees that Gottesman would receive 2 percent on a $100 million sale: to wit, $500,000 on the first $10 million, $400,000 on the second $10 million, $300,000 on third $10 million, $200,000 on the fourth $10 million, and $600,000 on the last $60 million. That is a $2 million fee on a $100 million transaction, which equals 2 percent. Thus, in response to Gottesman's counsel's rhetorical question when Gottesman offered to take $275,000 in full satisfaction of its claim, "Who gets less than *5* percent?" the answer is "Gottesman gets less than *5* percent on its larger deals."

Focusing only on the RAMA-owned assets sold by RAMA, this was a $5 million transaction. By the fee schedule, that would be $100,000 for the first $1 million and $200,000 for the last $4 million. That is a $300,000 claim, equaling 6 percent of the $5 million selling price.

Of the $5 million, only about $800,000 was netted for unsecured claims, and that amount is subject to attorneys fees and other administrative expenses yet to be determined.

There is no hint or suggestion that Gottesman ever acted in bad faith toward unsecured creditors of RAMA - Gottesman appears to have been completely "shut out" of dealings that led to a drop in purchase price that is blamed on an Internal Revenue Service investigation, and that brought RAMA from a price at sale that would have left it solvent, to a price at sale that left it grossly insolvent.

Secured creditors enjoyed the benefits of a sale that left them whole, while what is left will pay only priority tax debt and pennies on the dollar for trade and certain other tax debt.

Also, certain affiliates of RAMA obtained personal benefits from the sale, though no one has yet suggested that this came at the expense of RAMA's creditors.

So this Court views the present matter strictly as a matter between Gottesman and RAMA's non-priority, unsecured creditors. In light of this Court's analysis in the case of In *re Cardon Realty,* 172 B .R. 182 (Bankr. W.D.N.Y. 1994), regarding the fact that bankruptcy does not change the unwise, injudicious, or even frivolous decisions that pre-bankruptcy management made (although principals may be held liable to the estate where appropriate under law), the Court concludes that Gottesman is entitled to an equitable lien in the amount of $199,000.

That allowance is comprised of two parts. The first represents half the difference between 2 percent (charged by Gottesman on a $100 million transaction) and 6 percent (charged on transactions of just under $10 million). Three point five percent of $5 million is $175,000. The second element is $24,000 representing the fact that this was a transaction as to which the Gottesman agreement provided for a $50,000 bonus on the first million dollars of a smaller (less than $10 million) transaction.

This amount would appear to be fundamentally fair and equitable as to Gottesman because it falls in the middle range (as a percentage) of what Gottesman is willing to accept as to larger deals, and also provides half of the "kicker" that Gottesman contractually obtains on deals of less than $10 million.

And the amount appears to be fundamentally fair and equitable to the general unsecured creditor body because this amount is at least $100,000 less than what Gottesman had a

right to obtain had this sale occurred and had Gottesman been paid prior to, rather than after, the Chapter 11 filing. Moreover, $199,000 is slightly less than a quarter of the $800,000 remaining after satisfaction of the secured claims: that is not unduly large, in this writer's opinion, nor is it outside the range of what Gottesman reasonably could have obtained had the Court insisted (as addressed in this Court's earlier decision) that Gottesman's rights be adjudicated or settled before the Court would allow the performance of the Asset Purchase Agreement.

The Debtor may pay $199,000 to Gottesman in satisfaction of its equitable lien. Gottesman may file an unsecured pre-petition claim for the balance of anything it believes to be owed by RAMA.

SO ORDERED.

Dated: Buffalo, New York
May 16, 2001

/s/ Michael J. Kaplan

U.S.B.J.