

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

GARY C. SMITH
d/b/a All Natural Weight Loss

Case No. 92-13939 K

Debtor

In re

PATRICIA M. SMITH
d/b/a All Natural Weight Loss

Case No. 93-11966 K

Debtor

Counsel for the Debtors have applied for \$51,866.00 in fees and \$3955.62 in disbursements in this confirmed, ready-to-be-closed Chapter 11 case.

The Amended Plan and Disclosure Statement filed in May of 1995 were confirmed in August and little of substance occurred between then and now. In that Disclosure Statement it was "estimated" that counsel's fees would be \$40,000 through the closing of the case.

The Court has reviewed the time sheets in detail and has some concerns, although neither the United States Trustee nor the Debtors have opposed the application. (Since the payout to creditors is fixed, these fees will be paid by the Debtors themselves.)

Fully appreciating the difficulty of taking this case over from prior counsel and the complexity of the case, the Court is nonetheless discomfited by the more than 25% disparity between the "estimated" fees and the application itself, in light of what appears to be an unusual degree of participation by multiple attorneys on particular issues.

For example:

- On 4/30/93, DCP worked 2.3 hours on Mrs. Smith's schedules, at \$85.00/hr., then DFB spent 2.5 hours on the "Smith bankruptcy schedules" on 5/11/93, at \$125.00/ hr.
- In June and July of 1993, DCP worked perhaps 10 hours total on opposition to previous counsel's fee application, but DFB spent some time on that matter as well, and even WFS billed a few minutes for looking at my decision and order on that subject.
- The draft of the plan in January of 1995 took a great deal of both DCP's and DFB's time. Was it well co-ordinated? E.g. DCP's work on the liquidation analysis on 1/16/95 (3.4 hours) compared with DFB's work on same on 1/23/95. Also, similar overlaps on the issue of the treatment of tax claims.

These are not the only examples and I do not want an explanation of these.

What the Court wishes in light of the \$40,000 fee estimate presented at confirmation, is a fuller review of this Application by the Applicant, to consider whether appropriate billing judgment has been exercised.

For tracking purposes, the Application is currently denied, but will be reconsidered upon receipt of a response.

SO ORDERED.

Dated: Buffalo, New York
January 31, 1996

/s/Michael J. Kaplan

U.S.B.J.