

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

TAYLOR FARMS, INC.

Case No. 92-10971 K

Debtor

MEMORANDUM OF DECISION

The application by the attorney for the Chapter 12 Debtors for fees will be approved in full in accordance with the terms of a separate order entered simultaneously herewith.

For the reasons stated in his "Affirmation in Response to Objection filed by M & T" and his "Affirmation in Response to Objection filed by Agway, Inc." those objections are overruled.

The Court finds it necessary to comment only on the portion of the Agway objection that characterizes some of the Debtor's attorney's work as "unnecessary," and the corresponding portion of the objection of M & T which criticizes his opposition to M & T's motion to condition the use of cash collateral and the fact that the first proposed plan was not the product of negotiation and was unconfirmable.

If this were a Chapter 11 case rather than a Chapter 12 case, my decision might be different. In Chapter 11 cases I expect plans to be the product of good faith negotiations, and will not compensate the Chapter 11 Debtor's counsel for time spent on matters that could have been avoided through good faith cooperation and negotiation with creditors. I certainly would have little

sympathy for a Chapter 11 Debtor's counsel who relies upon "shock tactics" and extreme or "fringe" positions and arguments to bring creditors to the bargaining table. But in Chapter 12 cases, as pointed out by Debtor's counsel, a plan must usually be filed promptly after the commencement of the case, and I cannot be certain that this goal would be more readily reached "with honey than with vinegar."

However much this Court, like M & T's counsel and Agway's counsel, might prefer an atmosphere of calm and reasonable approaches at all points in the interpersonal and professional contacts involved in a farm reorganization case, objections to allowances under § 330 or 331 of the Code ought not to be sustained where they amount to one attorney's disapproval of another attorney's "style."

"The duty of a lawyer, both to his client and to the legal system, is to represent his client zealously within the bounds of the law, which includes Disciplinary Rules and enforceable professional regulations." Ethical Consideration 7-1, New York Code of Professional Responsibility.

"The advocate may urge any permissible construction of the law favorable to his client, without regard to his professional opinion as to the likelihood that the construction will ultimately prevail.... However, a lawyer is not justified in asserting a position in litigation that is frivolous." Ethical Consideration 7-4, New York Code of Professional Responsibility.

It is my view that so long as counsel acts within the above considerations, and achieves a meritorious result for his client and the estate, then the Court may not jump to the conclusion that "zealous" representation in the form of extreme posturing constitutes "unnecessary work" or "unreasonable charges" per se.

As noted above, a separate order is issuing awarding fees.

SO ORDERED.

Dated: Buffalo, New York
May 6, 1994

/s/ Michael J. Kaplan

U.S.B.J.