UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

THE CONLON CORPORATION Case No. 84-20421 X

Debtor

MEMORANDUM OF DECISION

ORDER

I have carefully considered John W. Conlon, Jr.'s pro se objection to the allowance of additional fees and costs to Weinstein, Vullo & Miller and to Harter, Secrest and Emery.

I have carefully considered the response thereto, and in particular the Trustee's filed response to Mr. Conlon's objection. As pointed out therein, Mr. Conlon's complaints regarding Mr. Vullo's handling of estate funds are unrelated to these applications for fees for attorneys for Mr. Vullo.

Nonetheless I will note that it is clear that from February 28, 1985 (when the Trustee directed Central Trust to place all Conlon Corporation funds in his name) to "mid 1990" (when, according to Mr. Conlon, Conlon advised U.S. District Judge David G. Larimer (in the context of an appeal) of the existence of the $14,091.51 fund), the Trustee could not reasonably be charged with knowledge of the funds; and it also is clear that Mr. Conlon somehow did obtain knowledge of funds which as Principal of the Debtor he had a duty to disclose.

Assuming arguendo that Conlon did advise the District

Court of the funds in Mid-1990, I have no explanation of why the funds were not secured prior to the July 8, 1991 escheat notice, other than the attestation by the Trustee that he promptly secured them after Conlon's counsel advised the Trustee's tax counsel of the funds by letter on August 12, 1991.

Thus if any lost interest is attributable to any oversight on the part of the Trustee, it would be for the one-year period from "mid 1990" to August 12, 1991.

Conlon has not provided evidence that he did indeed disclose the existence of the fund in front of Judge Larimer in mid 1990, nor has he indicated how or how long he knew about it before mid 1990, or about its status thereafter.

Even if the trustee failed to assure proper investment of estate funds, he is not necessarily to be surcharged for the loss of interest. He has collected in excess of $500,000.00 for the benefit of creditors and has earned over $100,000.00 in interest. If $14,091.51 remained in a non-interest bearing account for one year, the overall effect would certainly not warrant a full surcharge, if any at all. Inadvertently missing an income opportunity with regard to a minute portion of estate assets is not the same thing as causing a loss.

At hearing on January 31, 1991, I offered Mr. Conlon seven days in which to reply to the Trustee's response to his Objections. He has not done so. I cannot base any surcharge on Mr. Conlon's unsubstantiated allegations.

The two applications are approved in full.

SO ORDERED.

Dated: Buffalo, New York
February 21, 1992

/S/ MICHAEL J. KAPLAN

U.S.B.J.