

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

In re

DALLAS C. SANDS, individually  
and d/b/a D-C Electric &  
Development Co., formerly  
d/b/a D-C Electric Co.;  
a/k/a Dale C. Sands

Case No. 91-12393 K

Debtor

By Motion heard on September 16, 1992, creditor Rochele M. Sands sought an Order directing that Trustee Douglas W. Marky, Esq. pay her \$15,000 plus interest from the bankrupt estate "prior to distribution of assets to general unsecured creditors." The funds are proceeds from the sale of real estate of her former husband, the debtor, Dallas C. Sands.

Neither the Trustee, Douglas W. Marky, Esq., nor the Debtor appeared in opposition. Rather than presuming that the Trustee's failure to oppose the Motion was not inadvertent, the Court on September 24, 1992 sent a letter to Marky (copy to creditor's counsel) directing him to respond to the Motion by October 16, 1992, either opposing or not opposing, and if opposing to file a memorandum by that date.

Nearly one month after the deadline, on November 12, 1992, the Trustee signed an application seeking retroactive approval (to October 16, 1992) of his retention of the firm of Damon <sup>Morey</sup> Morey to "Research the applicable ... law to determine if the Trustee will oppose Rochele Sands' motion ...."

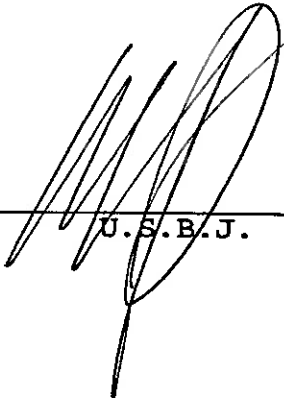
That application, and the Declaration of the Firm, were submitted to the U.S. Trustee on November 13, 1992 and filed with the Court on November 23, 1992. No response to Rochele Sands' motion has been received.

Fundamentally, the Trustee or his counsel asks the Court to condone a month of neglect of this Court's earlier direction, and to do so at the potential expense of the creditor. (The Court further notes that Debtor Dallas Sands made an impermissible ex parte communication in a letter received by the Court on October 22, 1992. However, that communication has had no bearing on the Court's consideration of the present matter.)

The Trustee's application to employ counsel is denied. Further, the Court finds that the Trustee has defaulted on the Court's direction to respond, and as a result the Motion of Rochele Sands must be granted.

SO ORDERED.

Dated: Buffalo, New York  
November 24, 1992



U.S.B.J.