

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

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In re)	Bankruptcy Case No. 81C-01939
)	
CAREER CONCEPTS, INC,)	
fka UNITED PERSONNEL, INC.,)	
)	MEMORANDUM DECISION ON PETITION
Debtor.)	FOR APPROVAL OF ATTORNEY'S FEES
)	AS ATTORNEY FOR DEBTOR

On March 30, 1983, the Court entered its memorandum decision on the appointment and compensation of Keith and Dana Sohm as attorneys for debtor. The Court concluded that because the Sohms are not disinterested persons, their employment by the debtor while it was a debtor in possession under Chapter 11 was forbidden by 11 U.S.C. § 327(a). The Court also concluded that the employment of the Sohms after the conversion of this case on October 30, 1981 was not forbidden by Section 372(a), that they did not need to be appointed for services performed for the debtor after October 30, 1981, and that they could apply for an award of fees for those services. The Court also ordered Keith Sohm to file a statement showing in detail how and when any parts of the \$3,500 he had earlier disclosed as a pre-petition payment of fees had been applied.

On April 21, 1983, the Sohms filed a "Petition for Approval of Attorneys Fees As Attorney for Debtor [And] Affidavits." The affidavits show that although Keith Sohm represented to the Court

that he had been paid \$3,500 pre-petition, in fact no pre-petition payment was made. The Sohms received one post-petition payment of \$1,000 on May 22, 1981. Of this \$1,000, \$102 was paid to the law firm of Roe and Fowler for an interview with William Fowler concerning "the use of [his] services."

The affidavit of Keith Sohm claims \$1,938.75 worth of services performed "under chapter 7 excluding services to Debtor in Possession" calculated as follows: 25.85 hours x \$75 per hour equals \$1,938.75.

Of the 25.85 hours, four (items a. and b.) were spent before the conversion of the case to a case under Chapter 7 and are therefore not compensable under the Court's prior ruling. Even though the services may have related to conversion to Chapter 7, they were in fact performed for a debtor in possession.

Of the remaining 21.85 hours, a least ten (items m. through q.) relate solely to the Sohms' abortive attempts to recover attorneys fees. Because those services were performed solely for the benefit of the Sohms and not for the debtors, those services are not compensable out of the estate. While some time spent in applying for fees may be compensable out of a bankruptcy estate, on the facts of this case such compensation would be unjust. Creditors should not bear the costs of these applications. See Section 330.

The remaining 11.85 hours (items c. through l.), have been paid for by the debtor. The debtor paid \$1,000, which, at \$75

per hour covers 13.33 hours of work. Thus, it appears that the Sohms have been overpaid. At \$75 per hour, the 11.85 hours would amount to a claim for \$862.50. \$1,000 minus \$862.50 equals \$137.50.

If the \$102 paid to Roe and Fowler can be credited against the \$137.50 overpayment, the Sohms will owe the Chapter 7 trustee \$35.50. See 11 U.S.C. § 329(b). In this case, because it appears that the payment to Roe and Fowler may be classified as an expense of doing business of the Chapter 11 debtor, properly payable as an out of pocket expense, such a credit may be allowed.

IT IS THEREFORE ORDERED that the Sohms are allowed a claim for fees of \$862.50 which have already been paid. That payment may be the subject of objections by any party in interest at the final hearing in this case. The objection of the United States of America, Internal Revenue Service has been considered as to allowance. Insofar as that objection relates to payment, it will be heard at the final hearing. It is further ordered that the Sohms forthwith pay to the Chapter 7 trustee the sum of \$35.50.

The decision reached herein is based solely on the mandates of the Bankruptcy Code respecting attorney compensation and is not based on any finding of bad faith on the part of the Sohms. The honesty of the Sohms is not questioned. Notwithstanding their honesty, the laws of the United States require the decision made today.

DATED this 13 day of June, 1983.

BY THE COURT:



GLEN E. CLARK
UNITED STATES BANKRUPTCY JUDGE