

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.
Tax I.D. No. 22-3137244

Case No. 11-01-10779 SA

Debtor.

**UNITED STATES TRUSTEE'S MOTION FOR RECONSIDERATION
OF ORDER UNDER 11 U.S.C. §§105 AND 363 AUTHORIZING MAINTENANCE
OF EXISTING BANK ACCOUNTS FILED HEREIN ON FEBRUARY 8, 2001**

The United States Trustee for the District of New Mexico, by Assistant U.S. Trustee Ron E. Andazola, hereby respectfully requests that the Court reconsider the *Order Under 11 U.S.C. §§105 and 363 Authorizing (I) Maintenance of Existing Bank Accounts, (II) Continued Use of Existing Business Forms, and (III) Continued Use of Existing Cash Management System, and Waiving Investment and Deposit Requirements* (Order) filed herein on February 8, 2001. As her reasons therefor, the U.S. Trustee states:

1. The Order, at paragraph 4, allows the Debtor to close and open bank accounts, without requiring that (1) such actions be reported to the United States Trustee, (2) the accounts be maintained in authorized depositories, (3) that any amounts over \$100,000 be collateralized by the depository institutions, and (4) that U.S. Trustee reporting requirements be honored.

a. The *Motion for Order Under 11 U.S.C. §§105 and 363 Authorizing (I) Maintenance of Existing Bank Accounts, (II) Continued Use of Existing Business Forms, and (III) Continued Use of Existing Cash Management System, and Waiving Investment and Deposit Requirements* filed herein on February 8, 2001 (Motion), did not request authorization to open and close bank accounts. It merely requested authorization to maintain existing bank accounts and continue the

cash management system with such modifications as may be approved by Court order in the future. See Motion at ¶¶ 11,12, and 21.

b. The Declaration of Steven Mortensen, at p. 29, paragraph 95, sets forth the difficulties of opening and closing bank accounts in the Debtor's integrated cash management system.

c. If the Debtor is allowed to open and close accounts as set forth in the Order, the United States Trustee will be severely impaired in meeting her statutory responsibilities to supervise the administration of this proceeding. See 28 U.S.C. §586 (a)(3).

2. The Order, at paragraph 9, authorizes the Debtor to continue using its existing check stock and other business forms, to which the U.S. Trustee has no objection. However, the Order is silent as to whether the Debtor shall have the legend "Debtor in Possession" placed on new check stock and business forms used after existing supplies of such documents are exhausted.

a. Neither the Declaration of Steven L. Mortensen nor the Motion set forth any good reason why **new** check stock and other business forms should not comply with U.S. Trustee requirements.

3. The Order, at paragraph 12, authorizes the Debtor to continue its current investment and deposit practices and waives the requirements of 11 U.S.C. §345(b), dealing with collateralization of bankruptcy estate funds.

a. The Declaration of Stephen Mortensen gives no detail as to the Debtor's investment and deposit practices (See pages 28-41 dealing with issues related to the Motion). Beyond mere generalized allegations, there is no evidence as to what investment and deposit practices are being authorized in paragraph 12 of the Order.

b. The Debtor's Motion merely states that the Debtor maintains approximately 90 accounts and alleges that the accounts are maintained in financially stable institutions subject to FDIC insurance. No evidence was introduced as to the balances in those accounts and the amounts not subject to FDIC insurance.

c. Although the Debtor asserts that a number of the bank accounts are "sweep" accounts, no evidence was offered regarding (1) the size of deposits into those accounts (2) the amounts not subject to FDIC coverage and (3) the amounts at risk, if even for a short time.

d. Exhibit A attached to the Debtor's Motion lists several institutions, including a number of relatively small institutions, at which Debtor accounts are maintained. No information is provided as to the liquidity of the institutions together with the amount of deposits not covered by FDIC insurance.

e. No evidence whatsoever establishes cause under 11 U.S.C. §345 to waive the requirements of that statute in this case.

4. Exhibit A attached to the Debtor's Motion lists several banks which are not authorized depositories in the District of New Mexico and therefore have not agreed to provide information as may be requested by the U.S. Trustee. As such, the U.S. Trustee is again severely impaired in performing her statutory responsibilities pursuant to 28 U.S.C. 586(a)(3).

5. Grounds warranting a motion to reconsider include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice. Servants of the Paraclete v. John Does, et al., 204 F.3d 1005, 1011 (10th Cir. 2000). *supra*.

6. In this matter, the Order was entered as part of an extensive hearing in which the Court considered approximately 15 first day motions in possibly the largest Chapter 11 proceeding ever filed in this District. Although the U.S. Trustee raised her objection to the entry of the Order relating to this Motion, the Court advised the U.S. Trustee that a motion for reconsideration would be an appropriate procedural vehicle to consider the objection, in light of the numerous matters which the Court was addressing on February 8, 2001.

7. The U.S. Trustee respectfully asserts that this motion is warranted on the basis that consideration of the above objections is necessary to correct clear error and prevent the manifest injustice which has resulted from the entry of the Order.

Respectfully submitted,
BRENDA MOODY WHINERY
United States Trustee

Filed electronically 2/20/01
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The undersigned certifies that a true and accurate copy of the foregoing motion for reconsideration was mailed to the below listed counsel of record this 20th day of February, 2001.

Filed electronically 2/20/01
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