

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

02 JUN 20 AM 9:23

In re:

U.S. BANKRUPTCY COURT
ALBUQUERQUE, NM

FURR'S SUPERMARKETS, INC.

No. 11-01-10779-SA

Debtor

AMENDED
RESPONSE TO MOTION OF STATE OF NEW MEXICO
TAXATION & REVENUE AS TO J. D. BEHLES & ASSOCIATES

COMES NOW Jennie Deden Behles and in her Amended Response to the Motion does state

1. Jurisdiction to enforce orders of the District Court, Santa Fe County, resides in that Court exclusively.
2. The Department seeks here to gain what the state District Court would not grant it, an injunction against Behles practicing.
3. No such order was made or entered, despite attempts of the Department to have such an order entered in a manner not in conformity with the local rules of that court and the New Mexico Rules of Civil Procedure.
4. The Department seeks to gain advantage here when in fact they abandoned for purposes of hearing in the State Court the majority of their claims based on a successor theory and refused security or settlement of tax during this proceeding.
5. Behles has filed a Motion before the District Court (Judge Hall) asking to have this practice on behalf of the Department stopped.
6. Attached hereto and incorporated herein is a partial transcript of proceedings which shows the ruling of the Court. No Order has yet been entered.

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ORIGINAL

7. The Court has set a hearing on Behles' **Amended Motion to Require Compliance with Order of Court by State Tax and Revenue** on July 2, 2002.

Respectfully submitted.

J.D. Behles & Associates,
a Commercial Law Firm

By _____
Jennie Deden Behles
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Albuquerque, NM 87103-0849
Phone: (505) 243-9756
Fax: (505) 243-7262

I HEREBY CERTIFY that a true and correct copy of the foregoing **Amended Response to Motion of State of New Mexico Tax and Revenue as to J.D. Behles & Associates** was mailed via U.S. mail, first class, postage prepaid, to:

Lewis J. Terr
Special Assistant Attorney General
For the Taxation and Revenue Department
P. O. Box 630
Santa Fe, NM 87509-0630

Robert H. Jacobvitz
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10 Renaissance Center, 36th Floor
Detroit, MI 48243

Don Harris
P. O. Box 8485
Albuquerque, NM 87108

Courtesy copy to
The Honorable James A. Hall
Judge of the First Judicial District Court
P. O. Box 2268
Santa Fe, NM 87504

this *20th* day of June, 2002

By: _____

Jennie Deden Behles

1 FIRST JUDICIAL DISTRICT COURT
2 COUNTY OF SANTA FE
3 STATE OF NEW MEXICO

4 SECRETARY, TAXATION and REVENUE DEPARTMENT,

5 Plaintiff,

6 vs.

7 SF 2001-2733 CV

8 JENNIE BEHLES d/b/a J.D. BEHLES and
9 ASSOCIATES, A COMMERCIAL LAW FIRM, PC,

10 Defendants.

11 PARTIAL TRANSCRIPT OF PROCEEDINGS

12 On the 21st day of May, 2002, at

13 approximately 10:30 a.m., this matter came on for
14 hearing on MERITS/MOTION TO SET ASIDE TEMPORARY
15 RESTRAINING ORDER AND TO PROHIBIT ISSUANCE OF AN
16 INJUNCTION before the HONORABLE JAMES A. HALL, Judge
17 of the First Judicial District, State of New Mexico,
18 Division II.

19 The Plaintiff, TAXATION and REVENUE
20 DEPARTMENT, appeared by Counsel of Record, LEWIS TERR,
21 Attorney at Law, P.O. Box 630, Santa Fe, New Mexico
22 87504-0630.

23 The Defendant, JENNIE BEHLES, Attorney at
24 Law, appeared in person as her own Counsel of Record,
25 P.O. Box 849, Albuquerque, New Mexico 87103.

At which time the following proceedings
were had:

1 of these payments by the firm or the inability to pay,
2 for that matter.

3 The inability to pay argument doesn't make
4 any sense to me either, because the clients paid these
5 taxes for them and the firm simply took them. So I'm
6 not really persuaded that in this circumstance there
7 exists an inability to pay or that the hard times of
8 the firm are responsible for the circumstance. The
9 responsibility for the circumstance are the folks that
10 took the money that clients paid and used it for other
11 reasons. This has gone on for an extended period of
12 time, three years and three months, the time they
13 charged the clients and then took those monies.

14 In this circumstance, I think the
15 requirements for a delinquent taxpayer under Section
16 7-1-16 are met. If for some reason that's not
17 statutorily appropriate, then I would consider the
18 entity to be a person versus to include an entity who
19 may be liable for payment of the tax. There is no
20 doubt that liability exists.

21 I conclude this is an appropriate case to
22 enter an injunction against J.D. Behles and
23 Associates, a Commercial Law Firm, PC, and, therefore,
24 I will enter an injunction prohibiting that entity
25 from engaging in business as envisioned by Section

1 7-1-53.

2 I deny the request of the Department to
3 enter some sort of injunctive application personally
4 as to Ms. Behles. I don't believe that would be
5 appropriate in light of the evidence that has been
6 presented to me here today. The evidence, at least as
7 to the gross receipts tax, clearly applies to the
8 entity, not to Ms. Behles, so I don't believe there is
9 a basis for me to enter an injunction against Ms.
10 Behles personally; but as to the entity, I think the
11 evidence really compels me to enter an injunction.

12 I do not set an amount of security. I will
13 say this: If there is payment of the gross receipts
14 tax due as envisioned under Exhibit 5 plus interest,
15 that upon that payment, I would consider lifting the
16 injunction, because that would involve the payment,
17 and the interest would involve simply paying the money
18 they collected from their clients. There certainly
19 would be other issues as to penalties and perhaps
20 other taxes owed, but from my standpoint, if it was
21 paid in the amount set forth in Exhibit 5 with
22 interest, not penalties, at that point I would
23 certainly consider lifting the injunction as to the
24 entity.

25 I make no ruling on that, since no payment

1 has been made, and the other offers of security I do
2 not believe would provide security in light of the
3 evidence I've heard here today.

4 I grant the request for injunction as to
5 the entity, J.D. Behles and Associates, a Commercial
6 Law Firm, PC, and would direct Mr. Terr to prepare an
7 order reflecting the ruling of the Court. Questions,
8 Mr. Terr?

9 MR. TERR: Yes, Your Honor. We didn't get
10 into this extensively, but I think there is enough
11 evidence before the Court to indicate the next step or
12 expected step of Ms. Behles would be to form a new
13 corporation. I would like to know if the Court feels
14 that there is appropriate evidence before the Court
15 that there may be included in the order she not do so
16 and practice law under a new firm.

17 THE COURT: I don't believe that type of
18 relief is requested in the complaint. You made the
19 request that I enter it individually as to her. At
20 this point, I don't believe there is evidence before
21 me to do that. So I guess if you're asking for that
22 additional requirement as to the order, it's denied.
23 I don't think the evidence establishes it.

24 MR. TERR: Thank you.

25 THE COURT: Other questions?

1 MR. TERR: Nothing else.

2 THE COURT: Ms. Behles, questions on the
3 Court's order?

4 MS. BEHLES: No, Your Honor.

5 THE COURT: We have a local rule that
6 provides that exhibits are returned to the parties who
7 provided them. They may be resubmitted in the event
8 there is an appeal, so I am going to direct Counsel to
9 take the exhibits that you've submitted with you with
10 the order they be held and resubmitted in the event
11 there are further proceedings in this matter. We'll
12 be in recess.

13 (The Court recessed at 4:10 P.M.)

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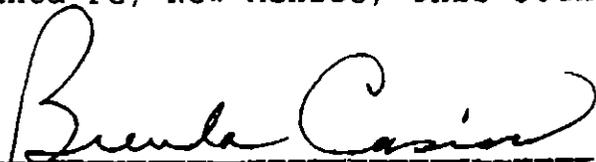
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1 STATE OF NEW MEXICO)
2) ss
3 COUNTY OF SANTA FE)
4

5 REPORTER'S CERTIFICATE
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7 I, BRENDA CASIAS, Official Court Reporter
8 for the First Judicial District Court of New Mexico,
9 hereby certify that I reported, to the best of my
10 ability, the partial proceedings in SF 2001-2733 CV;
11 that the pages numbered 1 through 9, inclusive, are a
12 true and correct partial transcript of my stenographic
13 notes, and were reduced to typewritten transcript
14 through Computer-Aided Transcription; that on the date
15 I reported these proceedings, I was a New Mexico
16 Certified Court Reporter.

17 Dated at Santa Fe, New Mexico, this 30th day
18 of May, 2002.

19 

20 BRENDA CASIAS
21 Official Court Reporter
Expires: December 31, 2002

22 First Judicial District Court
23 P.O. Box 2268
Santa Fe, New Mexico 87504-2268
24 (505) 827-5808

25 Total cost of this transcript is: \$37.25