

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In re:  
FURR'S SUPERMARKETS, INC.,

Case No. 7-01-10779-SA  
Chapter 7

Debtor.

**ORDER GRANTING TRUSTEE'S MOTION TO EMPLOY,  
AND APPROVING EMPLOYMENT OF DAVIS & PIERCE, P.C.  
AS COUNSEL FOR THE CHAPTER 7 TRUSTEE**

This matter came before the Court upon the Motion to Employ Davis & Pierce, P.C. as Counsel for the Chapter 7 Trustee, (the "Motion"), filed by Yvette Gonzales, the duly appointed Chapter 7 Trustee (the "Trustee"). The Court, being fully advised in the premises, hereby FINDS:

1. The Motion was filed on December 19, 2001. By the Motion, the Trustee seeks Bankruptcy Court approval of its employment of Davis & Pierce, P.C. ("D&P"), pursuant to Bankruptcy Code §327(a) and (e), as counsel for the Trustee in this case, to represent the Trustee in such matters as the Trustee may request of D&P and D&P may agree to perform, and for authority to make interim payment of compensation to D&P. On December 19, 2001, D&P filed its attorney disclosure pursuant to Bankruptcy Rules 2014 and 2016, and filed its Supplemental Disclosure on July 2, 2002 (the "Disclosure").

2. On December 21, 2001, D&P gave notice of the Motion to all persons on the limited mailing matrix in this Chapter 7 case

(the "Notice").

3. Notice was sufficient in form and content.

4. Pursuant to a Court Order shortening the objection deadline, the Notice specified a deadline of fifteen (15) days, plus three (3) days based on service of the Notice by mail, for a total of eighteen days, in which to file objections to the Motion.

5. The deadline to object to the Motion expired on January 8, 2002. An objection was filed on January 7, 2002 by Heller Financial, Inc., as agent for itself, Bank of America, N.A., Fleet Capital Corporation, and Metropolitan Life Insurance Company ("Heller"), which has been resolved as indicated by Heller's approval of this Order. No other objections were filed, timely or otherwise.

6. The Disclosure states, among other things:

"D&P represented the Official Committee of Unsecured Creditors in the Chapter 11 Case, and has an unpaid claim in excess of \$150,000.00 for attorneys fees incurred while representing the UCC. In addition, D&P asserts it is entitled to payment of such unpaid fees from a professional carve-out set forth in DIP financing orders. As of the date of this Disclosure, an application to approve such fees is on notice to creditors. Approval of D&P's fees incurred in the chapter 11 case after October 30, 2001 has not been sought or obtained."

7. An Order allowing the fees, in part, requested by D&P was entered on January 25, 2002, resolving the issue of the pending Fee Application.

8. In addition, D&P has disclosed their role as local counsel for Safeway, Inc. in the Adversary entitled Safeway, Inc., Plaintiff, s. Furr's Supermarkets, Inc., Westwood Joint Venture, and TGAAR Properties, Inc., Defendants, Adversary No. 01-01214, seeking declaratory relief. The Stipulated Order of Dismissal of the Safeway matter was filed on May 23, 2002, resolving the issue of the Safeway litigation. D&P's representation of Safeway in connection with this bankruptcy has concluded, and D&P will not provide any further representation of Safeway in this case.

9. The Trustee and Davis & Pierce, P.C. have agreed that, pursuant to 11 U.S.C. §327(e), the employment of Davis & Pierce, P.C. should be approved as of December 19, 2001 with regard to all services provided in connection with the Trustee's preference claims, and with regard to the Motion to Employ Davis & Pierce, P.C. The Trustee and Davis & Pierce, P.C. have further agreed that, pursuant to 11 U.S.C. §327(a), the employment of Davis & Pierce, P.C. should be approved as of June 28, 2002 with regard to the general representation of the Trustee, which includes all other services and representation which the Trustee may request of D&P and D&P may agree to perform.

10. The Court finds that the matters described above do not represent a conflict of interest in the facts and circumstances

of this case. Further, D&P will not represent the Chapter 7 Trustee with regard to any matter involving Safeway, Inc.

11. D&P satisfies the requirements set forth in Section 327(a) of the Bankruptcy Code for the Chapter 7 Trustee's retention of D&P.

12. No further notice of the Motion or of this Order is necessary in the particular circumstances, prior to entry of this Order.

13. The Motion should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

A. The Motion is granted to the extent set forth below.

B. The Trustee's employment of D&P as her counsel pursuant to Bankruptcy Code §327(e) is approved as of December 19, 2001 with regard to all services provided or to be provided in connection with the Trustee's preference claims, and with regard to the Motion to Employ Davis & Pierce, P.C.

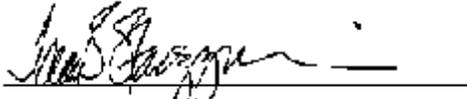
C. The Trustee's employment of D&P as her counsel pursuant to Bankruptcy Code §327(a) is approved as of June 28, 2002 with regard to the general representation of the Trustee, which includes all other services and representation which the Trustee may request of D&P and D&P may agree to perform.

D. D&P's billing rates be \$190.00 per hour for William F. Davis and \$170.00 for Chris W. Pierce. Any other attorneys who may be employed by D&P will be billed at their regular hourly

rates (which rates do not exceed \$150.00 per hour). Legal assistants will be charged at \$50.00 per hour.

E. The Trustee is authorized to pay D&P, upon receipt of D&P's billing statements and prior to the Court's determination of the allowability of D&P's compensation, up to and including 75% of fees, and up to and including 100% of reimbursable costs and applicable gross receipts tax on fees and costs that are paid. All fees, costs, and gross receipts tax paid shall be subject to ultimate approval of the Bankruptcy Court under Bankruptcy Code §328, 330, and 331.

F. D&P shall file fee applications approximately every 180 days.



THE HONORABLE JAMES S. STARZYNSKI  
UNITED STATES BANKRUPTCY JUDGE

Submitted by:

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/s/ submitted by email 7-2-02  
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Approved by:

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I hereby certify that on July 3, 2002, a true and correct copy of the foregoing was either electronically transmitted, faxed, delivered, or mailed to the listed counsel and parties.

Mary B. Anderson  
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