

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,

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

Debtor.

**ORDER APPROVING TRUSTEE'S MOTION TO (I) AUTHORIZE
PAYMENT OF RECOVERED MISDIRECTED FUNDS TO SAFEWAY AND (II)
APPROVE SALE OF REMAINDER INTEREST FOR \$15,000**

THIS MATTER came before the Court on the Chapter 7 Trustee's Motion to (I) Authorize Payment of Recovered Misdirected Funds to Safeway And (II) Approve Sale of Remainder Interest For \$15,000, filed on March 7, 2003 (doc. #2033) (the "Motion").

Having reviewed the Motion, and being otherwise advised in the matter, the Court FINDS:

A. On February 8, 2001 (the "Petition Date"), Furr's Supermarkets, Inc. (the "Debtor") filed a voluntary petition in this Court under Chapter 11 of the Bankruptcy Code.

B. On August 31, 2001, the Court entered its Order Approving Debtors' Assumption and Assignment of Unexpired Leases (the "Assignment Order"). As reflected in the Assignment Order, Surway Associates Ltd. ("Surway") was the landlord for former store 945. The lease for store 945 was assigned to Safeway Inc. ("Safeway").

C. Also, on August 31, 2001, the Order Resulting from Debtor's Notice of Proposed Cure Amounts was entered (the "Cure Order"). Pursuant to the Cure Order, the cure amounts to be paid by the Debtor to effect the assignments under the Assignment Order were approved.

D. The cure amounts to be paid to Surway for the assignment of Store 945 to Safeway included \$68,792.42 for rent and common area maintenance and \$61,412.41 for

2000 real estate taxes. The Debtor as debtor in possession inadvertently paid the \$68,792.42 amount to Sunway Associates (Sunway”) instead of Surway.

E. On December 19, 2001, the Debtor converted its Chapter 11 case to a case under Chapter 7 of the Bankruptcy Code. The Trustee was appointed on that date.

F. In 2002, Safeway purchased the real property underlying Store 945 from Surway. In connection with the transaction, the parties discovered that Surway had never received the \$68,792.42 cure payment. Upon further investigation, it was discovered that Furr’s had mistakenly sent the payment to Sunway.

G. The Trustee undertook to correct the error. The Trustee was successful in obtaining Sunway’s agreement to repay the \$68,792.42 (the “Returned Payment”).

H. Since Safeway paid the unpaid taxes at closing of its purchase from Surway, Safeway is subrogated to the rights of Surway or otherwise entitled to be paid the Returned Payment.

I. By the Motion, the Trustee seeks authority to pay the Returned Payment to Safeway. The Trustee believes that such payment is necessary and appropriate to correct the mistake. If the mistake had not been made, Safeway or its predecessor in interest would have received the funds. Payment of the Returned Payment to Safeway will also avoid any administrative or post-petition setoff claims that Safeway might have otherwise asserted.

J. In a related matter, the Trustee seeks Court authority to sell to Sunway a certain remainder interest in a parcel of real property in Albuquerque, New Mexico. The purchase price of \$15,000 is fair and reasonable, and represents the fair market value of the

remainder interest.

K. The proposed sale of the remainder interest to Sunway, as well as Sunway's agreement to return the Returned Payment, are set forth in the letter agreement attached to the Motion as Exhibit A (the "Letter Agreement").

L. On March 7, 2003, notice of the Motion (doc. #2034) (the "Notice") was mailed by first class United States mail, postage prepaid, to all persons on the limited mailing matrix maintained in the bankruptcy case, a copy of which was attached to the original of the Notice filed with the Clerk of the Bankruptcy Court, as shown by the certificate of service on the Notice filed with the Court;

M. The Notice provided for a deadline to object to the Motion of March 30, 2003, which was 20 days after the date of mailing of the Notice, plus three days for mailing, for a total of 23 days;

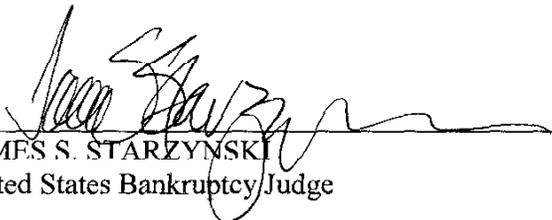
N. The Notice was sufficient and appropriate in the particular circumstances;

O. The deadline to object to the Motion has expired, and no objections to the Motion were filed;

P. The requirements of the Bankruptcy Code and Rules have been satisfied with respect to the relief granted by this Order;

Q. Entry of this Order, without further notice or hearing, is appropriate.

THE COURT THEREFORE ORDERS that the Motion is approved. As set forth in the Letter Agreement, Sunway shall pay the Returned Payment to the Trustee, who shall then pay it over to Safeway. As further set forth in the Letter Agreement, the Trustee may sell the subject remainder interest to Sunway for \$15,000, pursuant to the terms of the Letter Agreement.



JAMES S. STARZYNSKI
United States Bankruptcy Judge

Approved:

JACOBVITZ, THUMA & WALKER, P.C.

By: 

David T. Thuma

500 Marquette N.W., Suite 650
Albuquerque, NM 87102
(505) 766-9272
(505) 766-9287 (facsimile)

Attorneys for the Trustee

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

APR 15 2003

Mary B. Anderson