

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,

Case No. 7-01-10779-SA

Chapter 7

Debtor.

**ORDER RESULTING FROM THIRD INTERIM FEE
APPLICATION OF JACOBVITZ, THUMA & WALKER, P.C.,
ATTORNEYS FOR THE CHAPTER 7 TRUSTEE**

This matter came before the Court upon the Third Interim Fee Application of Jacobvitz, Thuma & Walker, P.C., Attorneys for the Chapter 7 Trustee, filed August 26, 2004 (the "Third Interim Fee Application"). The Court, having reviewed the record and the Third Interim Fee Application, and being sufficiently advised, FINDS:

A. For the period December 19, 2001 through June 30, 2002, by an order entered September 9, 2002 (Docket No. 1832), the Court approved compensation for Jacobvitz, Thuma & Walker, P.C. ("JTW") in the amount of \$164,758.03, consisting of \$152,579.51 for professional fees and gross receipts tax thereon and \$12,178.52 for reimbursable costs and expenses fees and gross receipts tax thereon. For the period July 1, 2002 through February 28, 2003, by an order entered May 16, 2003 (Docket No. 2091), the Court approved compensation for JTW in the amount of \$309,696.30, consisting of \$261,698.00 for professional fees, \$31,891.43

for reimbursable costs and expenses, and \$16,106.87 for gross receipts tax.

B. By its Third Interim Fee Application, filed August 26, 2004, JTW sought approval of compensation for the period March 1, 2003 through July 31, 2004. On August 27, 2004, notice (the "Notice") of the Third Interim Fee Application, specifying a period of twenty (20) days (plus 3 days as a result of service of the Notice by mail, for a total of 23 days) to object thereto, was served, in accordance with the Bankruptcy Code and Bankruptcy Rules 2002(a)(6) and 9006(f), by first class United States mail, postage prepaid, on all persons listed on the official limited mailing list maintained by the Clerk of the Bankruptcy Court in connection with this chapter 7 case;

C. The Notice was sufficient in the particular circumstances;

D. The objection deadline specified in the Notice expired on September 20, 2004, with no objections to the Third Interim Fee Application having been filed;

E. The Third Interim Fee Application complies with the requirements of Bankruptcy Rule 2016 and the local rules;

F. By an order filed July 25, 2002, the Court approved a settlement (the "Settlement") between the Trustee, on the one hand, and Heller Financial, Inc., Bank of America, N.A., Fleet Capital Corporation and Metropolitan Life Insurance Company (together the "Lenders"), on the other. JTW represents that it is informed and believes that the compensation for which JTW seeks approval under the Third Interim Fee Application includes \$102,414.80 of fees, plus gross receipts tax thereon and certain costs and tax thereon, that, under the Settlement, will be or have been paid as a reduction from the Lender's share of the proceeds of the Trustee's collection of assets, which fees consist of (i) \$29,816.10 for legal services relating to the sale of land and equipment; (ii) \$5,472 for legal services relating to maintaining and selling New Mexico liquor licenses; (iii) \$6,403.00 for legal services relating to disgorgement litigation pertaining to liquor licenses; (iv) \$60,230.70 for legal services relating to the prepaid, accounts receivable and the Newsom life insurance claim; and (v) \$493.00 for legal services relating to finalizing the El Paso Warehouse sale. Further, JTW represents that it is informed and believes that, although a portion of the compensation for which JTW seeks approval under the Third

Interim Fee Application for legal services relating to prosecution of avoidance actions has been paid by the Trustee as a reduction from avoidance action proceeds otherwise then payable to the Lenders, under the Settlement the estate ultimately will bear the entire amount of approved avoidance action collection costs because the estate has collected more avoidance action proceeds, net of avoidance action collection costs and certain other amounts, than needed to pay in full the chapter 11 loan from the Lenders secured by avoidance actions.

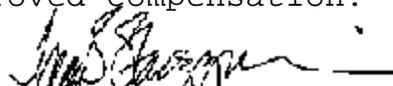
G. Although the time sheets are replete with "lumping" (eg, entry on 10/21/2003 by TDW for attending FPTC and preparing order arising out of that, billed at three-tenths of an hour with no breakdown between the two tasks), given that no one objected, the relatively low rates being charged the estate, the efficiency with which various tasks have been accomplished (eg, id.; entry on 6/6/2003 by DTT for one-tenth of an hour reviewing correspondence from attorney S. Lazear and responding to same -- some lawyers would bill the former out at at least four-tenths or five-tenths of an hour and the latter at two-tenths of an hour), the Court would have approvee the application even if someone did object to the lumping. In future billing (that

is, starting with the date of the entry of this order), the time keepers shall start making either separate entries for each task, or put in parentheses after each task listed the number of tenths of an hour that the particular task took.

H. The compensation sought in the Third Interim Fee Application is reasonable compensation for actual and necessary services that benefitted the estate, and should be allowed; and

I. Entry of this order is appropriate under Bankruptcy Code §§330(a), 331, 503(b)(2) and 507(a)(1).

IT IS, THEREFORE, ORDERED that for the fee application period specified in Third Interim Fee Application (March 1, 2003 through July 31, 2004), JTW is allowed, as a priority, administrative expense under Bankruptcy Code §§503(b)(2) and 507(a)(1), compensation in the amount of \$636,475.97, consisting of \$553,234.00 for professional fees, \$50,438.73 for reimbursable costs and expenses, and \$32,803.24 for gross receipts tax, which compensation is approved. The Chapter 7 Trustee is authorized to pay to JTW the unpaid balance of the approved compensation.



THE HONORABLE JAMES S. STARZYNSKI
UNITED STATES BANKRUPTCY JUDGE

**THIS ORDER CONTAINS MODIFICATIONS TO THE ORIGINAL ORDER
SUBMITTED BY E-MAIL.**

Submitted by:
JACOBVITZ, THUMA & WALKER, P.C.

By/submitted by e-mail

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APPROVED:

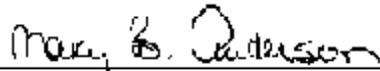
MAY E. MAY

U.S. Trustee

By: Approved by telephone 9-23-04

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I hereby certify that on October 6, 2004, a true and correct copy of the foregoing was electronically transmitted, faxed, delivered, or mailed to the listed counsel and/or parties.


Mary B. Anderson
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