

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' OBJECTION TO
APPLICATION FOR RETENTION OF CHANIN CAPITAL PARTNERS. LLC**

The United States Trustee for the District of New Mexico hereby objects to the Application by the Unsecured Creditors' Committee for Order Authorizing Employment of Chanin Capital Partners, LLC (Application), and as her reasons therefore states the following:

1. As stated by the court in *In re Drexel Burnham Lambert Group, Inc.*, 133 B.R. 13 (Bankr.S.D.N.Y.1991), employment applications submitted by an investment banker/adviser, should contain the following information:

A. The scope and complexity of the assignment, its anticipated duration, expected results, and required resources.

B. A description of the extent to which highly specialized skills may be needed and the extent to which such applicant has them or may be able to obtain them.

C. A statement of the projected salaries of professionals employed by the applicant, billing rate and prevailing fees for comparable services,

D. Current retentions in bankruptcy and any estimated lost opportunity costs due to time exigencies of the employment at issue,

E. A copy of the retention agreement.

F. A description by the debtor-in-possession of the process by which the investment banker/financial adviser was selected

In re Drexel Burnham Lambert Group, Inc. 133 B.R. at 27.

2. With the exception of the copy of the retention agreement, the Application either does not address the above factors or does so only vaguely.

3. The Application requests authorization for employment under 11 U.S.C. §328 (a) which would fix the terms of compensation absent a subsequent showing that they were improvidently approved, “in light of developments not capable of being anticipated....” In these circumstances, Chanin’s employment under this provision of the statute is unwarranted.

a. As an example of the unreasonableness of Chanin’s employment under §328 (a), the Application provides that the employment shall have a minimum term of four (4) months with advanced monthly payments of \$100,000. See Application at Exhibit A, ¶3 (a). Should the Debtor be successful in its pending motion to auction its assets on June 25th, the Chanin retention would still be in effect for approximately three months and presumably would entitle Chanin to a windfall payment of \$300,000 for its remaining term.

b. In addition to terms of compensation, approval of the employment pursuant to §328(a) will also entail approval of unreasonable terms of employment, including the indemnification provisions.

4. The Application does not establish the reasonableness of the fees requested therein, and all fees requested by Chanin should be subject to approval by the Court pursuant to the reasonableness requirements of 11 U.S.C. §§330 & 331.

a. The Application provides for a “restructuring transaction fee” of one percent (1%) of enterprise value for any sale in excess of \$160,000,000. This is apparently without regard to Chanin’s role or contribution to such an outcome.

b. The Application provides for a monthly fee of \$100,000 with no specification as to the work to be performed by Chanin on a monthly basis.

5. The Application includes services to be rendered by Chanin which appear to be duplicative of services rendered by Deloitte & Touche. Further, the services also appear to be duplicative of those proposed for the Debtor’s investment banker, Peter J. Solomon Co., Ltd.

6. Although the affidavit of Randall L. Lambert indicates that Chanin has no current connections with the Debtor and any significant parties in interest and their professionals, the Affidavit states that Chanin may in the future represent creditors and other parties in interests. See Affidavit of Randall L. Lambert at ¶s 5,6, 7. However, the Application fails to state whether Chanin will periodically review its connections to supplement its disclosures.

7. The Letter Agreement attached to the Application provides that the Debtor will reimburse Chanin for out-of-pocket expenses. See Letter Agreement at ¶3 (c). To the extent that this provision authorizes Chanin to retain legal counsel and obtain payment therefor without Court authorization and approval, objection is made thereto.

8. The Debtor may not terminate the agreement with Chanin within the first four months of Chanin’s employment. Such provisions should be subject to the issuance of a Court order terminating Chanin’s employment. Further, the amount of any fees due upon termination should be subject to Court approval, after notice and hearing.

9. The Letter Agreement provides that it shall be governed by the “laws of the State of New York” and requires arbitration of any disputes. See Letter Agreement at ¶8. To the extent

that this conflicts with the provisions of federal bankruptcy law and impinges on Bankruptcy Court jurisdiction, objection is made thereto.

10. The indemnification provisions of the letter agreement are over broad, premature, unreasonable, and inconsistent with the Debtor's responsibilities to act as a fiduciary for the estate and creditors thereof. *See, e.g. Realty Trust*, 123 B.R. at 630-31; *In re Drexel Burnham Lambert Group*, 133 B.R. 13, 27 (Bankr. S.D.N.Y. 1991). The United States Trustee believes that the sweeping indemnification agreement that Chanin seeks is entirely inappropriate.

11. The United States Trustee respectfully incorporates the legal arguments made in her brief filed in opposition to the retention of Peter J. Solomon Co., Ltd.

Respectfully submitted,

BRENDA MOODY WHINERY
United States Trustee

Filed electronically 6/7 /01
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The undersigned certifies that a true and accurate copy of the foregoing was mailed to the below listed counsel this 7th day of June, 2001.

Filed electronically 6/7/01
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