

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

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U.S. BANKRUPTCY COURT
ALBUQUERQUE, N.M.

In re:

FURR'S SUPERMARKETS, INC.

No. 11-01-10779-SA

Debtor.

**OBJECTION TO ADMINISTRATIVE ORDER REGARDING
PAYMENT OF PROFESSIONAL FEES AND EXPENSES**

Heller Financial, Inc., Agent, on behalf of itself, Metropolitan Life Insurance Company, Fleet Capital Corporation and Bank of America, N.A. (collectively "Lenders") objects to the Official Unsecured Creditors' Committee's Application for Entry of Administrative Order Regarding Payment of Interim Professional Fees and Expenses ("Professional Fees Motion") and grounds therefore state as follows:

1. On March 14, 2001, the United States District Court for the District of New Mexico entered its Final Order (1) Authorizing Debtor To Obtain Secured Financing, (2) Granting Adequate Protection and (3) Granting Other Relief ("DIP Financing Order"). Pursuant thereto, the Lenders are granted a security interest in all assets of the Debtor in this proceeding other than the proceeds of preference and fraudulent conveyance actions. Pursuant to Section 3 thereof, the Debtor is prohibited from using any proceeds of the collateral of the Lenders for the payment of professional fees and disbursements in connection with the assertion of any claims or causes of action against Lenders.

2. On May 23, 2001, the Unsecured Creditors' Committee ("UCC") filed an adversary proceeding against the Lenders asserting claims or causes of action against Lenders and challenging liens or claims of Lenders for which pursuant to Section 3 of the DIP Financing Order the Debtor is prohibited from paying professional fees or expenses.

6

3. Pursuant to Section 2(b) of the DIP Financing Order, the Debtor is allowed to pay expenses only in accordance with the Budget, as defined therein. To the extent any invoice submitted to the Debtor violate the restrictions provided therein, the Debtor should not pay it.

4. The Professional Fees Motion seeks to require the Debtor to pay invoices submitted by attorneys or other professionals of the UCC even if the invoices include or may include charges incurred in pursuing claims against the Lenders or are otherwise in violation of the DIP Financing Order.

5. Granting the relief sought by the Professional Fees Motion could, in such a circumstance, order the Debtor to do that which it is prohibited to do pursuant to the terms of the DIP Financing Order.

6. Because the litigation for which the Debtor is prohibited from making payment is against the Lenders, there may be circumstances where the Debtor would be unaware that the charges for which professionals of the UCC seek immediate and uncontested payment might actually be charges incurred in litigation against the Lenders. The Lenders (whose rights would be violated by such a payment) should be entitled to review any statements of the professions prior to payment by the Debtor in order to avoid the Debtor being put in a position where it inadvertently violates the DIP Financing Order, violates the cash collateral rights of the Lenders and finds itself in contempt of this Court despite its best efforts to avoid doing so.

7. Any order regarding the payment of professional fees should require that any such invoices be submitted to the Lenders and an adequate time for review be given the

Lenders in order to determine whether the charges made are, in fact, appropriate charges for which the Debtor may make payment without being in contempt of court.

8. While the time limits specified in the Professional Fees Motion might be adequate to determine whether mathematical errors exist, such time limits are inadequate for a substantive review of the invoices in question. At least thirty days should be granted to the Lenders and the Debtor to ensure that an error is not made and to ensure that the Debtor is not, inadvertently, in contempt of Court and in violation of the DIP Financing Order, either of which could have serious adverse consequences to the Debtor and this bankruptcy estate.

9. Attached as Exhibit ("A") to the Professional Fees Motion is a proposed form of order. The proposed form of order seeks relief far beyond the relief sought in the Professional Fees Motion and should not be considered or approved until an appropriate motion is filed by the UCC requesting such relief. For example, the following provisions in the proposed order are outside the scope of the professional fees motion:

a. Paragraph 4, 9 and 11 all make reference to the blocking out of allegedly confidential matters. Nothing whatever is stated in the Professional Fees Motion with regard to confidential matters. Further, *given the prohibition on payment for fees incurred in actions against the Lenders as described above, such blocking out is inappropriate. The Lenders are entitled to be sure their rights are not being violated.*

b. Paragraph 6 provides that the rates to be charged are to be the customary rates of the professional or the rates approved by the Court "as may be amended from time to time in the ordinary course of the

Professional's practice." The UCC has consistently opposed such provision in the applications of professionals for the Debtor, and the Court has consistently ruled that such provisions are inappropriate. If such a provision is contained in the Professional Fees Motion, the Court should deny such relief by reasons of judicial estoppel as a result of the consistent objections of the UCC thereto in the retention applications of professionals for the Debtor and for the reasons for which its prior rulings refused this provision.

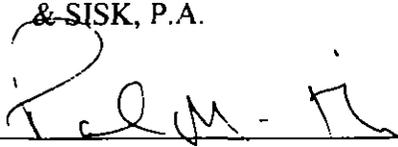
c. The proposed form of order limits review of the invoices to Mr. Mortensen. It is unclear why Mr. Mortensen is singled out, but in any event, if he is the appropriate person to order to undertake this task, such relief should have been sought in the Professional Fees Motion. However, the UCC has not qualified Mr. Mortensen as an expert in determining whether professional fees were incurred in pursuing the action against the Lenders.

d. The proposed form of order describes in some detail in paragraphs 9, 10 and 11 a procedure for four month applications for approval of fees and expenses. Such relief is not contained the Professional Fees Motion. If the UCC contends such is already required, the inclusion in this Order is duplicative. In any event, the Court should not order such relief absent a *specific request therefore*.

WHEREFORE, Heller Financial, Inc., agent, on behalf of itself, Metropolitan Life Insurance Company, Fleet Capital Corporation and Bank of America, N.A., prays that the

Official Unsecured Creditors' Committee's Application for Entry of Administrative
Order Regarding Payment of Professional Fees and Expenses be denied.

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

By: 

Paul M. Fish

Attorneys for Heller Financial, Inc., Bank of
America, N.A., Metropolitan Life Insurance
Company and Fleet Capital Corporation
Post Office Box 2168
Bank of America Centre, Suite 1000
500 Fourth Street, N.W.
Albuquerque, New Mexico 87103-2168
Telephone: (505) 848-1800

and

David S. Heller
LATHAM & WATKINS
Sears Tower, Suite 5800
Chicago, IL 60606
(312)876-7700
(312)993-9767

WE HEREBY CERTIFY that a true
and correct copy of the fore-
going pleading was mailed
this 2nd day of June, 2001 to the
following:

William F. Davis
201 Broadway Blvd. SE
Albuquerque, NM 87102

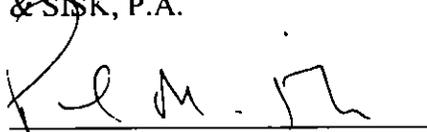
Ron E. Andazola
Assistant U.S. Trustee
421 Gold Ave. SW, Room 112
Albuquerque, NM 87102

Robert H. Jacobvitz
Jacobvitz, Thuma & Walker
500 Marquette NW < Suite 650
Albuquerque, NM 87102

Richard Levin
Skadden, Arps, Slate, Meagher & Flom, LLP
300 S. Grand Ave., Suite 3400
Los Angeles, CA 90071-3144

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

By:



Paul M. Fish

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