

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 INDEPENDENT CONTRACTOR AGREEMENT WITH
CATHY DAVIS**

This matter came before the Court upon the Chapter 7 Trustee's Motion to Approve Independent Contractor Agreement with Cathy Davis, filed February 8, 2002 (the "Motion"). By the Motion the Trustee seeks Court approval to enter into an independent contractor agreement with Ms. Cathy Davis ("Davis") to perform certain work in connection with the termination of the debtor Furr's Supermarkets, Inc.'s (the "Debtor's") pension plan and 401(k) plan.

The Court FINDS:

- A. On February 8, 2001, the Debtor commenced this bankruptcy case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.
- B. On December 19, 2001, the Debtor converted the case to a Chapter 7 case. The Trustee was appointed as the Chapter 7 trustee on the same day.
- C. Before it ceased operations and terminated all of its employees, the Debtor maintained the Furr's Supermarkets, Inc. Pension Plan (the "Pension Plan") and the Furr's Supermarkets, Inc. 401(k) plan (the "401(k) plan").

D. Since the Debtor has ceased operations permanently, the Pension Plan and 401(k) need to be terminated in an orderly manner, and the funds in the plans distributed in accordance with law.

E. Davis was the Debtor's employee in charge of administering the Pension Plan and the 401(k). It would be more efficient for her to assist in the termination of the Pension Plan and the 401(k) than anyone else.

F. Davis has agreed to work for the estate in terminating the Pension Plan and the 401(k) in accordance with the independent contractor agreement attached hereto as Exhibit A (the "Agreement").

G. Approval of the Agreement as modified below is in the best interest of the estate.

H. Davis is not a "professional person" within the meaning of 11 U.S.C. § 327 and, prior to the conversion of this matter to a Chapter 7 proceeding, performed the requested services as an employee for the Debtor with the benefit of an indemnification provision, a copy of which is attached hereto as Exhibit B.

I. No further notice of the Motion or of this order is necessary in the particular circumstances, prior to entry of this order;

J. The Motion should be approved with the modifications set forth below; and

K. Entry of this order is appropriate in the circumstances set forth in the Motion.

IT IS, THEREFORE, ORDERED:

1. The Trustee may enter into the Agreement.

2. The Trustee is authorized to pay Davis in accordance with the Agreement without further Court order.

3. Paragraph 10 of the Agreement shall be void.

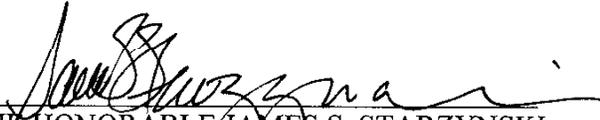
4. With regard to services performed in connection with the pension plan, Davis shall be deemed to be an employee for the purposes of paragraph 10.9 of the Pension Plan document (Indemnity), attached hereto as Exhibit B. To the extent allowable by applicable law, any amounts required to be paid in connection with any indemnity of Davis under this paragraph shall be paid from the Pension Plan rather than the estate assets generally.

5. With regard to services performed in connection with the 401 (k) plan, the provisions of paragraph 10.9 of Exhibit B, shall likewise be deemed to be applicable to Davis for purposes of indemnification. To the extent allowed by applicable law, any amounts required to be paid in connection with an indemnity of Davis under this paragraph shall be paid from the 401(k) plan rather than the estate assets generally.

6. In the event of a claim asserted against Davis that comes within paragraph 10.9 of the Pension Plan document, the Trustee shall exercise the rights of the board of directors, subject to Court approval.

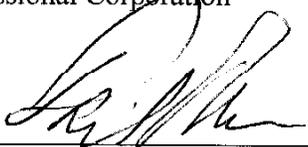
7. The Trustee shall use commercially reasonable efforts to obtain an errors and omissions insurance policy for all work performed by Davis in connection with the independent contractor agreement. If the Trustee in her reasonable business judgment determines to obtain such a policy, subject to Court approval, then to the extent allowed by law, the insurance premium shall be paid pro rata from the Pension Plan and 401(k) Plan according to the percentage of work performed for each.

8. This Order is being entered based on the particular circumstances set forth in the Motion and shall have no precedential effect whatsoever with regard to requests for approval of indemnification provisions by professionals in this or other matters.


THE HONORABLE JAMES S. STARZYNSKI
UNITED STATES BANKRUPTCY JUDGE

Submitted by:

JACOBVITZ, THUMA & WALKER,
a Professional Corporation

By: 
Robert H. Jacobvitz
David T. Thuma
500 Marquette N.W., Suite 650
Albuquerque, N.M. 87102
(505) 766-9272
(505) 722-9287 (fax)
Attorneys for the Debtor in Possession

APPROVED:

BRENDA MOODY WHINERY
United States 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:

MAR 22 2002

By: approved 3/15/02
Ronald E. Andazola
Leonard Martinez Metzgar
P.O. Box 608
Albuquerque, New Mexico 87103
(505) 248-6544

Mary B. Anderson

INDEPENDENT CONTRACTOR AGREEMENT

This Independent Contractor Agreement ("Agreement") is entered into this ____ day of February, 2002, by and between the Chapter 7 estate of Furr's Supermarkets, Inc., acting through its trustee Yvette J. Gonzales, (the "Estate") and Cathy Davis, an individual residing in Albuquerque, New Mexico ("Davis").

RECITALS

WHEREAS, the Estate desires to retain Davis to render independent contractor services to the Estate as set forth herein; and

WHEREAS, Davis is willing to render the independent contractor services in accordance with the terms and conditions set forth herein;

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants and promises contained in this Agreement, do hereby agree as follows:

AGREEMENT

1. Services to be Performed. The Estate hereby retains Davis to render the following independent contractor services:

a. Furr's Supermarkets Inc. Pension Plan. Davis shall assist lawyers, actuaries, and employee benefits consultants for the Estate to terminate the Furr's Supermarkets, Inc. Pension Plan (the "Pension Plan") in a standard termination. Davis's duties shall include, without limitation: (1) providing and reviewing data so that the Notice of Intent to Terminate and Notice of Plan Benefits can be issued to participants, PBGC Forms 500 and 501 can be filed with the PBGC, an IRS filing and complete distribution of assets can be made, and a final IRS Form 5500 can be filed; (2) answering questions raised by the PBGC or during the annuity bid process; and (3) performing other tasks required by plan administration before the complete distribution of assets; and

b. Furr's Supermarkets, Inc. 401(k). Assist lawyers and employee benefits consultants for the Estate to complete the final distribution of assets of the Furr's Supermarkets, Inc. 401(k) Plan (the "401(k)"), by performing all required plan administration tasks. Davis' duties shall not include, however, performing any work in connection with her own funds in the 401(k), all of which work shall be done by the Trustee or some other third party.

2. Compensation. For the services to be rendered by Davis to the Estate under this Agreement, Davis shall receive the following compensation:

a. For the Pension Plan Work. \$33,000 plus applicable gross receipts tax, paid at the rate \$5,500 per month plus gross receipts tax for six months, with the first payment being made on February 15, 2002 and the last payment being made on August 15, 2002. All funds shall be paid from the Pension Plan assets. No amounts shall be

EXHIBIT

 A

withheld for federal or state income taxes, social security taxes, unemployment taxes, or any other withholding taxes. All such withholding taxes shall be paid by Davis as an independent contractor.

b. For the 401(k) Work. \$3,000 plus applicable gross receipts tax, paid at the rate of \$500 per month plus gross receipts tax for six months, with the first payment being made on February 15, 2002 and the last payment being made on August 15, 2002. All funds shall be paid from the Estate funds. No amounts shall be withheld for federal or state income taxes, social security taxes, unemployment taxes, or any other withholding taxes. All such withholding taxes shall be paid by Davis as an independent contractor.

c. Other. Davis will be reimbursed up to \$1000 for actual costs incurred purchasing and using a cellular telephone during the term of this Agreement. 90% of the amount reimbursed shall be paid from the Pension Plan assets, and 10% shall be paid from the estate.

d. Costs. Davis will be reimbursed for all out-of-pocket costs incurred in performing her duties hereunder, such as photocopies, fax costs, and similar matters. Davis shall keep receipts for all costs, and shall submit monthly reimbursement requests to the Estate. All costs incurred in connection with the Pension Plan shall be paid from Pension Plan assets, while all costs incurred in connection with the 401(k) shall be paid by the estate. Davis shall obtain pre-approval for all large or unusual costs before incurring them.

3. Term. This Agreement shall commence February 1, 2002, and terminate July 31, 2002.

4. Supervision; Records. Davis shall perform her services hereunder without immediate supervision. Davis's work shall, however, be subject to final approval of the Trustee, acting on behalf of the Estate. Davis will keep records of the time she spends each day on her duties performed hereunder, and shall submit the records to the Estate upon the Estate's request.

5. Time Devoted to Consulting Work. For the first three months of her consulting work, Davis shall work at least 40 hours per week on her duties under this Agreement. For the last three months of her consulting work, Davis shall work at least 20 hours per week on her duties under this Agreement.

6. Efforts to Complete Work Within the Consulting Period. Davis will make reasonable commercial efforts to complete all the work for the Pension Plan and the 401(k) for which the Estate needs her services, within the term of this Agreement.

7. Non-Disclosure of Confidential Information. Davis acknowledges she may obtain confidential information of the Estate in the performance of her duties. The confidential information of the Estate could include, without limitation, information about the Debtor's former employees and their finances (together, the "Confidential Information"). As a material inducement to the Estate to enter into this Agreement and to

~~pay to Davis the compensation stated herein. Davis hereby agrees and covenants that she will not directly or indirectly divulge, communicate, use to the detriment of the Estate or the Debtor's former employees, use for the benefit of any other person or employer, or misuse in any way, any Confidential Information.~~

8. Assignment. Davis acknowledges that her services are unique and personal. Accordingly, Davis may not assign her rights or delegate her duties or obligations under this Agreement. The Estate's rights and obligations under this Agreement shall inure to the benefit of and shall be binding upon the Estate's successors and assigns.

9. Nature of Relationship. Davis and the Estate acknowledge and agree that their relationship is one of independently contracting parties, and that the Estate is not Davis's employer.

10. Indemnity. The Estate shall indemnify and hold Davis harmless from any and all claims, actions, and causes of action, of any kind or nature, brought by any person regarding or in connection with the Pension Plan or the 401(k) or her work done in connection with this Agreement, except for any claims, actions, or causes of action caused by her gross negligence or willful misconduct. This indemnity shall include all costs of defense, including reasonable attorney fees.

11. Miscellaneous. This Agreement contains the entire understanding of the parties. It may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension, or discharge is sought. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions. This Agreement shall in all respects be subject to, and governed by, the laws of the State of New Mexico. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. This Agreement may be executed by facsimile. This Agreement is not effective until approved by the United States Bankruptcy Court for the District of New Mexico.

IN WITNESS WHEREOF the parties have duly executed this Agreement on the date and year first written above.

The Estate:

Davis:

Yvette J. Gonzales, as Chapter 7
Trustee for Furr's Supermarkets, Inc.

Cathy Davis

10.9 Indemnity: The Corporation hereby agrees to indemnify each member of the Board of Directors of the Corporation and of the Committee, the Plan Administrator and each Employee who is allocated fiduciary responsibility hereunder against any and all claims, loss, damages, expenses, including counsel fees to the extent approved by the Board of Directors of the Corporation or otherwise provided by law, and liability, including any amounts paid in settlement, with the approval of the Board of Directors of the Corporation, arising from any action or failure to act relating to their fiduciary positions under the Plan and the Trust, except when the same is judicially determined to be due to the fraud, recklessness, lack of good faith or willful or intentional misconduct of such person. ~~The Corporation may purchase fiduciary liability insurance to satisfy its~~

claims over and above the coverage provided under any such fiduciary liability insurance. The Corporation shall be entitled to reimbursement by other Employers for their proportionate share of any expenses incurred by the Corporation under this Section 10.9, based on each Employer's proportionate share of the Trust Fund at the time the expense is incurred.

EXHIBIT
B
