

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,

Case No. 11-01-10779-SA
Chapter 11

Debtor.

**ORDER APPROVING EMPLOYMENT OF JACOBVITZ,
THUMA & WALKER, P.C. AS COUNSEL FOR THE DEBTOR**

This matter came before the Court upon the Debtors' Motion to Employ Jacobvitz, Thuma & Walker, P.C. as Counsel for the Debtor, filed February 8, 2001 (the "Retention Application") and the Motion for Order Authorizing Payment of Interim Compensation and Reimbursement of Expenses of Debtor's Professionals, filed February 20, 2001 (the "Interim Compensation Motion"). The Retention Application and Interim Compensation Motion are together called the "Motions." By the Motions, the Debtor in Possession, Furr's Supermarkets, Inc. (the "Debtor"), seeks (i) Bankruptcy Court approval of its employment of Jacobvitz, Thuma & Walker, P.C. ("JTW"), pursuant to Bankruptcy Code §327(a), as counsel for the Debtor in this case, to represent the Debtor in all matters and proceedings in which the Debtor requires bankruptcy counsel, and in such other matters as the Debtor may request of JTW and JTW may agree to perform, and (ii) authority to make interim payment of compensation to JTW.

The Court FINDS:

A. The Official Committee of Unsecured Creditors of Furr's Supermarkets, Inc. appointed pursuant to Bankruptcy Code §1102 (the "Committee"), based upon the Amended Attorney Disclosure of Jacobvitz, Thuma & Walker, P.C. Pursuant to

Bankruptcy Rules 2014 and 2016 (the “Attorney Disclosure”), asserts that there may be a preferential transfer claim against JTW in the amount of \$37,795.55 resulting from pre-petition payments by Furr’s Supermarkets, Inc. to JTW, and asserts that the existence of such a claim serves as a basis to deny approval of the Debtor’s employment of JTW;

B. The Committee and JTW have agreed, subject to the approval of the Court and the Court’s approval of Debtor’s employment of JTW (both of which conditions will be satisfied by entry of this order), that: (i) JTW will give the Debtor a credit as set forth in paragraph 2 below against post-petition compensation owed by the Debtor to JTW; (ii) such credit will resolve any preferential transfer claims against JTW resulting from pre-petition payments disclosed in the Attorney Disclosure; (iii) JTW does not admit that if the credit had not been given there would have been a valid preferential transfer claim against it; and (iv) JTW will waive its pre-petition claim against the Debtor that will result from the credit to be given against post-petition compensation.

C. On February 8, 2001, JTW filed its attorney disclosure pursuant to Bankruptcy Rules 2014 and 2016, which it amended by filing the Attorney Disclosure;

D. On February 17, 2001, Berger & Associates (“Berger”) gave notice of the Motions to all persons on the official mailing matrix maintained for this chapter 11 case, as shown by the Proof of Service filed March 2, 2001 (the “Notice”);

E. The Notice was given in accordance with the Order Prescribing Notice on Debtor’s Applications to Retain Skadden, Arps, Slate, Meagher & Flom LLP, Jacobvitz, Thuma & Walker, and Pricewaterhouse Coopers LLP, filed February 15, 2001;

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

G. The Notice specified a deadline of twenty days, plus three days based on service of the Notice by mail, for a total of twenty-three days, in which to file objections to the Motions;

H. The objection deadline expired on March 12, 2001, with no objections to the Motions having been filed;

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

J. JTW's employment as counsel for the Debtor, as set forth below, should be approved; and

K. Entry of this order is appropriate.

IT IS, THEREFORE, ORDERED:

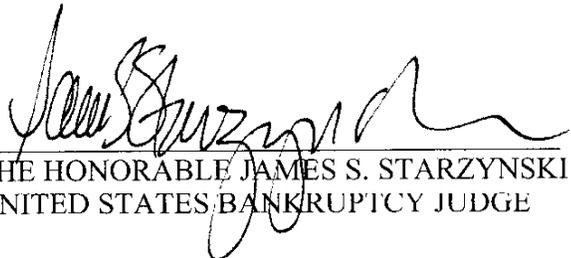
1. The Debtor's employment of JTW as its counsel, pursuant to Bankruptcy Code §327(a), is hereby approved effective as of February 8, 2001 (the "Petition Date").

2. JTW shall give Debtor a credit in the amount of \$37,795.55 (the "Credit") against compensation owed by the Debtor to JTW for services rendered on and after the Petition Date. The Credit shall be applied against the first bills rendered to the Debtor for such post-petition services.

3. After the Credit has been fully applied, the Debtor is authorized to pay JTW, upon receipt of JTW's billing statements and prior to the Court's determination of the allowability of JTW's compensation, up to and including 75% of fees, 100% of reimbursable costs, and 100% applicable gross receipts tax on fees and costs that are

paid. All fees, costs, and gross receipts tax paid shall be subject to ultimate approval of the Bankruptcy Court under Bankruptcy Code §§328, 330 and 331.

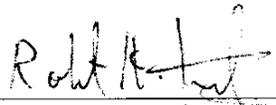
4. JTW shall file fee applications every ^{JTS} ~~120~~¹⁵⁰ days, approximately.



THE HONORABLE JAMES S. STARZYNSKI
UNITED STATES BANKRUPTCY JUDGE

Submitted by:

JACOBVITZ, THUMA & WALKER,
a Professional Corporation

By: 

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APPROVED:

DAVIS & PIERCE, P.C.

By: Approved by Telephone

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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 21 2001

Mary B. Anderson

BRENDA MOODY WHINERY
United States Trustee

By: Approved by telephone
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