

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW MEXICO**

**In re:**

**FURR'S SUPERMARKETS, INC.,**

**Debtor**

**Case No. 7-01-10779 SA**

**Chapter 7**

**Hearing Date: 3/13/02**

**Hearing Time: 9:00 a.m.**

**STIPULATED ORDER APPROVING MOTION TO EMPLOY ARTHUR  
ANDERSEN AND APPROVING [FIRST] FEE APPLICATION BY  
ARTHUR ANDERSEN, ACCOUNTANTS FOR THE DEBTORS FOR  
ALLOWANCE OF PAYMENT OF COMPENSATION AND COSTS FOR  
THE PERIOD MAY 24, 2001 THROUGH NOVEMBER 2, 2001**

The Court having considered Debtor's Motion to employ Arthur Andersen, L.L.P. ("Andersen") as Accountants and Tax Advisors for the Debtor (the "Motion to Employ"), and the objections filed thereto by the office of the United States Trustee (the "Motion to Employ Objections"); the Chapter 7 Trustee's Motion to Retain Certain Professionals Retained, or Sought to be Retained, by the Debtor in Possession (the "Motion to Retain"), and the United States Trustee's Comment on Motion to Retain ("Motion to Retain Objections"); and also having considered the Fee Application by Accountants for the Debtors, Furr's Supermarkets, Inc., for Allowance and Payment of Compensation (the "First Andersen Fee Application"), as well as the objections filed thereto by the Office of the United States Trustee and the Omnibus Objection to Professional's Application for Allowance for Compensation and Reimbursement of Expenses as it pertains to Andersen (the "Metropolitan Objections"); the Chapter 7 Trustee, the Office of the United States Trustee, Metropolitan Life Insurance Company and Andersen having resolved the matters

raised in the objections to the Motion to Employ, the Motion to Retain and the First Andersen Fee Application pursuant to the terms of this Stipulated Order; the Court finding notice of the Motion to Employ, the Motion to Retain, and the First Andersen Fee Application to be sufficient; the Court hereby APPROVES the Motion to Employ, the Motion to Retain as it applies to Andersen, and the First Andersen Fee Application as described herein; and FINDS and ORDERS that:

1. On February 8, 2001 (the "Petition Date") the Debtor filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code.
2. On May 24, 2001, the Debtor filed its Motion to Employ Arthur Andersen, LLP as Accountants and Tax Advisors for the Debtor pursuant to 11 USC Section 327(a) and Fed. R. Bank. P. 2014. Sufficient notice of this motion was served and given.
3. On November 13, 2001, Andersen filed its [First] Fee Application by Accountants for the Debtors, Furr's Supermarkets, Inc., for Allowance and Payment of Compensation. This Application was for work performed from May 17, 2001, through November 2, 2001. This Application sought approval of \$92,702 for fees and \$5,388.31 for gross receipts tax, for a total application of \$98,090.31. Of this amount, Andersen had been paid all but \$7,486.23, so that as of the date of the Fee Application and continuing to this date, Andersen has already been paid a total of \$90,604.08. Sufficient notice of this application was served and given.
4. On November 29, 2001, the United States Trustee filed its Objection to Fee Application by Accountants for the Debtors, Arthur Andersen, LLP.
5. On November 29, 2001, Metropolitan Life Insurance Company filed its

Objection to Professional's Application for Allowance for Compensation and



Reimbursement of Expenses. The Court has ruled orally that more specific objections are required.

6. On November 2, 2001, the United States Trustee filed its Objection to Debtor's Motion to Employ Arthur Andersen, LLP as accountants for the Debtor.

7. On December 19, 2001, the Court entered its Order of Conversion to Chapter 7, converting the Debtor's bankruptcy case to Chapter 7.

8. On December 19, 2001, the Office of the United States Trustee filed its Notice of Appointment and Designation of Required Bond, appointing Yvette Gonzales as Chapter 7 Trustee.

9. On January 11, 2002, the Chapter 7 Trustee filed her Motion to Retain Certain Professionals Retained, or Sought to be Retained, by the Debtor in Possession. By and through this Motion, the Chapter 7 Trustee adopted and sought to proceed with the employment of Andersen, along with other professionals. Sufficient notice of this motion was served and given.

10. On February 4, 2002, the United States Trustee filed its comment on Trustee's Position on Chapter 7 Trustee's Motion to Retain Certain Professionals Retained, or Sought to be Retained, by the Debtor in Possession. In this comment, the Trustee indicated its understanding that the Chapter 7 Trustee's Motion "preserve[s] all pending objections to the retention or compensation of professionals filed during the pendency of the Chapter 11 proceeding."

11. Andersen, the Office of the United States Trustee, and the Chapter 7 Trustee, in order to avoid the expenses and uncertainty of further hearings or trial, and in order to prevent the accrual of further administrative costs, have agreed to the following:

a. The First Fee Application will be reduced to the amount of \$81,182.52, such amount being for all work performed from May 24, 2001, through November 2, 2001.

b. The Chapter 7 Trustee requires the services of Andersen to perform future work with regard to benefit plan audits and related services. That work will be performed by Andersen at an hourly rate of \$160, plus New Mexico gross receipts tax.

c. Andersen has agreed to waive the provision contained in its engagement agreement that negligence must be proven by clear and convincing evidence.

It is therefore, ORDERED that the Motion to Employ Arthur Andersen and the Chapter 7 Trustee's Motion to Retain Certain Professionals Retained, or Sought to be Retained, by the Debtor in Possession, to the extent it applies to Andersen, is APPROVED; it is further

ORDERED that Andersen has an allowed Chapter 11 administrative expense ~~claim in this bankruptcy proceeding for professional fees and expenses pursuant to 11~~  
USC Sections 330(a) and 503(b)(1) in the amount of \$81,182.52; and it is further

ORDERED that the amount of \$9,421.56 which has already been received by Andersen but is presently allowed above, may be retained by Andersen and applied against all future work performed by Andersen on behalf of the Chapter 7 Trustee, upon approval of Andersen's fee application with regard to such work. Andersen's fee

application for future work shall include reference to this retainer of \$9,421.56 *and to any amounts already allowed (see Rule 2016(a)) and/or previously applied for. JES*

  
UNITED STATES BANKRUPTCY JUDGE

APPROVED BY:

ARTHUR ANDERSEN, LLP

By: 

James T. Reist

KREHBIEL, BANNERMAN & WILLIAMS, P.A.

6400 Uptown Blvd., NE, Suite 200W

Albuquerque, NM 87102

505-837-1900 (telephone)

505-837-1800 (facsimile)

CHAPTER 7 TRUSTEE

By: Approved telephonically 3/12/02

David Thuma

JACOBVITZ THUMA & WALKER, P.C.

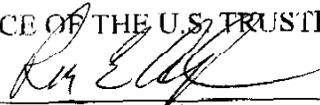
500 Marquette, N.W., Suite 650

Albuquerque, NM 87102

505-766-9272 (telephone)

505-766-9287 (facsimile)

OFFICE OF THE U.S. TRUSTEE

By: 

Ron E. Andazola

Asst. U.S. Trustee

421 Gold Ave., Room 112

Albuquerque, NM 87102

505-248-6549 (telephone)

505-248-6558 (facsimile)

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 13 2002

Mary B. Anderson

APPROVED AS TO FORM ONLY:

METROPOLITAN LIFE INSURANCE COMPANY

By: Approved by fax 3/12/02 <sup>REA</sup>

Jennic Deden Bohles

Attorneys for Metropolitan Life Insurance Company

400 Gold Ave., SW, Suite 400

P.O. Box 849

Albuquerque, NM 87103

505-243-9756 (telephone)

505-243-7262 (facsimile)