UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:	*	
	*	**CASE NUMBER 05-49330**
KIMPEL'S JEWELRY & GIFTS, INC.,	*	
	*	**CHAPTER 11**
	*	
Debtor.	*	**HONORABLE KAY WOODS**
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ORDER **CONCLUDING ORDER TO APPEAR AND SHOW CAUSE**
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On February 21, 2006, this Court issued Order for David J. Blasko and Hill, Barth & King to Appear and Show Cause ("Show Cause Order"). David J. Blasko and Hill, Barth & King ("HBK") were ordered to appear and show cause why they should not be sanctioned for filing a false affidavit with the Court. The Court held a hearing on the Show Cause Order on March 9, 2006.

The Court issued the Show Cause Order after it came to the Court's attention that HBK had to disqualify itself from continuing to work for Debtor Kimpel's Jewelry & Gifts, Inc. ("Kimpel's") after it belatedly became aware that HBK provided accounting services to Esteco, Inc. ("Esteco"), one of Kimpel's major creditors. Kimpel's filed for protection pursuant to Chapter 11 of the Bankruptcy Code on October 15, 2005 and sought to retain HBK as its accountant by motion filed November 17, 2005. Prior to filing the application to employ HBK, Kimpel's had filed Motion to Use Cash Collateral of Esteco, Inc., which clearly identified Esteco on the record as a significant creditor in the Kimpel's bankruptcy case.

At a hearing on February 10, 2006, Richard Zellers, counsel for Kimpel's, represented that Kimpel's had not filed the

operating reports that it was required to file because they had not been prepared by HBK. Mr. Zellers stated that he had recently been informed that HBK had a conflict of interest that prevented the firm from acting as Kimpel's accountants because HBK also represented Esteco. HBK had failed to disclose its connection with Esteco in the affidavit it filed regarding the application to employ HBK.

Mr. Blasko appeared at the March 9, 2006 hearing for himself and on behalf of HBK. Frederick Coombs, representing both Blasko and HBK at the hearing, acknowledged that HBK should have asked questions concerning Kimpel's creditors, and, after making such inquiries, HBK should have disclosed its connections with certain creditors. However, Mr. Coombs stated that HBK now had a heightened awareness of its obligations concerning disclosure and, as a consequence, it was going to review the affidavits it had filed in other cases pending before this Court to see if additional disclosure was warranted in any of those cases.

Mr. Zellers, on behalf of Kimpel's, stated that he had dealt with HBK for many years without problem and that HBK's failure to disclose its connection with Esteco was an isolated incident. Mr. Zellers further argued that HBK's failure to disclose had a "built-in" sanction because HBK would not be compensated for the work it had performed for Kimpel's.

Mr. Coombs stated that HBK would like to complete its review of the affidavits filed in the other pending cases and submit a report to the Court. The Court deferred ruling on the Show Cause Order until it could review the report from HBK.

On April 28, 2006, HBK filed Status Report of Hill, Barth & King, LLC Supplemental Due Diligence ("Status Report"). In the Status Report, HBK states that it re-examined twenty-four other open cases identified by the Office of the United States Trustee as cases in which HBK had been retained as accountant for either the debtor-in-possession or the trustee (each will be referred to as "DIP"). HBK represented that, after it checked its database of clients against the list of creditors and attorneys in each of those twenty-four cases, it determined that there was no situation in which HBK assisted any attorney or any client of HBK in prosecuting a claim adverse to the DIP. HBK further represented that the services it provided to any creditor or attorney in those twenty-four cases consisted only of routine accounting services, including preparation of tax returns. However, the re-examination caused HBK to file supplemental affidavits in fourteen of those twenty-four cases. (HBK's Status Report indicates that only thirteen supplemental affidavits were filed, but the docket reveals that there were actually fourteen such supplemental affidavits.)

Before ruling on the Show Cause Order, this Court reviewed each of the supplemental affidavits in the other cases for which HBK has been retained as accountant. Based upon the Status Report and the supplemental affidavits, this Court finds that HBK should have made inquiry at the time its employment was sought in each of those cases. Pursuant to 11 U.S.C. § 327, a DIP "with the court's approval, may employ one or more . . . accountants . . . that do not hold or represent an interest adverse to the estate, and that are

disinterested person[.]" 11 U.S.C. § 327(a). In order to determine if a court can approve the proposed retention of a professional, the professional must disclose its connections with creditors and other entities and/or persons related to the estate so that it is clear that the proposed professional is a "disinterested person." "Disinterested person" is defined in 11 U.S.C. § 101(14) as a "person that – (A) is not a creditor, an equity security holder, or an insider; . . . and (E) does not have an interest materially adverse to the interest of the estate . . . by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, . . . or for any other reason[.]" In order for the court to be able to determine if a professional, including an accounting firm, is a "disinterested person," such professional is required to submit and file a "verified statement" setting forth the professional's "connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee." FED. R. BANKR. P. 2014(a).

As a consequence, HBK was required to disclose its connections with Kimpel's creditors at the time the application of employment was filed. Because Esteco was a significant and visible creditor of Kimpel's, HBK should have been aware of its conflict of interest at or before the application to employ HBK was filed. This requirement of disclosure is applicable to each of the other twenty-four cases in which HBK has been retained as the DIP's accountant. In some of those other cases, HBK has received signif-

icant compensation for its services to the DIP; however, in other cases, there have been no fee applications submitted to date.

This Court is disturbed by the seemingly cavalier attitude HBK has displayed regarding its obligation to disclose its connections necessary to determine disinterestedness and the casual way in which HBK signed and submitted to the Court pro forma affidavits without performing due diligence. It appears, however, that HBK is now aware of its obligation of full disclosure and is attempting to correct past errors. The supplemental affidavits reveal several potential conflicts of interest about which the Court should have been informed at the time the retention applications were filed. Because HBK has represented that there was and is no real adversarial nature to any of these representations, but that such connections consist of routine accounting services only, this Court does not believe that a disqualifying conflict exists in any of the cases other than Kimpel's.

HBK's retention as the accountant for Kimpel's is hereby revoked *nunc pro tunc* as of the petition filing date (*i.e.*, October 15, 2005). As a consequence, HBK is not entitled to any compensation for any services it may have performed for Kimpel's subsequent to October 15, 2005. To the extent HBK may have received compensation from Kimpel's (without Court authorization) for any services subsequent to October 15, 2005, this Court orders HBK to disgorge any such compensation and repay such amount to Kimpel's.

HBK is admonished to pay closer attention to the affidavits it files with the Court in the future and, to the extent

not already done, HBK is ordered to make all required disclosures in all cases pending before this Court now and in the future.

IT IS SO ORDERED.

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HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE