

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

CUTTY'S, INC.,

Debtor.

CASE NUMBER 02-42988

HONORABLE KAY WOODS

ORDER CLARIFYING BENCH RULING
REGARDING FINAL COMPENSATION FOR
ATTORNEY FOR DEBTOR AND DEBTOR IN POSSESSION

This cause is before the Court on the Motion for Clarification of Ruling filed by Richard G. Zellers, Attorney for Debtor and Debtor in Possession ("Motion for Clarification"). The Motion for Clarification seeks clarification of this Court's ruling from the bench at a hearing on September 20, 2006 regarding the Final Application for Compensation for Attorneys for Debtor and Request for Authority to Pay Approved Fees ("Final Fee Application").

In the Final Fee Application, counsel for the Debtor and Debtor in Possession represented that, prior to the petition date, Debtor had given counsel a retainer of \$10,000.00, of which \$2,386.00 was applied to the payment of fees for services rendered pre-petition and \$830.00 was paid to the Clerk of the Bankruptcy Court as the Debtor's filing fee. Counsel represented that he was allowed and paid \$7,650.00 on his first fee application, pursuant to Order of this Court entered on December 18, 2002. Although the

December 18, 2002 Order is silent about whether the remainder of the retainer (in the amount of \$6,784.00) was to be applied in payment of the approved fees, this Court assumes that the retainer was applied to the fees approved in the first fee application because there was no mention of any remaining retainer amount in the Final Fee Application. The Final Fee Application further represented that counsel for Debtor and Debtor in Possession had filed second and third interim fee applications, which were approved for payment, in the amounts of \$3,186.00 and \$10,219.00, respectively, but that these amounts had not been paid.

The issue raised in the Motion for Clarification is whether the Court intended that the entire amount of compensation in the Final Fee Application, *i.e.*, \$33,814.00 be approved, but not paid pending a determination of whether the Trustee holds sufficient funds to pay all administrative expenses, or whether the amounts approved by prior orders of the Court were to be paid and only the remaining balance of \$20,409.00 be approved, but not paid pending that determination.

Pursuant to Order of this Court dated June 25, 2003, the Court approved and ordered payment of \$3,186.00 in connection with the second fee application. By Order dated December 10, 2003, \$10,219.09 was approved for payment in connection with the third fee application. At the September 20, hearing, the Court asked counsel for the Trustee why the previously approved fees had not been paid, as directed by prior Court orders. Counsel for Trustee

had no explanation.

This case was converted from a Chapter 11 case to a case under Chapter 7 on May 23, 2005. The June 25, 2003 and December 10, 2003 Orders approving compensation and authorizing payment were entered more than a year and a half prior to conversion of this case and at a time when there were funds to pay all administrative expenses. If these approved counsel fees had been timely paid pursuant to the prior Court orders, they would have been paid in full - not *pro rata*. Since there is no apparent reason for the failure to timely pay these approved attorney's fees, this Court did, indeed, intend for the compensation previously ordered to be paid in full and not *pro rata*. Only the fees incurred after the previously approved fee applications, in the amount of \$20,409.00, were approved, but not authorized for payment until the Trustee determines if there are sufficient funds to pay all administrative claims.

IT IS SO ORDERED.

Honorable Kay Woods
United States Bankruptcy Judge