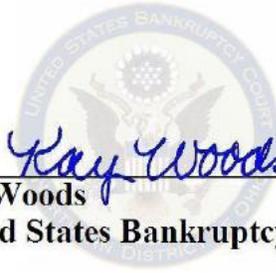


IT IS SO ORDERED.

Dated: March 26, 2013  
12:39:43 PM



*Kay Woods*  
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 Kay Woods  
 United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

IN RE:	*	
	*	
	*	CASE NUMBER 10-40143
	*	
M.E. SUPPLY CO.,	*	CHAPTER 11
	*	
Debtor.	*	HONORABLE KAY WOODS
	*	

\*\*\*\*\*  
 ORDER GRANTING, IN PART, SECOND AND FINAL APPLICATION  
 FOR FEES AND REIMBURSEMENT OF EXPENSES AS COUNSEL  
 FOR DEBTOR AND DEBTOR-IN-POSSESSION  
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This cause is before the Court on Second and Final Application for Fees and Reimbursement of Expenses as Counsel for Debtor and Debtor-in-Possession ("Final Fee Application") (Doc. # 192) filed by Joseph C. Lucci, Esq. ("Mr. Lucci") of Nadler Nadler & Burdman Co., L.P.A. ("Nadler Firm") on February 8, 2013. The Court held a hearing on the Final Fee Application on March 12, 2013 ("Fee Hearing"), at which appeared Mr. Lucci on behalf of the Nadler Firm and Robert J. Holmes ("Mr. Holmes"), President of the Debtor and Debtor-in-Possession, M.E. Supply Co. ("M.E. Supply").

M.E. Supply filed a petition pursuant to chapter 11 of Title 11 on January 18, 2010. Pursuant to Order (Doc. # 29), the Nadler Firm was appointed counsel for M.E. Supply, effective as of January 18, 2010. Pursuant to the Nadler Firm's first interim fee application (Doc. # 124), the Court approved compensation in the amount of \$42,392.50 and reimbursement of expenses in the amount of \$689.16 for the period January 18, 2010 through December 31, 2010. See Order Granting First Application for Interim Fees and Reimbursement of Expenses as Counsel for Debtor and Debtor-in-Possession (Doc. # 129).

At the Fee Hearing, Mr. Lucci represented that, as of November 1, 2012, M.E. Supply had paid all of its administrative expense claims. He requested authorization for M.E. Supply to (i) pay the fees requested in the Final Fee Application in the amount of \$53,418.50 for the period January 1, 2011 through October 31, 2012; and (ii) reimburse expenses in the amount of \$3,157.32 for this same period of time. The Court questioned one of the expenses for copying charges in the amount of \$734.40 because it was based on 20 cents per page when other copying charges were based on 10 cents per page. The Court indicated that the expenses should be reduced by \$367.20 to account for this discrepancy.

At the conclusion of Mr. Lucci's presentation, Mr. Holmes requested the opportunity to speak. He pointed out that the Second Amended Plan of Reorganization ("Second Amended Plan") (Doc. # 177), which had been filed on June 26, 2012, contained an estimate of

additional attorney fees in the range of \$25,000.00 to \$35,000.00. (Second Am. Plan at 24) ("Debtor's counsel anticipates additional fees will be in the approximate range of \$25,000.00 to \$35,000.00, all of which will be set forth in subsequent fee applications to be filed with the Bankruptcy Court.") Mr. Holmes noted that the requested fees were approximately 214% higher than the lower estimate for attorney fees in the Second Amended Plan. He further pointed out that (i) because the Second Amended Plan called for unsecured creditors to receive 50% of M.E. Supply's profits after payment of all administrative expenses, the higher attorney fees lowered the distribution to unsecured creditors; and (ii) the requested fees represent 105% of M.E. Supply's total profits from the prior year. Although Mr. Holmes acknowledged that Mr. Lucci did a good job in representing M.E. Supply, he stated that estimates have to have value and some degree of reliability.

After hearing Mr. Holmes, the Court questioned Mr. Lucci about the woefully inadequate estimate of anticipated attorney fees in the Second Amended Plan, noting that the vast majority of the fees requested in the Final Fee Application related to work performed prior to the time the Second Amended Plan was filed. Mr. Lucci acknowledged that a quick review of Exhibit A to the Final Fee Application showed fewer than 50 hours related to work performed subsequent to filing the Second Amended Plan.

The Final Fee Application requests compensation of \$53,418.50 for 247.9 hours of attorney time; 216.3 hours relate to work

performed on or prior to June 26, 2012, and 31.6 hours are for work performed subsequent to that time. The ratio of time expended pre and post filing of the Second Amended Plan is 87.25 to 12.75. In other words, 7/8 of the fees requested relate to work performed prior to filing the Second Amended Plan. As a consequence, the Nadler Firm should have known that it had already incurred approximately \$46,600.00 in fees for work performed prior to filing the Final Fee Application. Thus, the Nadler Firm knew or should have known that the estimate of \$25,000.00 to \$35,000.00 was woefully inadequate and not supported by the firm's own time records.

At the Fee Hearing, this Court noted that Mr. Holmes had made a sound point concerning the inadequate estimate of attorney fees as administrative expenses in the Second Amended Plan and took the matter under advisement. The Court permitted the parties fourteen days to submit an agreed order resolving the objection to the Final Fee Application. If the objection was not resolved, the Court would issue its own order on the Final Fee Application. On March 25, 2013, Mr. Lucci uploaded a proposed order for the Court to enter, which provided for: (i) payment of fees to the Nadler Firm in the amount of \$53,418.50 (as requested in the Final Fee Application); and (ii) the expense reimbursement to be reduced by \$367.20 to \$2,790.12. The proposed order bore the signatures of both Mr. Lucci and Mr. Holmes. Although the Court acknowledges that Mr. Holmes apparently no longer objects to the fees requested in the Final Fee

Application, this Court cannot enter the proposed order.

Estimates of future fees in a plan of reorganization, on which creditors are asked to vote, or in a disclosure statement, which is required to contain "adequate information," must be based on reasonable assumptions. In the instant case, counsel for M.E. Supply had access to its own time records and should have made at least a cursory review of the time already expended for work performed when the Nadler Firm made its estimate of anticipated future attorney fees. It is apparent that the Nadler Firm did not perform any due diligence in that regard. If it had done so, the Nadler Firm would have known that the upper estimate of \$35,000.00 for anticipated attorney fees had been exceeded prior to filing the Second Amended Plan.

Based on the Nadler Firm's lack of due diligence and the reasonable reliance that the creditors of M.E. Supply and M.E. Supply, itself, were entitled to place on the projected administrative expenses for attorney fees, this Court finds that it is inequitable to award the Nadler Firm the entire amount requested in the Final Fee Application. The requested fees of \$53,418.50 bear no rational relationship to and cannot be reconciled with the estimated fees in the Second Amended Plan. As a consequence, the Court hereby approves attorney fees for the period January 1, 2012 through October 31, 2012 in the amount of \$35,000.00, which is the upper limit of the range of estimated, anticipated fees set forth in the Second Amended Plan.

It is therefore ordered that M.E. Supply is authorized and directed to pay the Nadler Firm the following amounts:  
(i) \$35,000.00 as and for compensation for attorney fees; and  
(ii) expense reimbursement in the amount of \$2,790.12.

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