

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

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In re: :

LIANNA, INC. : BK No. 00-14161
Debtor : Chapter 7
- - - - -x

ORDER DETERMINING APPLICATIONS FOR COMPENSATION

Before the Court is the fee application of counsel for the Debtor, Boyajian, Harrington & Richardson ("BHR"), requesting compensation of \$27,296 and expenses of \$732 for services rendered in a failed Chapter 11 case. Gregory Porcaro, CPA, also requests \$5,711 for accounting services rendered to the former Debtor-in-Possession.

Initially, Citizens Bank objected, and several hearings were held. At issue is whether a pre-petition retainer received by BHR is property of the estate. If it is, then it would be subject to the claims of other administrative creditors, and subordinate to Citizens' super-priority lien. Prior to the evidentiary hearing to resolve the issue, Citizens withdrew its objection, and neither the Chapter 7 Trustee nor the United States Trustee presently oppose the Application.

BHR had received a pre-petition retainer of \$25,000 from various family members of the Debtor's principals, against which it had drawn down \$10,906, with Court authorization.

Having reviewed the Application, and applying the lodestar approach and other factors used in this Circuit, see *Garb v. Marshall (In re Narragansett Clothing Co.)*, 210 B.R. 493, (B.A.P. 1st Cir. 1997), I find that the balance of the retainer held by BHR, approximately \$15,560 with interest, may be applied to its outstanding bill for services. Because the parties have removed it as an issue, I specifically make no ruling as to whether the retainer is property of the estate, and this Order shall have no bearing on the consideration of future disputes involving that issue.

As to Mr. Porcaro's fee, the request is denied without prejudice, as there are presently no funds in the estate to pay Chapter 11 administrative claims. If this situation changes, the Chapter 7 Trustee shall immediately notify Mr. Porcaro, who may renew his application.

Enter judgment consistent with this order.

Dated at Providence, Rhode Island, this 12th day of September, 2003.



Arthur N. Votolato
U.S. Bankruptcy Judge