

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF RHODE ISLAND

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In re: :

THOMAS CULLEN :  
Debtor

BK No. 04-12498  
Chapter 13

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**ORDER ALLOWING REALTOR'S APPLICATION FOR COMPENSATION**

Heard on the objection to the Fee Application (Doc. #91) of the Debtor's Realtor, Daniel Cregan requesting commissions in the amount of \$40,725. Cregan seeks fees in connection with the sale of the Debtor's one-half interest in a 30 acre parcel of real estate in Lincoln, Rhode Island. The entire parcel was sold for \$905,000 and Cregan requests a commission in the amount of 4.5% of the total sale price. The Debtor had only a 50% interest in the property, so the estate received \$452,500 from the sale. The Debtor argues that Cregan's fee application, vis-a-vis the estate, at least, should be limited to 5% of the proceeds received by the estate, or \$22,625. The Debtor's brother, John Cullen, the 50% co-owner of the property, was the purchaser of the entire property under a right of first refusal. The funds received by the estate from the sale are sufficient to pay all creditors in full plus interest, with the Debtor receiving surplus proceeds in excess of \$240,000.

The Debtor's application to employ Cregan states at paragraph 4: "In consideration for said services, broker will receive as

commission, upon consummation of any such sale, a real estate broker's commission in an amount equal to five (5%) of the purchase price." Doc. #25, at 1. Our Order provided that: "the Application... is hereby approved, subject to the following: (1) This order is not a determination that the services are necessary; and (2) No fee agreement between the applicant and the person or entity being employed is binding on the court." Doc. #28. Additionally, pursuant to the order approving the Notice of Sale, if John Cullen purchased the real estate pursuant to his right of first refusal, "the real estate sales commission due and payable to the broker, John Creegan [sic], shall be paid entirely from the proceeds of sale allocated to the Debtor." Doc. #52, ¶8.

In reviewing fee applications in a bankruptcy context, the lodestar approach and other factors used in this Circuit are applicable, including consideration of the extent to which the applicant's services benefitted the estate. See *Garb v. Marshall (In re Narragansett Clothing Co.)*, 210 B.R. 493 (B.A.P. 1<sup>st</sup> Cir. 1997). In that regard, I find that Mr. Creegan's efforts benefitted the estate in the amount of \$452,500. The application does not contain detailed time records required of other professionals who usually bill for services on an hourly basis, so using the lodestar approach here would be difficult and unreliable. However,

considering that Cregan marketed the property from October 2004 through December 2004, dealt with at least 28 interested parties, and paid all marketing costs associated with the sale, I find that a 5% commission, based on the estate's share of the proceeds, is reasonable. Accordingly, the Application of Daniel Cregan is **ALLOWED** in the amount of \$22,625, which is 5% of the proceeds received by the estate.

Enter Judgment consistent with this order.

Dated at Providence, Rhode Island, this 9<sup>th</sup> day of September, 2005.



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Arthur N. Votolato  
U.S. Bankruptcy Judge

Entered on docket: 9/9/2005