

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

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In re: :

NARRAGANSETT CLOTHING COMPANY : BK No. 90-10149
Debtor Chapter 11

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TITLE: *In re Narragansett Clothing Co.*

CITATION: 201 B.R. 30 (Bankr. D.R.I. 1996)

ORDER SETTING COMPENSATION AND COMPELLING DISGORGEMENT

Before the Court is the final fee application of the Chapter 11 Trustee, Joseph B. Garb, who requests total compensation of \$555,175 and expenses of \$7,934.57 in what has been previously described as "this liquidating and professionally beleaguered Chapter 11 case." *In re Narragansett Clothing Co.*, 160 B.R. 477, 478 (Bankr. D.R.I. 1993). The Unsecured Creditors' Committee and the United States Trustee object to the application.

The applicant has previously received compensation, *on account*, in the amount of \$400,000, and reimbursement of \$7,511 in expenses, and points out that his maximum statutory commission under 11 U.S.C. § 326 would be \$557,062.¹ The

¹ That § 326 establishes *only* maximum compensation, and

Trustee calculates his request by multiplying 2,220.7 hours at the rate of \$250 per hour, across the board, with no adjustments for the type of service being rendered.² We have already written extensively on fee requests in this case, and in 1993, Mr. Garb's maximum hourly rate was set at \$160. See *id.* at 483; see also *In re Narragansett Clothing Co.*, 175 B.R. 820 (Bankr. D.R.I. 1995). He does not address this in the instant application. Suffice it to say that nothing has changed since our earlier fee decision(s), and that we agree with, adopt, and incorporate by reference herein the positions of the Objectors. (See Exhibits A and B.) Accordingly, Mr. Garb's request for compensation in the amount of \$555,175 is

creates no entitlement to a commission in that amount, was settled ten years ago in *In re Roco Corp.*, 64 B.R. 499 (D.R.I. 1986) ("11 U.S.C. § 326(a) (1978) capped the fees which could be awarded to a trustee for his services in such capacity, but created no entitlement to a commission in that amount. There is nothing in the statute, in its legislative history, or in the relevant caselaw for that matter, which suggests an opposite conclusion.")

² In earlier requests for compensation Mr. Garb has argued, in justifying large blocks of time to accomplish certain easy tasks, that "since he is a one-man office, he has to do everything himself." Mr. Garb's choice to cut office and personnel overhead by doing everything himself is hardly a reason to charge creditors for ministerial and clerical work at his regular hourly rates. The degree of difficulty of the work performed has a significant bearing on the applicable hourly rate, regardless of who does the work.

DENIED, and he is allowed final and full compensation in the amount \$347,936.

To arrive at this precise number, since most of the services were rendered circa 1993, we multiplied 2,174.6 hours by \$160 per hour. See *Narragansett*, 160 B.R. at 483. Giving Mr. Garb the benefit of many doubts and close calls, his time has been reduced by a mere 45.4 hours, simply because he has not provided any time entries for these hours. We make this modest (time only) adjustment to the request, notwithstanding the fact that the benefit to the estate of many of Mr. Garb's services are subject to serious question. See *Narragansett*, 160 B.R. at 484. We have also taken into account the First Circuit guidance regarding application of the lodestar and the *Johnson* criteria. See *King v. Greenblatt*, 560 F.2d 1024 (1st Cir. 1977), *cert. denied* 438 U.S. 911 (1978) (adopting the factors set forth in *Johnson v. Georgia Highway Express*, 488 F.2d 714 (5th Cir. 1974); *Furtado v. Bishop*, 635 F.2d 915 (1st Cir. 1980); *In re Swansea Consol. Resources, Inc.*, 155 B.R. 28 (Bankr. D.R.I. 1993); *In re Almacs, Inc.*, 178 B.R. 598 (Bankr. D.R.I. 1995). In additional deference to Mr. Garb, we make no order regarding interest on the amount being disgorged, even

though he has had the use of that money since March 26, 1992.

This translates approximately into an additional \$11,600.

Because he has already received \$400,000, Mr. Garb must disgorge the overpayment of \$52,064, to himself as Trustee, for distribution to creditors, and it is so ORDERED.³ Any delay by Mr. Garb in accomplishing the final distribution will cause us to reconsider our Order regarding interest.

Enter Judgment consistent with this order.

Dated at Providence, Rhode Island, this 3rd day
of
October, 1996.

/s/ Arthur N. Votolato

Arthur N. Votolato
U.S. Bankruptcy Judge

³ On September 11, 1996, we granted the United States Trustee's Motion to Compel the Trustee to file an amended order of distribution and final report. In light of our findings herein, these new numbers should be included in the Trustee's distribution order and report.