

7/3/80

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE
WESTERN DISTRICT OF WISCONSIN

In the Matter of

IN BANKRUPTCY

THEODORE S. PETERSON
and BEVERLY PETERSON

No. 79-00457 Vol.
No. 79-00458 Vol.

Bankrupts.

ORDER ALLOWING CLAIM

United Farm Agency, Inc. having duly filed a claim herein on the 15th day of August, 1979, in the sum of \$20,000.00 pursuant to a real estate listing contract and as an expense of administration and priority in the full amount; and the Trustee having duly objected to said claim on the grounds that it does not appear that claimant is entitled to priority, and that the bankrupt estate is not indebted to said claimant in the amount claimed, but that the Trustee consents to the allowance of an amount which would fairly compensate the claimant for its efforts on behalf of the bankrupt estate, and for all expenses incurred in any part of this effort; and a pre-trial hearing having been duly held, and a trial having followed at a later date; and witnesses having been sworn; and counsel for the respective parties, being Robert Hagness for the claimant and Peter F. Herrell in his own behalf as Trustee, having filed briefs; and the Court being fully advised in the premises, FINDS:

1. That the above named bankrupts duly filed their petitions in bankruptcy herein on the 24th day of April, 1979.
2. That on September 12, 1978, said bankrupts duly signed and executed to the United Farm Agency, Inc. a listing contract for the sale of their real estate described in the bankruptcy schedules.
3. That the commission to be paid pursuant to said contract was ten percent.
4. That on December 13, 1978, Steven W. Franck and his wife made a written offer to purchase said property for the sum

of \$200,000.00, which was duly accepted by the bankrupts in writing on the 16th day of December, 1978; that said offer was subject to financing and the final approval for financing was obtained in March of 1980.

5. That on April 24, 1979, said bankruptcy schedules were duly filed as hereinabove stated.

6. That the Trustee on July 20, 1979, by written statement, elected to accept the sales contract and to reject the listing contract of the United Farm Agency, Inc. above described.

7. That said sale for \$200,000.00 was completed on October 10, 1979, and on March 31, 1980, the Trustee filed an objection to the claim of the United Farm Agency, Inc. on the grounds stated above.

8. That said farm sale agreement and real estate listing are, in the opinion of the Court, non-separable and that the Trustee cannot elect to take the sale contract without taking with it the liabilities, responsibilities and liens thereon. (See Collier on Bankruptcy, 14th Edition, Volume 4A, Section 70.43, Pages 524, 525 and subsequent pages.)

9. That the briefs of counsel were very helpful to the Court in the determination of the matters herein involved, the claimant's attorney having cited the authorities on both sides of the question before the Court.

10. That the claim of the United Farm Agency, Inc. is a priority claim and a claim of expense of administration herein; and as

CONCLUSIONS OF LAW

That an Order be entered determining the claim of United Farm Agency, Inc. in the sum of \$20,000.00, to be a priority claim in these proceedings and a part of the expense of administration of said estate.

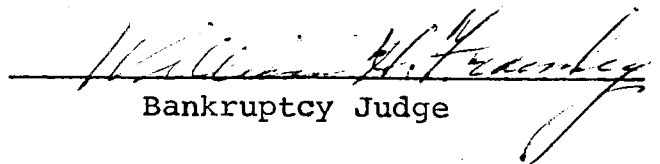
O R D E R

NOW, THEREFORE, IT IS ORDERED: That the claim of United Farm Agency, Inc. in the sum of \$20,000.00, filed herein as above

stated, be and the same is hereby allowed as a priority claim and an expense of administration and payable from the funds of said farm sale.

Dated: July 3, 1980.

BY THE COURT:


Bankruptcy Judge