

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

In the Matter of

IN BANKRUPTCY

KERNON J. BAST,

No. 80-01650 Vol.

Debtor.

FILED

JAN 28 1981

CLERK
U.S. BANKRUPTCY COURT

ORDER APPOINTING TRUSTEE

At Eau Claire, in said district, this 28th day of
January, 1981.

An application having been filed by Energy Research and Development Corporation for the appointment of a trustee in these proceedings, to take charge of the business and properties of the debtor; and it being shown that due notice of such application was given to said debtor as shown by the proof of service on file herein; and a hearing having been duly held on January 5, 1981; and the applicant having appeared by David G. Walsh, one of its attorneys; the debtor having appeared by Roger G. Schnitzler, his attorney; Davis A. Donnelly, an officer of Energy Research and Development Corporation, having appeared for said corporation; and Kernon J. Bast, the president of Solid Fuel Heating Systems, Inc., did not appear; and the Court having considered the application and the evidence introduced in support thereof, and the statements in opposition thereto; and having heard the arguments of counsel, and having ruled that each of said counsel were to file a brief within ten days; and a brief having been submitted by Attorney Walsh on behalf of the applicant, and no other briefs having been submitted; and the Court having considered the arguments of counsel, and the brief and evidence presented, and the entire record, proceedings and file herein, and being satisfied that the appointment of a trustee is necessary in the interest of the creditors, equity security holders and other interests to the estate, and is required because of the co-mingling of the property of the individual estate of Kernon J. Bast and the corporate estate

of Solid Fuel Heating Systems, Inc., the sale of property of either Mr. Bast individually or said corporation, the lack of sufficient records to clearly reveal the percentage of ownership in Solid Fuel Heating Systems, Inc. by Mr. Bast or his wife or any others, and the lack of a clear set of records to reveal the values of the respective properties, the costs, sale prices, time of sale or other records; and the Court does make the following further findings:

1. That the applicant obtained a judgment in the Bankruptcy Court for the Western District of Wisconsin before the Honorable Robert D. Martin, United States Bankruptcy Judge, which judgment was dated October 10, 1980, and in which said Court made findings of fact, briefly as follows:

"The defendant, Solid Fuel Heating Systems, Inc., is a shell corporation completely dominated and controlled by Bast solely to his benefit in the following way:

a. There were no notices of or formal shareholder meetings;

b. There were no notices of or formal board of directors meetings;

c. There were no consent resolutions or formal or informal resolutions ratifying the conduct of Bast;

d. There was not a corporate book maintained, nor were any minutes of any meetings ever recorded;

e. Bast held out the business to the public as a sole proprietorship as evidenced by the corporate stationery which described the entity as Solid Fuel Heating Systems and did not indicate either the word 'Corporation' or 'Inc.';

f. Bast drew funds from the business as if it were a sole proprietorship and the business entity did not withhold taxes or pay social security on the draws;

g. All actions of the business entity were the actions of Bast; and

h. Bast did at all times freely and without any condition use the financial resources including the checking account funds for his own personal use, such as payment of house mortgage, improvement upon home and for the purchase of inventory and payment to creditors of businesses other than Solid Fuel Heating Systems, Inc. in which Bast had an interest."

2. That the application for trustee is brought pursuant to 11 U.S.C. §1104 and that good cause for the appointment of a trustee appears under (1) and (2) of said section.

3. That because of the co-mingling of property between Kernon J. Bast individually and the corporation, and vice versa, it is in the best interest to appoint a trustee herein.

4. That it appears that Kernon J. Bast and his wife are the sole stockholders of Solid Fuel Heating Systems, Inc., the amount of their interest therein not clearly known.

5. That Kernon J. Bast is also engaged in the operation of other businesses, being that of a convenience store and gas station known as "The Junction" and a sporting goods store known as "The Outfitters." That the interest of Mr. Bast in these businesses is not known or available to the creditors.

6. That it is contended The Outfitters was sold by land contract that is not available or filed in the office of the Register of Deeds of Eau Claire County, Wisconsin. That certain notes were issued back and forth relative to the sale of certain inventories and that the correct amounts have not been ascertained or can be ascertained.

7. That recently a fire occurred at The Outfitters' location which the Court takes judicial notice of the fact from newspaper, television and other sources.

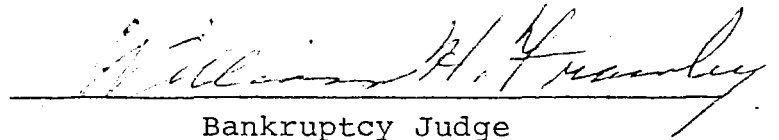
8. That assets have been diverted from the debtor, Kernon J. Bast, to Solid Fuel Heating Systems, Inc. with a possible preferential transfer at less than the fair market value of some of the properties, and especially The Outfitters.

9. That it has been most difficult for creditors and parties in interest to determine the true financial status of the debtor because of the inconsistencies and testimony of Mr. Bast and of the lack of sufficient records being available.

NOW, THEREFORE, IT IS ORDERED: That Eric J. Wahl of the City of Eau Claire, Eau Claire County, Wisconsin, be and he hereby is appointed trustee of the property and business of the debtor with bond hereby fixed in the amount of Five Thousand (\$5,000.00) Dollars, to take over the assets and control of the individual business operations of the said Kernon J. Bast as of the date of qualification of such office by filing a bond in the amount aforesaid, with all of the rights, powers and duties of a trustee.

IT IS FURTHER ORDERED: That debtor, its officers, agents and representatives, turn over, deliver, and surrender to said Eric J. Wahl, upon his qualification by giving bond as aforesaid, all property, assets, and the control of the business of said Kernon J. Bast forthwith, and thereafter refrain from hindering the said Eric J. Wahl in any way or manner, directly or indirectly, in his handling of the property and affairs of Kernon J. Bast individually, until further order of this Court.

BY THE COURT:


Bankruptcy Judge