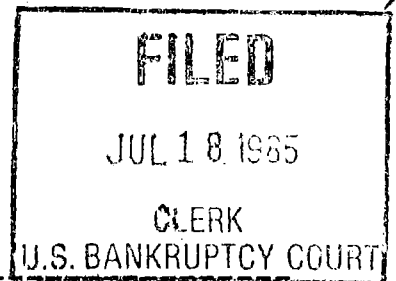


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

TRI-STATE HOMES

WF11-82-00488

Debtor.

ORDER ON CLAIMS

William Rodman, Richard Mutchler and Donald Dickman have each filed proof of claims against debtor Tri-State Homes, Inc., pursuant to 11 U.S.C. § 501. The debtor has objected to these claims. At the hearing on this matter on June 19, 1985, debtor withdrew its objection as to the claim of William Rodman. Therefore, the only claims for consideration before the court are those of Richard Mutchler and Donald Dickman.

Mr. Mutchler's claim is in the amount of \$6,442.29 which represents the cost of medical care and related costs incurred as a result of an injury to his daughter. Mr. Mutchler asserts that at the time of his daughter's injury on June 6, 1981, he was an employee of Tri-State Homes entitled to health insurance coverage. Debtor's objection to this claim is based on the argument that Mr. Mutchler's employment had been terminated on May 29, 1981, prior to the injury. Therefore, debtor asserts that he was not eligible for health insurance coverage.

A properly filed proof of claim constitutes prima facie evidence of the validity and amount of the claim. Bankruptcy Rule 3001(f). An objecting party has the burden of introducing

sufficient evidence to overcome the prima facie case. In re DeLorean Motor Co., 39 B.R. 157, at 158 (Bankr.E.D.Mich. 1984). If the objecting party is successful, the claimant must prove the validity of the claim by a preponderance of the evidence. Id.

Debtor's witness at the hearing on this matter, Edward Alvey, the company president, had no personal knowledge of the alleged May 29, 1981 termination. The only evidence of any May 29, 1981, termination was a notation to that effect on Mr. Mutchler's personnel file. No explanation accompanied the notation and no evidence was introduced that such termination actually took place.

Mr. Mutchler introduced evidence of a phone conversation between himself and a Tri-State company official, Mr. Hawkes, which occurred on June 6, 1981. At that time, Mr. Mutchler was told that he would be paid a 2% sales commission rather than a salary of \$500 a week from that point on. Mr. Mutchler testified that he was terminated on July 7, 1981, at a meeting with Mr. Hawkes in Wausau. At that time Mr. Hawkes took possession of the company car which Mr. Mutchler had driven to the meeting. Mr. Mutchler had been summoned to this meeting from Illinois.

Debtor in this case has failed to overcome Mr. Mutchler's prima facie case. The credible evidence in the record exclusively supports Mr. Mutchler's claim as to its validity and

amount.¹ Mr. Mutchler's claim in the amount of \$6,442.29 shall be allowed.

The second claim at issue in this proceeding is one by Donald Dickman for \$15,047.88. Mr. Dickman possessed a Dealership Franchise Sales Agreement with debtor until July 9, 1978, according to his proof of claim. Mr. Dickman claims to be entitled to a commission or a portion of a commission for the sale of three homes. He also argues that debtor is liable to him for \$500 in deposits he made with debtor for the building of two fourplex units. Finally, he claims that debtor owes him \$8,000 in damages, including an original dealership franchise fee of \$1,000, for wrongfully terminating the franchise agreement.

The evidence introduced by Tri-State Homes overcomes Mr. Dickman's prima facie case as to all claims other than a claim for a commission of \$2,913.68 on a sale of a Tri-State home to a Nevin Groth. Edward Alvey testified that Mr. Dickman was not paid commissions because he had not provided the required assistance to customers or Tri-State, or was not responsible for the home sales at issue. Mr. Alvey also stated that the franchise agreement was terminated for the same reasons. He further testified that drawings for the fourplex units were sent to Mr. Dickman. However, work did not proceed because Mr. Dickman did not make the required downpayment of 10 percent.

¹ From a practical standpoint, it would be more than a little difficult to believe that Mr. Mutchler would drive the long distance to Wausau if he had been previously terminated.

Mr. Dickman did not successfully discredit the testimony of Mr. Alvey. His own testimony on those issues is not credible. Based on the credible evidence introduced at the hearing, the court concludes that Mr. Dickman is not entitled to any claim other than his claim for commission on the Groth home, which will be subsequently discussed.

The only evidence in the record concerning the commission on the Groth home was that Mr. Dickman was offered a check for that commission from Tri-State in the amount of \$2,913.68. However, he refused the check because Tri-State demanded a full release from any liability in connection with the sale of this home. Tri-State introduced no evidence that it had a right to such release or that such release was legal. Under these circumstances the court must conclude that Mr. Dickman was entitled to this commission of \$2,913.68.

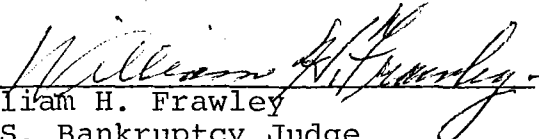
ORDER

IT IS ORDERED THAT Mr. Mutchler's claim for \$6,442.29 is allowed pursuant to 11 U.S.C. § 502.

IT IS FURTHER ORDERED THAT Mr. Dickman's claim for a commission of \$2,913.68 for the sale of the Groth home is allowed pursuant to 11 U.S.C. § 502. In all other respects Mr. Dickman's claim is denied.

Dated: July 18, 1985.

BY THE COURT:



William H. Frawley
U. S. Bankruptcy Judge

cc: Atty. Robert E. Hackett, Jr.
Mr. Richard Mutchler
Mr. Donald Dickman