

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

FILED

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U.S. BANKRUPTCY COURT

In re:

Case Number:

EDWARD R. ALTENBURG
PAMELA K. ALTENBURG

WF11-83-00984

Debtors.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND
ORDERS (1) FOR AN ACCOUNTING OF ATTORNEYS FEES AND COSTS
(2) FOR A RECONSIDERATION HEARING UPON PAYMENT OF
SAID FEES AND COSTS

Garber Corporation, by Jeffrey L. Huttenburg having filed a request for a hearing on objection to claim; and a hearing having been held to consider said request; and Garber Corporation appearing by counsel; and the Debtors appearing by William Rameker; and briefs having been filed; the Court, being fully advised in the premises, FINDS THAT:

1. On June 15, 1983, Debtors Edward R. and Pamela K. Altenburg filed for relief under Chapter 11 of the Bankruptcy Code.
2. On February 4, 1985, the Debtors filed an objection to the claims of over 40 creditors, including a Garber Corporation (Garber) claim for \$26,156.46.
3. The notice accompanying the Debtors' objection provided that unless a hearing was requested on the objection by

February 14, 1985, the Court might enter an order granting the application.

4. Several creditors filed timely hearing requests and hearings on those claims were held on March 20, 1985.

5. On February 21, 1985, this Court signed an Order disallowing the claims of those creditors which did not request a hearing--including the Garber claim.

6. James Custer, "the principal person at Garber Corporation who is familiar with this bankruptcy action", was on vacation from January 31, 1985, to March 1, 1985. Affidavit of James Custer in Support of Request (filed March 7, 1985).

7. Upon returning to work, Mr. Custer became aware of the notice of objection and "immediately contacted the bankruptcy court and retained counsel for the purpose of requesting a hearing". Id.

8. On March 6, 1985, Garber filed a request for a hearing on the Debtors' objection.

9. Adequacy of Notice. If "objection to a claim is made, the court, after notice and a hearing, shall determine" the propriety of a claim. 11 U.S.C. sec. 502(b). Accordingly, Fed.R. Bankr.P. 3007 provides that a "copy of the objection with notice of the hearing thereon shall be mailed . . . to the claimant . . . at least 30 days prior to the hearing."

10. However, "'after notice and a hearing', or a similar phrase . . . authorizes an act without an actual hearing . . . if such a hearing is not requested timely by a party in interest. ."

11 U.S.C. sec. 102(1)(B)(i). See Fed.R.Bankr.P. 9014 (opportunity for hearing shall be afforded in contested matters); cf. In re Seville Partners, 43 B.R. 537 (Bankr.W.D.Wis. 1984) (notice of request for relief from automatic stay).

11. Relief from Order. A disallowed claim may be reconsidered for cause and, based upon the equities of the case, reallocated or disallowed. 11 U.S.C. sec. 502(j)(1982), Fed.R. Bankr.P. 3008 & 9024. In re Washington County Broadcasting, Inc., 39 B.R. 77 (Bankr.D.Me. 1984) (cases collected).¹

12. This Court is inclined, based upon the reasoning of the Washington County Broadcasting Court, to permit reconsideration.

13. However, Garber's neglect of a valid legal notice has prejudiced the Debtors to the extent that the Order disallowing the claim was prepared and defended. Relief to Garber must be predicated upon relief to the Debtors.

CONCLUSIONS OF LAW

1. Garber received adequate notice of the Debtors' objection to its claim.

2. Garber must pay all attorneys fees and disbursements associated with the Debtors' preparation and defense of the Order signed by this Court on February 21, 1985.

¹ Under the Bankruptcy Amendments and Federal Judgeships Act of 1984, 11 U.S.C. sec. 502(j) explicitly provides for the reconsideration of disallowed claims in cases filed after October 7, 1984.

3. Upon such payment a hearing should be held to reconsider the disallowance of the Garber claim.

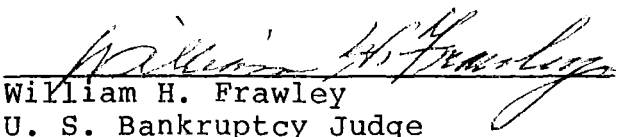
ORDERS

IT IS ORDERED THAT Debtors Pamela K. Altenburg and Edward R. Altenburg file, within 10 days, an accounting of attorneys fees and costs incurred during the preparation and defense of the disallowance Order signed by this Court on February 21, 1985. For the purpose of the instant Order, any fee or cost associated with preparation or defense of the disallowance Order--even if partially attributable to the disallowance of other claims--shall be included in the accounting. E.g., travel time to Wausau to argue against Garber's motion to reconsider and in favor of contested objections to claims should be included in full (time actually spent supporting contested objections should be excluded).

IT IS FURTHER ORDERED THAT, upon payment of said attorneys fees and costs by Garber Corporation to the Debtors, a hearing be held to reconsider the disallowance of the claim filed in this proceeding by Garber Corporation.

Dated: April 23, 1985.

BY THE COURT:


William H. Frawley
U. S. Bankruptcy Judge

cc: Attorney Jeffrey L. Huttenburg
Attorney William Rameker