

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

In re:

KNR HOTELS, LLC,

Case No. 6:09-bk-19085-ABB

Chapter 11

Debtor.

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**ORDER**

This matter came before the Court on the Motion to Allow Administrative Expense Claim and Compel Payment (Doc. No. 105) and the Supplement (Doc. No. 141) filed by Super 8 Worldwide, Inc. ("Super 8"). Hearings were held on May 6, 2010 and July 8, 2010 at which the principal of the Debtor KNR Hotels, LLC, Debtor's counsel, counsel for Super 8, and other parties in interest appeared. The Debtor and Super 8 filed post-hearing briefs pursuant to the Court's directive (Doc. Nos. 166, 167).

Super 8 seeks allowance of a post-petition administrative claim of \$41,663.71, as of July 16, 2010, pursuant to the Licensing Agreement executed by the Debtor and Super 8 on September 16, 2006. The Court terminated the Licensing Agreement effective as of May 4, 2010. Super 8 asserts its administrative claim continues to increase as the Debtor continues to hold itself out as a Super 8 hotel. The Debtor disputes the administrative claim asserting the claim should be reduced for the Debtor's lack of access to the Super 8 online reservation system.

The Court found Super 8 is entitled to an administrative expense claim subject to reduction for the Debtor's lack of access to the online reservation system (*see* July 15, 2010 Order at Doc. No. 152) The Court directed the parties to submit briefs delineating their valuations of Super 8's administrative claim.

### *Analysis*

The party requesting an administrative claim bears the burden of establishing the estate received an actual, concrete benefit in exchange for its expenditures. Broadcast Corp. of Ga. v. Broadfoot (In re Subscription Tel. of Greater Atlanta), 789 F.2d 1530, 1532 (11th Cir. 1986). Super 8 asserts it is entitled to an administrative claim of \$41,663.71 and has the burden to establish the Debtor's estate received an actual, concrete benefit in exchange for its expenditures.

Super 8's administrative claim is comprised of three components:

- (i) post-petition royalty fees of \$21,188.66;
- (ii) inspection fees of \$1,500.00 and \$1,700.00; and
- (iii) the balance of \$17,275.05 apparently consisting of "System Assessment Fees."

Super 8 submitted a copy of the Licensing Agreement and computer generated Itemized Statements in support of its claim. The Itemized Statements contain various billing codes which are not defined in the Itemized Statements, the Licensing Agreement, or Super 8's pleadings. The Itemized Statements provide little assistance in this matter without translation by Super 8.

**Royalty Fees:** The royalty fees of \$21,188.66 are based upon Paragraph 7.1.1 of the Licensing Agreement which provides for a "Royalty" equal to five percent of gross room sales. The Debtor generated gross room sales of \$423,773.21 from the petition date of December 15, 2009 through May 31, 2010, resulting in a five percent royalty fee of \$21,188.66.

Paragraph 13.2 of the Licensing Agreement provides:

You will owe us Recurring Fees on Gross Room Sales accruing while the Facility is identified as a 'Super 8 Motel,' including the System Assessment Fees for so long as the Facility receives services from the Reservation System.

The royalty fee constitutes a "Recurring Fee" as defined by Paragraph 7.1 of the Licensing Agreement, which the Debtor continues to owe post-termination of the Licensing Agreement as long as it holds itself out as a Super 8 hotel.

The Licensing Agreement was terminated by Court Order effective May 4, 2010, but the Debtor continues to hold itself out as a Super 8 hotel. Super 8 is entitled to an administrative claim for post-petition royalty fees pursuant to Paragraphs 7.1.1 and 13.2 of the Licensing Agreement.

**Inspection Fees:** Super 8's Itemized Statements contain line item charges of \$1,500.00 and \$1,700.00 for "inspection fees" with no further description or support. These charges are unsubstantiated and due to be disallowed.

**System Assessment Fees:** Paragraph 7.1.2 provides for the charging by Super 8 of "System Assessment Fees" to be paid into the "Advertising and Reservation Fund." It appears the balance of Super 8's administrative claim, \$17,275.05, constitutes System Assessment Fees, but Super 8 has not delineated how such amount was calculated. Super 8 contends System Assessment Fees continue to accrue post-termination.

Super 8's contention is contrary to the plain and unambiguous language of Paragraph 13.2 of the Licensing Agreement. Paragraph 13.2 provides System Assessment Fees may only be charged so long as the Debtor "receives services from the Reservation System." The Debtor's access to the Super 8 online reservation system was

terminated by Super 8 prepetition on April 15, 2009. The Debtor received no benefits from the reservation system post-petition.

Super 8's administrative claim of \$17,275.05 for System Assessment Fees is unsubstantiated, contrary to Paragraph 13.2 of the Licensing Agreement, and due to be disallowed.

***Royalty Fee Claim Reduction:*** The Debtor asserts the most valuable component of its affiliation with Super 8 was its access to the Super 8 central reservation system. The Debtor presented a spreadsheet reflecting its gross revenues declined by 34.71 percent after Super 8 terminated its access to the central reservation system. It asserts Super 8's royalty fee claim of "\$22,000.00" should be reduced by 34.71 percent, resulting in an allowed royalty fee claim of \$14,363.80.

The Debtor is not entitled to a 34.71 percent reduction of the royalty fee assessments. The Debtor was barred and prohibited from operating its motel using Super 8's system and intellectual property, including signage, pursuant to the Order entered on April 13, 2010 (Doc. No. 104). The Debtor has continued to hold itself out as a Super 8 motel in violation of the April 13, 2010 Order.

Super 8's royalty fee claim of \$21,188.66 is due to be reduced by twenty percent, \$4,237.73, representing the loss of business suffered by the Debtor due to Super 8's cancellation of the Debtor's access to the central reservation system and adjusted for the Debtor's continued wrongful usage of Super 8's intellectual property. A royalty fee of \$16,950.93 is due to be awarded to Super 8 as an administrative claim.

Accordingly, it is

**ORDERED, ADJUDGED and DECREED** that Super 8's request for an administrative expense claim of \$41,663.71 is hereby reduced by \$24,712.78 (representing the sum of disallowed inspection fees of \$3,200.00, System Assessment Fees of \$17,275.05, and royalty fees of \$4,237.73), resulting in an **ALLOWED** administrative expense claim of \$16,950.93.

Dated this 9th day of August, 2010.

/s/ Arthur B. Briskman  
ARTHUR B. BRISKMAN  
United States Bankruptcy Judge