

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE FIRST CIRCUIT

BAP No. PR 96-037

IN RE: J.P. CONSTRUCTION, INC.

Appeal from the United States Bankruptcy Court
for the District of Puerto Rico
(Hon. Sara E. de Jesus, U.S. Bankruptcy Judge)

Before

Votolato, Vaughn and Kenner, Bankruptcy Judges

Rodrigo Otero Bigles with whom Otero Suro & Otero Suro was on
brief for appellant.

May 9, 1997

Per Curiam

This is an appeal by the Chapter 7 Trustee from an Order of the Bankruptcy Court directing him to remit to the Clerk of the Bankruptcy Court \$2,178.75 received for fees and expenses in 1987. No one has appeared in opposition to this appeal, and the United States Trustee takes no position in the matter.

Upon consideration of all that we have before us in this ten year old case, the Order in question is VACATED, on two grounds. First, the Chapter 7 case had been dismissed prior to the date of the Order in question, and the Bankruptcy Court neither reopened the case nor sought to retain jurisdiction for any purpose.¹ For that reason, the Order was a nullity. See *In re Morris*, 950 F.2d 1531, 1534 (11th Cir. 1992) (general rule is that dismissal of main bankruptcy case results in dismissal of related proceedings, but bankruptcy court has discretion on whether it should retain jurisdiction). Second, and in order to give some deference to the merits of the appeal, the United States Attorney has issued a letter indicating that its investigation was closed without taking any action on the matter. In the circumstances, it appears that there is no basis upon which to conclude that the payment in question was improper.

¹ In fact, the Bankruptcy Court clearly stated it did not wish to reopen the case to decide the issue of the trustee's fee, and encouraged the debtor and trustee to reach an agreement outside of the bankruptcy court.

Since the Appellant is still in possession of the funds, there is no need to remand the matter to the Bankruptcy Court, and no further action is required.

SO ORDERED.