

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT



---

In re:

**APPLIED BIOMETRICS  
PRODUCTS, INC.,**

**Debtor.**

---

**Case # 02-10787**

**Chapter 7**

**ORDER**  
**on Allowance of Fees for Post-Petition Legal Fees**

WHEREAS, on January 2, 2003, Downs Rachlin Martin, PLLC (“Movant”) filed a Motion for Allowance and Payment of Administrative Expenses (doc. #44) seeking an order allowing payment of its invoice for post-petition legal services as an administrative expense; and

WHEREAS the Court denied the Motion without prejudice, specifying that the Movant could re-file its Motion demonstrating why it was entitled to relief pursuant to In re Keren Ltd. P’ship, 189 F.3d 86 (2d Cir. 1999). See doc. #45; and

WHEREAS the Movant resubmitted its Motion for Allowance and Payment of Administrative Expenses (doc. #47), and the Court held a hearing on said Motion on March 4, 2003; and

WHEREAS Andre Bouffard, Esq. appeared for the Movant; Kevin Purcell, Esq. appeared for The Office of the U.S. Trustee (via telephone); and Gleb Glinka, Esq. appeared *pro se* for the case trustee (via telephone) at said hearing.

AFTER DUE CONSIDERATION of the Motion and the arguments of counsel,

THE COURT FINDS the case trustee failed to take the steps required pursuant to 11 U.S.C. § 327 to have the Movant retained as his counsel and such failure could be construed as compelling denial of the Motion, based upon In re Keren Ltd. P’ship, *supra.*

However, THE COURT FURTHER FINDS that the services provided by the Movant to the case trustee were provided in good faith, contributed to the trustee’s administration of the estate, benefitted the bankruptcy estate, and justify the fees sought.

THE COURT FURTHER FINDS that although it would be inequitable for the Movant to be denied compensation because of an oversight by the trustee, under the facts of this case the trustee’s failure to have the Movant retained prior to the date the Movant began providing post-petition services does not constitute “extraordinary circumstances” under In re Keren Ltd. P’ship.

THE COURT FURTHER FINDS that in order to both comply with the principles enunciated in In re Keren Ltd. P'ship, and compensate the Movant for the valuable services it provided to the estate, the payment of Movant's fee for post-petition legal services must be paid in a way that does not diminish the distribution to creditors in this case.

Therefore, IT IS HEREBY ORDERED that

1. the Movant's Motion for Allowance and Payment of Administrative Expenses is GRANTED; and the trustee is directed to pay Movant's fees for services rendered post-petition to the case trustee as an administrative expense; and
2. the amount of compensation that the case trustee would otherwise be eligible to apply for under 11 U.S.C. § 326 shall be reduced by an amount equal to the Movant's administrative expense and the trustee is hereby ordered to reduce his application for §326 compensation accordingly.

**SO ORDERED.**

March 5, 2003  
Rutland, Vermont

  
\_\_\_\_\_  
Colleen A. Brown  
United States Bankruptcy Judge