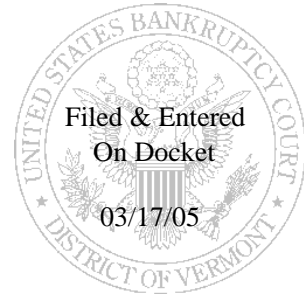


UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT



In re:

**FIBERMARK, INC.,
FIBERMARK NORTH AMERICA, INC., and
FIBERMARK INTERNATIONAL HOLDINGS, INC.,
Debtors.**

**Chapter 11 Case
04-10463
Jointly Administered**

ORDER

**GRANTING, IN PART, THE SUPPLEMENTAL APPLICATION TO THE FIRST APPLICATION OF
KPMG, LLP AND GRANTING, IN PART, KPMG'S MOTION FOR RECONSIDERATION**

On October 19, 2004, KPMG, LLP ("KPMG"), as auditors and providers of certain accounting, tax and employee benefit services to the Debtors, filed a First Interim Application for Compensation and Reimbursement of Expenses for the period from March 30, 2004 through June 30, 2004 (the "Application Period") (doc. # 681) ("KPMG's First Application"). On January 14, 2005, the Court issued an order granting, in part, KPMG's First Application and disallowing the reimbursement of expenses (doc. # 1005) and allowing KPMG to supplement certain portions of KPMG's First Application. KPMG filed a motion for reconsideration and supplement to KPMG's First Application addressing the issues raised by the Court and arguing that the Court should have allowed certain professional fees which the Court originally denied in its January 14, 2005 Order (doc. # 1135) (the "KPMG Supplement").¹

THE KPMG SUPPLEMENT

In its January 14, 2005 Order, the Court disallowed \$15,549 (or actually \$10,884.30, \$15,549 minus KPMG's voluntary 30% reduction) for professional services rendered in connection with "Retention & Employment Matters." None of the professionals who performed services within this category billed their time at a rate of less than \$540 per hour. The Court allowed KPMG an opportunity to supplement this portion of KPMG's First Application to demonstrate that the amount of compensation it sought under this category was reasonable, and specifically so that KPMG could articulate why these tasks required such a high level of expertise. In the KPMG Supplement, KPMG asserts that those services related to retention and employment primarily involve identifying the scope of KPMG's services, establishing the terms of employment and

¹ In the KPMG Supplement, KPMG seeks: (1) \$ 12,742.80 for Retention and Employment Matters; (2) \$2,648.80 for fees incurred in preparing KPMG's First Application; (3) \$506.10 for fees disallowed as administrative activities; (4) \$950.60 for fees disallowed for certain research; and (5) reimbursement of expenses in the amount of \$ 1,870.00 (doc. # 1135, at ¶ 15). The Court notes that these amounts do not correspond to those contained in the Court's January 14, 2005 Order (doc. # 1005) and KPMG does not allege that the Court's previous analysis regarding these matters is mathematically flawed. Accordingly, the Court will address the requests relying upon the amounts set forth in its previous order on KPMG's First Application.

reviewing and analyzing KPMG's possible connections to parties in interest in these cases. KPMG has persuaded the Court that the skills and expertise of senior professionals were required to analyze whether KPMG was qualified to perform services for the estate and met the definition of a disinterested person under the Bankruptcy Code. Thus, after consideration of the KPMG Supplement, the Court finds the services rendered by KPMG for "Retention and Employment Matters" were reasonable, necessary and of benefit to the estate, pursuant to 11 U.S.C. § 330(a). See also In re JLM, Inc., 210 B.R. 19, 24 (2d Cir. BAP 1997). Therefore, the professional fees KPMG seeks for "Retention and Employment Matters" (\$10,884.30) is approved.

In its January 14, 2005 Order, the Court also disallowed the \$6,441 (minus the 30% reduction or \$4,508.70) KPMG sought for professional fees incurred in preparing KPMG's First Application. Much like the "Retention and Employment Matters" category, KPMG utilized only its most senior professionals who billed at rates ranging from \$475-\$600 per hour. In the KPMG Supplement, KPMG argues that because it does not normally maintain billing procedures that are as detailed as required in a fee application, generally, more senior professionals are involved in the preparation of the initial fee application. However, the task in question was the application of principles clearly set forth in the local rules and the STN decision, and nothing KPMG has submitted persuades the Court that this is so complex a task that it exceeds the capabilities of KPMG's less expensive professionals. The KPMG Supplement does not demonstrate that the fees sought in connection with the preparation of KPMG's First Application are reasonable. S.T.N. Enterprises, 70 B.R. at 835. While this Court has regularly allowed compensation for time spent on the preparation of a fee application, S.T.N. Enterprises, 70 B.R. at 835, the prerequisite for allowance is the professional's demonstration that the fees sought are reasonable and the time spent was reasonable and necessary. In determining whether the fees are reasonable, the Court considers whether those tasks that can be delegated to junior professionals have been delegated. See id. at 839 (citing In re Cuisine Magazine, Inc., 61 B.R. 210, 217 (Bankr. D. S. N. Y. 1986) (time spent reviewing billings should not be compensated out of estate funds). The KPMG Supplement does not provide the Court with enough additional information for the Court to find that the tasks in question could not have been delegated to less senior (and less expensive) professionals, hence it does not meet the burden of showing that the fees sought are reasonable. Accordingly, the Court disallows KPMG's requested fees for preparation of KPMG's First Application.

KPMG'S MOTION FOR RECONSIDERATION

In its January 14, 2005 Order, the Court disallowed certain fees and the reimbursement of expenses sought in KPMG's First Application. KPMG asserts that reconsideration of the Court's denial of the requested fees and expenses is "appropriate because these fees and expenses were denied *sua sponte* without a hearing or further opportunity to be heard." (at ¶ 3). The Court notes that KPMG's First Application was submitted to the Court under the default procedure set forth in Vt. L.B.R. 9013-1. The default procedure allows a party to

submit an application for compensation with the flexibility of having the Court deem the matter unopposed and consider the motion without further hearing in the event that no objection is filed. Vt. L.B.R. 9013-1 (f). When KPMG filed its First Application, it made the intentional determination to file it under the default procedure, where the hearing is waived and the Court is asked to rule on the question, based solely on the papers, rather than moving under the conventional method (set forth in Vt. L.B.R. 9013-1) which would have ensured that a hearing be held. As the applicant, KPMG had the burden to establish that the fees and expenses it sought were reasonable, necessary and justified. See S.T.N. Enterprises, 70 B.R. 823, 831-835. To sustain that burden, an applicant must present a carefully detailed application and supporting documentation. Id. Furthermore, the Bankruptcy Code imposes upon this Court a supervisory obligation not only to approve a professional's employment, but also to ensure that the fees sought by professionals in a bankruptcy case are reasonable, and that the services and expenses were actually and necessarily incurred. 11 U.S.C. §§ 327-330. The Court therefore rejects KPMG's argument that it denied KPMG an opportunity to be heard on KPMG's First Application. Accordingly, KPMG's motion for reconsideration on this ground is denied. Nonetheless, for the reasons set forth below, the Court grants, in part, KPMG's motion for reconsideration.

The Bankruptcy Rules, which incorporate many procedures of the Federal Rules of Civil Procedure, do not recognize motions for reconsideration. In this Court, pursuant to Vt. LBR 9013-1(I), a motion captioned as a "Motion to Reconsider" shall be construed as a "Motion for Relief from a Judgment or Order." As such, the movant must set forth the grounds alleged to satisfy the criteria set forth in Fed R. Bankr. P. 9023 or 9024. See id.; see also, e.g., In re Arms, 238 B.R. 259 (Bankr. D. Vt. 1999); In re Village Craftsman, Inc., 160 B.R. 740, 744 (Bankr. D. N.J. 1993)(collecting cases). Hence, in order to prevail on its motion for reconsideration, KPMG must demonstrate it is entitled to relief from judgment under Bankruptcy Rule 9023 or 9024.

Based upon the plain language of the rule, Bankruptcy Rule 9023 is inapplicable in this instance, and accordingly KPMG is not entitled to relief under Bankruptcy Rule 9023.

While KPMG does not specify the grounds under which it seeks reconsideration under Rule 9024, as a court of equity, this Court recognizes that KPMG does not prepare fee applications in the ordinary course of its business, and infers from KPMG's motion a basis for reconsideration under Rule 9024. The Court grants in part KPMG's motion for reconsideration on the grounds of mistake and excusable neglect, in this limited circumstance. FED. R. BANKR. P. 9024.

KPMG argues that this Court erred by denying allowance of fees for certain time entries that the Court considered administrative based upon the limited descriptions provided in KPMG's First Application. After considering KPMG's arguments and citation to various American Institute of Certified Public Accountants Professional Standards, the Court grants KPMG's motion and allows \$506.10 (net of KPMG's voluntary 30% reduction). The Court finds that based upon the additional description provided in the motion for

reconsideration, that these fees are reasonable, necessary and of benefit to the estate, pursuant to 11 U.S.C. § 330(a). See also In re JLM, Inc., 210 B.R. at 24.

KPMG also argues that fees sought in connection with various research projects should have been allowed. Because KPMG's motion for reconsideration provides no greater detail to the time entries provided in KPMG's First Application, the Court denies KPMG's motion for reconsideration of that portion of its decision that disallowed this sum.


Lastly, in its January 14, 2005 order, this Court denied KPMG's request for reimbursement of expenses *in toto*, on the basis that the table it provided lacked the specificity necessary for the Court to determine whether the \$1,870 sought as reimbursement of expenses is reasonable, necessary or justified (doc. # 1005, p. 6). In its motion for reconsideration, KPMG provides the detail that was clearly lacking in KPMG's First Application. Based upon the supplemental information provided, the Court finds that the \$1,870.00 of expenses for which KPMG seeks reimbursement are reasonable and appropriate and, accordingly, they are approved and allowed.

THEREFORE, IT IS HEREBY ORDERED that

1. The KPMG Supplement and motion for reconsideration is allowed in part and disallowed in part.
2. The following fees and expenses requested in the KPMG Supplement are approved and allowed:
 - (A) \$11,390.40 for professional services rendered; and
 - (B) \$ 1,870.00 for reimbursement of expenses.
3. The Debtors are hereby authorized and directed to pay to KPMG, LLP (to the extent not previously paid) the sum of:
 - (A) \$11,390.40, representing professionals' fees earned by KPMG, LLP during the Application Period; and
 - (B) \$ 1,870.00, representing reimbursement for the approved expenses incurred by KPMG, LLP during the Application Period.

SO ORDERED.

March 17, 2005
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge