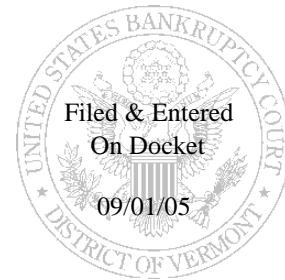


UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT



In re:
**FIBERMARK, INC.,
FIBERMARK NORTH AMERICA, INC., and
FIBERMARK INTERNATIONAL HOLDINGS, INC.,
Debtors.**

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

ORDER

**GRANTING THE THIRD INTERIM FEE APPLICATION OF BERENSON & COMPANY, L.L.C.
AND GRANTING, IN PART, THE REIMBURSEMENT OF EXPENSES**

WHEREAS, on June 9, 2005, Berenson & Company, L.L.C. (“Berenson”), as financial advisor and investment banker for the Debtors, filed a Third Interim Fee Application for Compensation for Professional Services Rendered and Reimbursement of Expenses Incurred for the period from October 1, 2004 through February 28, 2005 (doc. # 1529) (“Berenson’s Third Application”); and

WHEREAS no party has filed an objection to Berenson’s Third Application and the United States Trustee has neither objected nor consented to Berenson’s Third Application; and

WHEREAS Berenson’s Third Application seeks compensation in the amount of \$750,000 for professional services rendered for the period from October 1, 2004 through February 28, 2005 (the “Application Period”) and \$93,321.32 for reimbursement of expenses incurred during the Application Period;

THE COURT FINDS that the professionals’ fees earned during the Application Period to be fully and properly compensable. Specifically, the Court finds the services rendered by Berenson 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). Accordingly, the professionals’ fees sought in connection with services rendered by Berenson during the Application Period are approved and allowed in full.

THE COURT FURTHER FINDS that Berenson has failed to provide sufficient information for the Court to determine whether certain of the expenses for which reimbursement is sought are actual, necessary and justified. See 11 U.S.C. § 330(a); S.T.N. Enterprises, 70 B.R. 823, 836 (Bankr. Vt. 1987); In re Fibermark, No. 04-10463, *4 (Bankr. Vt. filed Nov. 29, 2004)(doc. # 783); In re Fibermark, No. 04-10463, *10 (Bankr. Vt. filed Oct. 22, 2004)(doc. # 698); In re Fibermark, No. 04-10463, *2-3(Bankr. Vt. filed Sept. 30, 2004) (doc. # 645). In particular, the Court observes that the entries requesting reimbursement for hotel charges do not specify the length of stay, making it impossible to either compute the per day charge or determine whether the expense is reasonable and justified. In light of the lack of information provided, the Court disallows reimbursement for the \$1,496.23 sought for hotel charges.

Likewise, Berenson's Third Application is devoid of any explanation for two travel entries that aggregate \$10,675.50. Because Berenson has not presented sufficient information for the Court to determine whether these requested expenses are reasonable and justified, the Court disallows these expenses.

THE COURT FURTHER FINDS that Berenson has failed to present sufficient information for the Court to assess whether certain expenses for cell phone and various other telephone charges totaling \$1,224.84 are eligible for reimbursement and specifically, whether they can be distinguished from overhead expenses. As articulated in S.T.N. Enterprises, those expenses which are incurred day-to-day by a professional, regardless of whom the professional represents, are considered "overhead expenses" and are categorically not reimbursable from the estate. 70 B.R. at 844. By contrast, if the applicant provides information for such charges that demonstrates and justifies that the expenses generated a benefit to the estate, the expenses may be reimbursed. Id. Due to the lack of information Berenson provided, the Court denies Berenson's request for reimbursement for these cell phone and telephone charges.

Under the facts and circumstances of this case, the Court has allowed reimbursement for certain costs related to out-of-state professionals' meals. In re Fibermark, No. 04-10463, *2-3(Bankr. Vt. filed Sept. 30, 2004) (doc. # 645). However, the COURT FINDS that certain meal expenses in Berenson's Third Application are not compensable from the estate. Berenson seeks reimbursement for a lunch expense of \$1,923.42 for ten people, an average price of \$192.00 per person and another lunch expense of \$1,841.75 for ten people, an average price of \$184.00 per person. Berenson has not articulated any justification for these rather extraordinary expenses or characterized these expenses as reasonable. Therefore, the Court concludes that it would be neither reasonable nor fair for the estate to reimburse Berenson for these expenses. Similarly, the Court denies reimbursement for an expense Berenson incurred for a breakfast for five people at an average price of \$65.00 per person (for a total of \$325.30), since there is no explanation of why this expense is reasonable and no business justification presented for this expense. Accordingly, the Court disallows \$4,090.47 sought for reimbursement of these particular meal expenses.

THE COURT FURTHER FINDS that Berenson has failed to sustain its burden of proof and to justify as reasonable and necessary \$4,140.94 worth of transportation costs that include various car rentals, transportation by Concord Limousine, numerous car services for the same persons on the same date (on which dates those persons also incurred expenses for taxi services) and van rentals exceeding \$1,900. Accordingly, the Court denies reimbursement of \$4,140.94 of the transportation expenses.

THE COURT FURTHER FINDS that an expense entry for \$47,279.00 identified as "legal" expenses for "retention issues and fee applications" lacks sufficient information for the Court to determine whether this expense is more appropriately an overhead expense which is not compensable from the estate. S.T.N. Enterprises, 70 B.R. at 844. There is no explanation for the services provided, the number

of hours of services provided or the rate which Berenson's legal counsel billed Berenson for his or her legal services. Thus, the Court cannot make a determination as to whether this expense is reasonable, specifically related to this case, necessary to Berenson's ability to fulfill its duties to the Debtor and justified under the facts of this case. Therefore, the Court denies reimbursement of this expense.¹

THE COURT FURTHER FINDS that Berenson's Third Application lacks sufficient information for the Court to determine whether the expenses charged for in house copies are reasonable. Berenson's Third Application contains no explanation of the number of copies made or the amount charged for each copy. Consequently, the Court disallows the \$3,813.65 sought for "printing" reimbursement.


THE COURT FURTHER FINDS that the remaining \$20,600.69 sought for reimbursement of expenses incurred during the Application Period to be reasonable, necessary and justified. Accordingly, those expenses are allowed.

THEREFORE, IT IS HEREBY ORDERED that

1. The Third Interim Fee Application of Berenson & Company, L.L.C. (doc. # 1529) is allowed in part and disallowed in part.
2. The following fees and expenses requested in Berenson's Third Application are approved and allowed:
 - (A) \$750,000.00 for professional services rendered; and
 - (B) \$ 20,600.69 for reimbursement of expenses.
3. The Debtors are hereby authorized and directed to pay to Berenson & Company, L.L.C. (to the extent not previously paid) the sum of:
 - (A) \$750,000.00, representing professionals' fees earned by Berenson & Company, L.L.C. during the Application Period; and
 - (B) \$20,600.69, representing reimbursement for the approved expenses incurred by Berenson & Company, L.L.C. during the Application Period.

SO ORDERED.

September 1, 2005
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge

¹ This Court previously disallowed legal fees totaling \$1,449.81 sought by Berenson in its Second Application for the same reasons. In re Fibermark, No. 04-10463, *2 (Bankr. Vt. filed January 25, 2005) (doc. # 1092).