

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

IN RE:)	
)	
ROBERT N. LUPO,)	
)	
Debtor,)	CHAPTER 7 (CONVERTED)
)	CASE NO. 09-21945-JNF
JOSEPH B. COLLINS, ESQ.)	
)	
Trustee.)	
)	

**AMENDED
FIRST AND FINAL APPLICATION FOR ADMINISTRATIVE
COMPENSATION AND REIMBURSEMENT OF EXPENSES
BY STEPHEN R. FOLLANSBEE & FOLLANSBEE & McLEOD, LLP
AS SPECIAL COUNSEL TO THE DEBTOR, ROBERT N. LUPO**

To The Honorable Joan N. Feeney, United States Bankruptcy Judge

Follansbee & McLeod, LLP and Stephen R. Follansbee, Esquire (hereinafter referred to collectively as "F&M"), having been employed as Special Counsel to the above captioned debtor and debtor-in-possession (the "Debtor"), respectfully submits this Amended First and Final Application for Compensation and Reimbursement of Expenses ("Application") in accordance with 11 U.S.C. §§327, 328, 330(a) & 503(b)(2) and Rule 2016 of the Federal Rules of Bankruptcy Procedure. In support of this Application, F&M states as follows:

INTRODUCTION

1. On December 10, 2009 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 [Docket No. 1] of the Bankruptcy Code in the United States Bankruptcy Court for the District of Massachusetts (the "Court").

2. On December 17, 2009, the Debtor filed an application with the Court to retain **Hanify & King, P.C.**, as his counsel [Docket No. 24]. The Application was approved by this Court [Bailey, J.] by Order on January 4, 2010 [Docket No. 41].

3. On June 10, 2010, the Debtor, through counsel, filed an Application for Authority to Retain **Stephen R. Follansbee** and the Firm of **Follansbee and McLeod, LLP** as Special Counsel to the Debtor [Docket No. 182] with Expedited Determination Requested. Said application was to permit the Debtor, through special counsel, to prosecute claims against Rockland Trust Company ("Rockland") he had commenced on or about August 17, 2009 in the Middlesex Superior Court, denoted as civil action number MICV 2009-3183 (the "Rockland Action"). In June of 2009, Rockland commenced five foreclosure actions in Middlesex Superior Court against the Debtor and related trust entities, asserting alleged substantial arrearages on three loans (mortgages) secured by five of his properties (denoted as civil action nos. MICV2009-2605, MICV2009-2609, MICV 2009-2610, MICV 2009, 2611, and MICV 2009-2612).

4. On June 11, 2009 [Docket No. 189] and again on June 29, 2009 [Docket No. 288], **Lisa Ann Jacobs** ("Jacobs") filed an Opposition of Jacobs to Application to Employ Follansbee & McLeod, LLP.

5. On June 14, 2009, Rockland filed its Opposition of **Rockland Trust Company** to Application for Authority to Employ Special Counsel [Docket No. 200].

6. On June 15, 2009, the U.S. Trustee filed a Limited Objection of United States Trustee to Application to Employ Stephen Follansbee and the Firm of Follansbee and McLeod, LLP as Special Counsel, to the Debtor [Docket No. 206], thereby arguing fees and reimbursement of expenses should be paid "only upon the filing and approval of a fee application per 11 U.S.C. 330 and 3331, Fed R. Bank. P. 2016 and MLBR 2016-1." Trustee's Objection @ paragraph 1.

7. On June 16, 2010, Judge Hillman granted the application to employ Stephen Follansbee and the Firm of Follansbee & McLeod, LLP (the "employment approval date") by Order [Docket No. 210]. **A copy of the Order is attached hereto as Exhibit A.**

8. On June 18, 2010, Hanify & King filed its Motion to Withdraw as Counsel to the Debtor [Docket No. 232], which was approved by Order [Docket No. 303] at hearing on June 29, 2010.

9. On June 21, 2010, the U.S. Trustee filed its United States Trustee's Motion to Convert Debtor's Chapter 11 Case to Chapter 7 or To Appoint a Chapter 11 Trustee and Request for Expedited Determination [Docket No. 249].

10. On June 25, 2010, the Debtor filed his Limited Objection to Hanify & King's Motion to Withdraw as Counsel [Docket No. 270].

11. On June 28, 2010, the Debtor filed an application to employ entitled Motion of Debtor to Employ **Stewart F. Grossman** and The Law Firm of **Looney &**

Grossman, LLP as Counsel [Docket No. 279] which was allowed by Order of this Court [Docket No. 307] on July 29, 2010.

12. On June 29, 2010, in response the U.S. Trustee's Motion to Convert or Appoint a Chapter 11 Trustee, Judge Hillman Ordered the U.S. Trustee to appoint an examiner forthwith [Docket No. 304]. On June 30, 2010 the U.S. Trustee filed its Certificate of Appointment of Mark DeGiacomo as examiner [Docket No. 313] and his Verified Declaration [Docket No. 314].

13. On August 9, 2010, the Debtor filed his Chapter 11 Plan of Organization [Docket No. 333] and his Motion for Extension of Time to file his Chapter 11 Disclosure Statement to August 27, 2010 [Docket No. 334]

14. On August 16, 2010 the examiner filed his report pursuant to 11 U.S.C. 1106(a)(3) & (4) [Docket No. 344].

15. On August 18, 2010, the Court appointed Joseph B. Collins as Chapter 11 Trustee [Docket No. 353].

16. On August 27, 2010, the Debtor failed to file his Disclosure Statement.

17. On September 14, 2010, Judge Hillman scheduled a hearing to be held on September 15, 2010 [Docket No. 383], on an Order to Show Cause why this case should be converted to one under Chapter 7 due to the Debtor's failure to file his Disclosure Statement [Docket No. 375].

18. On September 15, 2010, Judge Hillman converted the case to Chapter 7 [Docket No. 385] effective September 18, 2010.

19. On September 17, 2010, Judge Hillman recused himself and Judge Feeney entered the case, and this Court schedule a hearing for September 21, 2010 [Docket No.

394] on the Debtor Motion to Reconsider [Docket No. 391] and denied the Debtor's Motion [Docket No. 420].

20. By order dated September 28, 2010, the Court entered an order establishing a bar date of December 27, 2010 for the filing of Chapter 11 administrative claims [Docket No. 456].

21. On December 23, 2010, F&M filed its Notice of Appearance [Docket No. 1026], filed its proof of claim with the Court, which is docketed as P.O.C. No. 110-1. **To the extent, F&M filed its proof of claim incorrectly as an unsecured non-priority claim, F&M incorporates this application for Administrative Fee, therein by reference, thereby amending same.**

22. On December 28, 2010, F&M filed its First & Final Application For Administrative Compensation [Docket No. 1056]. **To the extent, F&M filed its Application without itemization, it hereby amends the same.**

APPLICATION BY F&M

23. Pursuant to this Application, F&M requests approval of fees in the amount of \$11,550.00 and reimbursement of expenses in the sum of \$57.00, totaling \$11,507.00 for services rendered and expenses incurred during the period between May 27, 2010 and September 29, 2010 (the "application period"). Other than compensation for services related to reviewing the substantial records in the Rockland case, including traveling to the Middlesex Superior Court, reviewing previously filed pleadings in this case, countless meetings with the Debtor, an appearance before the U.S. Bankruptcy Court on June 16, 2010, countless meetings with the Debtor regarding discovery, discussions with the

examiner as well as the Chapter 11 Trustee, F&M has not charged for fees incurred subsequent to the application period.

24. F&M requests payment of the requested fees and expenses, **including the immediate application of the approved retainer of \$10,000.00**, already received by the Debtor in or about June of 2010, as previously approved by Judge Hillman.

25. As more fully described herein, F&M provided substantial legal services to the Debtor during the application period. Attached hereto as **Exhibit A** is a copy of the Order authorizing F&M application of employment. **Exhibit B** contains a biographical description of Attorney Stephen R. Follansbee. Once the Chapter 11 Trustee was appointed on August 18, 2010, the undersigned counsel was prohibited from prosecuting the Rockland claim.

26. This compensation sought is for one category, the prosecution (including marshaling the facts) of the Middlesex Superior Court civil action, Robert N. Lupo v. Rockland Trust Company, Docket No. MICV2009-3183, with expenses related thereto.

27. During the Application Period, F&M expense 46.20 hours at the rate of \$250 per hour, totaling \$11,550.00 at its customary and usual hourly rate. The average hourly rate is \$250.00. (Attached as **Exhibit "C"** are copies of the itemized billing records which were attached to the proof of claim filed on December 23, 2010.)

28. During the application period, F&M has incurred expenses totaling \$57.00, i.e., \$32.00 for parking on 6/16/2010 and copies on 7/6/2010. F&M did not charge for in-house copies, nor the further cost of accessing the PACER system for the U.S. Bankruptcy Court, estimated over \$1,000.00.

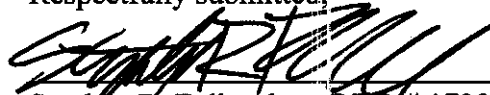
29. F&M submits that compensation for the services rendered and reimbursement of expenses incurred is reasonable based on: (i) the time and labor required; (ii) the substantially lower rate of \$250.00 per hour as compared with the customary compensation in Massachusetts and the average cost of Debtor's counsel: Hanify & King, P.C.; and Looney & Grossman, LLP; and Rockland's counsel, Posternak, Blankstein & Lund, LLP; of between \$425 and \$475.00; (iii) the estimate of Rockland, in paragraph 15 of its Request of Rockland Trust Company for Payment of Chapter 11 Administrative Claim (Including Claims for Superpriority) [Docket No. 1039] wherein it estimates it has expensed \$15,000 in legal fees during the chapter 11 proceedings in defense of the litigation; (iv) the complexity of the legal questions presented; (v) the skill required to marshal the facts and perform the legal services; and (vi) the experience and ability of the attorney providing the services.

WHEREFORE, F&M respectfully moves the Court for an Order:

- (1) Approving the fees in the sum of \$11,550.00 and reimbursement of expenses in the sum of \$57.00;
- (2) Authorizing payment of such fees and expenses from the bankruptcy estate, after the application of the Court approved retainer in the sum of \$10,000.00; and
- (3) Granting such other relief as is just and proper.

Dated: January 24, 2011.

Respectfully submitted,



Stephen R. Follansbee (BBO # 173820)
FOLLANSBEE & McLEOD, LLP
536 Granite Street
Braintree, MA 02148-3963
Telephone (781) 848-1500
steve@fmlaw.us

CERTIFICATE OF SERVICE

The Stephen R. Follansbee, hereby certify, that I have this day cause to be served a copy of the following document:

FIRST AND FINAL APPLICATION FOR ADMINISTRATIVE
COMPENSATION AND REIMBURSEMENT OF EXPENSES
BY STEPHEN R. FOLLANSBEE & FOLLANSBEE & McLEOD, LLP
AS SPECIAL COUNSEL TO THE DEBTOR, ROBERT N. LUPO

via first class mail, postage pre-paid, as indicated on the service list below as address to:

1. Robert N. Lupo
89 Sudbury Road
Weston, MA 02493
2. Leonard M. Krulewich, Esq.
Leonard Krulewich & Associates
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Newton, MA 02458
3. Paula Bachtell, Asst. U.S. Trustee
Office of the U.S. Trustee
J.W. McCormack Post Office & Courthouse
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Boston, MA 02109
4. Amy Lee Lipman-White, Esq.
Stanton & Davis
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5. Harvey Alford, Esq.
Alford & Bertrand, LLC
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8. David Reier, Esq.
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 9. Julie Raniere, Esq.
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 10. Nicole Starck, Esq.
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-
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 12. American Home Mortgage Servicing, Inc.
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 13. E-Z Oil Company
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 14. Robert T. Grimes
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 15. Lisa Jacobs
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 16. Litton Loan Servicing, LP
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 17. Recovery Management Systems Corp.
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18. Jeanette McCarthy, Mayor
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43. Carroll M. Lowenstein, Esq.
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Arlington, MA 02474
44. Michael R. Murphy
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45. ReMax Leading Edge
c/o Colleen Sleeper
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Winchester, MA 01890
46. SmartBooks Corp.
Post Office Box 722
Maynard, MA 01754

47. Douglas G. Thayer
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Wakefield, MA 01880

Dated: January 24, 2011



Stephen R. Follansbee
(BBO # 173820)
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Braintree, MA 02148-3963
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UNITED STATES BANKRUPTCY COURT DISTRICT OF MASSACHUSETTS
Proceeding Memorandum/Order of Court

"A"

In Re: Robert N. Lupo

Case Number: 09-21945

Ch: 11

Matter:

- #182 Application filed by Debtor Robert N. Lupo to Employ Stephen R. Follansbee and the Firm of Follansbee & McLeod, LLP as Special Counsel. Expedited Determination Requested. (A. Lizotte)
- #189 Opposition by Creditor Lisa Jacobs (L. Jacobs)
- #200 Opposition by Creditor Rockland Trust Company (D. Reier)
- #206 Limited Objection by US Trustee (P. Bachtell)

MOVANT/APPLICANT/PARTIES

OUTCOME:

DEC28'10 AM 8:26 358

By Agreement of the Parties

182 Granted Denied Approved Sustained

Denied Denied without prejudice Withdrawn in open court Overruled

OSC enforced/released

Continued to: _____ For: _____

Formal order/stipulation to be submitted by: _____ Date due: _____

Findings and conclusions dictated at close of hearing incorporated by reference

Taken under advisement: Brief(s) due _____ From _____

Response(s) due _____ From _____

Fees allowed in the amount of: \$ _____ Expenses of: \$ _____

No appearance/response by: _____

DECISION SET OUT MORE FULLY BY COURT AS FOLLOWS:

Hearing held.

IT IS SO NOTED:

IT IS SO ORDERED:

William C. Hillman

Dated: 06/16/2010

Courtroom Deputy

William C. Hillman, U.S. Bankruptcy Judge

"B"

Stephen R. Follansbee, Esq.

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536 Granite Street
Braintree, MA. 02184
(781) 848-1500
(781) 848-2220 Facsimile
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Education: Boston College, B.A. 1971
Boston College Law School, J.D. 1974

Professional: 1994 - Present Partner in Follansbee & McLeod, LLP, 10 McGrath Highway,
Quincy, MA 02169

1974 - 1993 Partner in Thomas & Follansbee, 1 Court Street, Boston,
Massachusetts; 335 Providence Highway, Westwood, Massachusetts

1971-1974 Suffolk County District Attorney's Office; Norfolk County District
Attorney's Office

Since 1974, private practice has included specializing in Civil Litigation, Construction Litigation,
Public Contracts Arbitration Cases, Public Contract Bid Disputes, Commercial Litigation,
Bonding & Insurance, Eminent Domain, and Real Estate Law.

Memberships: Massachusetts Bar Association, Association of Trial Lawyers of America, American Bar
Association

Community: • Management Committee - South Shore Country Club, publicly owned facility of the Town of
Hingham, Hingham, Massachusetts 1996-2001.
• Volunteer and coach, Hingham Youth Soccer 1990-2000

Notable Cases: J.D'Amico, Inc. v. Saugus, 9 Mass. App. 880 (1980)
Public Contract - change orders, compliance with contract requirements on unit price
contract.

J.D'Amico, Inc. v. Worcester, 19 Mass. App. 112 (1984)
Public Contract - bid protest, bid bond requirements, statutory requirements must be
adhered to in all respects.

Metropolitan Ins. v. Choukas 47 Mass. App. 196 (1999)
Unfair Settlement Practices - insurance company obligated to pay damages under G.L. c.
93A for willful failure to settle under insured claims.

Ecolab v. Coyle (Mass. Lawyers Weekly No. 16-010-99)
Abuse of Process - On counterclaim in covenant not to compete action, former employee
prevailed on abuse of process claim and recovered under G.L. c. 93A.

Quinton v. Gavin 2001 WL 1194151 (Mass.Super.)
Trustees (Fraud) - Trustee held accountable under G.L. c.93A, treble damages against
trustee.

"c"

FOLLANSBEE AND McLEOD, LLP
ATTORNEYS AT LAW
536 GRANITE STREET, 3rd FLOOR EAST
BRAINTREE MA 02184

DEC23'10 AM 11:45 US

December 22, 2010

Invoice submitted to:

Mr. Robert Lupo
721 Main Street
Waltham MA 02451

In Reference To: Rockland Trust, Middlesex Superior Court

Professional services

	<u>Hrs/Rate</u>	<u>Amount</u>
5/27/10 Meeting with client and review of documents	1.00 250.00/hr	250.00
6/1/10 Review of records at Middlesex Superior Court in underlying action; meeting with Christopher Lewis; telephone conference with client; telephone conference with Atty. Lizotte's office	2.00 250.00/hr	500.00
6/2/10 Telephone conference with Hanify & King; telephone conference with R. Lupo and C. Lewis; email to Hanify & King; telephone conerence with Atty. Lizotte; correspondence from R. Lupo and C. Lewis re: counterclaim and discovery; telephone conference with C. Lewis in response	2.25 250.00/hr	562.50
6/3/10 Review of R. Lupo letter to Hanify & King; telephone conference with R. Lupo and C. Lewis	0.25 250.00/hr	62.50

	<u>Hrs/Rate</u>	<u>Amount</u>
6/4/10 Exchange of emails with R. Lupo	0.25 250.00/hr	62.50
6/7/10 Review of emails re: Hanify & King filing withdrawal; R. Lupo's response received and reviewed	0.85 250.00/hr	212.50
6/9/10 Meeting with R. Lupo, C. Lewis and correspondence to Andy Lizotte, Esq.; review of emails re: Hanify & King withdrawal; pleadings re: motion to employ SRF; telephone conferences with Atty. Lizotte and R. Lupo	4.25 250.00/hr	1,062.50
6/10/10 Review of emails re: U.S. Trustee's position; correspondence and emails from Atty. Lizotte and R. Lupo	1.00 250.00/hr	250.00
6/11/10 Review and response to Atty Lizotte's emails regarding employment; telephone conferences with R. Lupo and C. Lewis; review of Hanify & King motion to withdraw; telephone conference with Steve Shambam	1.50 250.00/hr	375.00
6/14/10 Telephone conference with Atty. Lizotte; review of objection by Lisa Jacobs; review of objections by Rockland Trust; telephone conference with Atty. Lizotte and client	0.50 250.00/hr	125.00
6/16/10 Attendance at hearing in Bankruptcy Court, Boston; meeting with client in Boston	3.50 250.00/hr	875.00
6/28/10 Review of Rockland Trust pleadings	0.50 250.00/hr	125.00
6/30/10 Review of documents received from Bob Lupo; emails to B. Lupo	2.10 250.00/hr	525.00
7/1/10 Meeting with C. Lewis; review of emails re: Rockland records from Bowditch & Dewey; conference with C. Lewis and R. Lupo re: additional records	2.25 250.00/hr	562.50
7/6/10 Review of pleadings at Middlesex Superior Court; copies to R. Lupo; telephone conference with R. Lupo and C. Lewis re: discovery requests	5.50 250.00/hr	1,375.00

Mr. Robert Lupo

Page 3

		<u>Hrs/Rate</u>	<u>Amount</u>
7/14/10	Review of emails from R. Lupo; telephone conference with R. Lupo and C. Lewis re: discovery and scheduling	1.00 250.00/hr	250.00
7/22/10	Review of emails from R. Lupo and Atty. Ruttenberg; email to R. Lupo re: discovery; telephone conference with C. Lewis re: discovery	1.50 250.00/hr	375.00
7/23/10	Telephone conference with R. Lupo re: discovery	0.50 250.00/hr	125.00
7/28/10	Review of email from R. Lupo; email to R. Lupo; extensive email to Atty. DeGiacomo re: Rockland issues	2.00 250.00/hr	500.00
8/4/10	Telephone conference with R. Lupo; review of R. Lupo's email; damages analysis for R. Lupo	0.50 250.00/hr	125.00
8/10/10	Telephone conference with C. Lewis; review of R. Lupo's email re: documents for Rockland case	0.75 250.00/hr	187.50
8/18/10	Telephone conference with R. Lupo; review and response to correspondence re: Rockland case	1.00 250.00/hr	250.00
8/24/10	Telephone conferences with Bob Lupo; review correspondence from Bowditch; emails to Bob Lupo; review of Middlesex docket; review of bankruptcy docket; telephone conference with R. Lupo and C. Lewis re: status report due in Middlesex Superior Court	2.75 250.00/hr	687.50
8/25/10	Telephone conference with R. Lupo and review of emails re: Rockland removal to Bankruptcy court; advised that I would not accept a contingent fee arrangement	0.25 250.00/hr	62.50
8/30/10	Follow up email to R. Lupo requesting compliance with outstanding discovery; reminder to R. Lupo re: Collins and status report for Superior Court	1.00 250.00/hr	250.00
9/1/10	Telephone conference with C. Lewis and emails re: status report; email to Atty. Siedband	0.75 250.00/hr	187.50

Mr. Robert Lupo

Page 4

	<u>Hrs/Rate</u>	<u>Amount</u>
9/6/10 Review and respond to R. Lupo email re: discovery on Rockland case	0.50 250.00/hr	125.00
9/8/10 Review of email re: license complaint	250.00/hr	NO CHARGE
9/10/10 Review and response to removal of case to Bankruptcy Court; status scheduled for 9/15/10	0.50 250.00/hr	125.00
9/12/10 Email to R. Lupo re: attempts to obtain documents re: Rockland case (affidavit)	1.00 250.00/hr	250.00
9/13/10 Email to R. Lupo re: critical to respond to discovery	0.25 250.00/hr	62.50
9/14/10 Review of email re: status date	0.25 250.00/hr	62.50
9/20/10 Affidavit re: Rockland Trust etc; review of orders re: Chapter 7	0.50 250.00/hr	125.00
9/29/10 Review of file and conference with Atty. Collins' office re: continuation of Rockland litigation; email to R. Lupo; assembled records and pleadings re: Rockland, forwarded same to R. Lupo; email with documents to Atty. Collins	2.50 250.00/hr	625.00
Assembled records and pleadings re: Rockland, forwarded same to R. Lupo; email with document to Atty. Collins	1.00 250.00/hr	250.00
For professional services rendered	46.20	\$11,550.00
<u>Additional charges:</u>		
	<u>Price</u>	
6/16/10 Parking	32.00	32.00

Mr. Robert Lupo

Page 5

	<u>Price</u>	<u>Amount</u>
7/6/10 Copies	25.00	25.00
Total costs		<hr/> \$57.00
Total amount of this bill		<hr/> \$11,607.00
Balance due		<hr/> <hr/> \$11,607.00

01/25/11 4:10:54 LSP