

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS

In re)
) Chapter 7, No. 09-21945-JNF
)
ROBERT N. LUPO)
)
)
)
Debtor)
)

FIRST INTERIM APPLICATION FOR ALLOWANCE OF FEES AND EXPENSES
BY HENDEL & COLLINS, P.C.,
AS COUNSEL TO THE CHAPTER 7 TRUSTEE

TABLE OF CONTENTS

Summary Sheet (per UST Guidelines) ii

Application for First Interim Allowance by
Hendel & Collins, P.C. as
Counsel to the Chapter 7 Trustee 1

Order Authorizing Employment of
Hendel & Collins, P.C. Exhibit "A"

Biographies of Personnel Rendering
Services Exhibit "B"

Attorney Time Summary Exhibit "C"

Itemized Statement of Services Exhibit "D"

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS

In re)	
)	Chapter 7, No. 09-21945-JNF
ROBERT N. LUPO)	
)	
Debtor)	

Fees Previously Requested	\$ None	NAME OF APPLICANT:
Fees Previously Awarded	\$ None	Hendel & Collins, P.C.
Expenses Previously Requested	\$ None	ROLE IN CASE:
Expenses Previously Awarded	\$ None	Counsel to Chapter 7 Trustee
Retainer Paid	\$ None	CURRENT APPLICATION:
		Fee Requested \$319,984.50
		Expenses \$ 11,566.30
		Requested

FEE APPLICATION

PROFESSIONALS/ PARAPROFESSIONALS	YEAR ADMITTED TO PRACTICE	HOURS BILLED	RATE	TOTAL AMOUNT
PARTNERS:				
Philip J. Hendel	1965	0.8	\$410.00	\$ 328.00
Joseph B. Collins	1978	113.3	\$385.00	\$43,620.50
Henry E. Geberth, Jr.	1977	74.0	\$360.00	\$26,640.00
George I. Roumeliotis	1993	25.7	\$330.00	\$ 8,481.00
Philip J. Hendel	1965	1.2	\$435.00	\$ 522.00
Joseph B. Collins	1978	191.2	\$410.00	\$78,392.00
Henry E. Geberth, Jr.	1977	127.3	\$385.00	\$49,010.50
George I. Roumeliotis	1993	44.8	\$355.00	\$15,904.00
ASSOCIATES:				
Spencer A. Stone	2008	121.5	\$175.00	\$21,262.50
Spencer A. Stone	2008	216.1	\$200.00	\$43,220.00
Andrea M. Momnie	2010	177.2	\$150.00	\$26,580.00

LAW CLERKS:

Andrea M. Momnie	2010	41.6	\$130.00	\$ 5,408.00
------------------	------	------	----------	-------------

PARAPROFESSIONALS:

Susan M. Mello		0.6	\$110.00	\$ 66.00
Melissa J. Conte		<u>5.0</u>	\$110.00	<u>\$ 550.00</u>

TOTAL		1,140.3		\$319,984.50
-------	--	---------	--	--------------

AVERAGE HOURLY RATE \$228.57
(from 9/18/10 to
10/31/10)

AVERAGE HOURLY RATE \$245.71
(from 11/1/10 to
1/19/11)

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS

In re)
) Chapter 7, No. 09-21945-JNF
)
ROBERT N. LUPO)
)
)
)
Debtor)
)

**FIRST INTERIM APPLICATION FOR ALLOWANCE OF FEES AND EXPENSES BY
HENDEL & COLLINS, P.C., AS COUNSEL TO THE CHAPTER 7 TRUSTEE**

To the HONORABLE JOAN N. FEENEY, Bankruptcy Judge:

Now comes your Applicant, HENDEL & COLLINS, P.C., of 101 State Street, Springfield, Massachusetts, (hereinafter "Applicant" or "H&C") and pursuant to the provisions of Sections 327 and 330 of the Bankruptcy Code, Rule 2016 of the Federal Rules of Bankruptcy Procedure and Rule 2016-1 of the Massachusetts Local Bankruptcy Rules, requests an interim allowance of fees and expenses in connection with professional services provided to the Chapter 7 Trustee in this case. In support thereof, your Applicant represents as follows:

1. On December 10, 2009, Robert N. Lupo ("Debtor") filed a Voluntary Petition pursuant to the provisions of Chapter 11 of the United States Bankruptcy Code ("Code") with the United States Bankruptcy Court for the District of Massachusetts ("Court").

2. On or about August 19, 2010, the Trustee accepted an appointment as Chapter 11 Trustee of the Debtor's Bankruptcy Estate.

3. On September 15, 2010, the Court entered an Order converting the Debtor's bankruptcy case to one under the provisions of Chapter 7 of the Code effective September 18, 2010. On or about September 18, 2010, the Trustee accepted an appointment as Chapter 7 Trustee of the Debtor's Bankruptcy Estate and he continues to serve in that capacity.

4. On September 23, 2010, the employment of Hendel & Collins, P.C. as counsel to the Chapter 7 Trustee was approved by Order of the Bankruptcy Court, effective as of September 18, 2010.

5. As Counsel to the Chapter 7 Trustee, your Applicant rendered valuable professional services to the Estate between September 18, 2010 and January 19, 2011, totaling 1,140.3 hours of legal representation on a variety of issues in connection with this case, all as detailed on the itemization attached hereto as Exhibit "D".

6. Pursuant to MLBR 2016-1, your Applicant has attached a copy of the Order authorizing employment as Exhibit "A", a brief biography of each person contributing to the professional services rendered to the Trustee as Exhibit "B", a summary of attorney/legal assistant time as Exhibit "C" and a detailed itemization of professional services rendered as Exhibit "D".

7. As the total compensation sought exceeds \$35,000.00, your Applicant has segmented its legal services into the narrative categories that follow. These categories detail the nature of the services rendered and the benefits provided, pursuant to MLBR 2016-1. Because professional legal services cover a broad range of activities, time entries are likely to fit into more than one category. Your Applicant has exercised care to place the entry into the category best describing the services rendered.

8. On November 1, 2010, Hendel & Collins, P.C. increased its hourly billing rates. The services for which an allowance is sought in this Application include time expended before and after the change in billing rates. The time summaries included in this Application set forth the amount of time expended before and after the change in the rates.

A. Asset Analysis and Recovery

Your Applicant assisted the Trustee in connection with multiple issues that affected the value of the Debtor's assets and their ability to be recovered. This review was commenced during the Chapter 11 portion of the Debtor's bankruptcy case and continues into the Chapter 7 portion of the case. Your Applicant's analysis of the Debtor's financial affairs included a review of the Examiner's Report, the Court Docket, the Claims Register, and the Debtor's proposed Plan of Reorganization. Your Applicant also considered the validity and extent of security interests and consignment agreements, the Estate's interest in securities accounts, the Debtor's transactions with insiders, and potential preferential and other avoidable transfers.

The actions taken by your Applicant to recover property of the Estate include the collection of two separate securities accounts in which the Debtor had an interest. The total value of the funds recovered for the benefit of the Estate from these accounts was \$194,320.78. A portion of these funds were in a joint account with Jean Reynolds, the Debtor's non-debtor spouse. Mrs. Reynolds has taken the position that she is entitled to a portion of the funds in the joint account that were turned over to the Estate. Your Applicant has negotiated with counsel representing Mrs. Reynolds in an effort to resolve this controversy.

Tax refunds were also collected by the Estate as a result of your Applicant's efforts to arrange for their turnover. The Federal income tax refunds that your Applicant has recovered total \$15,614.92. The tax refunds collected by your Applicant result from joint accounts filed by the Debtor and his non-debtor spouse. The Debtor's spouse takes the position that a portion of the refunds are attributable to her withholdings and should be turned over to her. Your Applicant continues to negotiate with the counsel representing the Debtor's spouse regarding the resolution of these issues.

In addition to the foregoing, a portion of the time included in this category represents time expended in organizing an auction sale of the Debtor's assets.

A summary of the professional services devoted to this aspect of the case is as follows:

<u>Attorney/Paralegal</u>	<u>Hours</u>	<u>Rate/Hour</u>	<u>Amount</u>
---------------------------	--------------	------------------	---------------

Joseph B. Collins (JBC)	39.3	\$385.00	\$15,130.50
Henry E. Geberth, Jr. (HEG)	5.6	\$360.00	\$2,016.00
George I. Roumeliotis (GIR)	14.6	\$330.00	\$4,818.00
Spencer A. Stone (SAS)	39.0	\$175.00	\$6,825.00
Andrea M. Momnie (AMM)	17.3	\$130.00	\$2,249.00
Melissa J. Conte (MJC)	0.9	\$110.00	\$99.00
Joseph B. Collins (JBC)	43.8	\$410.00	\$17,958.00
Henry E. Geberth, Jr. (HEG)	5.1	\$385.00	\$1,963.50
George I. Roumeliotis (GIR)	7.8	\$355.00	\$2,769.00
Spencer A. Stone (SAS)	59.8	\$200.00	\$11,960.00
Andrea M. Momnie (AMM)	31.9	\$150.00	\$4,785.00
Melissa J. Conte (MJC)	<u>0.4</u>	\$110.00	<u>\$44.00</u>
TOTAL	265.50		\$70,617.00

B. Asset Disposition

The two principal components of the time expended in the Asset Disposition category relate to the Estate's abandonment of real estate and the conduct of an auction sale.

The assets of the Debtor's Bankruptcy Estate include multiple commercial and residential income properties. The Applicant conducted an analysis of the value of each of these properties to the Estate. This evaluation included the consideration of current cash flow and expenditures, mortgage debt, other encumbrances, the cost of sale, tax consequences and value. The analysis was assisted by the accountants for the Bankruptcy Estate who provided much information regarding current mortgage debt and the tax consequences from any sale.

As a result of this analysis, eight separate properties were identified for abandonment. Your Applicant filed multiple pleadings in order to accomplish the abandonment of each of these properties. One of the Notices of Abandonment regarding the Orange Street, Waltham property, resulted in the filing of Objections by the Debtor and Lisa Jacobs. After notice and hearing, this abandonment was allowed. All of the other properties that the Trustee has sought to abandon have proceeded without an objection and each has been abandoned. The effect of the abandonment is to substantially reduce the exposure of the Bankruptcy Estate to the risks associated with the continued operation of unproductive properties.

The auction sale that was conducted by the Bankruptcy Estate was essentially in two parts. The first part of the auction sale involved the sale of the Debtor's automobiles. This aspect of the sale proved to be eventful as a result of the Debtor's reluctance to identify the location of his automobiles, or to turnover physical possession of his automobiles, Certificates of Title and car keys. The Debtor's recalcitrance resulted in the filing by your Applicant of the Motion to Compel Turnover. Eventually, your Applicant was successful in obtaining most of the information required to properly conduct the sale of the Debtor's vehicles.

The second aspect of the auction sale involved the Estate's liquidation of the assets of a corporation wholly owned by the Debtor, i.e., The Piano Man, Inc. The Applicant's investigation of the Debtor's financial affairs revealed that the Debtor was the holder of a security interest in the assets of that Corporation. Although not listed on his Bankruptcy Schedules, the Debtor was also the holder of an account receivable due to

him from The Piano Man, Inc. in the amount of several hundred thousand dollars. As a result of the Debtor's refusal to provide documentation regarding the loan and security interest that he held in the corporate assets, the Trustee undertook steps to properly document a security interest in favor of the Bankruptcy Estate. Your Applicant then proceeded to assist the Trustee in the liquidation of the assets of The Piano Man, Inc. by a secured party sale.

The pleadings that your Applicant filed in order to obtain approval for the auction sale of the Debtor's automobiles and the secured party sale of the assets of The Piano Man, Inc. resulted in a series of Objections. These Objections included those of a creditor that claimed to hold a security interest in all accounts receivable owned by Mr. Lupo and, therefore, the account receivable being enforced by the Bankruptcy Estate, and the claims of several parties that have claimed to be consignors of assets located at the premises of The Piano Man, Inc. At the direction of the Court, the claims of the consignors were resolved in their favor. The claim of the creditor claiming a security interest in the Debtor's accounts receivable is presently being addressed in a separate negotiation.

As a result of the auction sales, the gross sum of \$224,867.07 was realized for the benefit of the Bankruptcy Estate. The net amount that will be covered by the Bankruptcy Estate will likely be reduced by auctioneer fees and expenses, the claims of creditors holding security interests in the Debtor's assets, and the claims of other consignors that have contacted the Trustee subsequent to the auction sale.

A summary of the professional services devoted to this

aspect of the case is as follows:

<u>Attorney/Paralegal</u>	<u>Hours</u>	<u>Rate/Hour</u>	<u>Amount</u>
Joseph B. Collins (JBC)	3.7	\$385.00	\$1,424.50
Henry E. Geberth, Jr. (HEG)	3.4	\$360.00	\$1,224.00
George I. Roumeliotis (GIR)	3.9	\$330.00	\$1,287.00
Spencer A. Stone (SAS)	3.0	\$175.00	\$525.00
Andrea M. Momnie (AMM)	6.3	\$130.00	\$819.00
Melissa J. Conte (MJC)	0.2	\$110.00	\$22.00
Joseph B. Collins (JBC)	0.6	\$410.00	\$246.00
Henry E. Geberth, Jr. (HEG)	9.8	\$385.00	\$3,773.00
Spencer A. Stone (SAS)	3.8	\$200.00	\$760.00
Andrea M. Momnie (AMM)	<u>11.3</u>	\$150.00	<u>\$1,695.00</u>
TOTAL	46.0		\$11,775.50

C. Business Operations

The assets of the Debtor's Bankruptcy Estate included multiple units of commercial and residential investment real estate. Immediately after the Appointment of the Chapter 7 Trustee, your Applicant prepared and prosecuted a motion seeking authority for the Trustee to operate the business. Counsel also continued efforts to identify and employ a management company to assist in the business operation. Your Applicant conferred with several prospective management companies and spent a significant period of time reviewing the proposed terms and conditions of property management agreements. After concluding the negotiation of an acceptable management contract, a Motion was filed and prosecuted with the Bankruptcy Court seeking the employment of a management company.

During the period of this Application, your Applicant also undertook an assortment of varied responsibilities necessary to

maintain the security of the business operation. One of these activities involved the preparation of cash flow budgets necessary to support the use of cash collateral. H&C conferred with the Trustee's accountants and also actively participated in the management of cash flow. Among the difficulties presented by the Debtor's bankruptcy case was the collection of rents. The Trustee learned that notwithstanding instructions to the contrary, the Debtor continued to meet with tenants and collect rents from them. H&C has spent significant efforts in determining and securing rents properly due to the Bankruptcy Estate.

The proper accounting of rents was also complicated by the abandonment of properties back to the Debtor. Transitional problems occurred involving rents, maintenance, heating, and insurance. H&C continues to spend efforts in order to properly enforce the rights of the Estate with respect to all of these issues.

The business operations undertaken by H&C also included procuring insurance necessary to secure the assets of the Estate. H&C found that the Debtor's records regarding insurance were not well kept and that in some instances, insurance had to be procured on an emergency basis. Further, H&C experienced the common bankruptcy problem of obtaining insurance for unoccupied properties that, in some instances, were out of state. H&C addressed all of these insurance issues. The business operations undertaken by H&C also included addressing an assortment of tax issues. These issues primarily included payroll tax and capital gains tax issues. These issues continue to be addressed.

A summary of the professional services devoted to this aspect of the case is as follows:

<u>Attorney/Paralegal</u>	<u>Hours</u>	<u>Rate/Hour</u>	<u>Amount</u>
---------------------------	--------------	------------------	---------------

Philip J. Hendel (PJH)	0.4	\$410.00	\$164.00
Joseph B. Collins (JBC)	12.6	\$385.00	\$4,851.00
Henry E. Geberth, Jr. (HEG)	20.0	\$360.00	\$7,200.00
Spencer A. Stone (SAS)	2.5	\$175.00	\$437.50
Andrea M. Momnie (AMM)	3.5	\$130.00	\$455.00
Melissa J. Conte (MJC)	0.6	\$110.00	\$66.00
Joseph B. Collins (JBC)	7.8	\$410.00	\$3,198.00
Henry E. Geberth, Jr. (HEG)	78.6	\$385.00	\$30,261.00
Spencer A. Stone (SAS)	4.6	\$200.00	\$920.00
Andrea M. Momnie (AMM)	48.2	\$150.00	\$7,230.00
Melissa J. Conte (MJC)	0.2	\$110.00	\$22.00
Susan M. Mello (SMM)	<u>0.4</u>	\$110.00	<u>\$44.00</u>
TOTAL	179.4		\$54,848.50

D. Case Administration

The services rendered in the category entitled Case Administration are multiple and varied. They include time expended in initial pleadings including the Chapter 7 Trustee's Motion Seeking Authority to Operate the Debtor's Business as well as the Chapter 7 Trustee's Motion to Approve Cash Collateral. During the initial portion of the administration of the Bankruptcy Estate, time expended in connection with multiple pending Motions for Relief from Stay was also included in this category.

The Case Administration services also related to the Debtor's repeated attempts to reconvert his bankruptcy case to Chapter 11. Significant time was expended in connection with the development of information necessary to conclude that creditors would be better served by the continuance of a Chapter

7 case. Hearings were held in connection with the Debtor's Motion to Reconvert and the Debtor's Motions were not approved.

A summary of the professional services devoted to this aspect of the case is as follows:

<u>Attorney/Paralegal</u>	<u>Hours</u>	<u>Rate/Hour</u>	<u>Amount</u>
Philip J. Hendel (PJH)	0.4	\$410.00	\$164.00
Joseph B. Collins (JBC)	1.7	\$385.00	\$654.50
Henry E. Geberth, Jr. (HEG)	14.4	\$360.00	\$5,184.00
George I. Roumeliotis (GIR)	0.8	\$330.00	\$264.00
Spencer A. Stone (SAS)	7.1	\$175.00	\$1,242.50
Andrea M. Momnie (AMM)	3.8	\$130.00	\$494.00
Melissa J. Conte (MJC)	0.2	\$110.00	\$22.00
Joseph B. Collins (JBC)	11.0	\$410.00	\$4,510.00
Henry E. Geberth, Jr. (HEG)	11.2	\$385.00	\$4,312.00
Spencer A. Stone (SAS)	2.4	\$200.00	\$480.00
Andrea M. Momnie (AMM)	2.2	\$150.00	\$330.00
Melissa J. Conte (MJC)	<u>0.4</u>	\$110.00	<u>\$44.00</u>
TOTAL	55.6		\$17,701.00

E. Claims Administration and Objections

During the time period covered by this Application, your Applicant continued assisting the Trustee in connection with specific claim inquiries made by various creditors, the analysis of various creditors' claims, and the review of supporting documentation for various claims to confirm their validity and amount.

As of the date of this Application, your Applicant has filed three formal Objections to claims. Two of these claims objections have been approved and the claims have been

disallowed. The third claim Objection is pending before the Court as a contested motion.

An additional claim, filed by an allegedly secured creditor, is also being addressed by your Applicant. It is expected that this secured claim will be resolved for an amount less than the full amount of the claim.

A summary of the professional services devoted to this aspect of the case is as follows:

<u>Attorney/Paralegal</u>	<u>Hours</u>	<u>Rate/Hour</u>	<u>Amount</u>
Joseph B. Collins (JBC)	1.3	\$385.00	\$500.50
Henry E. Geberth, Jr. (HEG)	1.2	\$360.00	\$432.00
George I. Roumeliotis (GIR)	1.1	\$330.00	\$363.00
Joseph B. Collins (JBC)	6.7	\$410.00	\$2,747.00
Henry E. Geberth, Jr. (HEG)	3.1	\$385.00	\$1,193.50
George I. Roumeliotis (GIR)	0.8	\$355.00	\$284.00
Spencer A. Stone (SAS)	14.3	\$200.00	\$2,860.00
Andrea M. Momnie (AMM)	2.2	\$150.00	\$330.00
Melissa J. Conte (MJC)	<u>0.6</u>	\$110.00	<u>\$66.00</u>
TOTAL	31.3		\$8,776.00

F. Employment Applications and Objections

Your Applicant assisted the Trustee in connection with the preparation of an employment application for your Applicant's involvement as the Trustee's counsel. Additionally, your Applicant assisted the Trustee in connection with employment applications of other professionals in the case, including the Chapter 7 accountant, property management company, real estate broker, and auctioneer. Your Applicant has also had discussions with other counsel in an effort to identify counsel for special

purposes including litigation and eviction proceedings.

A summary of the professional services devoted to this aspect of the case is as follows:

<u>Attorney/Paralegal</u>	<u>Hours</u>	<u>Rate/Hour</u>	<u>Amount</u>
Joseph B. Collins (JBC)	3.0	\$385.00	\$1,155.00
Henry E. Geberth, Jr. (HEG)	13.4	\$360.00	\$4,824.00
George I. Roumeliotis (GIR)	0.3	\$330.00	\$99.00
Spencer A. Stone (SAS)	14.0	\$175.00	\$2,450.00
Melissa J. Conte (MJC)	0.4	\$110.00	\$44.00
Spencer A. Stone (SAS)	<u>0.6</u>	\$200.00	<u>\$120.00</u>
TOTAL	31.7		\$8,692.00

G. Fee Applications

Your Applicant assisted the Trustee in connection with the preparation of a fee application for your Applicant's involvement as the Trustee's counsel. Additionally, your Applicant provided assistance to the Trustee in connection with fee applications of other professionals in the case, including the Chapter 7 auctioneer and accountant.

A summary of the professional services devoted to this aspect of the case is as follows:

<u>Attorney/Paralegal</u>	<u>Hours</u>	<u>Rate/Hour</u>	<u>Amount</u>
Joseph B. Collins (JBC)	6.4	\$410.00	\$2,624.00
Spencer A. Stone (SAS)	0.5	\$200.00	\$100.00
Andrea M. Momnie (AMM)	<u>6.8</u>	\$150.00	<u>\$1,020.00</u>
TOTAL	13.7		\$3,744.00

H. Litigation

Your Applicant assisted the Trustee in connection with a comprehensive review of the Court Docket regarding pending Motions and Adversary Proceedings, reviewed Complaints pending against the Debtor and causes of actions asserted by the Debtor. Your Applicant assisted the Trustee in connection with reviewing multiple Motions for Relief from Stay and all pleadings filed by various parties in the case.

This category also includes a substantial portion of the time expended by H&C in responding to the Debtor's last attempt to file a Chapter 11 Plan and to reconvert his case to Chapter 7. The actions taken to resist the Debtor's actions were successful and the Debtor's case remains in Chapter 7.

Additional time in this category is attributable to the preparation of a Complaint to authorize the sale of the Debtor's spouse's interest in a Weston property. H&C anticipates that the draft Complaint, not yet filed, will motivate the Debtor's spouse to settle the issues of the co-owned property with the Trustee.

A summary of the professional services devoted to this aspect of the case is as follows:

<u>Attorney/Paralegal</u>	<u>Hours</u>	<u>Rate/Hour</u>	<u>Amount</u>
Joseph B. Collins (JBC)	7.2	\$385.00	\$2,772.00
Henry E. Geberth, Jr. (HEG)	0.6	\$360.00	\$216.00
Spencer A. Stone (SAS)	7.1	\$175.00	\$1,242.50
Andrea M. Momnie (AMM)	0.1	\$130.00	\$13.00

Joseph B. Collins (JBC)	17.9	\$410.00	\$7,339.00
Henry E. Geberth, Jr. (HEG)	1.0	\$385.00	\$385.00
Spencer A. Stone (SAS)	22.0	\$200.00	\$4,400.00
Andrea M. Momnie (AMM)	9.9	\$150.00	\$1,485.00
Melissa J. Conte (MJC)	<u>0.2</u>	\$110.00	<u>\$22.00</u>
TOTAL	66.0		\$17,874.50

I. Lisa Jacobs

A separate billing category has been established to identify the damage that has been done to the Estate by a single alleged creditor. Since the conversion of the Debtor's bankruptcy case to Chapter 7, Lisa Jacobs ("Jacobs") has continuously sought payments and employment from the Estate. When her attempts to obtain undue financial advantages were rejected by the Trustee, she has followed through on threats to become the biggest "thorn" in the side of the Estate.

The steps taken by Jacobs to disrupt the Bankruptcy proceedings have been extraordinary. She has filed multiple pleadings having no basis in fact or law, she has been publicly critical and disrespectful of the Bankruptcy Court, the United States District Court, the Bankruptcy Clerk's Office, the Office of the United States Trustee, the Trustee and a substantial number of the attorneys that have appeared in this case, she has attributed false statements to the Bankruptcy Court, the Trustee and attorneys in the Trustee's office, she has improperly called for an election of a Chapter 7 Trustee, she has improperly engaged in the written solicitation of proxies, she has circulated solicitations for proxies that contain false representations, she has disturbed tenants occupying Estate properties, and she has threatened professionals employed by the Trustee, including the Trustee's Counsel Auctioneer, Real Estate

Broker and Management Company.

The pleadings and documents filed by Jacobs in the Bankruptcy Court and the United States District Court number in the hundreds. Her typical pleadings contain many pages; at least one pleading being in excess of 500 pages. Even after being Ordered by the Bankruptcy Court to reduce her pleadings to 10 pages or less, she has continued to file lengthy pleadings without regard to the Court Order.

All of the actions that Jacobs has taken in the Bankruptcy case require review by the Trustee's counsel, and, when appropriate, a response. The time that your Applicant has expended in connection with these issues is, therefore, substantial.

A summary of the professional services devoted to this aspect of the case is as follows:

<u>Attorney/Paralegal</u>	<u>Hours</u>	<u>Rate/Hour</u>	<u>Amount</u>
Joseph B. Collins (JBC)	18.4	\$385.00	\$7,084.00
Henry E. Geberth, Jr. (HEG)	13.7	\$360.00	\$4,932.00
George I. Roumeliotis (GIR)	4.5	\$330.00	\$1,485.00
Spencer A. Stone (SAS)	24.5	\$175.00	\$4,287.50
Andrea M. Momnie (AMM)	9.6	\$130.00	\$1,248.00
Philip J. Hendel (PJH)	1.2	\$435.00	\$522.00
Joseph B. Collins (JBC)	40.9	\$410.00	\$16,769.00
Henry E. Geberth, Jr. (HEG)	15.0	\$385.00	\$5,775.00
George I. Roumeliotis (GIR)	14.8	\$355.00	\$5,254.00
Spencer A. Stone (SAS)	45.3	\$200.00	\$9,060.00
Andrea M. Momnie (AMM)	11.2	\$150.00	\$1,680.00

Melissa J. Conte (MJC)	<u>0.3</u>	\$110.00	<u>\$33.00</u>
TOTAL	199.4		\$58,129.50

J. Sale of Real Estate

The assets of the Debtor's Bankruptcy Estate, as of the conversion to Chapter 7, included interests in 26 parcels of real estate including partial interests and interests held in trust. In order to assist the Trustee in determining the value (or lack of value) of these properties, your Applicant considered whether the property was co-owned, whether it was held in trust, whether any trust could be terminated, the amount of the encumbrances on the property, the tax consequences of any sale, the difficulty in operating a property pending sale and the cost of sale. Properties that may have value to the Estate have been placed on the market to be sold. As the sale process has continued, your Applicant has assisted the Trustee in negotiating sales, drafting Purchase and Sale Agreements, and drafting and prosecuting Motions for Authority to Sell. Your Applicant has also determined that there are numerous problems in the title to many of the Debtor's properties. For example, mortgage discharges from lenders were often not recorded by the Debtor when he did refinancing transactions. This problem has been exacerbated by the fact that some of these lenders are now defunct. Your Applicant has assisted the Trustee in addressing and resolving these problems. As the result of your Applicant's efforts, one property has been sold and four sale Motions are pending. It is anticipated that these approved and pending sales will realize approximately \$885,000.00 for the benefit of the Estate.

The status of the sale of the Estate's properties is as follows:

131 Tower Road, Lincoln Massachusetts - Sold for \$600,000.00. This sale was negotiated by your Applicant without a broker. The sale resulted in the collection of past due rent from the tenant and the payment of a substantial mortgage that, if foreclosed, would likely have resulted in a large deficiency claim against the Estate. The sale realized approximately \$35,000.00 for the Bankruptcy Estate. The sale was accomplished over the Objections of the Debtor and Lisa Jacobs.

402 Parker Street, Newton, Massachusetts - Sale Pending for \$100,000.00. This sale was negotiated by your Applicant without a broker. This is a sale of the Debtor's 50% interest in the property and is subject to all existing mortgage debt. Therefore, the sale will realize \$100,000.00 for the Bankruptcy Estate.

18 - 20 Vernon Street, Newton, Massachusetts - Sale Pending for \$527,000.00. This sale will satisfy a large mortgage debt and will realize approximately \$180,000.00 for the Estate after the payment of broker's fees and closing costs.

164 - 166 Washington Street, Newton, Massachusetts - Sale Pending for \$490,000.00. This sale will satisfy a large mortgage debt and will realize approximately \$200,000.00 for the Estate after the payment of broker's fees and closing costs.

28 Spectacle Circle, Moultonborough, New Hampshire - Sale Pending for \$450,000.00. This sale involves the Debtor's vacation home on Lake Winnepesaukee. There is a small mortgage on this property. The Estate should net approximately \$370,000.00 after the payment of all mortgage debt, broker's

fees and closing costs.

Active negotiations for the sale of several other properties are in progress. It is expected that one or more additional sale motions will be presented to Court in the days ahead.

A summary of the professional services devoted to this aspect of the case is as follows:

<u>Attorney/Paralegal</u>	<u>Hours</u>	<u>Rate/Hour</u>	<u>Amount</u>
Joseph B. Collins (JBC)	12.8	\$385.00	\$4,928.00
Henry E. Geberth, Jr. (HEG)	1.2	\$360.00	\$432.00
George I. Roumeliotis (GIR)	0.5	\$330.00	\$165.00
Spencer A. Stone (SAS)	14.8	\$175.00	\$2,590.00
Andrea M. Momnie (AMM)	0.4	\$130.00	\$52.00
Joseph B. Collins (JBC)	50.1	\$410.00	\$20,541.00
Henry E. Geberth, Jr. (HEG)	2.6	\$385.00	\$1,001.00
George I. Roumeliotis (GIR)	20.4	\$355.00	\$7,242.00
Spencer A. Stone (SAS)	45.6	\$200.00	\$9,120.00
Andrea M. Momnie (AMM)	41.3	\$150.00	\$6,195.00
Susan M. Mello (SMM)	0.2	\$110.00	\$22.00
Melissa J. Conte (MJC)	<u>0.4</u>	\$110.00	<u>\$44.00</u>
TOTAL	190.3		\$52,332.00

K. Rockland Trust Company

The largest creditor in the Lupo Bankruptcy case appears to be Rockland Trust Company ("Rockland"). Rockland claims to hold mortgages on five of the Debtors properties securing debt in excess of \$2,000,000.00. Also, prior to the Trustee's appointment, a Civil Action was commenced by the Debtor against

Rockland alleging several theories of liability and damage. That Civil Action was removed to the Bankruptcy Court where it is now pending.

Your Applicant has reviewed the Rockland loan documents and multiple documents and pleading relating to the Civil Action. The Trustee has also discussed the merits of the Civil Action with Rockland's counsel, the Debtor, the several attorneys that have represented the Debtor generally and in connection with the Rockland litigation. As a result of this review, the Trustee elected to enter into a Stipulation with Rockland for relief from stay. This Stipulation was ultimately approved by the Bankruptcy Court. Also, the Trustee determined that it was in the best interests of the Estate to abandon the properties subject to the Rockland mortgages. Your Applicant prepared and filed appropriate pleadings to effectuate this abandonment. Your Applicant has not, however, recommended that the Trustee abandon the Civil Action. At this time the Trustee is attempting to locate special counsel that might undertake the litigation.

A summary of the professional services devoted to this aspect of the case is as follows:

<u>Attorney/Paralegal</u>	<u>Hours</u>	<u>Rate/Hour</u>	<u>Amount</u>
Joseph B. Collins (JBC)	13.3	\$385.00	\$5,120.50
Henry E. Geberth, Jr. (HEG)	0.5	\$360.00	\$180.00
Spencer A. Stone (SAS)	9.5	\$175.00	\$1,662.50
Andrea M. Momnie (AMM)	0.6	\$130.00	\$78.00
Melissa J. Conte (MJC)	0.2	\$110.00	\$22.00
Joseph B. Collins (JBC)	2.4	\$410.00	\$984.00

Henry E. Geberth, Jr. (HEG)	0.7	\$385.00	\$269.50
Spencer A. Stone (SAS)	0.7	\$200.00	\$140.00
Andrea M. Momnie (AMM)	<u>3.6</u>	\$150.00	<u>\$540.00</u>
TOTAL	31.5		\$8,996.50

L. Motions for Relief from Stay

Your Applicant assisted the Trustee in connection with multiple Relief from Stay Motions. Your Applicant has taken all steps to protect the Estate from the foreclosure in properties having equity for the Estate. In circumstances in which the Estate might benefit from foreclosure, i.e., to realize capital loss that might be beneficial, your Applicant has not opposed relief from stay.

A summary of the professional services devoted to this aspect of the case is as follows:

<u>Attorney/Paralegal</u>	<u>Hours</u>	<u>Rate/Hour</u>	<u>Amount</u>
Joseph B. Collins (JBC)	0.3	\$410.00	\$123.00
Henry E. Geberth, Jr. (HEG)	0.2	\$385.00	\$77.00
George I. Roumeliotis (GIR)	1.0	\$355.00	\$355.00
Spencer A. Stone (SAS)	6.6	\$200.00	\$1,320.00
Andrea M. Momnie (AMM)	<u>8.2</u>	\$150.00	<u>\$1,230.00</u>
TOTAL	16.3		\$3,105.00

M. 10 Edgewater Park, Newton, MA

An investigation of the Debtor's financial affairs revealed that the Debtor was the Trustee and a 50% beneficiary of the Lupo Edgewater Realty Trust. The other 50% beneficiary of the Lupo Edgewater Realty Trust was the M. Adeline Lupo Revocable Trust. The Debtor is also the Trustee and a beneficiary of that

Trust, however, that Trust may have spendthrift provisions. The Lupo Edgewater Realty Trust held title to unencumbered single family home located at 10 Edgewater Park, Newton, Massachusetts ("Edgewater Property").

After the Debtor refused to cooperate with the Trustee's efforts to sell the Edgewater Property, your Applicant assisted the Trustee in the enforcement of the rights of the Estate. Specifically, your Applicant, on behalf of the Trustee, terminated the Lupo Edgewater Realty Trust pursuant to the power, set forth in the Trust, granting beneficiaries the right to terminate the Trust. As the result of the termination of the Lupo Edgewater Realty Trust, the Edgewater Property is now co-owned by the Bankruptcy Estate (50%) and the M. Adeline Lupo Revocable Trust (50%).

After the termination of the Trust, the Debtor, as Trustee of the M. Adeline Lupo Revocable Trust, continued to refuse to cooperate with the Trustee's efforts to sell the Edgewater Property. The Trustee learned, however, that the Debtor, without notice to the Trustee or approval of the Bankruptcy Court, had himself listed the property for sale at an asking price greater than \$500,000.00. Your Applicant, on behalf of the Trustee, commenced an Adversary Proceeding with the Bankruptcy Court seeking authority to sell the co-owners interest in the property pursuant to Section 363(h) of the Bankruptcy Code.

A summary of the professional services devoted to this aspect of the case is as follows:

<u>Attorney/Paralegal</u>	<u>Hours</u>	<u>Rate/Hour</u>	<u>Amount</u>
---------------------------	--------------	------------------	---------------

Joseph B. Collins (JBC)	3.3	\$410.00	\$1,353.00
Spencer A. Stone (SAS)	9.9	\$200.00	\$1,980.00
Andrea M. Momnie (AMM)	<u>0.4</u>	\$150.00	<u>\$60.00</u>
TOTAL	13.6		\$3,393.00

9. Your Applicant has accrued \$319,984.50 for services rendered in this case for the period from September 18, 2010 through January 19, 2011 in accordance with the account annexed hereto as Exhibit "D".

10. The various services rendered by your Applicant have been duly delegated among the professionals and paraprofessionals (see Exhibit "C") in an attempt to minimize, where possible, the total impact of professional fees, resulting in an average hourly billing rate of \$228.57 during the period from September 18, 2010 to October 31, 2010 and an average hourly billing rate of \$245.71 during the period from November 1, 2010 to January 19, 2011.

11. Your Applicant believes that the sum requested in this fee application for its services is fair and reasonable, particularly taking into account the progress made herein for and on behalf of the Chapter 7 Estate.

12. In pursuit of its responsibilities as Counsel to the Chapter 7 Trustee, your Applicant has also accrued the sum of \$11,566.30 in reasonable and necessary unreimbursed out-of-pocket expenses. The expenses are itemized at the end of Exhibit "D".

13. The compensation claimed herein belongs solely and wholly to your Applicant and will not be shared, divided or pooled, directly or indirectly, with any other person or firm, except as may be necessary to pay employees of your Applicant.

14. This Application has been provided to the Chapter 7 Trustee for review; he has voiced no objection to allowance and payment as requested herein.

15. As of the date of this Application, the Trustee is holding funds in the amount of \$735,369.14. After reserving \$169,211.17 to satisfy claims that are arguably secured by funds in the Estate (New England Phoenix, Inc. - \$140,000.00, RTN Bank - \$7,000.00, and other Judicial Lien creditors - \$22,211.17), \$194,736.00 to satisfy other accrued Chapter 7 priority claims (Verdolino & Lowey, P.C. - \$47,516.31, Aaron Posnik & Co. - \$32,544.69, real estate deposits - \$104,675.00, and estimated management, utility and vendor claims - \$10,000.00), and \$82,400.79 to assure coverage for funds that the Debtor's spouse contends are not property of the Estate, the Bankruptcy Estate presently does not have sufficient available funds to satisfy the fees and expenses sought by this Application. However, pending settlements and real estate sales that are likely to be approved and closed prior to any hearing on this Application should provide sufficient funds to satisfy any allowance that might be approved by the Court. Therefore, at the hearing on this Application, the Trustee shall provide the Court with an updated report on the availability of funds to pay Chapter 7 administrative expenses. If sufficient funds are available, H&C will request authority for the Trustee to pay any allowance that might be made by the Court.

WHEREFORE, your Applicant requests that it be allowed, as a Chapter 7 administrative priority claim, fees in the amount of \$319,984.50 and expenses in the amount of \$11,566.30; and that the Trustee be authorized to pay of such fees and expenses from available assets of the Estate; and for such other and further relief as is just and proper.

HENDEL & COLLINS, P.C.

Dated: January 27, 2011

By: /s/ Joseph B. Collins
JOSEPH B. COLLINS, ESQ.
(BBO No. 092660)

For HENDEL & COLLINS, P.C.
101 State Street
Springfield, MA 01103
Tel. (413) 734-6411
jcollins@hendelcollins.com

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS

In re)
) Chapter 7, No. 09-21945-JNF
)
ROBERT N. LUPO)
)
)
)
Debtor)
)

EXHIBITS "A" THROUGH "D"

As the exhibits contain, in the aggregate, greater than 50 pages, they are being filed separately from the underlying Application pursuant to MLBR Electronic Filing Rule 5(a). The items in said exhibits are as follows:

Order Authorizing Employment of
Hendel & Collins, P.C. Exhibit "A"

Biographies of Personnel Rendering
Services Exhibit "B"

Attorney Time Summary Exhibit "C"

Itemized Statement of Services Exhibit "D"

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS

_____))
In re) Chapter 7, No. 09-21945-JNF
))
ROBERT N. LUPO))
))
))
Debtor))
_____)

**ORDER ON FIRST INTERIM APPLICATION FOR ALLOWANCE OF FEES
AND EXPENSES BY HENDEL & COLLINS, P.C.,
AS COUNSEL TO THE CHAPTER 7 TRUSTEE**

At Boston, in said District, on this day of ,
2011.

Upon consideration of the above-captioned Application for Allowance of Fees and Expenses by Hendel & Collins, P.C., as Counsel to the Chapter 7 Trustee in the above-captioned case, for cause shown, after notice and hearing, it is hereby

ORDERED, that Hendel & Collins, P.C. be allowed fees in the amount of \$ for professional services rendered and the sum of \$ for expenses.

HONORABLE JOAN N. FEENEY
Bankruptcy Judge