

RECEIVED-FPSC

08 DEC 15 AM 9:54

COMMISSION
CLERK

IN THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR MIAMI-DADE COUNTY,
FLORIDA

GENERAL JURISDICTION DIVISION

In Re:

CASE NO.: 06-025317 CA 20

NTERA, INC.
a Florida corporation,

Assignor,

THE ORIGINAL
FILED ON:

To:

DEC 08 2008

KENNETH A. WELT,

IN THE OFFICE OF
CIRCUIT COURT DADE CO. FL

Assignee.

**SECOND MOTION TO APPROVE INTERIM APPLICATION
FOR FEES AND EXPENSES OF ASSIGNEE'S COUNSEL**

Pursuant to Florida Statutes §§727.109(8), 727.111(4), 727.113 and 727.114(2), as modified by the Ex-Parte Motion to Shorten Notice Period Required On Second Motion to Approve Interim Application for Fees and Expenses of Assignee's Counsel, any and all objections to this motion must be filed with the Circuit Court and served upon the Assignee, Kenneth A. Welt at 3790 North 28th Terrace, Hollywood, Florida 33020 and the Assignee's attorney, Robert A. Schatzman, Esq., at Adorno & Yoss LLP, 2525 Ponce de Leon Blvd., Suite 400, Miami, Florida 33134-6012 or (305)503-8961 on or before 5:00 p.m. on December 17, 2008 ("Deadline Date"), which date is not less than nine (9) calendar days (as computed under Rule 1.090(a) of the Florida Rules of Civil Procedure) from the date of this Motion. Any creditor or interested party who fails to file and serve a written response to this Motion by the Deadline Date shall be deemed to have consented to the entry of an Order approving the payment of fee and reimbursement of expenses requested herein.

COM _____ ADORNO & YOSS LLP ("A&Y"), as counsel to Kenneth A. Welt ("Assignee"),
ECR _____ assignee for the benefit of creditors of estate of Ntera, Inc., and pursuant to §§727.114(2) and
GCL _____
OPC _____ 727.108(6), Fla. Stats., hereby files this Second Motion To Approve Interim Application For
RCP _____
SSC _____ Fees And Expenses of Assignee's Counsel (the "Motion") for the period March 20, 2007
SGA _____ through November 30, 2008 (the "Application Period"), and states as follows:
ADM _____
CLK _____

1
ADORNO & YOSS LLP

2525 PONCE DE LEON BLVD. • SUITE 400 • MIAMI, FLORIDA 33134-6012 • TELEPHONE 305-460-1000 • TELEFAX 305-460-14
(M1761685_1)

DOCUMENT NUMBER-DATE

11522 DEC 15 8

FPSC-COMMISSION CLERK

A. OVERVIEW OF THE CASE:

1. On November 20, 2006, ("Petition Date") Ntera, Inc. ("Ntera") assigned all of its assets to the Assignee for the benefit of creditors pursuant to Chapter 727, Florida Statutes. Thereafter, on November 27, 2006, the Assignee commenced the above-styled proceeding. The Assignee was in charge with liquidating all the assets of Ntera for the benefit of its creditors pursuant to Florida Statutes §727.108.

2. Also on the Petition Date, an Assignment for the benefit of creditors was commenced on behalf of Ntera's affiliates, Ntera Holdings, Inc. (Case No. 06-025316 CA 22); Numind Software Systems, Inc. (Case No. 06-25319 CA 20); Intelligent Switching and Software, LLC (Case No. 06-25318 CA 11); and Radiant Telecom, Inc. (Case No. 06-25320 CA 32).

3. According to the schedules prepared by the Assignor, Tricon Holdings, LLC ("Tricon") asserts a first priority lien against substantially all assets of the assignment estate to secure an alleged outstanding debt of \$10,299,588.68. Pursuant to a settlement reached by and between the Assignee and Tricon, Tricon consented to the sale of the Assignor's equipment. To the extent Tricon holds a valid security interest against all or part of the sale proceeds, Tricon agreed to carve out a portion of its share of the sale proceeds to cover any and all allowed administrative expenses, fees and cost incurred by the Assignee and his counsel to administer this case and the related Assignor cases after application of all pre-assignment retainers. At this time, no determination as to the validity, priority or extent of Tricon's lien is being requested. All parties in interest, including the Assignee, expressly retain any claim against Tricon including, without limitation, the right to consent the validity, priority and extent of Tricon's lien against the sale proceeds.

4. On June 4, 2007, this Court entered the Order Granting Assignee's Motion for Entry of Order Establishing Procedure for Interim Monthly Compensation and Reimbursement of Expenses to the Assignee and his Professionals (the "Fee Order"). Pursuant to the Fee Order, the Court authorized the following procedure for the payment of fees and expenses to the Assignee's professionals:

- a. On or before the twentieth (20th) day of each month following the month for which compensation is sought, the Assignee and each of the Professionals seeking compensation under this Order shall file a monthly billing statement (the "Monthly Statement") with the Court and serve by U.S. Mail to all those parties-in-interest who have filed notices of appearances.
- b. If a party-in-interest objects to the fees or reimbursement sought in a particular Monthly Statement, a written objection must be filed and served on the Assignee and the requesting Professional by no later than the fifteenth (15) day following the day on which the Monthly Statement was served ("Objection"). The Objection must set forth the nature of the objection and the amount of fees or expenses at issue.
- c. If an objection is not timely filed and served, the Assignee is authorized to pay eighty-percent (80%) of the fees and one hundred percent (100%) of the expenses identified in each Monthly Statement.
- d. If an Objection is timely filed and served, the Assignee is authorized to disburse, in accordance with paragraph (c), that portion of the Monthly Statement which is not the subject of an Objection.
- e. If an Objection is amicably resolved, and a notice is filed withdrawing the Objection, the Assignee is authorized to pay, in accordance with paragraph (c), that portion of the Monthly Statement no longer subject to an Objection.
- f. All Objections not resolved by the parties shall be preserved and presented to the Court for hearing.

5. This Court has jurisdiction over this proceeding in accordance with the provisions of Fla. Stat. §727.102 and Local Rule R-4-1 of the Florida Rules of Court for the Eleventh Judicial Circuit.

6. Since the entry of the Fee Order, both the Assignee and A&Y have complied with the foregoing procedure. At no time did any party-in-interest object to the monthly payment of fees or expenses to A&Y.

7. By this motion, A&Y seeks the allowance of \$63,880.27, which represents the balance of unpaid fees incurred during the period March 20, 2007 through November 30, 2008. This balance due to A&Y represents the "Hold Back" of 20% of the fees incurred over a period of nearly two years.

B. APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF FEES AND EXPENSES FOR ASSIGNEE'S COUNSEL

8. Attached hereto as Exhibit "A" are the detailed invoices of A&Y in support of this application for fees by A&Y, as Counsel for the Assignee¹ (the "Fee Application"). The remaining unawarded and unpaid fees earned as counsel for the Assignee in connection with this matter during this Application Period were in the amount of \$63,880.27. These requested fees represent the balance of fees incurred by A&Y during the Application Period, but not otherwise authorized for payment pursuant to the Fee Order (the "Hold Back")². As more fully described herein and in the Fee Order, the Assignee was only authorized to pay A&Y 80% of the fees

¹ The detailed time and expense report is voluminous. In lieu, A&Y has attached a summary of unpaid fees by month. In the interest of conserving the estate's resources, counsel for the Assignee will provide these invoices only upon request by any party in interest. These invoices are attached to the original motion on file with this Court.

² No portion of the invoice dated December 3, 2008 has been paid as of the filing of this Motion.

incurred, with the balance of 20% subject to further order of this Court. By this motion, the Assignee seeks approval of the Hold Back.

9. The Assignee's counsel provided the Assignee with advice and counsel on all legal issues which have arisen in this case, as well as providing advice to the Assignee on his statutory duties. Counsel for the Assignee worked closely with the Assignee on all legal issues concerning the liquidation of assets, drafts of numerous motions either requesting the Court's authority to proceed in a certain manner or in compliance with the Assignee's statutory duties. Counsel attended numerous hearings, communicated with numerous creditor constituents, analyzed and provided advice concerning numerous litigation matters, conducted an extensive statutory examination, successfully negotiated on the Assignee's behalf with landlords in Miami, New York City and Los Angeles, advised the Assignee on significant issues relating to the Auction and successfully negotiated resolution of a settlement with Tricon to permit the sale of the estate's assets to go forward. A&Y has also spent a substantial amount of time analyzing litigation claims (one of which is presently the subject of pre-suit negotiations and the other the subject of a lawsuit pending before the United States District Court for the Southern District of Florida), as well as analyses, meetings and negotiations relative to a secured claim asserted by the Miami-Dade County Tax Collector. Since the beginning of this case, counsel for the Assignee has been called upon to assist the Assignee with matters on a daily basis.

WHEREFORE, A&Y, respectfully requests that the Court enter an order (i) allowing the Hold Back in the amount of \$63,880.27; (ii) authorizing the Assignee to disburse such amount to A&Y and (iii) for such further relief as to the Court deems just and proper.

Dated this 8th- day of December, 2008.

ADORNO & YOSS LLP

By: 

Robert S. Schatzman, Esq.

Fla. Bar No. 139008

Steven J. Solomon, Esq.

Fla. Bar No. 931969

2525 Ponce De Leon Blvd., Suite 400

Miami, Florida 33134

Telephone: (305) 460-1020

Facsimile: (305) 460-1422

Attorneys for the Assignee