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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91179074
Party	Defendant Ascentia Capital Partners, LLC
Correspondence Address	Matthew D. Francis Watson Rounds 5371 Kietzke Lane Reno, NV 89511 UNITED STATES mfrancis@watsonrounds.com
Submission	Request to Withdraw as Attorney
Filer's Name	Matthew D. Francis
Filer's e-mail	mfrancis@watsonrounds.com
Signature	/Matthew D. Francis/
Date	06/24/2008
Attachments	Motion to Withdraw.pdf (10 pages)(306263 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 78938805
Published in the Official Gazette on April 4, 2007

ASCENCIA BANK, INC., Opposer, v. ASCENTIA CAPITAL PARTNERS, LLC., Applicant.	Opposition No. 91179074

MOTION TO WITHDRAW AS REPRESENTATIVE

Applicant's attorney of record Matthew D. Francis and the law firm of Watson Rounds (collectively "Watson Rounds") hereby move to withdraw as the representative of Applicant Ascentia Capital Partners, LLC. ("Ascentia") in this Opposition proceeding. This Motion is based on 37 CFR §§ 2.19(b), 10.40, the following points and authorities, and the June 24, 2008 declaration of Matthew D. Francis ("Francis Decl.").

I. BACKGROUND

In November of 2007, Mr. Francis met with Robert Jorgensen of Ascentia regarding representation in this Opposition proceeding. Francis Decl., ¶ 2. After the meeting, Mr. Francis emailed Mr. Jorgensen an executed legal services agreement, which Mr. Jorgensen was required to sign and return along with a retainer of $5,000. *Id.* To date, neither Mr. Jorgensen nor anyone else at Ascentia has signed the executed legal services agreement or paid the retainer required by that agreement. *Id.*

On November 21, 2007, still awaiting the delivery of the executed legal services agreement and retainer check, Mr. Francis prepared and filed an Answer in this proceeding since

an Answer was due by November 23, 2007 pursuant to the TTAB's October 24, 2007 Order. *Id.*, ¶ 4. Watson Rounds billed Ascentia $500 for that work, and subsequently billed $125 on December 10, 2007, and $13 on February 26, 2008. *Id.* Under the standard terms of Watson Rounds' retainer agreement, a client must pay an invoice within 30 days. *Id.*, ¶ 3.

Mr. Jorgensen was provided with the Opposition and the Answer in this proceeding on November 21, 2007. Francis Decl., ¶ 5. Mr. Francis had a conversation with Mr. Jorgensen on March 27, 2008, during which Mr. Jorgensen advised Mr. Francis not to commence further work on the matter until Mr. Francis heard back from him. *Id.*, ¶ 6. Mr. Francis emailed Mr. Jorgensen on April 29, 2008, advising him that Ascentia's invoices were still outstanding, and that Watson Rounds needed to be paid on time and in full. *Id.*, ¶ 7. Mr. Francis further advised Mr. Jorgensen that there was substantial work to be done in this proceeding, and he needed to know how Ascentia wanted to proceed. *Id.* Mr. Francis has not heard from Mr. Jorgensen regarding these matters since the March 27, 2008 conversation. *Id.*

On May 7, 2008, Watson Rounds sent Ascentia to collections for failure to pay the aforementioned invoices. Francis Decl., ¶ 8. Watson Rounds ultimately did get paid on May 23, 2008, but again, only after sending Ascentia to collections. *Id.*

On June 4, 2008, Mr. Francis wrote Mr. Jorgensen another email, informing him that Watson Rounds had only received payment on the Ascentia account after submitting the account to collections. *Id.*, ¶ 9. Mr. Francis also informed him that Watson Rounds had not been paid on a separate long-standing account in a separate matter. *Id.* Further, Mr. Francis advised Mr. Jorgensen that in order to further represent Ascentia in this Opposition, Watson Rounds needed a retainer paid no later than June 13, 2008. *Id.* Finally, the email notified Mr. Jorgensen that Watson Rounds would move to withdraw from representing Ascentia in this Opposition

proceeding if a retainer was not paid. *Id.* Mr. Francis has not received any response from Mr. Jorgensen to the June 4th email, nor has Watson Rounds received the required retainer to date. *Id.*

On June 24, 2008, Mr. Jorgensen of Ascentia was mailed and emailed a letter attaching the dates of this Opposition proceeding along with all other documents on file in this proceeding. Francis Decl., ¶ 10. The letter also informed him that Watson Rounds' Motion to Withdraw as Representative would be forthcoming. *Id.* Since no retainer balance exists, no fee need be refunded to Ascentia. *Id.* Ascentia will be provided a copy of Watson Rounds' Motion to Withdraw as Representative by first class mail at its new business address of 5470 Kietzke Lane, Suite 230, Reno, NV 8951, as well as by email. *Id.*

II. ARGUMENT

37 CFR § 2.19(b) provides in pertinent part that "[i]f the requirements of § 10.40 of this chapter are met, an [authorized attorney] in a trademark case may withdraw upon application to and approval by the Director."

37 CFR § 10.40(a) provides in pertinent part:

> A practitioner shall not withdraw from employment in a proceeding before the Office without permission from the Office (see §§ 1.36 and 2.19 of this subchapter). In any event, a practitioner shall not withdraw from employment until the practitioner has taken reasonable steps to avoid foreseeable prejudice to the rights of the client, including giving due notice to his or her client, allowing time for employment of another practitioner, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

Subsection (c) of 37 CFR § 10.40 provides in pertinent part

> [A] practitioner may not request permission to withdraw in matters pending before the Office unless such request or such withdrawal is because:
> (1) The petitioner's client:
> ...

> (iv) By other conduct renders it unreasonably difficult for the practitioner to carry out the employment effectively;
>
> ...
>
> (vi) Has failed to pay one or more bills rendered by the practitioner for an unreasonable period of time or has failed to honor an agreement to pay a retainer in advance of the performance of legal services.

Watson Rounds has properly requested permissive withdrawal from this Opposition proceeding in accordance with 37 CFR § 10.40(c). As set forth above and in the Francis Decl., Ascentia has rendered it unreasonably difficult for Watson Rounds to effectively carry out its employment by repeatedly failing to respond to communications from Mr. Francis, by instructing Mr. Francis not to commence any work on the matter, by not providing an executed legal services agreement, and by not making timely payments to the firm. *See supra.* Further, Ascentia and Mr. Jorgensen have ignored continued requests to pay the agreed retainer, and only paid its long outstanding invoices after Ascentia was sent to collections. *Id.*

Moreover, Watson Rounds' Motion complies with the requirements of 37 CFR § 10.40(a). *Id.* In addition to specifying the bases for the Motion, Watson Rounds has: (1) notified Ascentia and Mr. Jorgensen of its desire and intent to withdraw from employment and has provided adequate time to find other counsel; and (2) delivered to Ascentia and Mr. Jorgensen all papers that relate to the proceeding to which Ascentia is entitled. *Id.* Since no retainer balance exists, no fee need be refunded to Ascentia. *Id.* Ascentia will be provided a copy of Watson Rounds' Motion to Withdraw as Representative by first class mail at its new business address of 5470 Kietzke Lane, Suite 230, Reno, NV 8951, as well as by email. *Id.*

Forced continued representation of Ascentia will result in an increased unreasonable financial burden on Watson Rounds and will make representation of this client even more difficult. Given the foregoing and the Francis Decl., Watson Rounds respectfully requests that it be relieved from further representation of Ascentia.

III. CONCLUSION

In light of the foregoing, Watson Rounds respectfully requests that an Order be entered approving its withdrawal as representative for Applicant Ascentia Capital Partners, LLC.

Dated: June 24, 2008

Respectfully Submitted,

By: _____

Matthew D. Francis
WATSON ROUNDS
5371 Kietzke Lane
Reno, Nevada 89511
(775) 324-4100

Attorney for Applicant
Ascentia Capital Partners, LLC

CERTIFICATE OF SERVICE

I certify that I am an employee of the Law Offices of Watson Rounds, a Professional Corporation, and on this day I deposited a true and correct copy in the United States mail, first class postage prepaid, of the within document entitled **Motion to Withdraw as Representative**, addressed as follows:

Ascentia Capital Partners, LLC
5470 Kietzke Lane, Suite 230
Reno, NV 89511
robertj@aevosoffice.com

Scott W. Johnston
Merchant & Gould, P.C.
P.O. Box 2910
Minneapolis, MN 55402-0910
sjohnston@merchantgould.com

Dated: June 24, 2008

Carla Ousby

Carla Ousby

Declaration of Matthew D. Francis

Declaration of Matthew D. Francis

DECLARATION OF MATTHEW D. FRANCIS

I, Matthew D. Francis do hereby declare and state:

1. I am a partner at the law firm of Watson Rounds located at 5371 Kietzke Lane, Reno, Nevada 89511. This declaration is based upon my personal knowledge, and is made in support of Watson Rounds' Motion to Withdraw as Representative.

2. In November of 2007, I met with Mr. Robert Jorgensen of Applicant Ascentia Capital Partners, LLC. ("Ascentia") regarding representation of Ascentia in this Opposition proceeding. On November 16, 2007, I emailed Mr. Jorgensen an executed legal services agreement, which required a retainer of $5,000. Mr. Jorgensen and Ascentia were required to sign and return that agreement along with $5,000. To this date, neither Mr. Jorgensen nor anyone else at Ascentia has done so.

3. Under the standard terms of Watson Rounds' retainer agreement, a client must pay an invoice within 30 days.

4. On November 21, 2007, while still awaiting the delivery of the executed legal services agreement and retainer check, I prepared and filed an Answer in this proceeding since an Answer was due by November 23, 2007 pursuant to the TTAB's October 24, 2007 Order. Ascentia was billed $500 for that work, and was subsequently billed additional amounts of $125 and $13 on December 10, 2007, and February 26, 2008 respectively.

5. On November 21, 2007, Mr. Jorgensen was provided with the Notice of Opposition in this action as well as the Answer.

6. On March 27, 2008, I had a conversation with Mr. Jorgensen, who advised me not to commence further work on the matter until I heard from him.

7. On April 29, 2008, I emailed Mr. Jorgensen and advised him that the above-mentioned invoices were still outstanding, that Watson Rounds needed to be paid on time and in full, and that there was substantial work to be done in this proceeding and I needed to know how Ascentia wanted to proceed. I did not hear from him and have not heard from him regarding these matters since our March 27th conversation.

8. On May 7, 2008, Watson Rounds sent Ascentia to collections for failure to pay the above-mentioned invoices. Only after sending Ascentia to collections did Watson Rounds get paid on May 23, 2008.

9. On June 4, 2008, I wrote Mr. Jorgensen an email informing him that Watson Rounds had only received payment on the Ascentia account after we sent the account to collections. However, Watson Rounds had still not been paid on a separate long-outstanding Jorgensen account in a separate matter. I also advised him that in order to further represent Ascentia in this Opposition, Watson Rounds needed a retainer paid no later than June 13, 2008. Finally, I advised him that Watson Rounds would move to withdraw from representing Ascentia in this Opposition proceeding if a retainer was not paid. Watson Rounds has not been paid the required retainer, and I have not heard from Mr. Jorgensen since this email was sent.

10. On June 24, 2008, Ascentia and Mr. Jorgensen was mailed and emailed a letter attaching the dates of this Opposition proceeding and all other documents on file in this proceeding. The letter also informed in that Watson Rounds' Motion to Withdraw as Representative would be forthcoming. Since no retainer balance exists, no fee need be refunded to Ascentia. Ascentia will be provided a copy of Watson Rounds' Motion to Withdraw as Representative by first class mail at its new business address of 5470 Kietzke Lane, Suite 230, Reno, NV 8951, as well as by email.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: 6/24/08

By: _____
MATTHEW D. FRANCIS