

ORIGINAL

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

DISTRIBUTION CENTER

_____)
In re:)
_____)
ESSENTIAL.COM, INC.,)
_____)
Debtor.)
_____)

Chapter 11
Case No. 01-15339-WCH

**APPLICATION TO EMPLOY ALLEN DANIEL ASSOCIATES, INC.
AS COLLECTION AGENT FOR THE DEBTOR**

To the Honorable William C. Hillman, Chief United States Bankruptcy Judge:

Pursuant to 11 U.S.C. § 327, Federal Rule of Bankruptcy Procedure 2014, and MLBR 2014-1, Essential.com, Inc., the debtor and debtor-in-possession (the "Debtor"), respectfully requests that this Court enter an order authorizing it to employ The Allen Daniel Associates, Inc. ("ADA") as its collection agent to pursue recovery of delinquent and outstanding accounts receivable. Prior to the commencement of this case, the Debtor retained ADA on substantially similar terms as set forth herein. In further support thereof, the Debtor states as follows:

I. BACKGROUND

1. On June 29, 2001 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code ("Bankruptcy Code") in this Court.
2. The Debtor continues to operate as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. On July 18, 2001, the United States Trustee appointed an official committee of unsecured creditors (the "Committee").

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3. The Debtor was in the business of reselling telecommunications services. As of the Petition Date, the Debtor had approximately 70,000 active subscribers in its customer base ("Customer Base") consisting predominately of households and small businesses.

4. On August 9, 2001, the Court approved the private sale ("Private Sale") of all of the Debtor's Customer Base, its trade names and URLs to United Systems Access, Inc. ("USA") for \$1,300,000. The Private Sale closed on August 10, 2001.

5. Pursuant to the Private Sale, the Debtor will also receive payments from USA for receivables generated, billed and unbilled, by the Debtor prior to the closing of the Private Sale. Since the Petition Date, the Debtor has collected in excess of \$2,500,000 on account of accounts receivable existing as of the Petition Date or generated post the Petition Date.

6. On August 8, 2001, the Debtor filed a motion to auction ("Auction Motion") certain of its personal property including computer equipment and furniture and to solicit bids for the assignment of the lease for its Burlington headquarters. The Auction is scheduled to take place on September 6, 2001.

7. Through the Private Sale and the Auction Motion, the Debtor is proceeding with a rapid and orderly liquidation of its Estate. The Debtor anticipates its operations to substantially cease after the Auction. The Debtor has continued to reduce its staff as appropriate.

8. The Debtor anticipates filing a liquidating plan of reorganization in September 2001.

II. Retention of Collection Agent

9. The Debtor seeks an order of this Court authorizing the employment and retention of ADA to pursue recovery of certain of its outstanding accounts receivables ("Receivables"). A copy of the Collection Agency Contract between ADA and the Debtor is attached as Exhibit A.

10. The Receivables total approximately \$9,200,000 consisting of approximately 28,000 customers with overdue accounts. These customers have not responded to prior requests from the Debtor for payment. Based on historical figures, the average outstanding Receivable is approximately \$183.00.

11. Employment of ADA is proposed on the following terms and the terms set forth in the Collection Agency Contract:

(i) ADA is to receive twenty-five percent (25%) of the gross amount of Receivables collected on accounts placed with ADA;

(ii) If an account receivable is placed with ADA and is later determined to have been previously paid, ADA shall receive a commission equal to seven and one half percent (7½%) of the amounts previously collected¹;

(iii) If litigation is required to collect on an account, ADA will undertake to locate counsel in the appropriate jurisdiction to be employed by the Debtor, subject to the Debtor's approval. ADA will use best efforts to locate counsel who agree to be compensated at the rate of twenty-five percent (25%) of amounts collected through litigation, in addition to Court costs. ADA shall receive no compensation for amounts collected in connection with such litigation.

III. Disinterestedness and Qualifications of ADA

9. Andrew W. Brierley, a representative of ADA, has filed an affidavit ("Affidavit") in connection with this Application, including a statement pursuant to Section 329(a) of the Bankruptcy Code. A copy of the Affidavit is attached as Exhibit B.

¹ ADA has agreed to reduce the commission set forth in the Collection Agency Agreement to the percentage set forth herein.

10. As set forth in greater detail in the attached Affidavit, ADA has no involvement with the Debtor, professionals employed in the Debtor's case, creditors, or other interested parties to the Debtor, except for the rendition of services to the Debtor prior to the Petition Date and except as provided in the Affidavit.

11. To the best of the Debtor's knowledge, ADA has not represented, nor does it now represent, any interest adverse to the Debtor with respect to the matters on which ADA is to be employed, and ADA and its principals and employees are otherwise disinterested persons with respect to the Debtor as that term is defined in the Bankruptcy Code, except as may be provided in the Affidavit.

12. ADA is qualified to perform the services contemplated herein. ADA has served as collection agent for Fidelity Investments, Cellular One, and the Controller's Office of the Commonwealth of Massachusetts, among other parties, and is believed to have the skills required to perform the requested collection activities. ADA has also worked with collection attorneys nationwide over the past several years, which will facilitate the Debtor's retention of counsel and collection on accounts requiring litigation.

13. The retention of ADA is further supported by the wind down of the Debtor's operations and departure of substantially all of its employees.

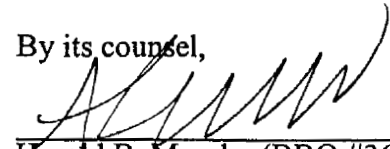
WHEREFORE, Essential.com, Inc. requests that this Court enter an Order:

- (i) Authorizing it to employ The Allen Daniel Associates, Inc. as its collection agent on the terms set forth herein; and

(ii) Granting it such other relief as is just and proper.

ESSENTIAL.COM, INC.,

By its counsel,



Harold B. Murphy (BBO #362610)
Alex M. Rodolakis (BBO #567781)
Hanify & King
Professional Corporation
One Federal Street
Boston, MA 02110
(617) 423-0400
Fax: (617) 565-8985

Dated: September 6, 2001

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EXHIBIT A

COLLECTION AGENCY CONTRACT

This AGREEMENT made this 17th day of August, 2000, by and between essential.com inc (Company) and THE ALLEN DANIEL ASSOCIATES, INC. (Contractor), a corporation with a usual place of business in Waltham, Massachusetts, shall take effect on 17 Aug 2000.

WITNESSETH

WHEREAS, the parties to this Agreement recognize, understand and agree that the principal purpose of this Agreement is the collection of accounts receivable; and

WHEREAS, the Company has unpaid accounts which it desires collected and the Contractor is qualified to collect such unpaid accounts as referred for collection by the Company;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby agree as follows:

1.0 CONDITIONS OF OPERATION

1.1 The Contractor hereby agrees to accept for collection upon the terms and conditions herein provided, any and all unpaid accounts referred to the Contractor by the Company.

1.2 The Contractor shall promptly undertake, through proper and lawful means the collection of all accounts referred by the Company without regard to the amount; provided however that the Contractor shall not under any circumstances use any threats, intimidation or harassment of debtors in the collection of accounts or violate any provision of state or federal rules and/or laws governing methods of collection of said accounts.

1.3 The Contractor shall remit to the Company each month. The Gross amount of collections from the previous month. The Company shall remit to the contractor its payment based on rates provided in Addendum A.

1.4 The contingent collection fee shall be as stated on Addendum A. Said fees shall be the sole consideration paid the Contractor and the Client shall not be liable for any other costs or expenses incurred by the Contractor in the collection of the accounts.

1.5 The Contractor shall have no authority to file suit on any accounts referred by the Company without prior written authorization from the Company's representative. The Contractor shall make every effort and use due diligence to collect accounts prior to making suit recommendations.

1.6 The Contractor agrees to suspend action either temporarily or permanently on any account referred to it for collection upon written or oral notification by the Company. In the event of termination or expiration of this contract, paying accounts only will not be cancelled by the Contractor or the Company.

1.7 The Contractor shall perform the specific collection services as set forth herein, as well as such ongoing technical and consulting services as may be requested by The Company from time to time, all of which are collectively referred to herein as the "Services".

1.8 The Contractor shall at all times provide the Services to The Company in an efficient, economic, and timely manner in accordance with generally accepted business practices.

1.9 The Contractor shall devote such time, energy, and best efforts as may be reasonably necessary to faithfully and diligently discharge Contractor's obligations pursuant to the express and implicit terms hereof, all to the reasonable satisfaction of The Company.

2.0 COMPLIANCE WITH LAW

2.1 The Contractor shall comply with all applicable federal, state and local laws governing the terms and conditions of this Agreement and the performance of the obligations thereunder.

2.2 The Contractor agrees to comply with applicable federal and state laws regarding Equal Opportunity for all persons, without regard to race, color, religion, sex, national origin or age.

2.3 The Contractor shall not, and shall have no authority to, bind The Company to any obligations without the express prior written approval of The Company.

3.0 REPORTING

The Contractor shall be responsible for providing competent, knowledgeable and professional personnel to perform collections in consultation with the Company and shall furnish the Company accurate, detailed and complete statements of collection accounts on a monthly basis.

4.0 PERIOD OF THE CONTRACT

The period of the Contract to be awarded shall be for one (1) year commencing with the signature date of this Agreement and expiring one (1) year later, unless terminated as hereinafter provided for or extended by prior written authorization of the Company.

5.0 INSURANCE

5.1 The Contractor shall secure and maintain, throughout the term hereof, workers' compensation insurance in accordance with all applicable federal and state laws, rules, and regulations.

5.2 The Contractor shall obtain and maintain continuously in effect at all times during and applicable to the term of the Agreement, at the Contractor's sole cost and expense, the following insurance:

comprehensive general liability insurance protecting the Company against any and all liability (whether due to injury or death to any person or damage to any property of any nature) arising out of or incidental to any acts or omissions of the Contractor related to this Agreement and the Contractor's responsibilities, duties, and obligations under this Agreement, in the minimum amount of \$1,000,000;

comprehensive automobile liability insurance, including hired and non-owned vehicles, if any, covering personal injury, bodily injury, and property damage, in the minimum amount of \$1,000,000.

5.3 The Contractor shall immediately notify the Company, in writing, of any accident or event which could give rise to any claim, demand, or action arising out of any occurrence covered, the time and place of the accident or event, the extent of damage, the names and addresses of the parties involved, persons injured, known witnesses, and owners of properties damaged. The Contractor shall further advise the Company, in writing, of all correspondence, papers, notices, and documents received by the Contractor in connection with any claim or demand involving or relating to the Contractor's performance hereunder.

6.0 TERMINATION

6.1 The Company may at any time withdraw from the Contractor any account that has been placed.

This Agreement may be cancelled by either party at any time by giving 30 days written notice to the other party. The reason or reasons for cancellation may be stated in the written notice.

Within 30 days from the date of any such cancellation notice and unless otherwise directed by the Company, the Contractor shall return to the Company all accounts placed for collection. All such returned accounts shall be accompanied by a report containing current balances through the date the accounts are returned.

6.2 Should the Contractor default in the performance of any of its covenants, duties, obligations or other terms and conditions of the Contract with the Company, it is expressly understood and agreed that the Company may, at its option, terminate the Agreement effective thirty (30) days after written notice has been sent by certified mail, return receipt requested, to the last known address of the Contractor; provided, however, that this Agreement may be terminated at any time without prior notice by the Company if the Contractor should become bankrupt or otherwise financially insolvent or should there be an assignment of assets for the benefit of creditors or if any action be taken by creditors which in the reasonable judgment of the Company diminishes the rights of the Company.

6.3 The Agreement may be extended by mutual written consent of the Company and the Contractor.

7.0 PROPERTY RIGHTS

The Company and the Contractor recognize, understand and agree that all accounts, account information, and related financial data is and shall remain the exclusive property of the Company and may not be used or released by the Contractor during the term of the Agreement except as otherwise authorized by the Company; provided that the Contractor shall at the expiration or termination of the Agreement promptly deliver to the Company all accounts, account information and related financial data.

8.0 INDEMNIFICATION AND HOLD HARMLESS

The Contractor shall indemnify and hold the Company harmless from any and all claims, actions or demands arising from the acts or omissions of the Contractor, its employees or agents in the performance of its obligations under this Agreement and the doing of business as provided herein including costs and expenses incurred by reasons hereof. However, these indemnity provisions shall not apply to injury or damage to person or property caused solely by the conduct of the Company, its employees or agents, without any participation or involvement with the account by the Contractor, its employees or agents. The Contractor's obligations under this Section shall survive the expiration or earlier termination of this Agreement.

9.0 INDEPENDENT CONTRACTOR

Notwithstanding anything to the contrary herein, it is acknowledged, confirmed, and agreed that the Contractor shall be, and shall be deemed to be, an independent contractor for all intents and purposes, including, without limitation, federal taxation. As an independent contractor, the Contractor shall be responsible for, among other things, any self-employment tax and shall not be eligible for various employee benefits of the Company, including, but not limited to, workers' and unemployment compensation, nor shall Contractor be eligible to participate in any retirement plan maintained or to be maintained by the Company.

10.0 SPECIAL PROVISIONS

Accounts with no activity within one year of placement will be automatically closed and returned to Company; however, Contractor may return accounts sooner if all efforts to collect have been exhausted.

11.0 PROHIBITION AGAINST ASSIGNMENTS

This Agreement is not assignable without the prior written consent of the Company.

12.0 AMENDMENTS AND APPLICABLE LAW

This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof. This Agreement cannot be waived or added to or modified orally and no waiver, addition or modification shall be valid unless in writing and signed by the parties. This Agreement, its validity, construction and effect, shall be governed by the laws of the Commonwealth of Massachusetts.

IN WITNESS, WHEREOF, the parties hereto have accepted this Agreement in duplicate the day and year first above written and have caused their signatures to be affixed.

Dated: 8/28/2000

Contractor
By: Daniel B. Desatrich

Title: President

Dated: 8/17/00

Company ESSENTIAL.COM
By: BOOM

Title: Treasurer

ADDENDUM A

CONTINGENT RATES

All Accounts 25.00%

If legal action is authorized by you, the contingent rate shall increase to 33.33%. Client is liable for service, entry fees and court costs. Costs are passed onto the debtor and if recovered, are returned at no fee.

Half of the regular commission is charged for payments discovered to have been made prior to placement of the account.

EXHIBIT B

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION**

In re:)	
)	
ESSENTIAL.COM, INC.,)	Chapter 11
)	Case No. 01-15339-WCH
Debtor.)	
)	

**AFFIDAVIT OF ANDREW W. BRIERLEY IN SUPPORT OF
APPLICATION BY DEBTOR TO EMPLOY ALLEN DANIEL ASSOCIATES, INC.
AS COLLECTION AGENT FOR THE DEBTOR**

Pursuant to Fed. R. Bankr. P. 2014(a), MLBR 2014-1, and 28 U.S.C. § 1746, I, Andrew W. Brierley, hereby state as follows:

1. I am the managing director of sales and marketing for the Allen Daniel Associates, Inc. (“ADA”), 411 Waverly Oaks Road, Building #1, Suite 113, Waltham, Massachusetts.
2. I am generally familiar with the business of ADA and have made inquiry concerning the facts set forth herein prior to making this Affidavit.
3. Based upon my review of our client matters, in accordance with Fed. R. Bankr. P. 2014(a), neither I nor any member of ADA has any connections or relationships with the Debtor, creditors or any other party in interest, their respective attorneys and accountants, the United States Trustee, or any person employed in the office of the United States Trustee, except that ADA has provided collection services to the Debtor prior to the filing of this case. ADA is presently not owed any sums from the Debtor.
4. Insofar as I have been able to ascertain, based on my review as described in paragraph three, ADA, the shareholders and associates thereof, and I do not hold or represent any

interest adverse to that of the Debtor's estate. I believe that I and each shareholder and associate of ADA is a "disinterested person" as that term is defined in 11 U.S.C. § 101(14). Furthermore, insofar as I have been able to ascertain, neither ADA, any shareholder or associate thereof, nor myself, is connected with any Bankruptcy Judge in the District of Massachusetts, or the United States Trustee or any person employed in the office of the United States Trustee, so as to render the employment of ADA as collection agent for the Debtor inappropriate under Fed. R. Bankr. P. 5002(b).

5. ADA and I have conducted, and will continue to conduct, research into any relationships we may have with the Debtor and its creditors, any accountants, attorneys or other professionals of the foregoing, and any other parties interested in this case. Although ADA has undertaken, and will continue to undertake, an investigation to identify any contacts with the Debtor or parties in interest, it is possible that such contacts have not been revealed. To the extent any such contacts are discovered, ADA will notify the Court by filing and serving a supplemental affidavit.

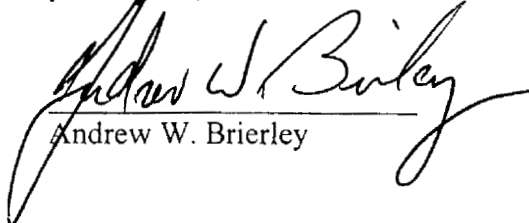
6. Any compensation, fee or allowance which may be claimed by me or by ADA will belong wholly to the firm and will not be divided, shared or pooled, directly or indirectly, with any other person or firm.

7. Neither ADA nor I received a retainer from the Debtor.

8. I shall amend this statement immediately upon my learning that (A) any of the within representations are incorrect or (B) there is any change of circumstances relating thereto.

9. I have reviewed the provisions of MLBR 2016-1.

Signed under the penalty of perjury this 5th day of Sept, 2001.



Andrew W. Brierley

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