

SILVERMANACAMPORA LLP
Counsel to Kenneth P. Silverman, Esq.,
Chapter 7 Trustee
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300
Jay S. Hellman, Esq.
David J. Mahoney, Esq.

Hearing Date: July 23, 2013
Time: 9:30 a.m.

Objections Due: July 16, 2013
Time: 5:00 p.m.

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

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In re:

AGAPE WORLD, INC.,
AGAPE MERCHANT ADVANCE LLC,
AGAPE COMMUNITY LLC, AGAPE
CONSTRUCTION MANAGEMENT LLC,
AGAPE WORLD BRIDGES LLC, AND
114 PARKWAY DRIVE SOUTH LLC,

Debtors.

-----X
KENNETH P. SILVERMAN, ESQ., as
Chapter 7 Trustee of Agape World, Inc., *et al.*,

Plaintiff,

-against-

HELEN QUINN,

Defendant.
-----X

Chapter 7
Case No.: 09-70660 (DTE)
Substantively Consolidated

Adv. Pro. No.: 11-08046 (REG)

**NOTICE OF HEARING ON TRUSTEE'S MOTION UNDER
BANKRUPTCY RULE 9019(a) SEEKING THE ENTRY OF AN
ORDER APPROVING THE RESOLUTION OF THIS ADVERSARY
PROCEEDING BY DEFENDANT'S EXECUTION OF A CONFESSION OF JUDGMENT**

PLEASE TAKE NOTICE, that upon the application (the "Motion") of Kenneth P. Silverman, Esq., the chapter 7 trustee (the "Trustee") for the substantively consolidated estate of Agape World, Inc., *et al.*, by his counsel, SilvermanAcampora LLP, the Trustee will move before the Honorable Robert E. Grossman, United States Bankruptcy Judge, at the United States Bankruptcy Court, Courtroom 860, Eastern District of New York at Central Islip, 290 Federal Plaza, Central Islip, New York 11722 on **July 23, 2013 at 9:30 a.m.**, or as soon thereafter as counsel can be heard, for entry of an order granting the Trustee's Motion for an

Order approving the resolution of this adversary proceeding by Defendant's execution of a confession of judgment. A copy of the proposed Order is annexed hereto.

PLEASE TAKE FURTHER NOTICE, that objections, if any, to the relief requested in the Motion or the proposed Order must be (i) made in writing; (ii) electronically filed with the Bankruptcy Court; (iii) delivered to Chambers of the Honorable Robert E. Grossman, United States Bankruptcy Judge, United States Bankruptcy Court, Eastern District of New York, Alfonse M. D'Amato Federal Courthouse, 290 Federal Plaza, Central Islip, New York 11722; (iv) mailed to SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753, Attn: David J. Mahoney, Esq.; and (v) mailed to the Office of the United States Trustee, 560 Federal Plaza, Central Islip, New York 11722, no later than **5:00 p.m., on July 16, 2013**.

PLEASE TAKE FURTHER NOTICE, that the Hearing may be adjourned without further notice other than by announcement of such adjournment in open Court.

Dated: Jericho, New York
May 31, 2013

SILVERMANACAMPORA LLP
Counsel to Kenneth P. Silverman, Esq., the
Chapter 7 Trustee

By: s/David J. Mahoney
David J. Mahoney
Member of the Firm
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300

SILVERMANACAMPORA LLP
Counsel to Kenneth P. Silverman, Esq.,
Chapter 7 Trustee
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Jay S. Hellman, Esq.
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UNITED STATES BANKRUPTCY COURT
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In re:

Chapter 7
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AGAPE WORLD, INC.,
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KENNETH P. SILVERMAN, ESQ., as
Chapter 7 Trustee of Agape World, Inc., *et al.*,

Plaintiff,

Adv. Pro. No.: 11-08046 (REG)

-against-

HELEN QUINN,

Defendant.

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**TRUSTEE'S MOTION UNDER
BANKRUPTCY RULE 9019(a) SEEKING THE ENTRY OF AN
ORDER APPROVING THE RESOLUTION OF THIS ADVERSARY
PROCEEDING BY DEFENDANT'S EXECUTION OF A CONFESSION OF JUDGMENT**

Kenneth P. Silverman, Esq., the chapter 7 trustee (the "Trustee") of the substantively consolidated estate of Agape World, Inc., *et al.*, by his attorneys SilvermanAcampora LLP, respectfully submits this application (the "Application") under 11 U.S.C. §105 and Federal Rule of Bankruptcy Procedure 9019(a) for entry of an order (the "Order") (annexed hereto as **Exhibit 1**) approving the proposed settlement of the Trustee's claims under 11 U.S.C. §§105, 502, 544, 548, 550, and 551, New York Debtor and Creditor Law §§273, 274, 275, 276, and

276-a, and New York common law against Helen Quinn as memorialized in the Confession of Judgment which is annexed hereto as **Exhibit 2**.

Background

1. On February 5, 2009 (the "Petition Date"), an involuntary chapter 7 petition was filed by four petitioning creditors ("the Petitioning Creditors") pursuant to 11 U.S.C. §303(b), against Agape World, Inc. ("AWI"), in the United States Bankruptcy Court for the Eastern District of New York.

2. On February 9, 2008, the Petitioning Creditors filed a motion to appoint an interim chapter 7 trustee under 11 U.S.C. §303(g).

3. On February 12, 2009, the Court granted the Petitioning Creditors' motion and entered an order directing the United States Trustee's Office to immediately appoint an interim chapter 7 trustee in the AWI case.

4. On February 12, 2009, Kenneth P. Silverman, Esq., was appointed the interim trustee in the AWI case, and has since duly qualified and is now the permanent Trustee in the substantively consolidated case.

5. On March 4, 2009, the Court issued an order for relief in the AWI chapter 7 case.

6. On April 14, 2009, the Court issued an order substantively consolidating AWI, Agape Merchant Advance LLC, Agape Community LLC, Agape Construction Management, LLC, Agape World Bridges LLC, and 114 Parkway Drive South LLC (collectively, "Agape" or the "Debtor").

7. Thereafter, pursuant to an order of this Court dated April 21, 2009 (Dkt. No. 106), the Trustee retained Navigant Consulting Inc. ("Navigant") to, among other things, conduct a forensic analysis of Agape's books and records.

8. Based upon Navigant's analysis, the Trustee determined that Helen Quinn ("Defendant") received certain transfers totaling Ninety Thousand Nine Hundred Twenty-Three and 91/100 (\$90,923.91) Dollars (the "Transfers") made by the Debtor to the Defendant that are

avoidable pursuant to 11 U.S.C. §§105, 502, 544, 548, 550, and 551, New York Debtor and Creditor Law §§273, 274, 275, 276, and 276-a, and New York common law.

9. On January 24, 2011, the Trustee commenced an adversary proceeding against the Defendant (the “Adversary Proceeding”) by the filing and service of a summons and complaint under Adv. Pro. No. 11-08854 seeking to, *inter alia*, avoid the Transfers pursuant to 11 U.S.C. §§105, 502, 544 and 548, New York Debtor and Creditor Law §§273, 274, 275, 276, and 276-a, and New York common law and to recover the Transfers from Defendant pursuant to 11 U.S.C. §550(a) (the “Trustee’s Claims”).

10. The parties engaged in discovery related to the Trustee’s Claims and the defenses asserted by Defendant, whereby she demonstrated that she invested \$231,750 with Agape and received \$296,283.91 in return, thereby reducing her net transfers to \$64,533.91 (the “Judgment Amount”).

11. The Trustee, through his counsel, and the Defendant, through their counsel engaged in negotiations to consensually resolve the Adversary Proceeding. In order to avoid the costs and expenses of continued litigation, Defendant has agreed to resolve the Trustee’s Claims by confessing judgment in the Judgment Amount.

12. For all of the reasons set forth herein, the Trustee submits that accepting Defendant’s offer to confess judgment in the Judgment Amount is a reasonable exercise of the Trustee’s business judgment and is in the best interests of the Debtor’s estate.

Settlement

13. The Trustee has determined that accepting Defendant’s confession of judgment is the most economical and efficient way to resolve this Adversary Proceeding and preserve the estate’s right to enforce the resulting judgment for the benefit of creditors, without the need to incur legal fees and risks inherent with the prosecution of the Trustee’s Claims.

14. In light of the foregoing, and mindful of the costs and risks of litigating the Trustee's Claims, the Trustee agreed to accept the confession of judgment in final resolution of the Claims.

Basis for Relief Requested

15. Federal Rule of Bankruptcy Procedure 9019(a), which governs the approval of compromises and settlement, provides:

(a) **Compromise.** On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

16. In approving a compromise and settlement, the Bankruptcy Court is required to make an "informed and independent judgment" as to whether the compromise and settlement is fair and equitable based on an:

[e]ducated estimate of the complexity, expense, and likely duration of [any] litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Basic to this process in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of litigation.

Protective Committee for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-425, *reh'g denied*, 391 U.S. 909 (1968). See *In re Jackson Brewing Co.*, 624 F.2d 605, 607 (5th Cir. 1980); *In re Holywell Corp.*, 93 B.R. 291, 294-95 (Bankr. S.D. Fla. 1988); *In re Arrow Air, Inc.*, 85 B.R. 886, 891 (Bankr. S.D. Fla. 1988); *In re Bell & Beckwith*, 77 B.R. 606, 611 (Bankr. N.D. Ohio), *aff'd*, 87 B.R. 472 (N.D. Ohio 1987); *In re Heissinger Resources Ltd.*, 67 B.R. 378, 383 (C.D. Ill. 1986) ("the law favors compromise").

17. In making its determination, the Court should consider whether the proposed compromise is in the "best interest of the estate." *Depo v. Chase Lincoln First Bank, N.A.* (*In re Depo*), 77 B.R. 381, 383 (N.D.N.Y. 1987), *aff'd*, 863 F.2d 45 (2d Cir. 1988). As stated in *Arrow Air*, the "approval of [a] proposed compromise and settlement is a matter of this Court's sound discretion." *Arrow Air*, 85 B.R. at 891. In passing upon a proposed settlement, "the bankruptcy

court does not substitute its judgment for that of the Trustee [or debtor in possession]." *Depo*, 77 B.R. at 384 (citations omitted). The bankruptcy court is not required "to decide the numerous questions of law and fact raised by [objectors] but rather canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness." *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983), *cert denied*, 464 U.S. 822 (1983) (internal quotations and citations omitted). See *Holywell* 93 B.R. at 294. ("In order to exercise this discretion properly, the Court must consider all of the relevant facts and evaluate whether the compromise suggested falls below the lowest point in the range of reasonableness") (internal quotations and citations omitted). In passing upon the reasonableness of a proposed compromise, the Court "may give weight to the opinions of the Trustee [or debtor in possession], the parties and their counsel." *Bell & Beckwith*, 77 B.R. at 612.

18. The factors to be considered by the Court in determining whether to approve a compromise or settlement include (a) probability of success in the litigation, with due consideration for the uncertainty in fact and law, (b) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay, and (c) all other factors bearing on the wisdom of the compromise. *Arrow Air*, 85 B.R. at 891 (*citing TMT Trailer Ferry*, 390 U.S. at 424-25). See *Jackson Brewing Co.*, 624 F.2d at 607; *Holywell Corp.*, 93 B.R. at 294-95 (citations omitted).

19. Through the discovery process, Defendant demonstrated that her total liability equaled the Judgment Amount. As such, by accepting the confession of judgment, the Trustee has obtained a judgment equal to 100% of what he might be awarded after trial, without incurring the costs associated with further litigation.

20. Accordingly, it is unlikely that further litigation would result in a greater "net benefit" to the Debtor's estate. In the sound business judgment of the Trustee, the proposed settlement is fair and equitable and in the best interest of the estate.

Notice

21. The Trustee has served the Notice of Hearing, proposed Order, and Application with exhibit upon: (i) the Office of the United States Trustee; (ii) Nicholas Cosmo, former principal of the Debtor; (iii) Defendant; (iv) Defendant's Counsel; (v) the appropriate taxing authorities; and (vi) all parties having filed a Notice of Appearance in this case. Copies have been posted on the Trustee's website located at www.agapeworldbankruptcy.com. The Trustee respectfully submits that the proposed service complies with this Court's Order Establishing Noticing Procedures entered on July 8, 2009 and is otherwise sufficient.

22. No previous application for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Trustee respectfully requests that the Court grant this Application authorizing and approving the Stipulation, and grant such other, further and different relief as the Court deems just and proper.

Dated: Jericho, New York
May 31, 2013

SILVERMANACAMPORA LLP
Attorneys for Kenneth P. Silverman, Esq.,
the Chapter 7 Trustee

By: s/ David J. Mahoney
David J. Mahoney
Member of the Firm
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300

Exhibit 1

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

AGAPE WORLD, INC.,
AGAPE MERCHANT ADVANCE LLC,
AGAPE COMMUNITY LLC, AGAPE
CONSTRUCTION MANAGEMENT LLC,
AGAPE WORLD BRIDGES LLC, AND
114 PARKWAY DRIVE SOUTH LLC,

Debtors.

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KENNETH P. SILVERMAN, ESQ., as
Chapter 7 Trustee of Agape World, Inc., *et al.*,

Plaintiff,

Chapter 7
Case No.: 09-70660 (DTE)
Substantively Consolidated

Adv. Pro. No.: 11-08046 (REG)

-against-

HELEN QUINN,

Defendant.

-----X

**ORDER UNDER BANKRUPTCY RULE 9019(a)
APPROVING THE RESOLUTION OF THIS ADVERSARY
PROCEEDING BY DEFENDANT'S EXECUTION OF A CONFESSION OF JUDGMENT**

Upon the Notice of Hearing (the "Notice"), dated May 31, 2013, and related application (collectively, the "Application") of Kenneth P. Silverman, Esq., the chapter 7 trustee (the "Trustee") of the substantively consolidated estate of Agape World, Inc., *et al.* (the "Debtor"), by his counsel, SilvermanAcampora LLP, seeking the entry of an order (the "Order") approving a resolution of the this adversary proceeding by defendant's execution of a confession of judgment; and upon the affidavit of service filed with the Court; and no objections to the Application or the proposed Order having been filed; and the Court having found that Helen Quinn's execution of a confession of judgment in the amount of \$64,533.91 in full and final resolution of the Trustee's claims pursuant to 11 U.S.C. §§105, 502, 544, 548, 550, and 551, New York Debtor and Creditor Law §§273, 274, 275, 276, and 276-a, and New York common law against Defendant to be fair, reasonable, and in the best interests of the Debtor's estate;

and sufficient cause having been shown therefor; and after due deliberation and consideration having been had; and it appearing that sufficient notice of the Application and proposed Order has been given; and it appearing that good and sufficient cause exists for granting the Application and proposed Order; and no additional notice being necessary or required;

NOW, THEREFORE, upon the Notice and Application of the Trustee and pursuant to Federal Rule of Bankruptcy Procedure 9019(a) and other applicable law, it is hereby

ORDERED, that service of the Notice and Application and proposed Order, having been provided to: (i) the Office of the United States Trustee; (ii) Nicholas Cosmo, former principal of the Debtor; (iii) Defendant; (iv) Defendant's Counsel; (v) the appropriate taxing authorities; and (vi) all parties that filed a Notice of Appearance in this case, and copies having been posted on the Trustee's website located at www.agapeworldbankruptcy.com, complies with this Court's Order Establishing Noticing Procedures entered on July 8, 2009 and is otherwise sufficient; and it is further

ORDERED, that the Application is granted, and it is further

ORDERED, that the resolution of this adversary proceeding by confessed judgment in the amount of \$64,533.91 is approved; and it is further

ORDERED, that the Trustee be, and hereby is authorized and directed to take such steps, execute such documents, and expend such funds as may be reasonably necessary to effectuate and implement the terms and conditions of this Order.

Exhibit 2

United States of America and its territories that the Trustee deems appropriate.

4. This confession of Judgment is for a debt justly due to the Trustee arising from the following facts:

- Between September 1, 2007 and the February 5, 2009, I received conveyances from the Debtor in the amount of \$64,533.91 (the "Transfers");
- The Transfers were made by the Debtor, to me, for no consideration or less than reasonably equivalent value;
- The Debtor was either insolvent at the times the Transfers were made, or was rendered insolvent as a result of the Transfers;
- At the times the Transfers were made, there existed unsecured creditors of the Debtor who remained unsecured creditors as of the filing date of the Debtor's bankruptcy cases; and

5. Pursuant to an agreement between me and the Trustee, I have agreed to confess judgment in the amount stated herein.

By:

[Redacted signature]

HELEN QUINN, a/k/a
HELEN MARIE QUINN

Sworn to before me this)

19 day of APRIL, 2013) ss.:

Danbury

[Redacted signature]

Notary Public

notary public
State of Connecticut
Robert Elias
my commission expires 08/31/2013